The Senate

Legal and Constitutional Legislation Committee

Migration Legislation Amendment (Migration Agents Integrity Measures) Bill 2003 and Migration Agents Registration Application Charge Amendment Bill 2003

November 2003

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TABLE OF CONTENTS

MEMBERS OF THE LEGISLATION COMMITTEE iii

RECOMMENDATIONS vii

ABBREVIATIONS ix

CHAPTER 1 1

INTRODUCTION 1

Key aspects of the bills 1
Conduct of the inquiry 1
Structure of report 2
Acknowledgements 2
Note on references 2

CHAPTER 2 3

BACKGROUND TO THE BILLS 3

Migration Legislation Amendment (Migration Agents Integrity Measures) Bill 2003 3
Background to the migration advice industry 3
'Immigration assistance' and 'immigration legal assistance' 4
Exemption for 'close family friend' or those assisting for no fee or reward 5
Prescribed qualifications 5
Disciplining registered migration agents for engaging in vexatious activity 6
Notification of giving of immigration assistance to visa applicants and review applicants 8
Protection from civil proceedings 8
Migration Agents Registration Application Charge Amendment Bill 2003 9

CHAPTER 3 11

REGISTRATION REQUIREMENTS FOR AGENTS 11

Overview 11
The cost of the 'sound knowledge' course and examination 11
Distinction between lawyer and non-lawyer registered migration agents 12
Professional indemnity insurance and audited trust accounts 13
Committee view 14

CHAPTER 4 17

DISCIPLINING REGISTERED MIGRATION AGENTS 17

The provisions of the Migration Legislation Amendment (Migration Agents Integrity Measures) Bill 2003 (the Bill) 17

Use of a statistical failure rate to activate sanctions 18

Alternatives to the chosen method 19

The number of agents potentially affected 20

Doubt over constitutionality 21

Agents' obligation to report when assistance is given 21

Removal of the right to confidential advice 22

Possible breach of legal professional privilege by lawyer agents 23

Absolute discretion of the Minister 23

Inadequate and inappropriate avenues of review 24

Appropriateness of regulating lawyers by such methods 25

Possible unintended consequences of the measures 26

Committee view 26

CHAPTER 5 29

REGISTRATION CHARGES 29

Definition of 'commercial basis' may be too wide 29

Committee view 29

APPENDIX 1 31

ORGANISATIONS AND INDIVIDUALS THAT PROVIDED THE COMMITTEE WITH SUBMISSIONS 31

APPENDIX 2 33

WITNESSES WHO APPEARED BEFORE THE COMMITTEE 33

Canberra Monday 27 October, 2003 33

RECOMMENDATIONS

Recommendation 1

The Committee recommends that in relation to the cost of prescribed courses and examinations, the MARA and the MIA ensure that non-profit migration advice services either be subsidised or exempted from the fees. This is important to ensure that the cost of courses and examinations does not restrict the ability of such services to register agents who have the requisite 'sound entry' knowledge.

Recommendation 2

The Committee recommends that the Government give further consideration to implementing Recommendation 11 of the *Spicer Report* by introducing a requirement that agents have a prescribed level of professional indemnity insurance. Consideration should also be given to requiring migration agents to hold audited trust accounts for clients.

Recommendation 3

The Committee recommends that the provisions of new Division 3AA be reviewed and should not proceed, on the basis that the measures are insufficiently targeted to vexatious agents and that the Bill grants complete discretion to the Minister, without detailing the basis on which such discretion will be exercised.

Recommendation 4

The Committee recommends that the Government reconsider implementing Recommendation 16 of the *Spicer Report* by strengthening the Migration Agents Code of Conduct.

Recommendation 5

The Committee recommends that the Migration Agents Application Charge Amendment Bill 2003 be agreed to.

ABBREVIATIONS

AAT	Administrative Appeals Tribunal
Application Charge Amendment Bill	Migration Agents Registration Application Charge Amendment Bill 2003
CPD	Continuing Professional Development
MARA	Migration Agents Registration Authority
MIA	Migration Institute of Australia
PV applicant	Protection Visa Applicant
the Act	*Migration Act 1958*
the Bill	Migration Legislation Amendment (Migration Agents Integrity Measures) Bill 2003
the Department	Department of Immigration and Multicultural and Indigenous Affairs
the Regulations	*Migration Agents Regulations 1998*

CHAPTER 1

INTRODUCTION

1.1 On 8 October 2003, the Senate referred the Migration Legislation Amendment (Migration Agents Integrity Measures) Bill 2003 (the Bill) and the Migration Agents Registration Application Charge Amendment Bill 2003 (the Application Charge Amendment Bill) to the Senate Legal and Constitutional Legislation Committee for inquiry and report by 25 November 2003.

Key aspects of the bills

1.2 The Bill seeks to implement key recommendations contained in the report to Government, *2001-2002 Review of Statutory Self-Regulation of the Migration Advice Industry* (the *Spicer Report*).[1] The first major recommendation it seeks to implement is to regulate the 'sound knowledge' requirements for registration as a migration agent (Recommendation 3), the second is to impose sanctions for those who are responsible for large numbers of vexatious visa applications (Recommendation 16).

1.3 The Application Charge Amendment Bill implements part of Recommendation 19 of the Spicer Report by introducing a new charge to ensure that agents who pay the 'non-commercial' registration fee and then practise as a commercial agent effectively pay a pro-rata proportion of the commercial fee.

Conduct of the inquiry

1.4 The Committee advertised the inquiry in *The Australian* newspaper on 13 October 2003 and invited submissions by 20 October 2003. Details of the inquiry, the Bill and associated documents were placed on the Committee's website. The Committee also wrote to over 70 organisations and individuals.

1.5 The Committee received 26 submissions and 5 supplementary submissions and these are listed at Appendix 1. Submissions were placed on the Committee's website for ease of access by the public.

1.6 The Committee held a public hearing in Canberra on 27 October 2003. A list of witnesses who appeared at the hearing is at Appendix 2.

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1 *Review of Statutory Self-Regulation of the Migration Advice Industry*, Department of Immigration and Multicultural and Indigenous Affairs, July 2002 at: http://www.immi.gov.au/agents/industry/review2002_report.htm. The report provided 27 recommendations, and expressed the view that the migration advice industry was not ready to move to self regulation, and that there remained several 'milestones' before this could be achieved. These 'milestones' included a reduction in the level of complaints and an increase in consumer satisfaction.

Structure of report

1.7 The majority of submissions and evidence related to the Bill, with only one submission addressing the Application Charge Amendment Bill.[2]

1.8 Chapter 2 provides background and details the significant provisions of the Bill and the Application Charge Amendment Bill. Chapter 3 considers the issue of registration requirements for migration agents. Chapter 4 details concerns regarding the disciplining of vexatious migration agents. Chapter 5 addresses concerns raised in relation to the Application Charge Amendment Bill.

Acknowledgements

1.9 The Committee thanks those organisations and individuals who made submissions and gave evidence at the public hearing.

Note on references

1.10 References in this report are to individual submissions as received by the Committee, not to a bound volume. References to the Committee Hansard are to the proof Hansard: page numbers may vary between the proof and the official Hansard transcript.

