



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT COMMITTEE ON MIGRATION

Reference: Migration Legislation Amendment Bill (No. 2) 2000

TUESDAY, 30 MAY 2000

CANBERRA

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JOINT COMMITTEE ON MIGRATION

Tuesday, 30 May 2000

Members: Mrs Gallus (*Chair*), Senators Bartlett, Eggleston, McKiernan and Tierney and Mr Adams, Mr Baird, Mrs Irwin, Mrs May and Mr Ripoll

Senators and members in attendance: Senator Bartlett and Mr Adams, Mr Baird, Mrs Gallus, Mrs Irwin, Mrs May and Mr Ripoll

Terms of reference for the inquiry:

Migration Legislation Amendment Bill (No. 2) 2000

WITNESSES

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Committee met at 8.05 p.m.

CHAIR—I declare open this meeting of the Joint Standing Committee on Migration on the review of the Migration Legislation Amendment Bill (No. 2) 2000. On 12 April the committee was asked by the Minister for Immigration and Multicultural Affairs to consider the bill and to report by 8 June this year.

The bill was introduced in the House of Representatives on Tuesday, 14 March 2000. It amends the Migration Act 1958 to give effect to the government's policy intention of restricting access to judicial review in visa related matters by prohibiting class actions and limiting those persons who may commence and continue proceedings in courts, to clarify the scope of the minister's power under section 501A to set aside a non-adverse section 501 decision and substitute an adverse decision and rectify an omission which allows for the consequential cancellation of visas. The bill also corrects a number of misdescribed amendments to the act.

The committee has received 24 submissions from individuals and organisations with an interest in these issues. The committee normally authorises submissions for publication and they are placed on the committee's web site. If you would like further details please ask the secretariat. I now welcome witnesses from the Migration Agents Registration Authority and also the Migration Institute of Australia.

[8.07 p.m.]

BROWN, Mr Raymond John, Chairman, Migration Agents Registration Authority

COPE, Mr Andrew James, Board Member, Migration Agents Registration Authority

HOLT, Mr Leonard Christopher, Board Member, Migration Agents Registration Authority

MAWSON, Mr David, Executive Officer, Migration Agents Registration Authority

CHAIR—Welcome. Although the committee does not require witnesses to give evidence under oath, you should understand that these hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the parliament itself. Giving false or misleading evidence is a serious matter and may be regarded as contempt of parliament. The committee prefers that evidence is taken in public but if at any time you wish to refer to a specific case and you would like that to be in camera, you may ask for that and we can go into camera. Before we ask you questions, you have not given us a submission. Is that right?

Mr Brown—That is right.

CHAIR—We presume you do wish to make an opening statement.

Mr Brown—A very brief opening statement. Thank you to the committee for the opportunity to appear this evening. The Migration Act sets the statutory framework for the Migration Agents Registration Authority, which commenced on 23 March 1998. As a result of its statutory role, MARA's capacity to comment is limited to its functions as set out in the act.

In broad terms MARA sees its role as consumer protection and the enhancement of skills and ethics in the migration advice profession. In this context MARA is particularly concerned about any conduct by registered migration agents which is false and misleading and/or encourages applications which have no grounds or hope of success. We have achieved progress in the promotion of awareness of the scheme through such initiatives as having incorporated MARA details on all departmental forms and posters in 42 different languages for display in MARA offices in Australia and overseas, in migration resource centres, agent offices and also through the inclusion of MARA details on the DIMA web site.

We have sought to provide greater transparency in the investigation and resolution of complaints through the appointment of mediators who adhere to the standards of LEADR—Lawyers Engaged in Alternative Dispute Resolution—and the utilisation of a conduct advisory panel. The panel has national representation from the migration advice sector, comprising legal, community and migration interests.

We welcome the joint standing committee's invitation to attend tonight. The committee will appreciate the invitation to attend was at very short notice and for this reason we have not

prepared a written submission. MARA is very interested in the material coming before your committee and is looking to act at any material which comes within its jurisdiction.

CHAIR—Thank you very much for that opening statement. The reason the committee asked to see you was because some of the issues that have arisen on this particular piece of legislation bring in the activities of some of the migration agents and local lawyers. Do the witnesses have a copy of these? I will hand it across to you—just the advertisements. Could I have some comment on how you perceive that advertisement—the one on the front, and there are others. I will give you time to look at them.

Mr Brown—In terms of the advertisement, it is clear it is inviting people to come forward. I guess the real issue is what happens once the people come forward in response to these ads and what is the advice they receive from the lawyer or registered agent at that point in time.

Mr ADAMS—We have the government putting legislation before the parliament, trying to stop class actions. They are doing it because they say these things are going on and it is costing millions of dollars. That is a very simple summary. Does your organisation support that sort of advertising? Is that ethical in your organisation's view?

CHAIR—That is what I was trying to get at but you might have put it a little more obviously than I did!

Mr Brown—The advertisement itself is encouraging people to come forward for class actions. To some extent my feeling is that the ad on its own is a catalyst for people to come forward. Then it really depends on what happens from that point in time. Does the agent then encourage somebody to go forward with a class action? Do they make any assessment of whether there are any grounds for action? Do they make any—

CHAIR—Mr Brown, if I can interrupt you there, that would be fine if this ad actually said what the class action was about, but it gives no indication at all. It just says, 'If you have been rejected by the Refugee Tribunal you may be able to join our class action at a very low cost.' There is no attempt to say 'if you have been refused on such and such grounds, if you came on such and such a boat', or anything like that. It is just 'If you have been refused, come to me and we'll get you'. Then there is this one: 'You may still qualify for a bridging visa and become legal.' There is no attempt to say, 'Look, this is where we are coming from, this is the class action.'

Mr Brown—Yes.

CHAIR—It is really a catch-all for anybody out there who wants to stay.

Mr Brown—Yes.

CHAIR—Does that change your response to that ad in any way?

Mr Brown—Certainly, in that context—if you are putting that it is an open invitation for anybody to come forward—it would change our response to the extent of saying, 'Okay, it's

something we would want to investigate. We would want to seek information from the lawyer or the agent on where they're going and what was the purpose of this ad and what is the process they are going through once people respond.'

Mr BAIRD—Madam Chair, could I be more direct than either you or Mr Adams and say I find this ad appalling. I would like to know whether you three gentlemen were part of that ad or whether you support it.

CHAIR—Can we have some discipline here? If I can finish, then you may all have free will to tell the gentlemen from MARA what you think about the ads.

Mr BAIRD—Certainly.

CHAIR—If I can get my information out first, that might be a more orderly way of proceeding. You were interrupted there. You said you might be disturbed. Has MARA ever asked anybody about these ads or called any migration agents or lawyers in to explain what they did next?

