



Bills Digest

No. 94 2001-02

Migration Agents Registration Application Charge
Amendment Bill 2002

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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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Migration Agents Registration Application Charge
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Rosemary Bell
Law and Bills Digest Group
13 March 2002

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Migration Agents Registration Application Charge Amendment Bill 2002

Date Introduced: 14 February 2002

House: House of Representatives

Portfolio: Immigration and Multicultural and Indigenous Affairs

Commencement: Royal Assent

Purpose

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

Background

This Bill is the same as the Migration Agents Registration Application Charge Amendment Bill 2001 which was introduced into the House of Representatives by the then Minister for Immigration and Multicultural Affairs on 23 August 2001. The Bill was supported by the Opposition¹ and was passed on 26 September 2001. It was introduced into the Senate on 26 September 2001 and the second reading was adjourned on that day. The Senate Scrutiny of Bills Committee considered the Bill in its Report No. 13/01 that was tabled and adopted on 29 August 2001. It did not recommend that the Bill be referred to a Committee for closer scrutiny. The Bill lapsed when Parliament was prorogued on 8 October 2001.

Regulation of the Migration Advice Industry

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

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were still taking place among migration agents.² In 1992 the *Migration Act 1958* (the Migration Act) was amended to require that migration agents be registered to protect entrance applicants from 'unscrupulous advisers and agents'.³ 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.⁴ Once registered, migration agents and lawyers must comply with the Code of Conduct prescribed in the Migration Regulations 1994. The Migration Agents Registration Authority (MARA) monitors the conduct of registered agents in their provision of immigration assistance and of lawyers in their provision of immigration legal assistance.⁵ To apply for registration, or to renew registration as a migration agent, a person must pay the relevant application charge set out in the Migration Agents Registration Application Charge Regulations 1998. The funds raised are paid into Consolidated Revenue and are used to support the MARA in carrying out its statutory responsibilities.

The Existing Regulatory Scheme

The existing statutory self-regulatory scheme was introduced by the *Migration Legislation Amendment (Migration Agents) Act 1997*. The amendments effected by that Act (contained in Part 3 of the Migration Act) allowed the then Minister for Immigration and Multicultural Affairs to appoint the Migration Institute of Australia Ltd (MIA) as the Migration Agents Registration Authority (MARA).

The functions of the MARA are listed in section 316 of the Migration Act, and include:

- maintaining a register of migration agents
- investigating complaints against agents and disciplining them, and
- overseeing agents' professional development.

The MIA is the main industry body, so a scheme in which the MIA (as the MARA) carries out regulatory functions under Part 3 of the Migration Act is a statutory self-regulatory one.

The scheme became operational on 23 March 1998 when the Minister formally appointed the MIA as the MARA.

On 27 August 1999, the then Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs announced that the existing arrangements for the migration advice industry would be extended until March 2003.⁶

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The decision to extend the existing arrangements was made after a review of their operation, carried out by the then Department of Immigration and Multicultural Affairs under direction from an independent reference group (the Spicer Committee).

Charges for Registration as a Migration Agent

The *Migration Agents Registration Application Charge Act 1997* (the Charge Act) imposes a charge on applications for registration as a migration agent. The legislation imposes a general charge and sets a general inflation indexed charge limit. Regulations prescribe the amounts, within the charge limit, applicable to different kinds of applicant. It was said in the second reading speech to the Charge Act that this regime ‘provides the government with flexibility to set differing levels of charge depending on the circumstances of the agent. It will allow, for example, lower levels of charge to be set for agents in the voluntary sector’.⁷

The Charge Act set an initial charge limit of \$1100 in relation to applications for 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 (application for registration) and from \$870 to \$950 (application for renewal).⁸ This has brought the application registration charge to the equivalent of the application charge limit. Subsection 6(3) of the Charge Act provides that the regulations must not prescribe an amount more than the charge limit for the registration application. 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 Hon Duncan Kerr MP, Migration Agents Registration Application Charge Amendment Bill 2001, House of Representatives, *Debates*, 26 September 2001, p. 31614.
- 2 Joint Standing Committee on Migration Regulations, 'Illegal Entrants in Australia – Balancing Control and Compassion', September 1990.
- 3 *Migration Amendment Act (No. 3) 1992*.
- 4 'Immigration assistance' is defined in section 276.
- 5 Section 316.
- 6 Sen the Hon Ian Campbell, 'Second Reading Speech', Migration Legislation Amendment (Migration Agents) Bill 1999, Senate, *Hansard*, 23 September 1999, p. 8752.
- 7 Hon Philip Ruddock MP, 'Second Reading Speech', Migration Agents Registration Application Charge Bill 1997, House of Representatives, *Debates*, 1 October 1997, p. 8934.
- 8 Migration Agents Registration Application Charge Amendment Regulations 2001 (No. 1).

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