2 *Submission 18.*

CHAPTER 2

BACKGROUND TO THE BILLS

2.1 This chapter outlines the main provisions of the Bill and the Application Charge Amendment Bill.

Migration Legislation Amendment (Migration Agents Integrity Measures) Bill 2003

Background to the migration advice industry

2.2 On 21 March 1998, the migration advice industry moved to a system of statutory self regulation, when the regulation of migration agents passed from the Department to the Migration Agents Registration Authority (MARA). MARA's key powers include:

- registration of new agents, including administration of sound knowledge requirements;
- re-registration of continuing agents, including administration of the Continuing Professional Development (CPD) scheme;
- monitoring the conduct of registered agents;
- investigating complaints against registered migration agents;
- applying disciplinary action against registered migration agents;
- investigating complaints about lawyers in relation to their provision of immigration legal assistance, for the purpose of referring appropriate cases to appropriate legal professional associations;
- referring offences under the *Migration Act 1958*, such as unregistered practice, to prosecuting authorities; and
- monitoring the adequacy of the Code of Conduct.[1]

2.3 In 2002, the authors of the *Spicer Report* expressed the view that the industry was not ready to move to full voluntary self-regulation and that it needed to achieve several 'milestones' before this should be allowed.[2]

2.4 In February 2003 the *Migration Legislation Amendment (Migration Advice Industry) Act 2003* amended the *Migration Act 1958* (the Act), to remove a sunset

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1 *Spicer Report*, at p.2.

2 *Spicer Report*, at p.2.

clause which would otherwise have had the current statutory self-regulation of the migration advice industry lapse on 21 March 2003.

2.5 The Bill seeks to implement two key recommendations of the *Spicer Report* (Recommendations 3 and 16), by ensuring 'sound entry-level' knowledge of migration agents and by imposing sanctions for those who are responsible for large numbers of 'vexatious' visa applications.

2.6 Recommendation 3 of the *Spicer Report* provided as follows:

> To improve competence through sound entry-level knowledge, the sound knowledge course and examination should be lengthened and made more comprehensive.
>
> The sound knowledge course and examination should cover the Migration Act and Migration Agents Regulations and the responsibilities of migration agents under the Code of Conduct. It should also include information for agents about running a business and their responsibilities as agents, including CPD requirements, their obligations to clients, to the MARA and to DIMIA.
>
> An alternative means of entry should also be introduced whereby individuals could complete a period of supervised practice followed by an entrance examination. Only lawyers with a current practising certificate would be exempt from these initial entry requirements.
>
> The MARA should be given the power to refuse to register a person seeking initial registration unless they have sound knowledge of migration procedure or other relevant qualifications. [3]

2.7 Recommendation 16 of the *Spicer Report* provided as follows:

> To support the integrity of the migration and humanitarian programs, improve the monitoring of agents and develop more effective means of sanctioning agents who lodge high numbers of vexatious, unfounded or incomplete applications.[4]

'Immigration assistance' and 'immigration legal assistance'

2.8 Under section 280 of the *Migration Act 1958* (the Act), only registered agents can give migration assistance.

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3 *Spicer Report,* p.4.

4 *Spicer Report* p.6.

2.9 Proposed subsection 276(2A) of the Bill expands the definition of 'migration assistance' to include assisting a person to seek ministerial intervention under sections 351, 391, 417, 454 or 501J of the Act.

2.10 While section 280 of the Act requires those giving migration assistance to be registered, an exemption is given for lawyers who give 'immigration legal assistance'. Proposed section 277(4) specifically excludes assisting in the preparation of a request for ministerial intervention from the 'immigration legal assistance' exemption. This will mean that lawyers who wish to assist clients in seeking ministerial intervention will need to be registered migration agents.

Exemption for 'close family friend' or those assisting for no fee or reward

2.11 Proposed subsection 280(5) will allow people to assist others in seeking ministerial intervention without being registered as a migration agent, where there is no fee or other reward. This ensures that those who currently assist in such applications for no reward, such as community leaders, can continue to do so without needing to be registered. Proposed subsection 280(5A) provides that a close family member of a person is not prevented from giving migration assistance to that person. Proposed subsection 280(7) defines 'close family member' to have the meaning given by the *Migration Agents Regulations 1998* (the Regulations).

Prescribed qualifications

2.12 Proposed section 289A stipulates that to be registered as a migration agent, a person must have completed a prescribed course of study and passed a prescribed examination or hold a prescribed qualification (currently the Regulations define 'prescribed qualifications' as including a Bachelor of Laws, Bachelor of Legal Studies, Master of Laws, Master of Legal Studies, and a Doctor of Laws. [5] It is proposed that this definition will be amended to include only a current legal practising certificate).[6] These requirements apply to applicants who have never been registered or who are applying to be registered more than 12 months after the end of their previous registration.

2.13 Proposed section 305C allows the MARA to require registered migration agents to give information or documents if the MARA is considering refusing a registration application or making a decision under section 303 to cancel or suspend an agent's registration or caution an agent. The provision makes it a strict liability offence not to produce such information or documents, subject to a penalty of 60 penalty units[7] ($6,600 currently). This provision also prevents an agent from refusing to provide such information or documentation on the grounds that it may tend to

5 *Migration Agents Regulations 1998*, subclause 5(1).

6 *Explanatory Memorandum*, p.33.

7 Proposed subsections 305C(4),(5) of the Bill.

incriminate them.[8] However, the removal of this common law right is mitigated by the proviso that such information cannot be used in criminal prosecutions against the agent.[9]

2.14 The Senate Standing Committee for the Scrutiny of Bills considered these provisions of the Bill, in particular proposed subsections 305C(2), 305C(6), 306J(1), 311EA(6) and 311EA(2). [10] The Scrutiny of Bills Committee considered whether these sections infringed a person's common law right to decline to answer questions on the grounds that their replies might tend to incriminate them. The Committee noted that the provisions would limit the circumstances in which such information will be admissible in evidence in proceedings against the person and reported that it accepted that the provisions strike a balance between the competing interests of obtaining information and protecting individual rights.

Disciplining registered migration agents for engaging in vexatious activity

2.15 Item 75 is a key provision of the Bill. It inserts a new Division 3AA in the Act, to provide for the disciplining of migration agents who engage in vexatious activity.

2.16 Proposed subsection 306AC(1) provides that the Minister has a discretion to refer a registered migration agent to the MARA for disciplinary action, where an agent has a 'high visa refusal rate' in relation to a visa of a particular class. Item 75 inserts three notes at the end of new subsection 306AC(1). These notes point out:

- that if the Minister is considering referring an agent to the MARA, the Minister must invite the agent to make a submission on the matter under new section 306AE and must consider any submission that is made;
- that if the Minister refers an agent to the MARA under this section, the MARA is under an *obligation* to discipline the agent under new section 306AG (emphasis added); and
- that the Minister's decision to refer is reviewable by the Administrative Appeals Tribunal under new section 306AJ.[11]

2.17 New subsection 306AC(2) sets out the step by step method for working out whether an agent has a 'high visa refusal rate' in relation to a visa of a particular class. The steps are as follows:

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8 Proposed subsection 305C(6) of the Bill

9 Proposed subsection 305C(7) of the Bill

10 *Alert Digest,* No.12 of 2003, (8 October 2003)

11 *Explanatory Memorandum*, p.71.

