

*[Received by email 30/7/10]*

**Productivity Commission's Annual Review of Regulatory Burdens on Business:  
Business and Consumer Services - Dual Regulation of Immigration Lawyers**

I am a member of the Law Council of Australia.

I have been a practising immigration lawyer since 1994.

I have read the Law Council's submissions dated 20 April 2010 and the supplementary submissions dated 15 June 2010 regarding the Productivity Commission's Annual Review of Regulatory Burdens on Business: Business and Consumer Services - Dual Regulation of Immigration Lawyers.

I fully support and endorse the Law Council's submissions that the continued dual-regulation of immigration lawyers seriously undermines consumer protection within the immigration advice profession.

I wish to provide the Productivity Commission with the following submission:

There is currently no protection for consumers in NSW (and as far as I can see nor is there in other States & Territories) against rogue lawyers acting as migration agents who have had their Migration Agents Registration Authority (MARA) registration cancelled or suspended for breaching the Migration Act 1958 and/or the Migration Agents Regulations 1994 and/or the Migration Agents Code of Conduct.

The reason for this is that immigration lawyers who have been de-registered by MARA can still practice as lawyers as they do not face sanction by the regulatory authority in their State/Territory (in NSW the Law Society of New South Wales or the NSW Legal Services Commissioner).

Rogue lawyers who have been de-registered by MARA can continue to practice law (but not give immigration advice).

These rogue lawyers can still be members of The Law Society of NSW and the Law Council of Australia without hindrance. The consumer would not be the wiser.

This is clearly unacceptable. It is not acceptable that migration advice offences are quarantined from the rogue lawyer's professional obligations and duties as a practising lawyer. This results in no consumer protection.

In his decision in *NAFJ v Minister for Immigration & Multicultural & Indigenous Affairs* [2003] FCA 91 (12 February 2003) Justice Conti raised concerns about the conduct of the immigration lawyer who had represented the applicant in the applicant's Refugee Review Tribunal matter.

See: [http://www.austlii.edu.au/au/cases/cth/federal\\_ct/2003/91.html](http://www.austlii.edu.au/au/cases/cth/federal_ct/2003/91.html)

In response to Justice Conti's comments the MARA investigated the immigration lawyer and subsequently cancelled his migration agent's registration.

On appeal to the Administrative Appeals Tribunal the immigration lawyer's penalty was reduced to a three year suspension.

At paragraph 76 the AAT Member states:

*“The above events of themselves lead to a conclusion that the Applicant cannot be said to be a fit and proper person on the grounds that he is a person in whom the Department of Immigration and the Refugee Review Tribunal can have no or very little confidence, both as to his competence and to his integrity.”*

See the full AAT decision: <http://www.austlii.edu.au/au/cases/cth/aat/2006/42.html>

However the suspended MARA migration agent never stopped practising as a lawyer.

All through his MARA suspension he could also continue to be a member of the Law Society of NSW.

Looking up his name on the Law Society NSW's website for its list of lawyers the consumer would not have been aware of the lawyer's MARA-suspension.

The fundamental problem is that Australia operates a dual regulation system for immigration lawyers.

Immigration lawyers in the United Kingdom or New Zealand are not allowed to practise as either migration agents or as lawyers during their period of sanction.

This is because the jurisdictions of the UK and NZ do not operate a dual regulation system for immigration lawyers.

A rogue lawyer practising in the UK or NZ would have had their lawyer's practising certificate suspended or cancelled, thereby protecting the consumer.

Unlike Australia neither the UK nor NZ protect such lawyers by isolating their migration agent's offences from their legal and ethical duties as practising lawyers.

Unfortunately rogue lawyers in Australia continue to benefit from this loop hole.

Therefore I submit that Australia should follow the UK and NZ regulatory systems and abolish the dual regulation of immigration lawyers.

Yours faithfully

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