Mr Cope—Madam Chair, this information is basically new to the authority. There are no complaints before the Migration Agents Registration Authority in respect of—I cannot say any of these ads because we have only just had them put before us. We had some information faxed to us last week in terms of attendance at this hearing. Let me first say there is a paucity of material the Migration Agents Registration Authority has in order to determine this matter. To give some preliminary views on these advertisements may prejudice any investigative actions the authority may want to take in respect of that. We have to be careful as to what individual opinions are of these matters.

Please do not feel that we are trying to avoid your questions. It is simply that the Migration Agents Registration Authority has conduct powers against registered migration agents and if these matters have been brought about by registered migration agents, it therefore means that some or all of this conduct in these advertisements, or the actions with the clients, may come within the grounds of conduct action by the authority. We do not want to prejudice what actions might happen by what we say here today. We certainly welcome this committee's investigations into any of these issues, because what we can get on the public record is information that the authority can itself then take in terms of its investigative actions.

CHAIR—Before I hand over to Mr Adams, what monitoring mechanisms are in place to cover the practices and actions of migration agents?

Mr Brown—In terms of advertising, the secretariat does monitor newspapers both in the ethnic and mainstream press. I am assuming this is where these ads have appeared.

CHAIR—I know one of them was in an Indian paper. One was the *Daily Telegraph* and I am not sure about this one, the *Indian Voice*. The front one looks like Arabic. Just to clarify the point, you do monitor the newspapers?

Mr Brown—I do not say we monitor every newspaper but we do monitor newspapers.

CHAIR—Mr Adams, you had some questions.

Mr ADAMS—Is this ad here an ethical ad for your organisation, for one of your members to put out?

Mr Cope—Maybe the easy way of answering that is to look at the ad in the context of the code of conduct, which is an objective document which sets out the requirements of an agent to adhere to. In terms of the code of conduct and in terms of part 3 of the Migration Act, there is immigration assistance and immigration legal assistance. The question on this first ad marked ‘permanent resident Australia’ is whether material set out in that advertisement is within the area of immigration assistance or in terms of immigration legal assistance. That would be the very first issue. Ironically this type of advertisement—

Mr ADAMS—Sorry to interrupt you, but that was not my question. You are dealing with the process of the act and the meaning of the act. I asked you whether your organisation has an ethical base and you told me earlier that it does.

Mr Cope—Yes.

Mr ADAMS—What I am asking about is the ethical standard of the Migration Agents Registration Authority.

Mr Cope—Subject to any views prejudicing any action, this advertisement does have some very negative connotations to—

Mr ADAMS—It is touting, isn’t it? It is touting for work, which could be—

Mr Cope—What I am saying is that in terms of immigration assistance and immigration legal assistance, while it might sound very pat, it actually may take some elements of this advertisement out of the jurisdiction of the Migration Agents Registration Authority. In terms of saying what action the authority can take about these advertisements, I am mindful of what the parliament has passed in terms of provisions. It is necessary to look at elements of this which are more likely to perhaps offend elements of a lawyer’s code of conduct or a lawyer’s obligations versus a migration agent’s obligations.

But in broad terms one would not find the authority endorsing any of these advertisements or any of the representations that are generally made. As a general principle, the answer is no, we do not support or endorse these advertisements. We are here in a regulatory capacity which has a sanction power. It has a power to refer matters to the Law Society in certain instances. It is a difficult question to answer in terms of that consequence, to judge on the face of seeing the document. It would take some further investigation certainly to see what other aspects of the conduct there are.

There may be many other issues than just the advertisement that are worth investigating further for possible breaches or investigatory options to the authority, including the authority taking its own action or the authority referring those findings or evidence off to another regulatory body such as the Law Society.

Mr ADAMS—Would you take that on notice and come back to us, on whether you are going to take any action in relation to this?

Mr Cope—Absolutely.

CHAIR—We do have a limited time frame for reporting, so if you get back fairly soon that would be good.

Mr ADAMS—What action do you take against an agent who is acting outside the regulatory framework?

Mr Cope—Sorry, outside the purview of the Migration Agents Registration Authority or in breach of its code?

Mr ADAMS—If you find this outside your standard, what action do you then take against the agent?

Mr Cope—We can certainly refer the members to the authority's annual report which is tabled.

Mr Brown—Are you talking about what action we would take if we found a breach?

Mr ADAMS—Sure.

Mr Brown—Our options are either suspension, cancellation or caution in terms of disciplinary sanctions we can bring to bear.

Mr Cope—There are also mediation aspects if there are any financial issues in terms of the clients themselves. If these people have paid money, there may be an entitlement to look for financial solutions to the recovery of any moneys.

Mr ADAMS—We have had evidence to that effect, I think, that sometimes people get sucked into an action and then money is paid over but they do not get much satisfaction for what they have paid.

Mr Brown—Whilst I may not have been saying it very well at the outset, that was the point I was trying to get out. It is what happens in response to this. We do not like the ads, but it is really what the conduct of the agent is when the person comes forward. It could be—and I am not suggesting in any way it is—that once somebody comes in the door they are given very ethical and straight advice. I guess our suspicion is now that it does not occur, that everybody is basically roped into the action. That is where I see the real breaches start occurring.

Mr ADAMS—But we know that has occurred, don't we? We know that is occurring.

Mr Brown—We know there are class actions going ahead, yes.

Mr ADAMS—We know these ads are sucking in a whole pile of people.

Mr Brown—Yes.

Mr Cope—I looked at the evidence by the department very early this morning and I was astounded by the number of people who have appeared, the number of actions. I think there is a total of 15 actions, 10 of which are decided, concerning many thousands of people. It is a serious issue.

Mr ADAMS—That is why the government has laid it before this legislation because they are talking about the number of people and the amount of money the litigation is costing.

Mr BAIRD—Yes. Yours is a licensing body. Is that right?

Mr Cope—Yes.

Mr BAIRD—Are you migration agents yourself or are you drawn from the—

Mr Brown—Three of us are migration agents and David is not.

Mr BAIRD—Are any of the three of you involved in this type of approach?

Mr Brown—No. Not to my knowledge anyway. None of us have ever been involved in any class actions.

Mr Cope—The winner of these class actions, as I said, is as far as I know very much unknown to the authority, certainly as a collective agency. Despite the fact that parliament is investigating this matter it is not as though it is something we are on notice of from our day-to-day activities. Our charter is to deal with complaints as they come forward. We have the power to initiate our own complaints. Parliamentarians are entitled to refer matters—and have done. We encourage members of parliament, state and federal, to come forward with any complaints on behalf of their constituents. If there are constituents who have come to members in that respect, that is a ground which could trigger a complaint.

Mr BAIRD—Those of us who are members are dealing day to day with concerns that people in the electorate have about the number of illegal migrants. The community tends to lose interest in trying to assist genuine refugees when you have this type of clear exploitation of legal loopholes. What justification can you provide for us as to why we should not take more stringent guidelines in terms of legislation to control the activities of organisations and licensing of agents and also to prevent such activities as this in terms of class actions?