STEP 1

Calculate the number of:

- Valid applications for a visa of a particular class; and
- Applications for review by a review authority of a decision to refuse to grant a visa of that class, that were made during a period determined by the Minister, in respect of which the agent has given immigration assistance to the applicants concerned.[12]

STEP 2

Determine whether the number calculated under Step 1 is equal to or greater than the number determined by the Minister to be required before the Division applies.[13]

STEP 3

If the volume of an agent's applications meet the threshold of step 2, step 3 involves working out how many of the applications referred to in step 1 resulted in a decision to refuse to grant a visa that is standing at the end of all proceedings.[14]

STEP 4

Step 4 provides that a migration agent has a high visa refusal rate in relation to a visa of that class once the number at step 3 (applications refused) expressed as a percentage of the number at step 1 (applications and applications for review) is equal to or greater than the percentage determined by the Minister in relation to that class of visa.[15]

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12 In proposed subsection 306AC(2) of the Bill the note at the end of step 1 points out that new subsections 305AC(3) and (4) provide for certain applications not to be counted. The *Explanatory Memorandum* states that this will enable certain applications to be exempt from Division 3AA, and gives the example that the regulations may exempt applications under the Immigration Advice and Application Assistance Scheme (see p.72 of the EM). The definition of 'immigration assistance' is that provided by section 276 of the Act.

13 The *Explanatory Memorandum* gives the example that this may be a threshold number such as assisting in four applications (see p.72).

14 The *Explanatory Memorandum* gives the example that if an agent gave immigration assistance in relation to 20 applications for a particular visa class, and 15 of those applications were refused and the decision was not overturned on appeal, the agent would have a 75% refusal rate (see p.72).

15 The *Explanatory Memorandum* explains that it is envisaged that the percentage determined by the Minister for the purposes of step 4 may vary between classes of visa, and suggests that the

2.18 Proposed section 306AD provides that the Minister may determine in writing the time period in step 1, the threshold number in step 2, and the percentage threshold for the purposes of step 4, and that this determination is a disallowable instrument.[16]

2.19 Proposed subsection 306AE(2) requires that if the Minister is considering referring a registered migration agent to the MARA for disciplinary action, the Minister must give the agent a written notice, and invite the agent to make a written submission to the Minister within 14 days giving reasons for the high refusal rate and any other matters the agent considers relevant.

2.20 If the Minister refers a registered migration agent to the MARA, proposed subsection 306AG(1) requires the MARA to make a mandatory decision in relation to disciplining the agent: in the case of a first referral, MARA must suspend the agent's registration for 12 months, in the case of a second referral, MARA cancel the agent's registration.

2.21 Proposed sections 306AH and 306AI allow the Minister to direct the MARA to revoke a mandatory decision. Proposed section 306J provides that a referral may be appealed to the Administrative Appeals Tribunal.

Notification of giving of immigration assistance to visa applicants and review applicants

2.22 To enable the Department to calculate an agent's visa refusal rate, the Bill requires agents to notify the Department if they give immigration assistance to a visa applicant in relation to a visa application (proposed section 312A) or if they give immigration assistance to a person in respect of a review application made by the person (proposed section 312B). Failure to comply with these sections is a strict liability offence and subject to a penalty of 60 penalty units ($6,600 currently).

Protection from civil proceedings

2.23 Proposed section 332E provides protection from civil proceedings for certain persons in relation to making a complaint about a registered migration agent or a person who is acting as a registered migration agent, or the investigation of such a complaint.

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percentage for protection visas may be 90% whilst other visa applications may be 75% (see p.72.)

16 Proposed subsection 306AD(4)

Migration Agents Registration Application Charge Amendment Bill 2003

2.24 The Application Charge Amendment Bill implements part of Recommendation 19 of the *Spicer Report* by introducing a new charge to ensure that agents who pay the 'non-commercial' registration fee and then practice as a commercial agent effectively pay a pro-rata proportion of the 'commercial' fee.

CHAPTER 3

REGISTRATION REQUIREMENTS FOR AGENTS

Overview

3.1 The Bill seeks to implement Recommendation 3 of the *Spicer Report* with proposed section 289A, which requires that for unregistered agents (including agents who have not been registered in the last 12 months) to be registered, the MARA must be satisfied that the applicant has completed a prescribed course and examination or holds a prescribed qualification. It is proposed that the Regulations will be amended so that 'prescribed qualification' will be limited to those with a current legal practising certificate.[1]

3.2 This chapter discusses concerns raised in submissions and evidence:

- the cost of the 'sound knowledge' course and examination;
- the distinction between lawyer and non-lawyer registered migration agents; and
- professional indemnity insurance and audited trust accounts.

The cost of the 'sound knowledge' course and examination

3.3 The South Brisbane Immigration and Community Legal Service noted that it understood the prescribed course would include a $1,250 fee, and expressed concern that this could make it difficult to recruit non-commercial agents dedicated to assisting in the voluntary sector.[2] The Service suggested that the requirement for the course could be amended to read that the applicant 'has completed one of the prescribed courses' which are determined by the MARA. It argued that this would give the MARA the flexibility to prescribe a course for non-commercial applicants, and suggested this could mean non-commercial applicants could be required to sit the same examinations, but could be given the training by a community legal centre at a reduced cost.[3]

3.4 In evidence, the MARA explained that they currently allow, and will continue to allow, community legal services to run their own training courses.[4] It explained, however, that the issue of the examination fee is more difficult. The MARA stated that after allowing discounted examinations and courses for non-commercial agents it

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1 *Explanatory Memorandum*, p.33

2 *Submission 4* at p.4.

3 *Submission 4*, p.4.

4 *Committee Hansard*, 27 October 2003, p.19.

is hard to account for what an agent will do after he or she has become trained. For example, it would be difficult to stop people from training through a cheaper non-commercial training method and then sitting the examination as a 'commercial agent':

> There have been a number of suggestions that the non-commercial area should be looked at for special leniency or special costing. One of the difficulties is that when a person puts their name down to do the examination, we have no idea as to whether they are going to be a commercial or non-commercial agent. They just apply as an individual. We have also considered the issues of MARA going into some contractual arrangement with the individuals who apply on a non-commercial basis, and we have found that quite difficult. However, the authority has raised that issue with the MIA function.[5]

3.5 The Migration Institute of Australia (MIA) explained that it is examining ways to make the training costs for non-profit organisations more affordable, to ensure they are not discouraged or restricted in training their staff to be registered for offering migration advice:

> The MIA are currently looking at arrangements that we might be able to put in place to assist in these sorts of circumstances, within the limited resources that we have available to us as an association. We certainly do have a strong belief that we ought to be doing what we can to assist not-for-profit organisations such as the ones you mentioned. We are currently looking at ways that we might be able, as an association, to look at assisting.[6]

3.6 In its answers to questions on notice, DIMIA explained:

> The Department has been advised that the MIA is currently developing a scheme for fee relief to applicants from the community section sitting the new common exam. The MIA has advised that it anticipates making an announcement about this shortly.[7]

Distinction between lawyer and non-lawyer registered migration agents

3.7 The Law Institute of Victoria/Immigration Lawyers Association of Australasia suggested that there should be a requirement that consumers be informed as to whether a migration agent has legal qualifications or a legal practising certificate.[8]

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5 *Committee Hansard*, 27 October 2003, Mr Mawson, p.19.

