



Migration Alliance

Advancing common goals and securing common interests for migration agents

Phone: (02) 8008 0890

Fax: (02) 9290 2191

Web: www.migrationalliance.com.au

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7 December 2011

The Hon. Chris Bowen
Minister for Immigration and Citizenship
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

Dear Minister

Ref: Migration Alliance – Consumer Protection and Unregistered Practice

Migration Alliance has reviewed the practical utility of migrant worker protection legislation and put forward relevant amendments with respect to the following three legislative defects:

- 1) The current legislation permits any unregistered person outside the migration zone to provide immigration assistance.
- 2) The current legislation permits exempted persons inside the migration zone with no knowledge of migration law to provide immigration assistance.
- 3) It permits sponsoring employers to undermine fair work conditions by interpreting immigration laws and employment contracts in their own favour for financial reasons. This exploits migrant workers and additionally demonstrates bias.

Migration Alliance suggests that the Minister amend particular legislation, submitted with this letter, to reduce exploitation of migrant workers, and uphold of the spirit and intention of Australia's migration legislation.

Thank you for your consideration. I may be contacted at

Yours faithfully

Liana Allan

Convenor

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THE HON. CHRIS BOWEN
MINISTER OF IMMIGRATION AND CITIZENSHIP
BRIEFING NOTE
06/12/2011

ISSUE:

Unregistered Practice of Persons Providing Immigration Assistance

BACKGROUND:

The Office of Migration Agent Registration Authority (OMARA) was established in 2009 by a Ministerial Direction in the wake of a government review into registration of the Australian migration law advice profession.

At its formation the OMARA recommended that unregistered practice of persons providing immigration assistance presents a risk to consumer protection and undermines the integrity of the Australian immigration system.

CURRENT POSITION:

The operation of legislation provides for mandatory registration with OMARA of persons providing immigration assistance.

The criteria for registration requires a person to hold a university-level qualification in migration law and practice, be a fit and proper person, and amongst other things, the annual attainment of continuing professional development points.

Registered Migration Agents, Specialist Immigration Accredited Solicitors and exempt persons specified by regulation are the only persons permitted to provide immigration assistance. The legislation is intended to:

- Provide Consumer Protection to vulnerable visa applicants;
- Maintain a high standard of current migration law knowledge and practice;
- Deliver a high ethical standard of the migration advice profession.

The legislative framework has three defects:

- It permits any unregistered person outside the migration zone to provide immigration assistance.
- It permits exempt persons inside the migration zone with no knowledge of migration law to provide immigration assistance.
- It permits employers to undermine fair work conditions and exploit migrant workers.

MIGRATION ALLIANCE
LAW REFORM TASKFORCE

Liana Allan- Kurt Kraues- Christopher Levingston -Robert Balzola
#Unregistered Practice #Migrant Worker and Family Protection #Employer Compliance

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PROPOSED AMENDMENTS:

The briefing note presents three amendments for the Minister's consideration:

1. That the regulations are amended with a provision to include persons outside the migration zone who provide immigration assistance.
2. That the regulations exempting persons from registration is amended with a provision for exemption of registration in visa subclasses prescribed by the regulations.
3. That the regulations permitting employers to provide immigration assistance is discontinued.

It is noted that:

1. Migrant Worker Protection legislation has recently been strengthened with the enactment of the *Migration Amendment (Migrant Worker Protection) Act 2008*.
2. Migrant Worker Protection has recently been refocussed around employer compliance with sponsorship obligations.

The general consensus on migrant worker protection is that migrant workers must have fair work conditions and cannot be exploited.

It is a conflict in interest for an employer to assist a migrant worker and their family with a visa application whilst simultaneously negotiating the worker's conditions of employment and pay terms.

COMMENT:

To ensure that Migrant Worker Protection functions as intended, the practical utility of legislation has been reviewed and appropriate amendments suggested. A draft of regulation amendments, highlighted in yellow is attached.

It is therefore **RECOMMENDED** that the Minister:

1. Approve the briefing note suggestions to strengthen consumer protection in the migration advice profession
2. Approve the amendments to the regulations, and sponsor those amendments by a legislative disallowable instrument before the end of this calendar year.

MIGRATION ALLIANCE
LAW REFORM TASKFORCE

Liana Allan- Kurt Kraues- Christopher Levingston -Robert Balzola
#Unregistered Practice #Migrant Worker and Family Protection #Employer Compliance

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Statutory Rule 2011 No. XXX

Commonwealth of Australia

Migration Amendment Regulations (No.X) 2011

Statutory Rule SR —{number filled in by CLO}
made under the

Migration Act 1998

1 Name of regulation

This instrument is the *Migration Amendment Regulations (No.X) 2011* and amends the *Migration Regulations 1994*.

2 Commencement

This instrument commences on DATE.

3 Definitions

Insert

“Offshore Migration Agent” means any person who is not the visa applicant, is outside the Australian Migration Zone at date of application and is not a person prescribed in Migration Regulation 2.07(5).

4 Notes

Notes included in this Regulation are limited to explanatory purposes only.

5 Main Objects

Regulations 5 & 6 constitute the main object of this instrument, i.e. to amend the *Migration Regulations 1994* as contained in the Schedule below.

6 Schedule

Insert

1. New R 1.03: “Offshore Migration Agent” means any person who is not the visa applicant, is outside the Australian Migration Zone at date of application and is not a person prescribed in Migration Regulation 2.07(5)
2. New R 1.03: “Applicant” means a person making an application, a Registered Migration Agent so authorized to make an application or a legal practitioner registered in a

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jurisdiction of the Commonwealth of Australia so authorized to make an application on behalf of an applicant.

