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Migration Agents Registration Application Charge
Amendment Bill 2001

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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No. 67 2001-02

Migration Agents Registration Application Charge
Amendment Bill 2001

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26 September 2001

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Migration Agents Registration Application Charge Amendment Bill 2001

Date Introduced: 23 August 2001

House: House of Representatives

Portfolio: Immigration and Multicultural Affairs

Commencement: Royal Assent

Purpose

To increase the charge limit in relation to migration agent registration applications.

Background

In 1989 the *Migration Act 1958* was amended to establish a regime for regulating the conduct of third parties giving migration advice. Various controls were introduced such as a ministerial veto on eligibility, maximum fee schedules, activity reporting, and offences for false and misleading representations with respect to migration decision making.

In September 1990 the Joint Standing Committee on Migration Regulations reported that despite the new regulatory measures negligent and unscrupulous activities and practices were still taking place among migration agents.¹ In 1992 the *Migration Act 1958* (the Act) was amended to require that migration agents be registered to protect entrance applicants from 'unscrupulous advisers and agents'.² In introducing the Migration Amendment Bill (No.3) 1992 the Government agreed that '[w]hile these were worthwhile initiatives, experience has shown that they have not gone far enough in addressing the problems'.

Accordingly, the Act prohibits a person who is not registered as a migration agent from giving 'immigration assistance' for a fee.³ While this prohibition originally applied to all persons or organisations, there are now two exceptions. The Act does not prohibit a lawyer from giving 'immigration legal assistance',⁴ or a parliamentarian from giving 'immigration assistance'. The Act also provides that a person who is not a registered agent must not ask for or receive any fee or other reward for giving immigration assistance.⁵

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Once registered, migration agents and lawyers must comply with the Code of Conduct prescribed in the Migration Regulations 1994. The Migration Agents Registration Authority monitors the conduct of registered agents in their provision of immigration assistance and of lawyers in their provision of immigration legal assistance.⁶

Alongside the Migration Amendment Bill (No.3) 1992 were two Bills dealing with registration charges. The Migration Agents Registration (*Application*) Levy Bill 1992 imposed a levy for registration of persons seeking to give immigration assistance for a fee (\$1000 for a principal and \$500 for an employee). The Migration Agents Registration (*Renewal*) Levy Bill 1992 imposed the same levy for persons renewing their registration.

The Migration Agents Registration Scheme (MARS) was initially established for 3 years with an undertaking to review after 2 years. However, it was given two temporary 12 month extensions by Labor and Coalition Governments in 1995⁷ and 1996.⁸ MARS was reviewed twice: in 1995 by the Joint Standing Committee on Migration⁹ and in 1997 by a taskforce within the Department of Immigration and Multicultural Affairs. The major recommendation of the latter review was to move towards a light-touch regulatory framework or 'from government backed regulation, to industry self-regulation'.

In 1997 this recommendation and other recommendations were incorporated into the Migration Legislation Amendment (Migration Agents) Bill 1997. Alongside this Bill were the Migration Agents Registration *Application* Charge Bill 1997 and the Migration Agents Registration *Renewal* Charge Bill 1997. The principal Bill repealed the levy regime effectively replacing it with a flexible charge regime. Under this regime the legislation imposes a general charge and sets a general inflation indexed charge limit. The regulations prescribe the amounts, within the charge limit, applicable to different kinds of applicant.

Both the Application and Renewal Bills set an initial charge limit of \$1100 in relation to applications for registration or renewal of registration in the year ending 30 June 1998. As at 30 June 2001, the indexed charge limit was \$1180. On 1 July 2001 the charges, as opposed to the charge limit, were increased from \$1085 to \$1180 (registration) and from \$870 to \$950 (renewal).¹⁰ As the Department of Immigration and Multicultural Affairs has noted, the increase in the registration charge was equivalent to the indexed charge limit.¹¹ Thus, a higher charge limit is necessary for any future increases in the registration charge.

Main Provisions

Schedule 1, item 1 increases the charge limit under the *Migration Agents Registration Application Charge Act 1997* to \$1800 in relation to registration applications in the year ending 30 June 2002. Effectively, this is an increase in the indexed limit of at least \$620.

The remaining amendments secure the status quo for registration applications in the year ending 30 June 2001 (**item 2**) or for registration applications made between 1 July 2001 and the commencement of this Bill (**item 3**).

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Endnotes

- 1 Joint Standing Committee on Migration Regulations, 'Illegal Entrants in Australia – Balancing Control and Compassion', September 1990.
- 2 *Migration Amendment Act (No. 3) 1992*.
- 3 'Immigration assistance' is defined in section 276.
- 4 'Immigration legal assistance' is defined in section 277.
- 5 Section 281.
- 6 Section 316.
- 7 *Migration Legislation Amendment Act (No. 5) 1995*.
- 8 *Migration Legislation Amendment Act (No. 1) 1996*.
- 9 Joint Standing Committee on Migration, 'Protecting the Vulnerable? The Migration Agents Registration Scheme', May 1995.
- 10 Department of Immigration and Multicultural Affairs, Notice of Legislation Change: effective 1 July 2001 – Migration Agents Registration Application Charge Regulations 1998 at http://www.immi.gov.au/legislation/lc0601_10.htm [25/09/01].
- 11 Department of Immigration and Multicultural Affairs, Notice of Legislation Change: effective 1 July 2001 – Migration Agents Registration Application Charge Regulations 1998 at http://www.immi.gov.au/legislation/lc0601_10.htm [25/09/01].

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