6 *Committee Hansard*, 27 October 2003, Mr Holt, p.19.

7 *Submission 24*, p.10.

8 *Submission 11*, p.iv.

3.8 They also suggested that the entry level requirements should be at least at a diploma level, and agents should be required to hold a prescribed level of professional indemnity insurance and to maintain trust accounts for clients.[9]

3.9 The MARA did not comment specifically on whether consumers should be informed as to whether a registered agent has legal qualifications or a practising certificate. The MARA noted that those individuals with a practising certificate would meet the requirements of holding 'prescribed qualifications' and hence would not be required to sit the prescribed course or examination. While they would not be required to fulfill the training and examination requirements of other applicants, all migration agents would be subject to a continuing professional development program:

> Certainly individuals with practising certificates and law degrees have had a privileged entry into the scheme, and our understanding is that the prescribed qualification regime will continue. In addition, as part of our overall process, we have the continuing professional development scheme in place. This year we have announced the next transition stage to that particular scheme which will allow course providers to provide assessable continuing professional development. This is a fairly leading-edge approach to the ongoing professional development of any profession. It has to be remembered that within Australia only New South Wales lawyers have a continuing professional development program. Victoria will be introducing one next year, only because the Attorney-General said that they have to, or else. No other state actually has a continuing professional development program. As we have a federal jurisdiction, we are working to ensure that all migration agents, regardless of their other professional qualifications, meet the higher standards, and we will continue to improve those standards.[10]

Professional indemnity insurance and audited trust accounts

3.10 Although the Bill does not address this point, the *Spicer Report* recommended that migration agents should be required to hold professional indemnity insurance.[11] Submissions to the Committee also suggested that migration agents should be required to hold audited trust accounts for clients.[12]

3.11 At the public hearing, the MIA supported the suggestion that migration agents be required to hold professional indemnity insurance.[13]

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9 *ibid*.

10 *Committee Hansard*, 27 October 2003, Mr Mawson, p.19-20.

11 *Spicer Report,* Recommendation 11.

12 *Submission 11*, p.31.

13 *Committee Hansard*, 27 October 2003, Mr Conyer, p.24.

3.12 In answers to questions on notice, the Department noted:

> The Government is committed to the implementation of all of the Review's 27 recommendations, including Recommendation 11, which suggested that the feasibility of requiring agents to hold professional indemnity insurance should be explored. The Department has been monitoring developments in the insurance industry and is liaising with the MARA and the MIA about strengthening registration requirements, including in relation to professional indemnity insurance.
>
> The MIA's expression of support for requiring professional indemnity insurance and its advice, at the hearing on 27 October 2003, that it had established a package for agents seeking indemnity insurance, bodes well for the making of professional indemnity insurance a mandatory requirement for all fee-charging migration agents. The way that the not for profit sector is handled will, of course, also need to be explored.[14]

3.13 The Department also addressed the suggestion that commercial migration agents be required to hold audited trust accounts for clients, explaining that the benefits provided to consumers would need to be considered against the administrative costs it would impose on agents:

> Whilst requiring all migration agents to provide audited accounts as part of their registration process would better ensure that the basic financial obligations were being met, it would need to be balanced against the size of the problem to be addressed, the amount of client funds likely to be held and the costs of providing audited accounts. It is understood that some 200-300 agents each year may be asked to provide evidence of meeting their financial obligations under Part 7 of the Code. In response to representations from the legal profession, the Department has undertaken to explore this issue with the MARA and will consult with the MIA on the possible impact on the profession of imposing such a requirement.[15]

Committee view

3.14 The Committee is of the view that the requirement under proposed section 289A that those seeking to register as migration agents either complete a prescribed course and examination or hold a prescribed qualification (a current legal practising certificate) would be a positive move towards ensuring migration agents have sound entry level knowledge to operate in the industry.

3.15 The Committee notes that although the MARA and the MIA do not currently have measures to subsidise the costs of these courses or examinations for non-commercial agents, the MARA has commented that it intends to continue allowing community legal centres and services to provide their own training. The MARA has stated that the issue of examination costs for non-commercial agents is being

14 *Submission 24*, p.8.

15 *Submission* 24, p.9.

considered and that it intends to ensure that non-commercial migration service providers such as community legal services are not unduly restricted by such costs. The Committee commends this approach, and suggests that the MARA continue to investigate measures that will reduce the cost of examinations for volunteers and employees of non-profit migration advisers.

3.16 The Committee also considers that there is merit in the suggestions that migration agents should be required to have professional indemnity insurance and to hold audited trust accounts on behalf of their clients. The Committee notes the Department's advice that it is liaising with the MARA and the MIA about these issues and encourages the Government to give serious further consideration to these matters.

Recommendation 1

The Committee recommends that in relation to the cost of prescribed courses and examinations, the MARA and the MIA ensure that non-profit migration advice services either be subsidised or exempted from the fees. This is important to ensure that the cost of courses and examinations does not restrict the ability of such services to register agents who have the requisite 'sound entry' knowledge.

Recommendation 2

The Committee recommends that the Government give further consideration to implementing Recommendation 11 of the *Spicer Report* by introducing a requirement that agents have a prescribed level of professional indemnity insurance. Consideration should also be given to requiring migration agents to hold audited trust accounts for clients.

CHAPTER 4

DISCIPLINING REGISTERED MIGRATION AGENTS

4.1 This chapter considers new Division 3AA of the Bill, which seeks to introduce a scheme for disciplining registered migration agents who have engaged in vexatious applications.

The provisions of the Migration Legislation Amendment (Migration Agents Integrity Measures) Bill 2003 (the Bill)

4.2 Proposed sections 312A and 312B would require all agents to report to the Department when they give migration assistance in relation to a visa application or application for review. It is proposed that if in a six month period (or period otherwise specified) an agent has assisted in four or more applications, and if a specified number of applications fail (75% or 90%, depending on the class of visa), it will be at the discretion of the Minister to refer the agent to the MARA. The MARA would then be required to suspend the agent's registration for 12 months on the first occasion, and permanently on any subsequent occasion. Prior to being referred, agents would have 14 days to provide the Minister with reasons as to why they should not be referred. If they are referred, agents will have access to merits review through the Administrative Appeals Tribunal.[1]

4.3 This part of the Bill attracted the most criticism from submissions and in evidence. There were ten general concerns about the Bill, discussed in turn below:

- the use of a statistical failure rate to activate sanctions;
- the number of agents potentially affected
- doubt over constitutionality;
- agents' obligation to report when assistance is given;
- removal of the right to confidential advice;
- possible breach of legal professional privilege by lawyer agents;
- the absolute discretion of the Minister;
- inadequate and inappropriate avenues of review;
- the appropriateness of regulating lawyers by such methods; and
- unintended consequences of the measures.

