

28 August 2017

Senate Legal and Constitutional Affairs Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Reference:

*Migration Amendment (Regulation of Migration Agents) Bill 2017 and:
Migration Agents Registration Application Charge Amendment (Rates of Charge) Bill 2017*

Background:

Mr Ian Bosley

Current Registered Migration Agent
Member, Migration Institute of Australia
Member, Migration Alliance
Former Director, Australian Taxation Office
Former Regional Manager, Medicare-Health Insurance Commission
Former Principal Board Support Manager, Australian Health Practitioner Regulation Agency
Former Secretary, Tax Agents Board of Queensland

I have had broad experience in the Regulatory Affairs of numerous professions, tax agents, all medical professions and others. .

[1] Concerns about this proposed Amendment Bill and about the regulation of the profession and **non-regulation** of numerous unqualified immigration “advisors” preparing applications that are accepted by the Department of Immigration and Border Protection.

[2] Current regulatory environment:

The relevant legislation enabling the regulation of migration agents and lawyers in the immigration advice field. Relevant sections are provided and I note there is no section omitted from this submission that impacts on my arguments.

[3] Brief explanation: The key point in this legislation is that it is illegal for anyone who is not a Registered Migration Agent or Legal Practitioner to provide advice and accept a fee, with penalties of up to 10 years jail sentence possible.

Migration Act 1958

PART 3 - MIGRATION AGENTS AND IMMIGRATION ASSISTANCE

Division 2 - Restrictions on giving of immigration assistance and making of immigration representations

Section 280 Restrictions on giving of immigration assistance

(1) Subject to this section, a person who is not a registered migration agent must not give immigration assistance.

(3) *This section does not prohibit a lawyer from giving immigration legal assistance.*

(5) *This section does not prevent an individual from giving immigration assistance of a kind covered by subsection 276(2A) if the assistance is not given for a fee or other reward.*

Section 281 Restriction on charging fees for immigration assistance

(1) *Subject to subsection (3), a person who is not a registered migration agent must not ask for or receive any fee or other reward for giving immigration assistance.*

Penalty: Imprisonment for 10 years.

(2) *Subject to subsection (3), a person must not ask for or receive any fee or other reward for the giving of immigration assistance by another person who is not a registered migration agent.*

Penalty: Imprisonment for 10 years.

(3) *This section does not prohibit:*

(a) a lawyer from asking for or receiving a fee for giving immigration legal assistance; or

(b) a person from asking for or receiving a fee for the giving of immigration legal assistance by a lawyer.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the Criminal Code).

[4] Proposed change to remove Legal Practitioners from the Office of Migration Agents Regulation Agency regulation.

[5] Comments: Legal Practitioners have skills and experience to assess the Migration Act 1958 and Regulations and carry out this important and complex work. Those that choose to operate in this field benefit from being part of the recognised immigration advisor's community and contributing to that community with their own specialist knowledge. By removing them from the OMARA regulatory scheme and the forums and activities of all Migration Agents, the whole advisor community suffers a loss of expertise. There appears to be little gained from the proposed removal of Legal Practitioners and considerable risk of differing regulatory management.

Concerns:

- Varying and inconsistent assessment of Legal Practitioners and Registered Migration Agents by the different regulators.
- Loss of Legal Practitioner knowledge input into the migration advice community.
- Legal Practitioner loss of access to the migration advice community for improving their knowledge.
- Tax Agents and Accountants have a similar dual regulatory environment. The current dual system of regulating Legal Practitioners for migration advice through OMARA is no different and appears advantageous.
- Dual registration costs for Legal Practitioners could be overcome by discounted OMARA fees for Legal Practitioners holding a Practising Certificate. Alternatively, a more equitable fee for OMARA registration could be charged for all. The current OMARA fee is massively above other professions registration costs.

[6] Impact: The risk impact is very low when compared to the huge unregulated and unqualified migration advisor community described below and facilitated by the Department of Immigration and Border Protection.

The above Act does not limit the requirement to be registered to only onshore (in Australia) immigration advisors. There is no inferred acceptance in the Act of advisors overseas (offshore) to provide advice and prepare and lodge applications offshore **without registration** and regulation. Very large numbers of applications prepared for a fee by unregistered offshore businesses are lodged and accepted by the Department.