3. New R 2.07(5): For the purpose of ss.45 & 46 of the Act, the following persons are permitted to make a valid visa application on behalf of an applicant:
 - a. The applicant;
 - b. A Registered Migration Agent or legal practitioner registered in a jurisdiction of the Commonwealth of Australia on behalf of an applicant who has lawful authority and instruction to do so
4. New R 2.07(6): For the purpose of ss.45 & 46 of the Act, the following persons are not permitted to make a valid visa application or otherwise assist an applicant on behalf of that application:
 - a. An Offshore Migration Agent;
 - b. Any other person not prescribed in 2.07(5)

Minister of Immigration and Citizenship
6 December 2011

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**MIGRATION AMENDMENT (PROTECTION OF MIGRANT WORKERS)
BILL 2012**

2011-2012

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Migration Amendment (Protection of Migrant
Workers) Bill 2012**

No. , 2012

(Immigration and Citizenship)

**A Bill for an Act to amend the *Migration Act 1958*,
and for related purposes**

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Contents

- 1 Short title
 - 2 Commencement
 - 3 Schedule(s)
-

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Schedule 1 Amendments

Migration Act 1958

Migration Amendment (Protection of Migrant Workers) Bill 2011 No. , 2012

A Bill for an Act to amend the *Migration Act 1958*, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Migration Amendment (Protecting Migrant Workers) Act 2012*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

**Column 1
Provisions**

**Column 2
Commencement**

**Column 3
Date/Details**

Section 1

The date this Act receives Royal Assent

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Amendments Schedule 1

Migration Amendment (Protecting Migrant Workers) Bill 2011 No. , 2012

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Schedule 1--Amendments

Migration Act 1958

1 Subsection 280(5B)

Remove:

2 Subsection 280(5C)

Amend:

This section does not prevent a person sponsoring a visa applicant in a class of visas prescribed by the regulations for the purposes of the regulations from giving immigration assistance to the applicant.

THIS IS NOT PART OF THE BILL

(You will need a regulatory amendment to *include* those sponsoring visas that are not skilled migration visas e.g. family stream migration, certain 4XX visa subclasses whilst *excluding* employer nomination visas).

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2 Commencement

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3 Definitions

Insert

“Sponsor” mean the sponsor of an applicant for a visa (except a person who proposes on the relevant approved form another person for entry to Australia as an applicant for a permanent humanitarian visa) who undertakes the obligations stated in subregulation (2) in relation to the applicant, but is not a person exempt from Section 280(5C) of the *Migration Act 1958* by reason of a relationship of employment between the sponsor and the applicant for a visa being an employee or employer as defined in the Fair Work Act 2009.

4 Notes

Notes included in this Regulation are limited to explanatory purposes only.

5 Main Objects

Sections 5 & 6 constitute the main object of this instrument, i.e. to amend the *Migration Regulations 1994* as contained in the Schedule below.

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6 Schedule

Insert

1. New R 1.20(1): The sponsor of an applicant for a visa is a person (except a person who proposes on the relevant approved form another person for entry to Australia as an applicant for a permanent humanitarian visa) who undertakes the obligations stated in subregulation (2) in relation to the applicant, **but is not a person exempt from Section 280(5C) of the *Migration Act 1958* by reason of a relationship of employment between the sponsor and the applicant for a visa being an employee or employer as defined in the Fair Work Act 2009.**

Minister for Immigration and Citizenship
6 December 2011

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Statutory Rule SR —{number filled in by CLO}
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Migration Act 1998

1 Name of regulation

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2 Commencement

This instrument commences on DATE.

3 Definitions

‘Employer organisation’ has the same meaning as that provided for in the *Fair Work Act 2009*.

4 Notes

Notes included in this Regulation are limited to explanatory purposes only.

5 Main Objects

Sections 5 & 6 constitute the main object of this instrument, i.e. to amend the *Migration Regulations 1994* as contained in the Schedule below.

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6 Schedule

Insert

1. New R 1.03: Employer organisation has the same meaning as that provided for in the *Fair Work Act 2009*.

Minister for Immigration and Citizenship
6 December 2011

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Migration Act 1998

1 Name of regulation

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2 Commencement

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3 Definitions

'Industrial association' has the same meaning as that provided for in the *Fair Work Act 2009*.

4 Notes

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5 Main Objects

Sections 5 & 6 constitute the main object of this instrument, i.e. to amend the *Migration Regulations 1994* as contained in the Schedule below.

6 Schedule

Insert

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1. New R 1.03: Industrial association has the same meaning as that provided for in the *Fair Work Act 2009*.

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Statutory Rule 2011 No. XXX

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1 Name of regulation

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2 Commencement

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3 Definitions

'Employment' is any activity if conducted within the Commonwealth of Australia would ordinarily attract assessable income.

4 Notes

Notes included in this Regulation are limited to explanatory purposes only.

5 Main Objects

Sections 5 & 6 constitute the main object of this instrument, i.e. to amend the *Migration Regulations 1994* as contained in the Schedule below.

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6 Schedule

Insert

1. New R 1.03: 'Employment' is any activity if conducted within the Commonwealth of Australia would ordinarily attract assessable income.

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1 Name of regulation

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2 Commencement

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3 Definitions

'Employee' has the same meaning as that provided for in the *Fair Work Act 2009*.

4 Notes

Notes included in this Regulation are limited to explanatory purposes only.

5 Main Objects

Sections 5 & 6 constitute the main object of this instrument, i.e. to amend the *Migration Regulations 1994* as contained in the Schedule below.

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6 Schedule

Insert

1. New R 1.03: Employee has the same meaning as that provided for in the *Fair Work Act 2009*.

Minister for Immigration and Citizenship
6 December 2011

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