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1 *Explanatory Memorandum*, pp.71-73.

Use of a statistical failure rate to activate sanctions

4.4 A common criticism in submissions was the proposed reliance on a statistical method to assess whether a migration agent's conduct is vexatious. Submissions provided various arguments as to why a 'statistical failure rate' was an inappropriate way of regulating vexatious applications. Arguments were that agents often have no control over the factors that cause applications to ultimately fail;[2] that applicants may lodge vexatious applications regardless of whether they have an agent or not;[3] and that some of the applicants most in need of assistance are those with borderline cases, which may also be those likely to fail.[4]

4.5 Several submissions argued that migration agents do not necessarily have control over the factors that may cause applications to fail. Some argued that this could be because of external factors that may change after advice or assistance was given.[5] Ms Maria Jockel on behalf of the Law Institute of Victoria/Immigration Lawyers of Australasia pointed out that the Deparment's policy guidelines can change in a way that an agent is unable to predict:

> I could lodge an application based on the department's current policy advice guidelines and, because they change regularly, by the time my client's application was determined, those guidelines may have changed. I could then be caught up in a change of perspective, and I could be penalised. When I spoke to a senior officer of the department in Canberra on Tuesday and raised this issue, he said, 'If you knew that you'd lodged four such applications in the last six months and you were concerned as to whether you were going to be knocked out, when the next client comes in through the door you can refuse to give them advice on that issue.'[6]

4.6 It was also pointed out that the proposed 'failure rate' method fails to distinguish between an agent who advises a client against proceeding, but the client insists on doing so regardless, and the migration agent who encourages the client to put in a vexatious application.[7]

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2 Law Society of NSW, *Submission 1*, p.7; Cope Thornton, *Submission 2*, p.2; South Brisbane Immigration and Community Legal Service *Submission 4*,p.2; Mr Ram Ravi Singh Khalsa *Submission 5*, p.2; Mr Seng-Chaye Yap, *Submission 12*, p.1; Bruce Henry Migration Services, *Submission 14*, p.2; Refugee Advice Casework Service *Submission 16*, p.2.

3 *Submission 4*, p.2.

4 *Submission 17*, p.2.

5 *Submission 2*, p.1.

6 *Committee Hansard*, 27 October 2003, p.9.

7 *Submission 12*, p.2.

Alternatives to the chosen method

4.7 Proposed Division 3AA of the Bill seeks to implement recommendation 16 of the *Spicer Report*, which recommended:

> To support the integrity of the migration and humanitarian programs, improve the monitoring of agents and develop more effective means of sanctioning agents who lodge high numbers of vexatious, unfounded or incomplete applications.

4.8 During the public hearing the Committee suggested to the Department that Recommendation 16 makes no reference to the use of a statistical formula. The Department was asked why a statistical failure rate method was chosen as a way of lessening vexatious visa applications, as opposed to alternatives such as strengthening the Code of Conduct for migration agents or increasing enforcement and investigation funding for the MARA. A Departmental representative responded:

> Predominantly, it was sourced in an issue that arose about two to 2½ years ago whereby we encountered a very large number of cases being lodged onshore for the purposes of merely delaying departure. We examined those cases closely and found that they were being coordinated by a number of agents—29 agents were involved. They had success rates in that visa class very close to zero. This is a visa class where the average success rate for an applicant is usually around 90 per cent—often higher—so to have a success rate of zero per cent rang the alarm bells for us. We referred all of those cases to the MARA to deal with. It took a very long time before actions could be taken with respect to those agents, and those agents continued to operate in that fashion for quite some time afterwards. That was one instance. We have encountered others where similar things have occurred.[8]

4.9 At the hearing, the Department tabled statistics that showed in the Protection Class Visa, for the period of 1 November 2001 to 30 June 2002, over 40 migration agents had been responsible for more than 20 applications, all of which failed. In the worst case, one migration agent had been responsible for 323 applications, all of which had failed.[9]

4.10 In answers to questions on notice following the hearing, the Department explained that two other options to implement Recommendation 16 had been considered. The first option involved publishing reports of agents who lodge incomplete or vexatious applications, so as to enable consumers to be informed of vexatious agents. However, internal legal advice of the Department indicated that without legislative authority, such reporting would be in breach of the *Privacy Act 1988*.[10]

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8 *Committee Hansard*, 27 October 2003, p.7.

9 Information tabled by the Department at the public hearing on 27 October 2003.

10 *Submission 24*, p.4.

4.11 The second option considered by the Department was to substantially strengthen the Code of Conduct for migration agents in order to provide greater protection to consumers. However, the Department advised that its internal legal advice noted that the Code of Conduct would need to be significantly redrafted to define what a vexatious or grossly unfounded application was, and that:

> … furthermore, if the Code were revised in such a manner it would be carrying quite a substantial workload for regulations made under a statutory provision (section 314 of the *Migration Act 1958*), which provides little guidance about what matters the Code should contain.[11]

4.12 Section 314 of the Act provides that the Regulations may prescribe a Code of Conduct for migration agents, and requires that migration agents act in accordance with the Code. The Department argued that if the Code were strengthened to define and regulate vexatious or unfounded applications, section 314 of the Act would need to be amended to ensure such regulations are within the delegated power.

4.13 The Department also considered that if the Code were strengthened, too great a burden would be placed on the MARA, which is not adequately funded to deal with the amount of investigation and disciplinary processing that would be required.[12] At the hearing a representative of the Department argued that the current process of referral and investigation by the MARA would not be effective in regulating vexatious conduct by migration agents.[13]

The number of agents potentially affected

4.14 There was a general concern in submissions that the number of agents who may reach the prescribed refusal rate threshold may be considerable.

4.15 At the hearing, the Department tabled statistics on rates of applications and failure for Protection Visa (Class AZA) and Long Stay Business (Subclass 457) visa applications for the period of 1 November 2001 to 30 June 2002. The Committee asked the Department to confirm that these statistics indicated that in the Protection Visa class, 44% of agents assisting in applications would meet the prescribed failure rate threshold of 90%. The Department confirmed that this was the case, but pointed out:

> This reading of the data is reasonable although it needs to be recognised that these agents would initially only face possible suspension for 12 months. This is because agents who meet the threshold criteria, would trigger a request to the agent to show why their activity has not been vexatious, if a preliminary assessment of relevant parts of their caseload did not offer an already obvious explanation for the high refusal rate. Only if the explanation provided is unsatisfactory would a referral to the MARA be made.

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11 *ibid*.

12 *Submission 24*, p.4.

13 *Committee Hansard*, 27 October 2003, Mr Rizvi, pp.35-36.