The Department routinely, and in extremely large numbers, accepts and encourages applications prepared by and lodged by unregistered businesses outside Australia and for a fee. The Department appears to be facilitating breaches of the sections above of the Migration Act 1958 every time an application is lodged overseas by an unregistered business.

I see numerous failed visa applications, prepared by offshore businesses with no skills and knowledge, where the client had paid a substantial fee for service. These have been lodged directly with the Department and knowingly accepted. These come to me as appeals against the refusals. I see the original applications as part of the appeal process. It is perfectly clear that these applications are invariably extremely weak applications.

Generally there is an Australian who has paid for the visa application and is seriously impacted, financially and emotionally.

Consistent regulation internationally would provide Australian Registered Migration Agents and Legal Practitioners a fair market environment and build a better, stronger advise profession.

As a Registered Migration Agent, if I lodged these and failed, I would be subject to complaint to OMARA, possible sanctions but without doubt a refund of my fees. As an example of the cost to applicants, clients of the Department, a partner/spouse visa application fee is now \$7,000. This is not refunded after a failed application. An appeal would cost a further \$2,000 to \$10,000. Clients are invariably part of an Australian citizen family who suffer the financial losses as a result of the unregistered, unqualified businesses.

The Department routinely accepts Form 956, Authority to Act as a Registered Migration Agent from unregistered entities overseas. Decision-makers overseas regularly refer to these entities as Migration Agents even though they are not registered.

Department forms have provision for unregistered businesses to act for visa applicants. Note the Form 956 (Point 8) and Form 1446 (Point 5)

[7] New Zealand and Canada:

These countries refuse to accept applications from unregistered entities, refusing the application if it is clear such a business is involved. This protects applicants/clients of the Departments from unscrupulous and unskilled operators.

Australian Department Policy suggests that it is not practical to prosecute offshore operators and cedes to them by accepting applications. This is an unreasonable and questionably, is an illegal act.

New Zealand:

<http://www.iaa.govt.nz/need-licence/index.asp>

Who needs a licence?

Any individual providing New Zealand immigration advice **either in New Zealand or offshore** must be licensed unless explicitly exempt under the [Immigration Advisers Licensing Act 2007 \(the Act\)](#).

Canada:

<http://www.cic.gc.ca/english/information/representative/rep-who.asp>

Only some people can charge you a fee or receive any other type of payment. These people are called "authorized" representatives. They are:

- *lawyers and paralegals who are members in good standing of a [Canadian provincial or territorial law society](#)*
- *notaries who are members in good standing of the [Chambre des notaires du Québec](#) and*
- *citizenship or immigration consultants who are members in good standing of the [Immigration Consultants of Canada Regulatory Council](#)*

We will not deal with representatives who charge a fee but are not authorized. If you use an unauthorized representative, in Canada or abroad, we may return your application or refuse it.

[8] Comparison:

Onshore regulation: This is in the Act with serious penalties for those who transgress.
Offshore regulation: This does not exist and clients suffer huge losses. These clients almost always have Australian citizen families who pay the fees, for spousal, child, parent and visitor visas and many others.

[9] Submission

I respectfully request the Committee:

- Retain registration by OMARA of Legal Practitioners;
- Provide for a “fair” registration fee, currently 2 to 3 times that of a Medical Practitioner.
- **Including in this Bill, the requirement that the Department enforce the sections of the Act above and provide consumer protection against unskilled, unregistered and unqualified businesses overseas.**

This matter puts the proposed lack of consistent regulation of all advisors onshore (Migration Agents and Legal Practitioners) into perspective. Legal Practitioners should remain in the OMARA regulated space but serious offshore risks to consumers could be reduced by the approach taken by New Zealand and Canada, non-acceptance by the Department of applications from non-registered entities.

I am happy to elaborate my points directly to the Committee.

Yours sincerely

Ian Bosley

Registered Migration Agent



Australian Government

Department of Immigration
and Border Protection

Advice by a migration agent/exempt person of providing immigration assistance

Form
956

Who should use this form?

This form can **only** be used by:

- a registered migration agent;
- a non-registered migration agent outside Australia; or
- an exempt person.

This form should be used to notify the Department of Immigration and Border Protection (the department) that:

- you have **been appointed** by a client (eg. a visa applicant) to provide immigration assistance with matters under the *Migration Act 1958* and, if applicable, to receive documents on their behalf; or
- your **appointment has ended**. (You may notify the department of this in writing if you prefer.)