Mr Brown—I do not think it would be for us to suggest that strong action should be taken in terms of trying to prevent any activity which is misleading and taking advantage of people who are involved in a situation and also clogging the system, so to speak, in terms of taking forward cases which are ungrounded and have no basis and no prospect of success ultimately. Basically we would not be opposed to that.

Mr BAIRD—A final question to understand how it works: the various organisations you represent, the migration agents, pay a joining fee to belong to you. Is that right?

Mr Brown—No, MARA is a statutory body under the legislation. Agents pay a registration fee to become registered.

Mr BAIRD—Is it through your organisation?

Mr Cope—It is a charge which is paid to the Migration Agents Registration Authority which ultimately goes through the department of finance and back. Without wanting to be technical, it is either a tax or a charge. It is something under statute.

Mr Brown—We, as a body, are not representing the people who are registered agents.

Mr BAIRD—All right, I understand.

Mr Cope—It is a statutory self-regulating framework.

Mr BAIRD—Are there any agents who are not members?

Mr Brown—No. You have to keep it on the track of the Migration Agents Registration Authority. The legislation provides that if somebody is to give immigration advice they must be registered.

Mr BAIRD—They must be. You have them all coming through. Therefore you have the ability to move on such ads and the use of them. But you have indicated that even though you are licensing agents, you would still have questions about whether that is legitimate or not.

Mr Brown—Yes. There could be issues such as the distinction in the legislation between immigration advice representation and immigration legal advice. One of the avenues for some of this activity could be, if it is in the conduct of a lawyer, saying this is in the conduct or advice because it is with a court matter. That is one area of jurisdiction but we would still be able to monitor that and monitor it in the context of ‘Is this a matter we can refer on to a legal authority, or is it a matter we might as well refer on to the department?’

Senator BARTLETT—The context of this bill we are looking at is that the government is acting on the assumption there are a number of people who are undertaking or are involved in class actions that are frivolous or inappropriate purely to extend their stay in Australia. They are suggesting that access to a class action should be limited, which obviously raises concerns about people who are undertaking genuine class actions. The issue has been raised about ads like these and whether an alternative, or possibly a parallel course of action, may be to attack inappropriate action by migration agents or lawyers, which I guess is where you come into the picture.

Firstly, can I clarify a little bit more the distinction between migration agents that you oversee and lawyers. I presume some migration agents are lawyers who can undertake court action.

Mr Cope—Yes.

Senator BARTLETT—So they would all be registered with you?

Mr Cope—Not because of the fact that their client is before the courts but because they may, in the process of acting for clients, give immigration advice that is not before a court.

Senator BARTLETT—If a lawyer or any migration agent—but, for example, a lawyer who is registered as a migration agent—was to give advice or to encourage someone to join a class action that, even if it was successful, was not going to help them and they did not have any grounds under it but they just tack them on anyway—which has been alleged—do you have any power to act in such a circumstance?

Mr Brown—If it is a lawyer and it is purely court action and there are no immigration visa issues associated with that—it is purely the court process—

Senator BARTLETT—The issue would probably be a bridging visa, I would imagine. They attach them to the class action so they can get a bridging visa.

Mr Brown—Once we start talking about bridging visas here, then it is starting to bring it into the jurisdiction of immigration advice. That is an interesting point in terms of this ad.

Senator BARTLETT—Without getting into the argument of whether the allegation is true or not, but if it is that some people are either being falsely told that this class action is for them is a way of saying, ‘And of course you get a bridging visa so you can stay,’ holding out false hope—but even though they may be misleading all people that know that they can do that and attach themselves willingly—in either case, if it relates to the issuing of a bridging visa you could have the scope to act against an agent that knowingly attached a person to a class action which was not relevant for them.

Mr Cope—Yes.

Senator BARTLETT—You have not had any complaints about class actions and activity like that?

Mr Cope—Not until today, it would appear. There have not been any complaints.

Senator BARTLETT—Do you get complaints from the immigration department from time to time, not necessarily about class actions but about anything?

Mr Brown—From time to time, yes.

Senator BARTLETT—It would be appropriate, if the immigration department had concerns about this type of behaviour, that they report them to you and ask you to look into them?

Mr Brown—Certainly I would think so.

Senator BARTLETT—In terms of all these advertisements, I am not 100 per cent sure and you might not want to be prejudiced if you are going to conduct an investigation but my understanding of one of the class actions that is currently under way—and I may be wrong because I have not looked at it in huge detail—is challenging the conduct across the board of the RRT about how it goes about making all of its decisions. In such a context would it not be reasonable for anybody who has been rejected by the RRT to think it was appropriate for them to attach themselves to an action which was addressing that alleged failure?

Mr Cope—If we take the issue of legal assistance out and look at immigration advice, we are looking at it through the lens of a very technical perspective, whereas you are saying, ‘Look at this conduct, it’s monstrous’—looking at it from that blinkered view. Please do not feel we are not taking this as seriously as the committee is. If it was just immigration assistance, there are potential issues within the code of conduct, such as vexatious applications and failing to advise a client in writing, possibly financial irregularities in terms of accounting to the client, confirming in writing a range of instructions they have provided—a myriad of issues. What we are saying on the face of seeing these is can we get to that, because it may be outside that strict definition.

Whilst we were not around at the time of a High Court challenge, there was a challenge to the registration scheme in the nineties which was a very close decision as to the constitutionality of the registration scheme. We are mindful of the Migration Agents Registration Authority or the former board overstepping its jurisdiction in that regard. That is why our answers are somewhat guarded. We do not disagree with the general intent of the comments you have made.

Senator BARTLETT—In terms of the obligations of a person who offers migration advice, I guess taking it from the other side and not so much them doing something wrong, but what they are expected to do, looking at this second ad, the Parish Patience one, I am assuming it may or may not be the same one but I suspect that is what annexure C also relates to, that case, that class action. If that class action was under way—and it does not really matter whether it is to the Federal Court or the High Court by way of this example—and you were a migration agent and you knew there was a class action under way relating to everybody who was in Australia before 1 November 1993 who was not from one of the six countries which had the amnesty offered to it, so you know that class action is under way and you know what it is about. I accept that not every agent would, but if you did and someone comes to you who is in that situation and says, ‘I’m wanting to stay in Australia. Is there any legal avenue open to me?’ would that person be negligent to not tell this person about that class action and indicate to them that may be a course of action they may wish to take?

Mr Brown—In terms of an agent’s responsibility to the client, the responsibility first and foremost is to the client. If there was an action which was grounded on valid and substantive grounds—what I am trying to say is it is not a groundless class action—I would see that it is appropriate to draw it to the attention of a client.