> …
> The legislation is also likely to have a significant deterrent effect, such that in future, a much smaller number of agents might meet the thresholds.[14]

4.16 The Committee notes that in a press release on 27 October 2003, the Attorney-General announced a review of migration litigation. The press release noted that in 2002-2003 the Government won 92.5% of litigated migration matters in the Federal Court and Federal Magistrates Court. The Committee notes that if 92.5% of review applications in the Federal Court fail, a failure rate of 90% may easily reached by migration agents who are lawyers, especially those acting in curial review of immigration applications.

Doubt over constitutionality

4.17 The Committee also heard arguments that proposed Division 3AA may be open to constitutional challenge. Dr Gavan Griffith QC pointed out that the *Explanatory Memorandum* notes that the provisions may reduce the number of migration agents who are willing to act for certain applicants, and that it considers but discounts the proposition that this may amount to an unconstitutional fetter on political freedom of communication.[15]

4.18 However, Dr Griffith argued that the proposed provisions may infringe this implied constitutional freedom:

> It seems to me that the advice of the Australian Government Solicitor, that there would be no constitutional difficulty arising from this legislation if the percentage is fixed at an appropriate high rate, is facile advice which, in my opinion, arguably would not be sustained were this legislation attacked in the High Court. It goes beyond that which was permitted by a bare majority of the High Court in the Cunliffe decision and on the face of matters the very intrusive and strict operation of this law in my opinion would risk falling within the prohibited category of being legislation which is not reasonably appropriate and adapted for the end which does affect the capacity of communication particularly by qualified lawyers.[16]

Agents' obligation to report when assistance is given

4.19 Essential to the operation of the 'high refusal rate' provisions is the Department's ability to collect data on applications for each migration agent. Proposed sections 312A and 312B would require migration agents to report to the Department all cases where they assist clients with a visa application or an application for review.

4.20 Submissions argued that this requirement may impose an excessive burden on agents by requiring them to report all assistance, including assistance by phone or

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14 *Submission 24*, p.10.

15 *Explanatory Memorandum*, p.41.

16 *Committee Hansard*, 27 October 2003, p.2.

email or to a person in another country.[17] It was argued that there would also be a burden on the Department because of the massive amount of information and necessary administration.[18]

4.21 However, during the hearing the Department denied that the reporting requirements would apply to potential clients who merely inquire about possibly engaging an agent:

> Agents will not have to submit a form whenever they speak to a potential client, as some who have made submissions have claimed. The new provisions are necessary to close off the possible loophole of some agents trying to avoid a possible sanction for engaging in vexatious activity by not declaring their involvement.[19]

4.22 In answers to questions on notice, the Department reinforced that migration agents would not be required to declare assistance when they speak to prospective clients:

> [The Bill] will not require an agent to "declare their involvement" whenever they speak to a client.
>
> The proposed new sections 312A and 312B only require registered migration agents to notify the DIMIA when they give immigration assistance to a visa applicant in relation to a visa application.
>
> In practice, there would be no change to the arrangements followed by agents currently. Clients normally sign an "appointment of agent" section of an application form just before their agent lodge the application or sign a separate "appointment of agent" form (DIMIA Form 956) if they subsequently receive immigration assistance from a new agent after an application is lodged.
>
> Sections 312A and 312B are necessary to close off the possibility of some agents engaging in vexatious activity trying to avoid a possible sanction by not declaring their involvement.[20]

Removal of the right to confidential advice

4.23 Concern was expressed to the Committee that requiring migration agents to report the details of applicants they advise will remove the right of such applicants to receive confidential advice.[21]

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17 Law Society of NSW *Submission 1*, p.8.; Migration Institute of Australia *Submission 17*, p.6.

18 *Submission 17*, p.6.

19 *Committee Hansard*, 27 October 2003, Mr Rizvi, p.26.

20 *Submission 24*, p.12.

21 *Submission 1*, p.5; *Submission 11* at p.26; *Submission 17,* p.6.

4.24 It was argued that the right to keep such matters confidential is recognised in the *Privacy Act 1988*, and that the proposed provisions of the Bill would infringe such a right.[22] The Law Institute of Victoria/Immigration Lawyers Association of Australasia also expressed this concern to the Committee:

> I think it raises very real concerns and undermines very fundamental principles that are currently enshrined in the Privacy Act. I do not see any justification for that particular proposal, other than that it would be a mechanism to collect data. We would then have to question how that data would be used subsequently. It is capable of being used well beyond the intended provisions of this bill, in terms of statistical analysis as to what constitutes allegedly vexatious conduct.[23]

Possible breach of legal professional privilege by lawyer agents

4.25 Some submissions expressed concern that the reporting requirements in proposed sections 312A and 312B may require lawyer migration agents to act in breach of their legal professional privilege obligations, particularly where a client has asked them to keep the consultation confidential.[24]

4.26 The Department argued, however, that the Bill does not restrict a lawyer migration agent from asserting legal professional privilege:

> The High Court has recently confirmed that legal professional privilege is a rule of substantive law that cannot be taken to have been abolished by legislative provisions except by "express language or clear and unmistakable implication". The Integrity Measures Bill is silent on legal professional privilege. Thus, unless waived by clients, lawyers who are also registered migration agents will continue to be able to assert their clients' legal professional privilege where the MARA requests documents and information.[25]

Absolute discretion of the Minister

4.27 Proposed section 306AC provides that once an agent meets the prescribed threshold of visa refusals (75% or 90%, depending on the visa class) it would be within the Minister's discretion to decide whether to refer the agent to the MARA for sanctioning (twelve months suspension of registration for a first referral and permanent deregistration for a second referral). The Bill does not specify on what criteria this decision to refer an agent will be based.

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22 *Submission 17*, p.6.

23 *Committee Hansard*, 27 October 2003, Ms Jockel, p. 7.

24 *Submission 1*, p.5; *Submission 11*, p. 26.

25 *Submission 24,* p. 6.

4.28 Submissions received by the Committee strongly opposed this broad discretion.[26] Christopher Levingston & Associates pointed out in its submission that not only is the discretion granted to the Minister after an agent reaches a statistical refusal rate, but that the refusal rate itself is not set out in the Bill.[27] It is suggested to be 75% or 90%, but is to be set at a later date by disallowable instrument. The Law Institute of Victoria/Immigration Lawyers Association of Australasia also argued that such strong powers concentrate too much power in the Executive and border on judicial functions.[28]

4.29 The Department gave the Committee some broad details of the guidelines to be used in deciding whether or not an agent would be referred:

> Preliminary work has identified that a listing of events outside an agent's control relevant to deciding whether to refer an agent to the MARA will be an important issue but that each referral decision should be made on its individual merits. Examples of events that would be included in the guidelines include:
>
> - Change in country circumstances for PV applicants (eg as had happened recently in Afghanistan)
>
> - Including where applications previously granted temporary protection visas apply for further stay.
>
> - Change in ability to meet time of decision visa criteria, such as:
>
> -Deterioration in health or financial circumstances
>
> -Break down of spousal relationship
>
> -Death of primary visa applicant
>
> -Failure by applicant to provide additional information by the deadline
>
> -Change in the criteria set out in legislation or policy on its application
>
> Any explanation offered by an agent would, of course, be central to decision making. [29]

4.30 The Committee notes that it appears that such guidelines would not be included in the regulations.

Inadequate and inappropriate avenues of review

4.31 At the hearing the Department argued that concerns over the discretion the Bill grants to the Minister do not take into account the review process that would be available to agents. Agents who meet the threshold would be given 14 days to explain

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26 *Submission 4*, p. 4; *Submission 8*, p. 2; *Submission 11*, p. 27.