A separate form 956 *Advice by a migration agent/exempt person of providing immigration assistance* must be completed for each matter.

Do not use this form if:

- you have only been appointed as a person who is authorised to receive documents, on their behalf, that the department would otherwise give to them; or
- your appointment as an authorised recipient has ended.

In these cases, please use form 956A *Appointment or withdrawal of an authorised recipient*.

What is immigration assistance?

A person gives immigration assistance if he or she uses, or claims to use, his or her knowledge or experience in migration procedure to assist a person with matters related under the *Migration Act 1958*.

The most common times assistance is provided is during visa application processes, visa cancellation processes or sponsorship processes (including monitoring or sanctions).

Note: Immigration assistance does not include simply filling in an application form, translating or interpreting or passing on information about an application without comment or explanation.

Registered migration agents

A registered migration agent is a person who is registered with the Office of the Migration Agents Registration Authority (Office of the MARA) to provide immigration assistance.

If operating in Australia, migration agents must be registered with the Office of the MARA.

Information on migration agents is available on the Office of the MARA website www.mara.gov.au

Immigration Advice and Assistance Scheme (IAAAS)/Primary Application Information Service (PAIS)

If you are a registered migration agent who is assisting a client under either of these schemes, please indicate this on the form at Question 8.

Non-registered migration agents outside Australia

Migration agents operating outside Australia do not have to be registered with the Office of the MARA. The department may issue offshore agents with an identification number for administrative purposes only. This number does not mean that the agent is registered and it does not represent endorsement of the agent by the Australian Government.



Exempt persons

The following people do not have to be registered as migration agents in order to provide immigration assistance:

- a close family member (spouse, child, adopted child, parent, brother or sister of a visa applicant);
- a sponsor or nominator for a visa applicant;
- a member of parliament or their staff;
- an official whose duties include providing immigration assistance;
- a member of a diplomatic mission, consular post or international organisation.

As an exempt person **you must not charge a fee** for your service. In Australia, if you do charge a fee you are committing an offence and penalties of up to 10 years jail can apply.

Authorised recipient

An authorised recipient is a person appointed to receive all written communications from the department on behalf of another person.

If you are not appointed as the authorised recipient, all written communication will be sent to the client or their appointed authorised recipient.

Roles and responsibilities

The department

The department will:

- discuss the client's case with you;
- send written communications to you (if you are also appointed as the authorised recipient);
- seek information from you.

Registered migration agents

If you are giving immigration assistance to a visa applicant in relation to a visa application and give that assistance after having agreed to represent the applicant, section 312A of the *Migration Act 1958* and regulation 7G of the Migration Agents Regulations 1998 require you to inform the department. One way you can do this is by sending a completed form 956 to the department.



Australian Government
Department of Immigration
and Border Protection

Withdrawal of a visa application

Form
1446

IMPORTANT: After a visa application has been withdrawn, no further action can be taken on the withdrawn application.

Please use a pen, and write neatly in English using BLOCK LETTERS.

Tick where applicable

Part A – Application details

1 Details of the visa application that is being withdrawn
Application ID/File reference number/Transaction reference number

Visa type

Visa subclass

Date of lodgement Day Month Year

Place of lodgement

Visa application charge receipt number (if known)

2 Main applicant's details

Family name

Given names

Date of birth Day Month Year

Passport number

Part B – Authority to withdraw

3 Are you applying to withdraw the visa application on behalf of another person(s)?
No **Go to Part C**
Yes

4 Have you been given authority to withdraw the visa application, by the visa applicant(s)?
No See 'Who can withdraw a visa application?' on page 1 of this form.
Yes

5 Indicate if you are withdrawing the visa application as:
(select one only)
a visa applicant **Go to Part C**
a registered migration agent
a non-registered migration agent outside Australia
an authorised exempt person

6 Details of authority withdrawing the visa application

Family name

Given names

Organisation name (if applicable)

Current address

Postcode

Email address

Telephone numbers

Office hours (Area code)

After hours (Area code)

Mobile/cell

Migration Agent Registration Number (MARN) or Offshore Agent ID Number (if applicable)

Note: You must sign this form at Question 9.