Senator BARTLETT—In that sense, advertising to people that this may be an option for them is not necessarily inappropriate either.

Mr Brown—From my view, certainly. Advertising in itself I do not see is wrong. It depends upon what the ad says and then what conduct follows when somebody walks through the door. Advertising is part of commercial activity. If an agent is to advertise their services I believe they are entitled to do so. The concern really comes down to whether the advertising is misleading in any way and what is driving the advertising. I come back to what happens when the person comes in the door and what advice is given. Are they given accurate advice in saying, ‘You have got no chance. There are no grounds. I can’t help you.’ If that is the situation the agent may be acting quite ethically. But if they are not and they are simply signing everybody up, whether there is any basis or any assessment of their prospects at all, or whether there is any ground for their claim, then that is purely wrong.

Mr Cope—Just to add to that, under clause 2(10), as an example within the code of conduct, a migration agent must not engage in false or misleading advertising, including advertising in relation to guaranteeing the success of an application. What I have seen so far is that we do not know whether this is a migration agent—sorry, the Parish Patience one does say RMA70721, so that is a registered migration agent. But the prior one that I looked at more carefully—it is blacked out—perhaps there is someone who is a registered migration agent. But the code talks of ‘a migration agent’. But guaranteeing the success of an application—‘if you apply you are guaranteed this’—when they have no chance of success, then the advertisement, of itself, would offend clause 2(10) of the code of conduct, if they are a migration agent. There may be some elements within these advertisements that may offend the code.

Mr BAIRD—But had you seen these ads?

Mr Cope—No.

Mr BAIRD—If you are the registered authority and this committee has presented the ads, do you not think that suggests some weaknesses in the system? If you are the licensing authority and the monitoring system has not brought forth those ads, then one has to ask about the system.

Mr Cope—It is a very valid question. Perhaps we are monitoring inadequately. I would say, however, what the authority has done in the two years in which it has been operating has been to attempt to get its message out to all agencies, individuals, parliamentarians, community sectors, the department, a range of plans and permanent fixtures within the framework to actually be aware of the scheme and, in hearing those elements, to feed those back. It is not just the people who may be part of this matter but it is actually the other people who have seen this as well. It is now before us and it is now a matter that can be taken considerably further.

Mr Brown—In terms of monitoring, if we are talking about monitoring of the newspaper advertisements by the authority themselves, you may say there are some weaknesses in that. But we may also say there is a capacity to monitor all the newspapers—and I have to say we do not have the capacity. I am not sure how many ethnic papers there would be coming out on a daily or weekly basis in Sydney. Add that to all the national newspapers around Australia—

Mr ADAMS—You can buy clipping services. There are professional bodies who do that clipping.

Mr Brown—That is a very good point.

Senator BARTLETT—How closely linked are you with DIMA? Is it an arm's length arrangement or do you consult or communicate fairly often? I am just thinking in terms of the resources. DIMA, I suspect, does a lot of monitoring of newspapers. They certainly got hold of these and they have had them—or at least one of them—for over two years. It might be handy for them to pass them on to you if they think they are of concern.

Mr Brown—Yes.

CHAIR—Perhaps Mr Adams's suggestion of the clippings could now pass to Mr Ripoll, please.

Mr RIPOLL—I want to pursue the issue of what the purpose of class actions is, in your view; whether the purpose of these actions is to try to reverse the decisions of the RRT or whether it is perhaps just to prolong the stay of people. What are the outcomes in your view and what is the purpose of the class actions?

Mr Brown—There is a lot of surmising that has to go on. We have not investigated any of the class actions or had information come before us. We would look at the departmental submission and the figures that are quoted there. They raise concerns. It is my understanding there have been actions involving some 4,000 people where outcomes have been reached and, at the very best interpretation, there are probably only about 15 people that may have got a positive outcome. That raises a very serious question about what is driving the actions and why you cannot make a final analysis just on a statistical basis, but it is certainly suggesting the cases were not found in the first instance.

That leads you down a path of questioning: was there another motive, was it really aimed at achieving a positive outcome or was it really to frustrate the departmental process? The department, we noticed in the submission, is suggesting it is to prolong the stay. I guess, just purely and simply on the statistics, the statistics would indicate they are right in that.

Mr RIPOLL—Yes. I also want to pursue it a bit further because I am concerned that it may not just be in itself just to prolong the stay but that the people putting forward these class actions may in actual fact know the outcomes prior and thereby, on what I would call false grounds, are purporting to a large number of people that if they join in—and these class actions are certainly by their advertising—they come to us under the pretence that we can fix this problem that you have, which is either that you are illegal, you have been refused or whatever. It raises some concerns about the expectations that these people are putting forward to people that do come to them, given that they would be fully aware of not only the statistics that you have just mentioned but also the likely outcomes, so I am a bit concerned about what information people coming forward might be given.

Mr Brown—Yes.

Mr RIPOLL—If they were interested in joining a class action, then the people giving that information would already know the possible outcome.

Mr Brown—Yes, and that is really the very issue that I was trying to allude to at the outset: what advice is being given to people when they come forward. That is where, obviously, the real danger of misrepresentation or unethical conduct is occurring. It is at that point of advice. Are they simply roping the people in, not advising them of the prospects of success? The code does make provision for cases which have little ground of success and the requirements of an agent to advise the person and to have their acknowledgment in writing of those grounds. They are matters, if it comes within our jurisdiction, that we can pursue and investigate so that you get the agent followed through the process in that regard.

Mr RIPOLL—One of the ads—I think the Parish Patience one—says ‘If you came to Australia before 1 November 1993 ...’, so we are talking a substantial number of years. It says that some of those people that would come forward under that ad would have been in the country for an extended period of stay and would probably be illegal and, in fact, one of them refers to people who are illegal. What do you understand would be the action taken by migration agents? Once they discovered somebody was illegal, what would be their course of action? If somebody came to them and it was obvious that they were illegal, what would you expect them to do: just to ignore that or to inform DIMA or to take some form of action?

Mr Brown—No. The migration agent is representing the client, so it is not the migration agent’s jurisdiction to start informing on the client when they come to them, but the appropriate action would be to look at the person’s circumstances. There are some limited areas where a person may be able to apply for residence quite legitimately, even though they are unlawful. But I would expect that the normal advice to somebody in that situation is to look at those options and advise them on their options, if there are any. Then you end up finding yourself having to advise the person, ‘Well, you have no options apart from leaving and departing.’

Mr RIPOLL—The advice that an agent would give or could or should give is within the confines of the law and the agent should not be encouraging the applicant or the person if they are unlawful to remain in Australia unlawfully, to simply remain. The agent’s advice should be frank about what they should be doing. There are certainly circumstances where people cannot apply onshore but they may be able to apply offshore. They may have a good case to apply offshore and, in fact, they may be prejudicing their situation by remaining in Australia unlawfully or by joining matters that are irrelevant to their own circumstances. Whilst an agent is there to assist a client or a potential client, the agent is not there to simply encourage the person to flout the law.

