



Refugee Council of Australia

SENATE LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE

SUBMISSION TO INQUIRY ON THE MIGRATION AMENDMENT (REGULATION OF MIGRATION AGENTS) BILL 2017 AND THE MIGRATION AGENTS REGISTRATION APPLICATION CHARGE AMENDMENT (RATES OF CHARGE) BILL 2017

The Refugee Council of Australia (RCOA) is the national umbrella body for refugees, people seeking asylum and the organisations and individuals who work with them, representing over 200 organisations and 1,000 individual members. RCOA promotes the adoption of humane, lawful and constructive policies by governments and communities in Australia and internationally towards refugees, people seeking asylum and humanitarian entrants. RCOA consults regularly with its members, community leaders and people from refugee backgrounds and this submission is informed by their views.

RCOA welcomes the introduction of the *Migration Amendment (Regulation of Migration Agents) Bill 2017* and the *Migration Agents Registration Application Charge Amendment (Rates of Charge) Bill 2017*. These Bills seek to reform the migration advice sector, and in particular remove the requirement that legal practitioners must be dual-registered as migration agents. RCOA believes this reform will allow more legal practitioners to provide vital legal advice for refugees and asylum.

This is particularly welcome as the Australian Government has removed over 80% of funding for legal advice for people seeking asylum and refugees. Until adequate legal funding is restored, people seeking asylum and refugees must often rely on pro bono assistance from lawyers and migration agents. By removing the requirement for legal practitioners also to be registered migration agents, RCOA believes more lawyers will be able to provide vital pro bono migration advice to those who need to most.

1. The need for pro bono legal advice

- 1.1. For a number of years, RCOA has expressed significant concern regarding the very limited support provided by the Australian Government for migration advice for refugees and people seeking asylum. This was further limited in 2013 by the Department of Immigration and Border Protection's removal of the Immigration Advice and Application Assistance Scheme (IAAAS) for those who arrived in Australia by boat.
- 1.2. The provision of legal support is essential for the rule of law and to ensure Australia makes the correct decision in matters such as refugee status determination. Without sound legal advice, there is a concern that people seeking asylum will not be able to adequately express their claims for protection, presenting a risk that Australia may return someone with legitimate claims of persecution back to harm.
- 1.3. Until the Government restores adequate funding for legal assistance, refugees and people seeking asylum often rely on pro bono support provided by the legal community. Currently, in order to give migration advice, lawyers are required to be registered migration agents, a process which takes at least a couple of months and which costs at least \$160 (for non-commercial registration).
- 1.4. This presents a hurdle for lawyers to provide pro bono migration assistance, and increases the time required to recruit pro bono lawyers. The time required for registration is particularly

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an issue due to the unpredictable implementation of government policies, such as the Minister for Immigration's short-notice requirement that all people seeking asylum who had arrived by boat must submit their claims by 1 October 2017. This policy was introduced in May 2016, leaving only a few months for legal providers to recruit pro bono lawyers to support thousands of people seeking asylum to meet this deadline.¹ The recruitment of lawyers would have been easier had they not had to wait a number of months to be registered as migration agents.

- 1.5. Lawyers are already required to maintain registration and uphold their ethical duties under their own state-based legal profession regulatory framework. RCOA believes this system is sufficient to ensure lawyers provide sound advice and adhere to their ethical obligations. Indeed, the legal profession regulatory framework in some ways provides more comprehensive requirements for lawyers than the Migration Agent's Code of Conduct. Further, the complaints mechanism within each state-based legal profession is also sufficient to provide a satisfactory process in which to make complaints against lawyers. Likewise, the legal profession's complaints mechanism can often be a more rigorous process for people to have their complaints remedied.
- 1.6. As such, RCOA welcomes the introduction of these Bills which would see lawyers will not be required to hold due registration as both legal practitioners and migration agents.

Recommendation

RCOA recommends these Bills should be passed.

¹ Ben Doherty, 'Deadline for asylum seekers in Australia impossible to meet, lawyers say' *The Guardian* (23 May 2017)
<<http://www.theguardian.com/australia-news/2017/may/23/deadline-for-asylum-seekers-in-australia-impossible-to-meet-lawyers-say>>.