
Committee Secretary

Senate Legal and Constitutional Affairs Committee

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Re : Senate Inquiry into the

Migration Amendment (Regulation of Migration Agents) Bill 2017 and Migration Agents
Registration Application Charge Amendment (Rates of Charge) Bill 2017

Dear Secretary

I write to object to the proposed bill, both to the over-riding scheme of the bill removing lawyers from regulation by the MARA,, and to the barring of dual registration as Australian Legal Practitioners and Registered Migration Agents.

1. Objections to the removal of regulation of Australian Legal Practitioners.

It is said that the Code of Conduct is both a sword and a shield. The Code of Conduct has been carefully crafted to guide migration agents in protecting the rights of vulnerable clients. As a Registered Migration Agent and a solicitor, I can see no reason in theory or practice why any practitioner could consider the obligations in the Code of Conduct to be onerous. Indeed it would be a concern if any practitioner in the field of migration advice and assistance could not abide by the Code of Conduct for Registered Migration Agents.

What will be implemented if the bill is passed in its present form is that Australian Legal Practitioners will be subject to a different set of obligations in providing migration advice, thus fracturing the regulation of the field. The different obligations could lead to perverse and anti-competitive outcomes and confusion in relation to consumer protection.

An example is the obligation for RMAs to have access to an online library at all times. This is a fundamental requirement in the field and there are strong grounds for considering that it would be negligent conduct for any practitioner to attempt to practice without access to the PAM3 policies and guidelines through Legendcom (including through Legendcom or Lexisnexis).

2. Objection to the bar on dual registration as an Australian Legal Practitioner and Registered Migration Agent

I strongly object to the bar against dual registration, because it infringes on the current rights of practitioners to operate as Registered Migration Agents separately from any concurrent legal practice as Australian Legal Practitioners. While this may seem innocuous to a non-practitioner, the change will be devastating by immediately destroying the rights to operate of large numbers of small business Migration Agent operators.

Many Migration Agents are concurrently registered as restricted or supervised legal practitioners, or are in training to become Australian legal practitioners. The small businesses operated by these Migration Agents will be immediately extinguished by the mere fact of the agent acquiring, or holding, a supervised practicing certificate.

The Legal Profession has failed to restrict the number of legal practitioners graduating every year to numbers which can be absorbed by the professions employment opportunities, and hence there is an extreme shortage of positions for supervised solicitors. Many supervised solicitors are reduced to virtually begging for work and offering themselves as unpaid interns, euphemistically volunteers, to get through the period of supervised practice. This is undignified and unsustainable for many people. To reduce presently autonomous RMA professionals to this state is to inflict an indignity upon them. Many agents undertake their supervised legal practice on a part time basis over a number of years and this sudden change of the law will have a devastating impact on them. Either they will have to give up their business, and seek to pursue their luck seeking employment as supervised solicitors along with the vast numbers of unemployed law graduates, or they will be forced to give up their practicing certificates.

Further there are compelling reasons for a dual RMA/legal practitioner to continue to separate their legal practice from the RMA practice. There are different rules for the management of monies under the Code of Conduct which are in fact far less onerous than those applying under the scheme for legal practitioners. The bar on dual registration would force legal practitioners who are RMAs to combine their two businesses into a single business, with significantly more onerous legal provisions such as relating to Trust Accounts, and significantly increased costs such as those relating to Law Cover.

There will be other significant imposts on small practitioners who will be forced to merge their migration and law businesses such as forcing both businesses over the GST threshold. While this may increase government revenue from some practitioners, it will reduce the viability of many small businesses, increase consumer costs and may drive some practitioners out of business.

3. Requirement for presently autonomous professionals giving Immigration advice to have supervision to give the same advice if the Bill is passed in its present form.

S.276 (1) of the Act appears to indicate that RMAs can represent clients in Courts. This is surprising. If this is the correct interpretation of s.276 then it should be recognised by the Parliament that RMAs have currently been authorised to represent clients in the Courts. A migration agent who has been authorised to undertake this task unsupervised, or any other migration advice unsupervised, would, if the Bill is passed, no longer be qualified to give that advice, except under the supervision of an unsupervised solicitor. There is no requirement for that supervising solicitor to have any experience or knowledge of the highly complex field of migration law. The notion that the supervising solicitor would even be able to provide that supervision would be surprising, if they had no actual experience of migration law and practice.

4. Objection that the bill does nothing to protect consumers and does not deal with the real evils besetting this field.

Another objection to the bill is that it does nothing to regulate unscrupulous operators in the the migration field, whether they are dual Solicitor-RMAs, RMAs, or persons unlawfully giving migration advice and assistance.

Yours faithfully

Daniel Taylor

solicitor