Mrs IRWIN—Following up from Mr Ripoll, are there any services available to asylum seekers to make a complaint against migration agents?

Mr Brown—Services available to help them make a complaint?

Mrs IRWIN—Yes. Say if an asylum seeker went to a migration agent and they were not happy with the way that the migration agent was assisting them or they found out from another migration agent that they were given the wrong advice, as an individual can they put in a complaint?

Mr Cope—Certainly.

Mr Brown—Absolutely, and part of the reason for the formation of the migration agents regulations was to specify the types of people or the nature of the persons other than the client who can make a complaint. Regulation 9 says any person may make a complaint, including the client of the agent or lawyer, an official, an employee or member of the institute, so the Migration Agents Registration Authority members or the secretary or a parliamentarian. That is not an exclusive but an inclusive list. I must say that it is in some ways better to have a well-rounded objective formal complaint put forward from another migration agent—that has certainly occurred—or by a member or others who have actually looked at it, classified the situation, thought this offends something, has found us and has put a complaint forward. We would absolutely encourage that.

CHAIR—Mrs Irwin, were you going to ask then how a client would know that they had the right to complain or who to complain to? Was that part of your next question?

Mrs IRWIN—I think you have just asked my question, Chair. If you would like to answer the chair's question, I can follow on with another one.

Mr Brown—I will just throw in another point about the complaint part. They can complain in their own language. There is no need for a complaint to be in English. We also utilise the TIS, the telephone interpreting service, if it is something like lodging a complaint by phone initially. Agents are all required to have on display the code of conduct in their offices. The aim of that, basically, is to alert people coming into the offices of an agent that there is a framework under which the agent is required to act and from that to then know that they are in a position to be able to complain.

Also, MARA has put together, as I indicated at the outset, posters in 42 languages which we have distributed to the department. We have encouraged those to go up in departmental offices. Agents' offices we have encouraged. You could say the issue is if the agent is going to act unethically, they are probably not going to have a poster in there encouraging them to lodge a complaint, but we have gone down that path of trying to alert people as far as we can of the scheme and of the right of people to lodge complaints.

Mrs IRWIN—You cannot give us a number of complaints that have been received?

Mr Brown—Yes, 479 complaints have been received by the MARA since its inception on 23 March 1998. To date there have been 160 since July last year.

Mrs IRWIN—Did you want to answer the chair's question. Then I would just like to follow on with a few more questions.

CHAIR—It was really taking up from what Mrs Irwin was saying. Yes, anybody can complain, but I was envisaging somebody in there with poor English, having been talked into doing something or other and losing their money. Suppose I am in that position; I have poor English and I have attended my migration agent. I think this guy is taking me for a ride. I have lost my money. How do I know that I can come to you to complain?

Mr Brown—English is a factor. It is a major factor. Another point is departmental forms.

CHAIR—How do I know? In real life, here am I sitting at the desk. You have taken the \$100,000 off me. I have no more money. You did not get me anywhere. I am getting thrown out of the country. How do I know that MARA exists and I can complain to you?

Mr Brown—I was coming back to the point of the forms. The form that the person is lodging their application on starts off with a bold—maybe not bold enough; we would like it bolder—message that there is a scheme where you can lodge your complaint. The difficulty there is that is in English, I concede.

CHAIR—It is the form that you fill out—so you get a copy, so the applicant gets a copy—but it is in English.

Mr Brown—How do you cover that in terms of the languages? I am not sure how you do in a practical sense.

CHAIR—That is there at least in one language. It gives a phone number.

Mr Brown—It gives a phone number. It gives the address.

Mr Holt—The web site.

Mr Brown—Apart from that, we did place ads in the *Yellow Pages*. There are various avenues that we do pursue to try to raise awareness. I am not saying in any way that we are comfortable with the community awareness that exists but there is activity which we have got going on all the time to try to raise that awareness.

Mrs IRWIN—The question I want to ask now relates to money. This sounds good, doesn't it? As migration agents yourselves, what does it cost to pursue judicial review through a class action? The reason I ask this question is that there is an argument that class actions make judicial review affordable.

Mr Brown—Personally, I do not know what it does cost to seek judicial reviews because I have never been involved in a class action. I have seen the acts you have here but they do not talk money. Do you have information on that?

Mr Cope—Yes. It is a good question and it is certainly worth finding out. In terms of cost, there may be a range of impacts. For example, if the court is so offended by its jurisdiction being made use of—made a mockery of—it may well be that the court may order a cost penalty. Not knowing how class actions are structured and what cost impacts there might be, it may be the cost of getting a matter to the court; it may be the conduct of the matter in the court; and then if it goes all the way to the court's decision, the court may then make some punitive damages order. It certainly would be a matter of trying to particularise that element and it may well be that if it is not immigration legal assistance then it is immigration assistance, is the client aware of what the costs may be or are, and how that is particularised. That may well be another element. We did mention that the financial interaction and information provided to a client or potential client could well be an issue that we would want to find out more about.

Mrs IRWIN—You are saying to me that the authority is not aware of what agents can charge.

Mr Cope—No.

Mr Brown—In terms of class actions, we do not know what they are charging.

Mr Cope—We might need to obtain some clear independent advice on that side of things.

Mrs IRWIN—If you could take that on notice that would be good, if you could get back to us on that.

Mr ADAMS—Is there a set of fees for agents?

Mr Cope—No, the codes talk about a fee that is reasonable in the circumstances. The reasonableness would need to be looked at in terms of a range of factors.

Mr ADAMS—On that money question, on the letter that is in this group, the agent here sent a letter asking for another \$200. As we told you when we began the case over a year ago, we expected that going as far as we would would require more money than the initial \$200. They have asked for another \$200 per family unit to go into the trust account. 'It is to be used at our discretion and no surplus will be refunded to individual contributors.' There is no group set up or anything to help there, to act as some sort of brake or reviewer. Is there anything on the trust account? They use the word 'trust' up here, in 'trust account', to give it some meaning. Is there anything like a lawyer's trust account structure in your make-up as agents?

Mr Cope—There is not quite the degree of onus on a migration agent to have a trust account. There is what is called a client account and an office account, which is not dissimilar in structure to a lawyer's trust account and office account. I must say that one of the representations that the authority has made in writing to the government of the day is for some further powers of audit in that regard and there are changes to the code of conduct, effective four weeks from now, exactly on that issue.

Mr ADAMS—If they get \$10,000 from their case, that is \$10,000 in the trust account. It has no accountability. There is not a sort of group looking at it that I know of. That is my concern. It is pretty open-ended play, isn't it?

