



Migration Amendment (Regulation of Migration Agents) Bill 2019

Senate Legal and Constitutional Affairs
Legislation Committee



Introduction

KPMG welcomes the opportunity to provide the following submission to the Senate Legal and Constitutional Affairs Committee (**the Committee**) as part of its inquiry into the Migration Amendment (Regulation of Migration Agents) Bill 2019 (**the Bill**).

The Bill aims to streamline the migration advice industry by reducing the administrative and financial burden on legal practitioners who are also registered migration agents by removing their regulation with MARA.

KPMG currently employs 25 staff in its immigration services business, which was established in 1988 with a focus on providing immigration advice and assistance to businesses looking to access the various employer sponsored visa categories. A majority of our staff members are dual registered legal practitioners holding unrestricted practising certificates practising as registered migration agents.

KPMG is not a legal practice/incorporated legal practice and as an immigration advisory services provider, the firm and its staff will be adversely impacted by the passing of the Bill in its current form.

This submission outlines the implications of the passage of the Bill and makes recommendations for amendments in the hope that competing interests can be balanced and the objective of the Bill realised.

Key Recommendations

If the Committee is minded to recommend passage of the Bill, KPMG proposes the implementation of an 'opt-in' framework for unrestricted legal practitioners. Providing a choice to continue with dual registration as a registered migration agent and legal practitioner would not adversely impact individuals within the industry or the regulatory requirements of registration as proposed by the Bill.

www.kpmg.com.au



1. The Migration Amendment (Regulation of Migration Agents) Bill 2019

Schedule 1 of the Bill makes amendments to key sections of Part 3 of the *Migration Act 1958* (Cth) (**the Act**) as follows:

- inserting new defined terms of *Australian Legal Practitioner* and *legal practice* that permit lawyers to give *immigration assistance* in connection with *legal practice* without the requirement to register as a migration agent;
- exclude unrestricted legal practitioners from registering with the Migration Agents Registration Authority (**MARA**);
- include transitional arrangements for eligible restricted legal practitioners to continue operating as both migration agents and restricted legal practitioners for up to two years (up to four years with an extension); and
- leave the regulation of Australian Legal Practitioners who provide immigration assistance (in connection with legal practice) entirely within the purview of the relevant legal professional body

The Bill, if passed in its current form, will remove legal practitioners who hold an unrestricted practicing certificate from the MARA register with automatic effect from the commencement of Schedule 1 and prevent these practitioners from providing immigration assistance (unless it is in connection with legal practice).

www.kpmg.com.au



2. Impact on KPMG

KPMG supports the intention of the Bill to improve the regulatory framework governing the migration advice industry and reduce red tape for dual practitioners. However, it considers that the proposed amendments will adversely affect the firm and those unrestricted practitioners who do not operate in a traditional law firm.

KPMG is not a legal practice/incorporated legal practice but rather a professional services firm that provides an array of services to our clients, including immigration advisory services. Consultancy firms reflect a now common provider in the market for the provision of immigration services and by extension, a common employer of unrestricted practitioners in this field.

The passing of the Bill will limit KPMG's ability to retain key staff members who hold unrestricted practicing certificates, as these practitioners will no longer be able to provide immigration advice independent of a connection to a legal practice. They will not be able to perform the full suite of their current duties for our firm and external clients. This will have a significant impact on our firm's ability to operate and provide high level client service in this industry. KPMG may lose staff members who have been practising in the industry for many years simply by virtue of our organisational structure.

KPMG's ability to continue to attract experienced immigration legal practitioners will also be adversely affected by the passing of the Bill. This is because unrestricted legal practitioners will be obliged to choose between retaining their practising certificate, which is the culmination of completing years of legal education, post-graduate courses and supervised legal training or surrendering it to work in a non-legal immigration practice.

In light of the above, KPMG submits that there will be a real and practical discriminatory effect on employers and unrestricted legal practitioners who operate outside of traditional law firms should the Bill be passed in its current form. The automatic removal of unrestricted practitioners once the Bill is in force provides little time for affected practitioners or their employers to adapt to the new regime. This is contrary to the Bill's Explanatory Memorandum which states that there is 'no practical discriminatory effect'¹.

¹ Explanatory Memorandum, Migration Amendment (Regulation of Migration Agents) Bill 2019, [55] – [56], available at:
https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6448



3. Recommendations

If the Committee is minded to recommend the passage of the Bill, KPMG recommends that the Bill be amended to provide an 'opt-in' framework for unrestricted legal practitioners.

Unrestricted legal practitioners should be given the option of continuing with dual registration as a migration agent and legal practitioner or surrendering their practising certificate in favour of registration as a migration agent. This change would provide flexibility to those practitioners who work outside of traditional law firms and allow businesses such as KPMG to attract and retain staff who choose to work in this differing structure.

Individuals within the industry would not be adversely impacted by this framework. Those practitioners who do not want to bear the costs of dual registration will not have to as they can select the professional body they wish to register with.

The regulatory requirements of registration, as proposed, can continue to be effected and the true objective of the Bill achieved under this 'opt-in' framework.

www.kpmg.com.au