AMCS | Australian Migration & Citizenship Services

30 AUGUST 2017

BY ONLINE SUBMISSION

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

Dear Committee Members

MIGRATION AMENDMENT (REGULATION OF MIGRATION AGENTS) BILL 2017

SUBMISSION SUPPORTING LEGAL PRACTITIONERS HAVING THE OPTION OF REGISTERING AS REGISTERED MIGRATION AGENTS

1. Introduction

1.1 I write to you as an Australian legal practitioner that is currently registered as a registered migration agent (**RMA**) under the *Migration Act 1958* (**Act**).

1.2 We refer to the *Migration Amendment (Regulation of Migration Agents) Bill 2017* (**Bill**) and in particular the sections (see proposed section 289B) which will bar legal practitioners from registering (or have their registration cancelled) as registered migration agents (**Bar**).

1.3 In our view the proposed Bar and lack of other amendments are not in the best interests of consumers, small to medium sized businesses and legal practitioners. We urge you to consider our reasoning for this contention as referred to below.

2. Executive Summary

We urge that the following amendments be made to relevant sections of the Bill to:

(a) remove the Bar and ensure that legal practitioners have **the option (but are not required)** to register as an RMA in order to provide immigration advice and assistance; and

(b) ensure that overseas based agents are required to be registered as a RMA in order to provide immigration advice and assistance.

3. Negative effects of barring legal practitioners from registering as an RMA

3.1 Contrary to paragraph 50 of the explanatory memorandum made in relation to the Bill that a legal practitioner "may need to adjust the way in which they provide such services" there are significant implications and harm that may be caused if the Bar is enacted as proposed.

3.2 I would like to explain how the Bar will personally affect myself and my young family (wife and 1 year old child).

3.3 If I am no longer able to register as a RMA as a holder of an unrestricted legal practitioner certificate:

(a) I will no longer be able to maintain my current employment as a registered migration agent (and manager) of a Perth based migration agency (**AMCS**); and

(b) I will have to close the small business law firm I have set up to supplement my family's income, which works in conjunction with AMCS, Loughton Yorke Lawyers (**LYL**).

3.4 I have already begun the process of searching for alternative employment opportunities with other law firms as LYL is not viable on its own (approximately $17,000 turnover in the last 6 months of operation).

3.5 However given the substantial negative financial impact and uncertainty that the Bar will cause to my family, I would greatly prefer to maintain my current employment and continue to develop my small business, LYL.

3.6 Although this doesn't affect me personally the Bar is particularly concerning in that it punishes any RMA that chooses to 'upskill' by obtaining a legal practice certificate as they would have to close their RMA business and would not be able to operate their own business again until they qualified as an unrestricted legal practitioner - this would generally take 2 years (full-time) or 4 years (part-time).

3.7 Additionally legal practitioners will be placed at a marketing disadvantage as they will lose access to having their services listed on the Office of the Migration Agents Registration Authority website[1] making it harder for potential clients to find their contact details and engage their services.

[1] See https://www.mara.gov.au/

4. A simple 'no harm' and 'win/win' solution – Allow legal practitioners the *option* to register as an RMA

4.1 Clearly there are efficiency and compliance savings for some legal practitioners in not being required to register as an RMA (mainly large law firms) in order to provide immigration advice.

4.2 However it seems a disproportionate response to impose the Bar given this will negatively affect a large proportion of legal practitioners.

4.3 As a result there appears to be no benefit in imposing the Bar on legal practitioners given the Bill could simply be amended to provide the option for legal practitioners to register as an RMA if they desired.

4.4 Optional immigration regulatory schemes already exist for legal practitioners in other jurisdictions such as the United Kingdom and Canada.[2]

5. Regulation of overseas based migration agents

5.1 We refer the Committee to a newspaper article published in The Australian, titled "*Time to rein in unregulated offshore migration agents*"[3] in which the arguments for regulation of overseas based migration agents are succinctly advocated. A copy of that article is **attached** to this submission and we reproduce excerpts from that article below:

> "…overseas-based agents who assist immigrants to come to Australia are entirely unregulated and do not even have to be registered. This is beyond farcical.
>
> If you suggested to a lawyer or legal regulator that offshore lawyers could prepare and file court documents on behalf of a client in any of the Supreme Courts or Federal Court in this country without having been admitted to that court and without holding a current practising certificate, they would be stunned into silence. The idea is so preposterous there would be an outcry, and for good reason.