Mr Brown—The trust account is a lawyer's requirement, but the point that Andrew is making is that in terms of the migration agent requirement, there is not a strict trust account requirement but there is this requirement to separate client and agent funds. We sought this provision to be able to do investigation and follow-up and make inquiries on those. I would have to say too, in terms of looking at this letter, that it was not raised to us in terms of a complaint but was dropped to us cc. We are going down an investigative path in regard to this particular matter.

Mr ADAMS—That is pretty standard stuff from an agent's point of view, I would have thought. I think that the ethics of that are pretty limited.

CHAIR—Mrs Irwin, you have the floor. Please continue.

Mrs IRWIN—It has been stated that individuals have been joined to class actions without their knowledge. Is the authority aware of this as well?

Mr Brown—We are not. The only point I would make there is that it is my understanding that class actions are in the Federal Court. You are in unless you exclude yourself, so you are automatically in. It is not an area that I am strong on but it is my understanding that everybody is in at that point.

Mrs IRWIN—Fine.

Mr Cope—The authority's interest in this is not going to be hampered purely on a technicality of whether it is immigration assistance or immigration legal assistance in order to at least establish what it is that is occurring. Can we be clear that there is a commitment to look into this matter in a fairly broad sense and we would state that if there are clients who wish to make a complaint on this, that may well assist in being able to get a lot further than just an advertisement. It is a trickle-down issue.

Mrs MAY—Mr Brown, in your opening statement you were talking about your role as far as looking after the consumer. You saw that as your number one role. I think you also said you had no complaints with regard to class actions. Is that right?

Mr Brown—That is right.

Mrs MAY—In evidence that we have heard previously, we have heard of people going from one class action that has finished or failed, into another class action.

Mr Brown—Yes.

Mrs MAY—To me, that would say that despite the code of conduct of migration agents who may be advising those people, they are not doing their job.

Mr Brown—Certainly the indications are there but there needs to be a complaint or the matter needs to be brought to our attention. That is really where the next step has to be.

Mrs MAY—That is the next step. You are saying, yes, you have the posters, you have the information and the code of conduct is up in a migration agent's office. But clearly out of 479 complaints you have had, not one has been from a class action in two years.

Mr Brown—That is right.

Mrs MAY—Do you see that as falling down somewhere, when you have got people going from one class action to another? Are they just staying for the duration?

Mr Brown—You may well find that those people are totally happy with the conduct that they have been receiving. Again it comes back to what is the individual trying to achieve? If they are going from one class action to another, it is suggesting to me that the person perhaps is not necessarily after the outcome but is after a different outcome, which is to protract, delay and stall. So maybe that client is in fact happy with the advice that they have been given and is not going to then come forward and complain.

Mrs MAY—Then I go back to what you were saying earlier about the advice being given by a migration agent—and I think you quoted from the book.

Mr Brown—Yes.

Mrs MAY—‘To be fair and reasonable’.

Mr Brown—Yes.

Mrs MAY—If they have no chance in a second class action, would you say a migration agent is giving that fair and reasonable advice?

Mr Brown—If they advise the person that they have no prospect of success—and the code addresses that particular issue—they must have the written instruction from the client confirming that they have been given such advice but the client nevertheless wants to proceed. It is not written in there for a class action or with that in mind. It was written in there with the context of limited discretions in other fields, whereas to lodge an initial application a person may have no ground of success. It was a defence of many agents, when we sought to pursue that, to say, ‘Well, there was no option. We had to go through the process where there was no prospect of success to be able to get to the minister.’ That is why that provision was changed, to add this extra provision or requirement of an agent to confirm that they have counselled the client to that effect and have the client understand that but nevertheless they want to continue.

Mrs MAY—Do you think the code of conduct needs to be tighter?

Mr Brown—The code of conduct is an evolving document; it is not a standing document. At the point where we are at the moment, and where we have been, it has been a good document but we are always looking to move, enhance and strengthen. We have been putting forward recommendations to the government, which the government has accepted, in terms of our liaison and contact with community bodies, the non-fee sector agency as with other people.

We are always encouraging and inviting them for comment and advice. For example, in an address I was giving to the Migration Review Tribunal members about a month ago, the code was an issue I raised with them in that context, saying, ‘We welcome you to have a look at it. If in your conduct of day-to-day activities you see things that are coming before you where you believe that our code is falling short, let us know.’ So it is not a perfect document in any sense. I believe it is quite a good document but there is always room to move ahead.

Mrs MAY—Out of those 479 complaints, are you able to tell us how many people have been deregistered?

Mr Mawson— There have been five cancellations of registered agents. There have been six cautions against five agents and there have been three agents who have been suspended. One of the other matters that occurs within the scheme is that registration is a 12-monthly process and agents who are the subject of complaint can drop out of the system before the complaint is actually resolved. If those agents come back into the system, or try to come back into the system, the authority looks at the material that it had on the previous complaint and will either start up the investigation again or, if it was a matter where the authority had made some decisions to close off or had enough evidence to make a decision about it but had not made a decision, they may actually ask the agent, before he or she is able to be registered, to show cause at that point in time.

Mrs MAY—What happens with someone who voluntarily pulls himself out—I have got a case, we will not go into the case, but Mr Holt is aware of it—and the client has nowhere to go?

Mr Mawson—Currently the authority does not have a power over an agent who withdraws their registration or lets their registration lapse. There have been some proposals in relation to that but they are still on foot at this point in time.

Mrs MAY—How quickly would you act on a complaint once a complaint is submitted to MARA? If the agent finds out there is a complaint against them, how quickly would you react?

Mr Brown—If he withdraws, you are saying?

Mrs MAY—Yes.

Mr Brown—David would be in a better position to advise on the actual time frames in terms of getting the complaint on the desk and getting a response to the complainant.

Mr Mawson—What we do is look at the seriousness of the matter. That is the first step in the process, once we have got the complaint and we have gone through the processes around that. If it is a very serious matter we may do a number of steps which make the agent aware straightaway that there is a complaint. The agent is always advised what the complaint is. At the same time we may go through an investigative process which gathers a wide range of information very quickly. That is sometimes difficult to do and in a normal complaint it would not occur. We would actually pass the complaint out to the agent and say, ‘This client has made some allegations against you. Please respond.’

We then take their response. We look at the matter and see whether it is a matter that is able to be mediated or not. If it is able to be mediated and both sides are comfortable with that, the mediation will go ahead. The total time line on that could be three months. It can be longer, depending on what the setting up time is for the mediation and so on. Sometimes the agent requires a bit more time to get themselves together, sometimes the client does, and sometimes there is an issue where the client is in a different city. Where the matter is more substantive than that, by the time all the processes go through it can take between seven and 12 months for an agent to actually be finalised, and that is because of the requirements of natural justice.

Mrs MAY—Would you get many complaints about the fees charged? There is not a structure of fees, obviously. Other members here probably have the same problems walk into their office.