27 *Submission 8*, p.2.

28 *Submission 11*, p.27.

29 *Submission 24,* p.12.

why they have done so. Following the Department's decision, agents would also have recourse to merits review through the Administrative Appeals Tribunal:

> The tribunal would be able to take into account whether the decision maker acted properly in weighing up the information and the arguments that the agent put forward for not being sanctioned. If the decision maker did not weigh up those arguments properly, the AAT would not be in a position to remit that case.[30]

4.32 However, Dr Griffith QC argued that because the Bill does not set out any criteria for a referral decision, an agent would only have merits review on the basis of whether or not he or she had reached the threshold:

> On Mr Rizvi's evidence, DIMIA could have regard to any considerations that it chose in making its decision to direct MARA to deregister any selected agent. However the review process would be confined to the statutory criteria for being vexatious, namely exceeding the statutory proportion for failure for the selected category of visa. The real and actual reasons for the decision most likely would remain secret, and administratively irrelevant on a review application.[31]

Appropriateness of regulating lawyers by such methods

4.33 The Committee also heard arguments that it was inappropriate for a scheme regulating vexatious behaviour to fail to distinguish between those migration agents who are lawyers and those who are not. It was argued that lawyer migration agents are already required to meet a higher professional and ethical standard than non-lawyer migration agents, because all lawyers are bound by their ethical and professional obligations as regulated by the relevant law society. For example, Dr Griffith QC told the Committee:

> [M]y objection is that to have an appropriate scheme it is almost essential to have discrimination between lawyers and non-lawyers. That is recognised already in principle, even by this report in saying that it will be assumed from the qualification that lawyers have the necessary understanding of the law and do not have to go through a course. My point is that one should go further and say, 'What is appropriate to lawyers?' This scheme after all is apparently being driven by statistical material, and yet nowhere in the statistics is a division made between lawyers and non-lawyers. Occasionally there is a difference made between some aspects of practice, but it is not identified that lawyers and non-lawyers, as migration agents, operate in a way where one can say that lawyers are a problem area. There may be individual lawyers who are a problem, but why have a scheme that regulates all lawyers?[32]

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30 *Committee Hansard*, 27 October 2003, p.30.

31 *Submission 21A*, p.3.

32 *Committee Hansard*, 27 October 2003, p.6.

Possible unintended consequences of the measures

4.34 The MARA suggested that proposed Division 3AA may have unintended consequences in that it might restrict registered agents from giving advice in borderline cases or cases where ministerial intervention is sought. The MARA argued that because those seeking ministerial intervention must exhaust all review processes, registered migration agents may become averse to assisting such applicants for fear of increasing their failure rate by assisting in exhausting all possible stages of review. They argued that this may force applicants to seek assistance in the unregulated market.[33]

4.35 If agents are discouraged from advising those with borderline cases and more applicants proceed without advice, the Refugee Council of Australia argued that this may actually increase the flow of spurious applications.[34]

4.36 Further, it was argued that the proposed provisions do not seem to take account of the inconvenience that would be caused to consumers who had applications in train, if their agent were suspended or deregistered through the sanction scheme. In such circumstances other agents may be reluctant to take over clients of a suspended or deregistered agent, as it would appear that such clients would have a high failure rate.[35]

Committee view

4.37 The Committee accepts that evidence provided by the Department indicates that there are a number of migration agents who appear to be lodging unfounded or baseless applications. However, the Committee believes that the proposed statistical method of identifying vexatious migration agents appears to be a crude and inaccurate method of assessment.

4.38 On the Department's own admission, in some visa classes 44% of agents making applications would be required to explain within 14 days why they should not be referred to MARA for sanctioning. The Department's explanation of this - that agents would only be referred after the Department had considered the agent's history of applications - appears to undermine the need for the statistical threshold in the first place. The Committee believes that the proposed statistical method of assessing vexatious agents is inappropriate and is inadequately supported by evidence provided to the Committee.

4.39 The Department explained at the hearing that the background to the Bill was the identification by the Department of 29 agents who were responsible for high numbers of applications which had all failed. The Committee notes with concern the

33 *Submission 13*, p.6.

34 *Submission 10*, p.2.

35 *Submission 8*, p.4.

Department's statement that these 29 agents were identified and referred to the MARA, which spent a long time before taking action. On this evidence the Committee is concerned about the effectiveness of MARA in regulating the behaviour of agents who are referred to it by the Department.

4.40 Concerns were raised during the inquiry about the constitutionality of proposed Division 3AA. The Committee notes that the *Explanatory Memorandum* acknowledges that advice was sought from the Australian Government Solicitor (AGS). The AGS advised that the provisions may operate as a fetter on the freedom to communicate about immigration matters, but the AGS believed the provisions would be found to be constitutionally valid if challenged because a sufficiently high refusal rate would be considered to be appropriate and adapted.

4.41 The Committee also notes the concern in submissions and evidence that proposed sections 312A and 312B of the Bill may operate against rights granted under the *Privacy Act 1988* and may require lawyer migration agents to breach their legal professional privilege. However, the Committee notes that under current law, visa applicants must inform the Department when they appoint a migration agent. Thus the new provisions would not require the disclosure of information that is not already required. Because the Bill does not explicitly override legal professional privilege, lawyer migration agents will be able to claim legal professional privilege as a reason for being unable to supply the information required under proposed sections 312A and 312B. However, the Committee notes that if a significant proportion of lawyer migration agents claim legal professional privilege, this could cause significant administrative problems for the Department and defeat the intent of the provisions.

4.42 The Committee is also concerned that the Bill does not outline what criteria the Minister will use when deciding whether to refer an agent to the MARA for sanctioning. Apart from the lack of transparency, agents will not know what issues are relevant when providing reasons as to why they should not be referred.

4.43 The Committee is not satisfied by the Department's assurance that agents will have the opportunity to justify their refusal rate, and then have access to merits review in the Administrative Appeals Tribunal and judicial review in the Federal Court.

4.44 The opportunity to be given to agents to provide reasons for their high refusal rate will require them to explain to the same agency that has refused their applications why the applications were in fact meritorious. The Committee is concerned that the Department would consider the original applications made by migration agents, and then review whether these applications were in fact meritorious. The decision to sanction migration agents would be made by the Minister on advice from the Department, with no input by any external body.

4.45 Although the Committee appreciates that merits review and judicial review are highly effective in ensuring administrative justice, it notes that the criteria for referring migration agents for sanctioning will not be contained in the Act or regulations. This would require merits review and judicial review of decisions that

have been made in a context that lacks transparency, as there is no legislative criteria by which such decisions would be made.

4.46 The Committee believes that proposed Division 3AA should not proceed, as the statistical method that is proposed will potentially apply to large sections of the industry, with the Department having complete discretion to choose which agents within that class will be sanctioned.