[2] See https://www.gov.uk/government/publications/oisc-regulation-and-solicitors/oisc-regulation-and-solicitors

[3] Van Onselen, Ainslie, published 27 July 2012, http://webcache.googleusercontent.com/search?q=cache:6lEvgv5TOl0J:www.theaustralian.com.au/business/legal-affairs/time-to-rein-in-unregulated-offshore-migration-agents/news-story/fc407c7535fb18ca7e50b4a451aefe52+&cd=6&hl=en&ct=clnk&gl=au

> Just like lawyers, migration agents have to set aside time from their busy workloads to complete continuing professional development courses each year. Their offshore counterparts do no such thing.
>
> Local agents have to pay hefty annual registration (renewal) fees, in excess of $1500, with the Office of Migration Agents Registration Authority, while offshore agents pay nothing.
>
> Australian agents incur professional indemnity insurance fees, while their offshore equivalents again pay nothing.
>
> New regulations require Australian agents to pass strict English language testing requirements, while offshore agents don't have to…
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> … Key findings of a 2002 survey conducted by the Migration Agents Policy and Liaison Section on the quality of service provided at overseas posts were startling -- failure to keep up to date with legislative changes; regularly asking very basic questions; limited competence; delays in responding to the department; discourtesy; overcharging; suspected fraudulent applications and alleged bribery…
>
> … Evident by two reports published by DIMIA -- now the Department of Immigration and Citizenship -- in 2002 and 2004, the government has been aware of the litany of problems created by offshore unregistered migration agents for over a decade…
>
> …So what's the solution? Several alternative options were set out in the DIMIA reports of a decade ago. The first is that Australian embassy posts or DIAC refuse applications filed by non-registered agents and otherwise have no dealings with them, and deal with the applicant directly. The alternative is to extend the current registration scheme offshore.
>
> A number of models have been set out for this, the minimum standard of which would require offshore agents to meet the same educational standards as onshore agents. At present about 4 per cent of all registered migration agents operate offshore, meaning that should the government compel all offshore agents to become registered, there is a model already in practice to be referenced…

5.2 It is our understanding that in order to commercially provide New Zealand and Canadian immigration advice and assistance there is a requirement to be registered with the relevant authorities in those respective countries. The Migration Institute of Australia, the pre-eminent professional association for registered migration agents and immigration lawyers in Australia, has consistently advocated for regulation of overseas based agents.

6. Conclusion

6.1 It is our understanding that a significant number of legal practitioners (and future legal practitioners) are negatively affected by the Bar as it currently stands and that many (including myself given the serious implications for my family as a result of the

Bar) have made personal representations to their relevant federal members of Parliament as well as the Assistant Minister for Immigration and Border Protection (**Assistant Minister**) and the Minister for Small Business.

6.2 We would like to thank our local federal member of Parliament, Mr Ben Morton MP for agreeing to meet with us (and two other legal practitioners based in Perth) to discuss the effect of the Bar on 22 August 2017 and personally forwarding our concerns to the Assistant Minister.

6.3 Given the above we urge the Committee to consider the following amendments be made to relevant sections of the Bill to:

(a) remove the Bar and ensure that legal practitioners have **the option (but are not required)** to register as an RMA in order to provide immigration advice and assistance; and

(b) ensure that overseas based agents are required to be registered as a RMA in order to provide immigration advice and assistance.

If you have any questions regarding the above please do not hesitate to contact us.

Yours faithfully

AUSTRALIAN MIGRATION & CITIZENSHIP SERVICES

Crawford Yorke
Director - Migration Services

THE AUSTRALIAN

Time to rein in unregulated offshore migration agents

AINSLIE VAN ONSELEN THEAUSTRALIAN 12:00AM July 27, 2012

A MAJOR frustration with the practice of immigration law in this country is that if you are a migration agent registered under the Migration Act you have to comply with processes and regulations far more stringent than migration agents based offshore.

