



Australian Government
**Department of Immigration
and Border Protection**

Parliamentary Inquiry into Migration Amendment (Regulation of Migration Agents) Bill 2017

Legal and Constitutional Affairs Legislation Committee



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1 Introduction

The key measure of the Migration Amendment (Regulation of Migration Agents) Bill 2017 is the exclusion of lawyers with practising certificates from regulation by the Office of the Migration Agents Registration Authority (OMARA).

Since regulatory schemes governing migration agents were first introduced in 1992, lawyers have argued for their exclusion from such schemes. At various times, other bodies have recommended the exclusion of lawyers when considering the migration agent industry. Significantly, in 2010, the Australian Productivity Commission recommended that lawyers be exempted from registration as migration agents and that a review of the performance of lawyers be conducted three years after the exemption becomes effective.

The 2014 Independent Review of the Office of the Migration Agents Registration Authority (OMARA Review) canvassed the views of all stakeholders across the migration advice industry.

After consideration of their views, the OMARA Inquiry made a number of recommendations, the first of which was that lawyers be removed from the regulatory scheme that governs migration agents such that lawyers:

- Cannot register as migration agents; and
- Are entirely regulated by their own professional bodies.

International comparisons revealed that Canada, the United Kingdom and New Zealand, which have comparable registration schemes for migration agents, do not require that lawyers be registered in order to provide immigration advice.

The OMARA Inquiry found that despite concerns expressed that lawyers should continue to be registered as migration agents due to the complexity of migration law, it was noted that while immigration law is complex, lawyers operate in many highly complex areas with the knowledge that if they are negligent or unprofessional, they will be subject to some of the strictest and harshest disciplinary procedures and professional sanctions in the country.

2 Existing regulatory scheme

Under the current legislation, all lawyers with practising certificates are required to register and pay registration fees to the relevant state and territory legal professional body and are subject to regulation by that body. However, lawyers with practising certificates involved in migration law are also required to register as migration agents and pay registration fees to the OMARA, which imposes an unjustified financial burden.

There are some exemptions for such lawyers under the current legislation:

- completion of the Graduate Certificate in Australian Migration Law and Practice; and
- purchasing additional professional indemnity insurance if they already have the required insurance on their legal practice.

3 Rationale for change

Prior to final drafting of this bill, the Government extensively consulted, including by circulating an Exposure Draft to key stakeholders in the migration advice industry. The feedback provided in response to the Exposure Draft was taken on board to ensure an orderly transition of lawyers from the OMARA regulatory scheme.

After consultations with key stakeholders, the Government accepted the recommendation of the OMARA Review regarding the exclusion of lawyers with practising certificates from the migration agent regulatory scheme. The following rationale underpins the Government decision.

3.1 Balancing consumer protection with deregulation agenda

A high level of regulation imposes unnecessary costs, damages productivity, deters investment and undermines job growth. As a result, the Government prioritises reducing inefficient regulation where possible.

However, the Government recognises that deregulation should not be prioritised over the maintenance of important consumer protections.

In the implementation of this change, the Government will ensure that appropriate consumer protections are in place, including mechanisms to ensure that vulnerable consumers will continue to be protected from receiving incompetent migration advice.

The OMARA will continue to regulate migration agents who are not lawyers with practising certificates and will offer a comprehensive communication strategy so that consumers understand that migration advice can also be obtained from practising lawyers.

Lawyers with practising certificates intending to practice in the migration advice field will be able to access educational offerings to increase their knowledge, as they already do with other complex aspects of the law.

The relevant legal professional and disciplinary bodies and the statutory schemes underpinning them have a broader range of powers to resolve consumer-related issues, which they are experts in implementing. This includes penalties outside of the OMARA's existing jurisdiction, including financial penalties for improper conduct, and recommending compensation for affected clients.

3.2 Existing comprehensive regulatory regime covering lawyers

The Government has sought to exclude lawyers with practising certificates from registration as migration agents on the basis that Australian lawyers are highly educated and already subject to one of the strictest regulatory schemes of any profession.

3.2.1 Training, education and suitability assessments

In addition to requiring a four-year degree for legal practice, lawyers must meet personal suitability requirements for admission, granting and renewal of legal practising certificates. Lawyers must also complete a period of supervised practice before they can practice on an unsupervised basis. Their relevant legal professional association requires them to complete continuing professional development courses as a condition of their practising certificate.

3.2.2 Regulatory requirements in legal schemes

There are complaint mechanisms for consumer and disciplinary matters. Legal regulators in each state and territory have the power to immediately cancel, suspend or vary practising entitlements or conditions in response to cases of misconduct, bankruptcy, or commission of certain offences.

There is strict regulation of trust accounts, including provisions for external intervention.

As at 15 August 2017, there were 7080 registered migration agents with OMARA, of which 2342 (33%) were Australian legal practitioners. Between 1 July 2016 and 30 July 2017, two out of 16 (12.5%) migration agents sanctioned were legal practitioners. This also represents two out of 2342 (0.08% of) legal practitioners.

These statistics demonstrate that the background and training provided to Australian legal practitioners is sufficiently rigorous for them to be able to competently deal with migration advice matters.

4 Transitional arrangements

Following the commencement of the legislation on 1 July 2018, the legal professional disciplinary bodies will be responsible for investigating existing complaints about immigration assistance given by lawyers with practising certificates. The OMARA will continue to be responsible for investigating existing complaints relating to registered migration agents without legal practising certificates.

The Department will work closely with the legal profession regulators to ensure that the transition is well managed. As part of this, the OMARA will endeavour to reduce the number of complaints against legal practitioners handed over to legal regulators upon commencement to the furthest extent possible.

Responsibility for investigating new complaints relating to lawyers with practising certificates will fall to the relevant State and Territory jurisdictions.

Suitable arrangements will be put in place, such as information sharing, that will assist the jurisdictions to resolve such complaints.

5 Conclusion

The Government recognises that the dual regulation of lawyers with practising certificates can pose an unnecessary administrative burden on such lawyer agents, who are already subject to a strict professional regulatory regime.

This change reaffirms the Government's commitment to deregulation and removing unnecessary red tape across industry sectors.