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## Migration Legislation Amendment (Migration Advice Industry) Bill 2002

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Migration Legislation Amendment (Migration Advice  
Industry) Bill 2002

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15 November 2002

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# Migration Legislation Amendment (Migration Advice Industry) Bill 2002

**Date Introduced:** 16 October 2002

**House:** House of Representatives

**Portfolio:** Immigration and Multicultural and Indigenous Affairs

**Commencement:** Royal Assent

## Purpose

To provide for the indefinite extension of the current statutory self-regulation of the migration advice industry. This is done by removing the sunset clause which would have seen the current arrangements end on 21 March 2003.

## Background

In 1989 the *Migration Act 1958* (the Migration Act) 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.<sup>1</sup> When introducing the Migration Amendment Bill (No. 3) 1992, the former Labor Government agreed that '[w]hile these were worthwhile initiatives, experience has shown that they have not gone far enough in addressing the problems', and amended the Migration Act to require that migration agents be registered to protect entrance applicants from 'unscrupulous advisers and agents'.<sup>2</sup>

Accordingly, the Act prohibits a person who is not registered as a migration agent from giving 'immigration assistance' for a fee.<sup>3</sup> 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

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immigration legal assistance.<sup>4</sup> 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.

## Regulation of the Migration Advice Industry

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 by 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. The Government proposed that the migration advice industry should move to voluntary self-regulation through a period of statutory self-regulation. This decision was based on recommendations of the 1996 *Review of the Migration Agents Registration Scheme*.<sup>5</sup> Voluntary self-regulation is generally understood to mean that there is no legislative framework for the industry, apart from consumer protection mechanisms such as small claims tribunals and the potential for clients to take legal action against agents under the *Trade Practices Act 1974* and/or civil action for damages. Statutory self-regulation was originally subject to a two year sunset clause and was to cease on 21 March 2000.

The current statutory self-regulation scheme for the migration advice industry has now been in operation for more than three years. The Government has reviewed the effectiveness of the operation of the scheme on several occasions. In 1999 a review was carried out by the then Department of Immigration and Multicultural Affairs under direction from an independent reference group led by Mr Ian Spicer, former President of the Confederation of Australian Industry. The Minister, Hon Phillip Ruddock, reported at the time that:

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The government has found that the industry is not yet ready to move to voluntary self-regulation in view of continuing significant consumer protection concerns, national interest issues and the special nature of the migration advice industry.

In particular, the government has significant concerns about the vulnerability of the client group to exploitation and the ethics and conduct of a small group in the industry.

Given the vulnerability of clients and the potential for malpractice in the industry, it is clear that voluntary regulation of the industry would not be desirable or viable at this stage and that statutory self-regulation should continue.<sup>6</sup>

The Government therefore decided to extend the sunset clause for statutory self-regulation until 21 March 2003 and to conduct a further review of the effectiveness of its operation before that date.

The most recent review of statutory self-regulation of the migration advice industry began in September 2001. The review found that, despite progress made by the industry since 1999 and the professionalism shown by most migration agents in Australia, 'more can still be done to protect consumers and to continue to improve the operations of the industry and its regulator'.<sup>7</sup> The review received 17 submissions from individuals and organisations representing government agencies, lawyers' organisations, migrant resource centres, registered migration agents and consumers. Not one submission suggested that the migration advice industry was ready yet for full self-regulation.<sup>8</sup> The review recommended that the period of statutory self-regulation should continue. It said that 'the activities of the unscrupulous few, as well as the need to continue to raise professional standards' were at the heart of this recommendation.<sup>9</sup>

The review also found some short-comings in the processes of the MARA and reported that:

Constant vigilance to streamline decision-making and to promote an open, efficient approach to clients – and demonstrated ongoing improvement in these areas – will be necessary if full voluntary self-regulation is ultimately to be achieved.<sup>10</sup>

The review recommended that, in order to provide the MIA with the level of long-term security it needs as the regulator, the current statutory self-regulation arrangements should no longer be subject to a sunset clause. Instead, the current arrangements should be extended and reviewed again after the industry has achieved 'key milestones', including a significant fall in the number of complaints against migration agents, and a 'manifest increase' in the level of consumer satisfaction.<sup>11</sup> The review also recommended the inclusion of various review processes in the MARA's work plan in order to promote a climate of continuous improvement in the industry regulator.

On 25 September 2002 the Minister for Citizenship and Multicultural Affairs, Hon Gary Hardgrave, announced that the Government will be acting on all the recommendations made by the latest review.<sup>12</sup> He said that a further review of the effectiveness of the

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operation of statutory self-regulation in the migration advice industry would be held before 2008 in order 'to chart the industry's further progress in achieving key milestones towards self-regulation'. At the same time he foreshadowed future legislation to require overseas migration agents to be registered in order to deal with Australian embassies and consulates.

The Shadow Minister for Citizenship and Multicultural Affairs, Mr Laurie Ferguson, welcomed the Government's decision to continue the arrangements for statutory self-regulation beyond March 2003.<sup>13</sup> He asked the Government to commit to a timetable for the implementation of the other recommendations of the 2001-02 review, including strengthening the current Code of Conduct, improving the knowledge requirements for migration agents entering the industry, and extending the registration requirements to overseas agents.

## Main Provisions

**Item 1 of Schedule 1** amends the *Migration Act 1958* to remove section 333. This section provides a sunset clause for the statutory self-regulation of the migration advice industry which would have the effect of terminating the statutory scheme on 21 March 2003. The effect of removing the sunset provisions is to ensure that the current statutory self-regulation scheme will continue indefinitely past 21 March 2003.

## Endnotes

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- 1 Joint Standing Committee on Migration Regulations, *Illegal entrants in Australia: balancing control and compassion*, Canberra, September 1990.
- 2 Hon. Gerry Hand, MP (Minister for Immigration, Local Government and Ethnic Affairs), 'Second Reading Speech', Migration Amendment Bill (No. 3) 1992, House of Representatives, *Debates*, 27 May 1992, p. 2937.
- 3 'Immigration assistance' is defined in section 276.
- 4 Section 316.
- 5 *Report on Review of the Migration Agents Registration Scheme*, Canberra, Dept. of Immigration and Multicultural Affairs, March 1997, Recommendations 7, 8 and 9.
- 6 Hon. Phillip Ruddock, MP, (Minister for Immigration and Multicultural Affairs and Minister Assisting the Prime Minister for Reconciliation), 'Second Reading Speech', Migration Legislation amendment (Migration Agents) Bill 1999, House of Representatives, *Debates*, 9 December 1999, p. 13375.

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- 7 2001-02 *Review of Statutory Self-Regulation of the Migration Advice Industry*, Canberra, Department of Immigration and Multicultural and Indigenous Affairs, September 2002, p. iii. This report can be accessed at [http://www.dimia.gov.au/general/agents\\_review2002.htm](http://www.dimia.gov.au/general/agents_review2002.htm)
- 8 *ibid.*, p. 2 and p. 63.
- 9 *ibid.*, p. 2.
- 10 *ibid.*, p. 3.
- 11 *ibid.*, p. 2.
- 12 Hon. Gary Hardgrave, MP, (Minister for Citizenship and Multicultural Affairs), 'Regulation of Migration Advice Industry', *Media Release*, H93/2002, 25 September 2002.
- 13 Laurie Ferguson, MP, (Shadow Minister for Citizenship and Multicultural Affairs), 'Regulation of migration agents to continue', *Media Release*, 25 September 2002.

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