Mr Brown—Without the percentages before me, a large number of matters would relate to fee issues. That is really where we would like restitution powers but we cannot have them. That is where the mediation becomes a major benefit to the scheme, as it exists at the moment, in that it is really the avenue for the client to pursue who simply wants their money back. We have also seen evidence of conduct of agents where they have agreed to mediate and refund fees prior to the matter proceeding with us. For example, we were looking at a matter today where the agent had refunded the fees to the complainant who later then withdrew their complaint.

Mrs MAY—So they are testing it to see and once the complaints are there—

Mr Brown—But I see that as a positive part of the scheme, in that where we are seeing agents that are now acting in a pre-emptive way, where they know a complaint has been lodged, before we have had to go through their process they have refunded the money and that is positive.

Mr BAIRD—You have no published scale of fees then. It would be taking action against somebody who charges too much. Isn't it just the market then?

Mr Brown—No, it is not. It is really a matter of looking at what would be fair and reasonable. It is a very complex issue as to what would be fair and reasonable in the individual case. For example, we go through a process invariably where we call for the agent's file and we look at it. We make judgments on how much work was conducted. We look at matters such as cost structures, as to whether they have a major law firm as opposed to somebody who is operating from the back room of their home. We look at the nature of the information which has been presented with the application. We try and draw conclusions about what the fee charge was in terms of the time spent and then make sure of the advice that was given and the nature of the assistance that was given. It is not a perfect science but this is also part of the reason why we have a conduct panel.

We have sought to have a legal representative, a community representative and a migration agent, someone with experience in that field. A migration agent can bring to bear their knowledge about what they might charge on the basis of the case before them. It is a process but we see cases where you look at the fees and you will say, 'That is just unconscionable.' You could not imagine a case where that fee would be reasonable.

Mr Cope—The idea is to get the agent to give the client information and then to make an informed decision about the actions of the agent. The agent cannot give a blanket cost. They have to explain. There are provisions in the legislation. You give a statement of fees. There are also elements of that which will come into the code of conduct effective 1 July this year. Professional indemnity insurance, which is something we had investigated prior to getting this power during 1997, has now been recommended. Whilst it is not mandatory to have professional indemnity insurance, it is now highly recommended. It will be effective 1 July.

There are elements there in terms of you asking questions about the adequacy of the code. We had considered that issue before and we were not sure whether professional indemnity insurance was available to this sector. It was not possible to put that into the code. We did not think it was prudent in case it was deemed to be anti-competitive. That idea of what is fair and reasonable, and the information, is a two-way process. Most of the elements of the code are very common sense provisions. You will, as soon as practicable, give confirmation of what they are asking you to do. That is a very common sense thing. But if the client does not know, as you were saying, about an application they had no idea about, were they ever informed? Was it in writing? The code really is a good practice element. There may be complaints about fees that may not come to the registration authority. They may go, under state laws, to the Office of Fair Trading.

Mrs MAY—My office.

Mr Brown—In terms of the process, one point we have done and we do on a fairly regular basis, is that the matters which on first blush look to be of a much more substantive nature—one of the courses that we have tended towards now is what we call the doorstep, essentially sending the agent an advice saying, ‘We will be calling you today and we will be coming down. We are going to set up a time today to come down and collect the papers in regard to this particular matter.’ That is partly in regard to concerns that agents may be having the opportunity in the more substantive matters to start messing with the evidence we might be looking for. The approach is at various levels, depending upon what the seriousness of the matter appears to be at the first instance.

CHAIR—I would like to finish this by 9.30, if I can. I suspect members have other questions. Is it legitimate for migration agents who are approached by non-citizens who are about to become illegal or who are already illegal and the person knows they have no chance of ever becoming a permanent resident—and so does the migration agent—but what they want is a bridging visa. Is it legitimate for a migration agent to say, ‘Our task for you is to obtain a bridging visa for you, irrespective of the fact we can never get you permanent residency’?

Mr Brown—You are saying they are simply looking to engage in a prolonged and obstructive process.

CHAIR—Yes, for whatever reason. Do you have a quick answer?

Mr Brown—No, I do not think it is. The process is around providing a service to the client to achieve—

CHAIR—Permanent residency.

Mr Brown—Not necessarily permanent residency because there may be people who are seeking temporary residence or other categories of visa.

CHAIR—But not a bridging visa.

Mr Brown—A bridging visa may be there in the shorter term but I draw the distinction that if it is simply to obstruct the process and to obstruct the legislation, no, I do not see it as legitimate. But if the person has a legitimate entitlement to, for example, get a bridging visa to extend—to give himself time to—

CHAIR—Yes, just for the bridging visa. On the face of it you would reject this front advertisement because it is clearly saying, ‘Look, we’re going to get you a bridging visa.’ It says nothing about allowing you to pursue a case or anything else. It says simply, ‘We are going to get you a bridging visa if you’re lucky.’ You would deem this as not something you would allow amongst your migration agents?

Mr Brown—It is certainly not something we would want to do.

CHAIR—Fine. If you have discovered that migration agents are doing this just to obtain bridging visas for their clients with no hope of any other positive outcome, what action could you or would you take against that migration agent?

Mr Brown—Then you come back to the code and look for the potential breach against the code.

CHAIR—At the moment you just cannot tell us but you are going to get back to us on that.

Mr Brown—Yes.

CHAIR—That is fine.

Mr Brown—You look at provisions such as whether they have misled the client, have they been—

CHAIR—No, they have not misled the client. The client wants a bridging visa and they are damn well going to get them a bridging visa. There is no misleading of the client.

Mr Brown—Yes, but you would work through the process.

CHAIR—You are going to get back to us and tell us.

Mr Brown—Yes.

CHAIR—Can you see, from your knowledge of your clients and what you do for them, a problem if there are no more class actions? What do you see as the outcome if we stop class actions? Remember that individual actions can still go ahead. There still can be test cases.

Mr Cope—I think we would have to take that question on notice because class actions are not this authority’s purview.

CHAIR—If you do have any information we would appreciate that. Obviously, if you have not dealt with it and the authority has not dealt with it, then we understand you have no comment on that. Do you have any other comment on anything else in the legislation—for instance, the ability of the minister to overturn a character decision?

Mr Cope—No, we are purely here for schedule 1 of the bill.

Senator BARTLETT—Back to your question then about the ads, which we keep coming back to, using the term I think the chair used about people who have a legitimate entitlement and this issue of people seeking bridging visas, I would like to draw the distinction between your statement that people will just go along saying, ‘I just want a bridging visa. Pull all the strings you can to just keep me here as long as you can. I know I don’t really have any entitlement for a formal visa or other type of visa, whether it is temporary or permanent.’