But overseas-based agents who assist immigrants to come to Australia are entirely unregulated and do not even have to be registered. This is beyond farcical.

If you suggested to a lawyer or legal regulator that offshore lawyers could prepare and file court documents on behalf of a client in any of the Supreme Courts or Federal Court in this country without having been admitted to that court and without holding a current practising certificate, they would be stunned into silence. The idea is so preposterous there would be an outcry, and for good reason.

Just like lawyers, migration agents have to set aside time from their busy workloads to complete continuing professional development courses each year. Their offshore counterparts do no such thing.

Local agents have to pay hefty annual registration (renewal) fees, in excess of $1500, with the Office of Migration Agents Registration Authority, while offshore agents pay nothing.

Australian agents incur professional indemnity insurance fees, while their offshore equivalents again pay nothing. New regulations require Australian agents to pass strict English language testing requirements, while offshore agents don't have to.

The local migration agents are effectively operating with one hand tied behind their back so long as offshore counterparts -- whom they compete with for clients -- are free to go about their business entirely unregulated.

Proper regulation and oversight of the legal profession is essential to the smooth operation of the rule of law -- a fundamental tenet of good government and public confidence in the system.

And so it should be for migration matters as well. So why is it that offshore unregistered migration agents are permitted to assist with the preparation and filing of applications for visas and residence in this country on behalf of clients at Australian posts overseas?

In 2001-02 an estimated 2500 offshore migration agents (mostly unregulated) lodged such applications and in 2004 the Department of Immigration and Multicultural and Indigenous Affairs estimated this figure to be about 3000. Unfortunately, no later figures have been released, but the consensus among the migration profession is that these figures are much higher now.

The consumer protection peril of this practice is obvious -- ignorance or unfamiliarity with Australian laws can lead to the proffering of inaccurate and incorrect advice.

Key findings of a 2002 survey conducted by the Migration Agents Policy and Liaison Section on the quality of service provided at overseas posts were startling -- failure to keep up to date with legislative changes; regularly asking very basic questions; limited competence; delays in responding to the department; discourtesy; overcharging; suspected fraudulent applications and alleged bribery.

Shouldn't the working of the Migration Act and the duties and obligations imposed be seen as a microcosm of the rule of law?

Doesn't that dictate that migration agents, be they operating offshore or onshore, should be properly regulated and overseen?

Evident by two reports published by DIMIA -- now the Department of Immigration and Citizenship -- in 2002 and 2004, the government has been aware of the litany of problems created by offshore unregistered migration agents for over a decade.

Yet, the department has done nothing to address or progress the issue. There is a saying that a week is a long time in politics. What does that say about a decade of political inaction by both major parties?

There is no partisan divide to hide behind on this issue.

Don't get me wrong, I am in no way complaining about the government's efforts to enhance the professionalisation of the migration profession. Improving the educational and ethical standards of migration agents enhances the reputation of the profession.

However, that it hasn't also extended its regulatory reach to offshore agents is inexcusable.

In fact, it actively disadvantages registered migration agents, requiring them to adhere to a higher standard than offshore unregistered agents.

So what's the solution? Several alternative options were set out in the DIMIA reports of a decade ago. The first is that Australian embassy posts or DIAC refuse applications filed by non-registered agents and otherwise have no dealings with them, and deal with the applicant directly. The alternative is to extend the current registration scheme offshore.

A number of models have been set out for this, the minimum standard of which would require offshore agents to meet the same educational standards as onshore agents. At present about 4 per cent of all registered migration agents operate offshore, meaning that should the government compel all offshore agents to become registered, there is a model already in practice to be referenced.

On April 4, I met Immigration Minister Chris Bowen and discussed this issue with him. He concurred that the time was right for action. The migration profession is waiting.

Ainslie van Onselen is a law partner, company director and associate professor at the University of Western Australia. She is the independent chairperson of the Migration Institute of Australia