Recommendation 3

The Committee recommends that the provisions of new Division 3AA be reviewed and should not proceed, on the basis that the measures are insufficiently targeted to vexatious agents and that the Bill grants complete discretion to the Minister, without detailing the basis on which such discretion will be exercised.

4.47 If, contrary to the Committee's recommendation, proposed Division 3AA were to proceed, Government Senators believe a higher threshold would be a more effective way of achieving the policy intent of discouraging vexatious migration agents, while not placing a fetter on those who seek to make genuine applications. On the statistics provided by the Department, in the protection class visa, the proposed threshold could make the measures apply to 44% of migration agents making applications in that class. Based on these statistics, if the minimum threshold level of applications was increased from the proposed level of four applications within a six month period, to 20 applications in a six month period, the measures would apply to 14% of migration agents making applications in that class. This would focus the possible sanctioning measures on those agents who are consistently making applications with a substantial failure rate. ALP and Democrat Senators do not support this suggestion.

4.48 The Committee considers that other alternatives to the proposed model should be further considered. The Committee notes the Department's explanation that the alternative of strengthening the Code of Conduct for migration agents was not pursued because this would require amendments to the Act as well as increased funding for MARA. This in turn may give rise to increased fees for agents. However, the Committee does not consider that these issues should preclude consideration of such options.

4.49 The Committee believes that the Code of Conduct could be strengthened by, for example, defining and prohibiting 'vexatious conduct' or 'baseless applications'. If this requires amending section 314 of the Act to provide for such regulations, and if it requires increased funding to the MARA or an alternative regulatory agency, then these reforms should be considered.

Recommendation 4

The Committee recommends that the Government reconsider implementing Recommendation 16 of the *Spicer Report* by strengthening the Migration Agents Code of Conduct.

CHAPTER 5

REGISTRATION CHARGES

5.1 Only one submission commented on the Application Charge Amendment Bill.

Definition of 'commercial basis' may be too wide

5.2 Ms Jennifer Burn of the University of Technology Sydney pointed out that the policy intent of the Application Charge Amendment Bill is to ensure that migration agents do not initially register as being 'non-commercial' and then proceed to offer assistance commercially for the remaining period of the year that they are registered. She argued that the definition of 'commercial basis' in proposed paragraph 9(2)(b) is not drafted in a sufficiently clear manner and may result in agents who are offering assistance on a non-commercial basis being caught by the definition.[1]

5.3 Ms Burn also argued that because proposed paragraph 9(2)(b) defines 'assistance on a commercial basis' as a person who provides immigration assistance as 'a member of, or a person associated with, an organisation that operates on a commercial, or for-profit, basis', many non-commercial organisations may be caught. Such a definition may encompass charities who, for example, operate 'thrift stores', or non-profit organisations that have tender agreements with the Department under the Immigration Application Assistance Scheme (a public scheme that funds community legal centres and services offering free immigration assistance).[2]

Committee view

5.4 The Committee does not consider that such organisations would fall within the definition of 'commercial basis' in proposed paragraph 9(2)(b). Although such organisations may have agreements that involve the provision of funding, they are not operated for the purposes of producing commercial results or profits. This view is supported by the Second Reading Speech which clearly explains that the intent of the Application Charge Amendment Bill is to catch those agents who register as non-commercial agents and then proceed to offer commercial assistance. All charity and community groups receive donations or funding in some manner, but that does not mean they operate 'commercially or on a for-profit basis'.

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1 *Submission 18*, p.4.

2 *ibid.*

Recommendation 5

The Committee recommends that the Migration Agents Application Charge Amendment Bill 2003 be agreed to.

Senator Marise Payne
Chair

APPENDIX 1

ORGANISATIONS AND INDIVIDUALS THAT PROVIDED THE COMMITTEE WITH SUBMISSIONS

1	Law Society of New South Wales
2	Cope Thornton
3	New South Wales Council for Civil Liberties Inc
4	South Brisbane Immigration and Community Legal Service
5	Mr Ram Ravi Singh Khalsa
6	Steele Migration Services
7	Immigration Rights and Advice Centre
8	Christopher Levingston & Associates
9	Australian Federal Police
10	Refugee Council of Australia
11	Law Institute of Victoria and the Immigration Lawyers Association of Australia (ILAA)
11A	Law Institute of Victoria and the Immigration Lawyers Association of Australia (ILAA)
13	Migration Agents Registration Authority
14	Bruce Henry Migration Services
15	Global Immigration Services
16	Refugee Advice Casework Service
17	Migration Institute of Australia
17A	Migration Institute of Australia
18	Ms Jennifer Burn
18A	Ms Jennifer Burn
19	Migrant Resource Centre North East
20	KesselsGoddard
21	Law Council of Australia and the Law Institute of Victoria
21A	Law Council of Australia and the Law Institute of Victoria
22	Australian Business Lawyers
23	Refugee and Immigration Legal Centre Inc.
24	Department of Immigration and Multicultural and Indigenous Affairs

25 Mr Gerald Santucci

26 The Hon Gary Hardgrave, Minister for Citizenship and Multicultural Affairs

Additional Information

Copy of Human Rights Watch, "Killing You is a Very Easy Thing for Us": Human Rights Abuses in Southeast Afghanistan, dated July 2003 from Cope Thornton

Copy of "Unplugging both ends of the communication pipeline in the Australian Migration Advice Industry, dated July 2003, from Matthew Albert

APPENDIX 2

WITNESSES WHO APPEARED BEFORE THE COMMITTEE

Canberra Monday 27 October, 2003

Law Institute of Victoria / Immigration Lawyers Association of Australasia / Law Council of Australia (by video-conference)
Ms Maria Jockel, State Director of Immigration Lawyers Association of Australasia; Member Migration Committee, Law Institute of Victoria
Dr Gavan Griffith QC, Law Council of Australia and the Law Institute of Victoria

South Brisbane Immigration and Community Legal Service
(by teleconference)
Mr Robert Lachowicz, Co-ordinator / Principal Solicitor

Migration Agents Registration Authority / Migration Institute of Australia
Mr David Mawson (MARA), Executive Officer
Mr Brian Jones (MARA), Director, South Australia
Ms Laurette Chao (MARA/MIA), Chairperson MARA, President MIA
Mr Len Holt, National Vice President (MIA)
Mr Arnold Conyer, NSW State President (MIA)

Department of Immigration & Multicultural & Indigenous Affairs
Mr Abul Rizvi, First Assistant Secretary Migration and Temporary Entry (MTE) Division
Mr Bernie Waters, Assistant Secretary, Business Branch, MTE
Ms Julie Campbell, Director, Migration Agents Policy and Liaison Section, Business Branch, MTE
Mr Robert Illingworth, Assistant Secretary, Onshore Protection Branch, Refugee, Humanitarian and International (RH & I) Division
Mr Vince McMahon, Executive Coordinator, Border Control and Compliance (BCC) Division
Mr Richard Konarski, Director Migration Fraud and Investigations Section, Compliance and Analysis Branch BCC
Mr Doug Walker, Assistant Secretary, Visa Framework Branch