



Australian Government
Department of Immigration and Citizenship

8 June 2010

Regulatory Burdens Review
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

Email: regulatoryburdens@pc.gov.au

Dear Sir/Madam

The inclusion of lawyers within the migration agent regulatory framework

The Department of Immigration and Citizenship is aware of the position of the Law Council of Australia (LCA), having received numerous submissions from them regarding the inclusion of lawyers within the migration agent regulatory framework.

In considering their submissions and considering whether to promote the removal of practising lawyers from the current regulatory arrangements, the Department's primary consideration has been, and continues to be, the protection of consumers. Our consumer protection concerns are largely based on the particularly vulnerable position some non-citizens can find themselves in after arrival in Australia, particularly if they have language difficulties and are mistrustful of government authorities. There is no statistical evidence to suggest that number of consumer complaints in relation to registered migration agents is proportionally different based on whether the agent has an Australian Legal Practising Certificate or not. The Office of the MARA may be able to advise you of any trends in this regard.

The Department has noted the position of the Office of the NSW Legal Services Commissioner, that the definition of 'immigration assistance' and 'immigration legal assistance' under the Migration Act 1958 precludes it taking any action against lawyers who provide 'immigration assistance' unless it is so egregious that it goes towards their capacity to operate as a lawyer. The LCA has advised that it is open to other States and Territories adopt this interpretation. Therefore in NSW, and any other jurisdiction which opts to take the same interpretation, the impact of 'dual regulation' is seen to be minimal. The issue would only arise if a legal disciplinary body chose to consider complaints that solely related to a person's conduct in providing immigration assistance. Good communication between the relevant legal disciplinary body and the Office of the Migration Agents Registration Authority (MARA) should operate to minimise the risk of duplication in investigating complaints.

It is worth noting that the most recent review into the migration advice profession has endorsed retaining lawyers who provide immigration assistance within the current regulatory framework. The Department notes that the Office of the MARA has established very good relations with the LCA and other relevant bodies. The Advisory Board to the Office of the MARA appointed by the Minister includes the President of the Law Council of Australia. The Department also notes that the Office of the MARA does make certain concessions to registered migration agents with Australian Legal Practising Certificates. I will leave it to the Office of the MARA to outline what these are.

The Department is mindful that the introduction of the National Legal Profession Reforms may be an opportune time for the issue of lawyer inclusion in migration agent regulation to be re-examined. Whether or not the Department will support the removal of lawyers from the current framework will depend in large part on the final outcome of the reform process, the national structure of the legal profession and whether our specific consumer protection objectives will be adequately dealt with under the national scheme. The final decision will, of course, ultimately rest with the Minister and Government of the day.

Yours sincerely

Peter Vardos PSM
Acting Deputy Secretary