I am interested in the difference between that versus someone who, under a class action, may have a legitimate entitlement. The point of the class action is to test someone’s entitlement. It may not even be a class action, it may be an individual action. This particular ad talks about bridging visas but also talks about permanent residents of Australia. I do not know which class action it relates to but if it is the one I am thinking of, potentially if that is successful—and it may well not be—if it is a vexatious claim the court has the power to toss it out. Those people have a right to test their legitimate entitlement through the court process, have they not? Is that not different to someone coming along and saying, ‘Just keep me here as long as you can by hook or by crook’?

Mr Brown—I would think so. It is what is the aim and what is the objective. Is there a potential for an outcome? That is the distinction I would try to draw. Is it simply a protraction process and something which has no avenues and is not leading anywhere, or is it something which is perhaps leading somebody to a positive outcome and a final outcome, a resolution of their status in Australia? If it is leading to a positive outcome in terms of the resolution of the status, it is an entitlement.

Mr BAIRD—It seems to be, though, between Senator Bartlett and myself there is a conflict of view. If their objective is to stay as long as they can in Australia and they achieve that, for you that is—

Mr Brown—By ‘positive outcome’ I mean bringing it to the resolution of their status. Either it leads to their having a temporary resident visa or a permanent resident visa which entitles them to remain here on a lawful basis, either permanently or on a temporary basis, to conduct whatever business or whatever it was intended to and not a matter of just protracting their stay. That is where I see the distinction.

Mr BAIRD—That is what I heard Senator Bartlett ask about, somebody protracting their stay.

Senator BARTLETT—No, I was asking about somebody seeking to test their legitimate entitlement. Obviously as part of testing that they have to get a bridging visa.

Mr Cope—The authority's functions include education and there is considerable effort by this authority in developing a whole range of activities and certainly improving CPD activities, which are now mandatory every year for every registered agent or they automatically are deregistered or not further registered. That is one of the positive elements that the authority is trying to encourage to bring agents further into the current domain of the law and to advise in a practical sense their clients.

Senator BARTLETT—You might be able to use these ads as a case study in future: how people can get into trouble with parliamentary committees and departments!

Mr ADAMS—Can you tell us the number of agents in Australia?

Mr Brown—Two thousand, one hundred and sixty, I think, at the moment.

Mr ADAMS—So the failure rate is not what you call high.

Mr Brown—The failure rate in?

Mr ADAMS—Didn't you say five cases have been—

Mr Cope—There is quite a turnover of agents. It would be about 500 new entrants a year.

Mr Mawson—Yes, there are 500 new entrants a year.

CHAIR—And how many exits?

Mr Cope—About the same, but there is a chain factor that is hard to—

Mr BAIRD—The failure rate is 0.5.

Mr Brown—The failure in terms of suspension are you talking about?

Mr BAIRD—Yes.

Mr ADAMS—Going broke?

Mr Brown—Or they may have been part of the 500—

CHAIR—Maybe they run before they are pushed.

Mr BAIRD—No, but in terms of you taking action, I am talking about.

Mr Brown—Yes. The action depends upon the nature of the case. You cannot do it on a numbers basis. You look at the nature of the complaints which come before us and whether they relate to substantive matters or not. You can only judge the matters which come before us in terms of action, and you have to take action which is appropriate to the complaint.

Mr BAIRD—Could you see yourself as being reactive rather than proactive in terms of these issues, in terms of taking action?

Mr Brown—In terms of complaints, I would have to say most complaints are reactive matters because they are matters which has happened in the past.

Mr BAIRD—Yes. I have heard, though, that you do not actually go out looking for abuses per se, but you wait for a specific complaint to be made.

Mr Cope—No. I would disagree with that, in the sense of not necessarily taking action against agents but encouraging the broad community, including migration agents, to participate in weeding out unethical conduct.

Mr BAIRD—But it seems like you are not, for example, finding things like this in the newspaper and, even though you have not had a specific complaint about it, saying, ‘What the heck is going on here?’ and then you start your own investigation process. It seems to me that you are not proactive in terms of that.

Mr Brown—David, you may be able to help me. We have initiated complaints ourselves in regard to advertisements, where we have raised complaints and followed up with agents. I do not know what number.

Mr Mawson—What we have done in the past is to basically walk to one of the newsagents in Haymarket or those areas, pick up the newspapers from there, and try and identify—depending on the language skills within the group—ads which would breach the code of conduct. The ones that we have seen are not in plain English. We then generate a matter out of that and ask the agent to respond. We do have that activity. We also do work around the web. We do a lot of checking on what is on the web pages, which is an area where people, particularly overseas, would apply. There are a number of matters on there that we are looking at at the moment. I do not know whether you listen to radio. Radio and TV both have advertisements. We are tracking some of those.

Mr BAIRD—I accept your point.

Mr ADAMS—How big are agents these days? Are there agents that have 10 other people working in their offices? Are they that sort of size? Or are there law firms?

Mr Brown—There are some of the major law firms and some of the major accounting firms. There are agencies that I am aware of that would have that number of staff, without having full details. My feeling is that probably about 50 per cent of agencies would be sole practitioners, and then beyond that you get a whole range of things, from two people and so on up.

Mr Cope—Solicitors and accountants may have immigration assistance as an adjunct to other parts of their practice as well.

Mr ADAMS—They may have some arrangement with an agent to do that side of the work or something like that, do you mean?

Mr Brown—Some of the major firms, no, they will have within their staff a registered migration agent.

CHAIR—When you said that you did not enter into class actions, we presume you are talking as individual migration agents here?

Mr Brown—Yes.

CHAIR—Secondly, if you had a complaint against a lawyer who was not a registered migration agent, you could not act. What then do you do?

Mr Brown—If he is not a registered migration agent?

CHAIR—Yes.

Mr Brown—There are two elements. If we think he is giving immigration advice, that is something we draw to the attention of the department.

CHAIR—Not actually immigration, but working in these cases.

Mr Brown—Then it is a matter to be brought to the attention of the legal authorities.

CHAIR—You would bring it to the attention of the legal authorities if you received it?

Mr Brown—We could. We would have the capacity to monitor the conduct, though, to establish which way it falls.

CHAIR—Good. Thank you for your attendance here today. You will get back to us on some of that information?

Mr Cope—May we retain copies of these advertisements?

CHAIR—Yes, please keep them. You will be sent a copy of the transcript of your evidence if you would like to check that for accuracy. We thank you very much for appearing.

Mr Cope—Just as a final matter, if there are any findings that the committee might make, obviously that would be material that the authority could take on after this committee has reached its deliberations.

CHAIR—You will be sent a copy of the report as soon as this is published.

Mr Cope—The evidence is particularly helpful as well.

CHAIR—We thank you for that.

Resolved (on motion by **Senator Bartlett**):

That this committee authorises publication of the proof transcript of the evidence given before it at public hearing this day.

Committee adjourned at 9.32 p.m.