



Law
Institute
Victoria

30 July 2010

Regulatory Burdens: Business and Consumer
Services
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

By email to: regulatoryburdens@pc.gov.au

Dear Commissioner

**Annual Review of Regulatory Burdens on Business: Business and Consumer Services
- Draft Recommendation 4.2**

The Law Institute of Victoria (LIV) is the professional association for Victorian lawyers. Our members include a strong network of lawyers holding legal practising certificates who are also registered migration agents. A number of members are also accredited specialists in immigration law. As you are aware, lawyers who provide immigration advice must be registered as migration agents and are subject to regulation by the Office of the Migration Agents Registration Authority (OMARA) in addition to regulation under the *Legal Profession Act 2004* (Vic) (the Victorian *Legal Profession Act*).

The LIV is of the view that regulation of legal practitioners by OMARA is unwarranted, time-consuming, and expensive and may in fact work contrary to the best interests of the migration advice industry as a whole by discouraging lawyers from practising in the area. The LIV therefore welcomes the Productivity Commission draft recommendation 4.2 of the Draft Research Report, *Annual Review of Regulatory Burdens on Business* (the Annual Review), which provides that "the Australian Government should amend the *Migration Act 1958* (Cth) to exempt lawyer migration agents from the Migration Agents' Registration Scheme".

The LIV strongly supports the Law Council of Australia's (LCA) position on dual regulation of immigration lawyers and the LIV's Migration Law Committee has reviewed and supports the LCA's submission to the Annual Review. We further support the LCA's submission of 30 July 2010 that recommendation 4.2 should be amended to refer to "lawyers holding a current legal practising certificate", as opposed to referring to "lawyer migration agents" or "lawyer agents", for the reasons set out in their submission.

We make the following additional comments in support of an amended version of draft recommendation 4.2.

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Legal profession regulation affords adequate consumer protection

As you are aware, legal practitioners are subject to a significant degree of regulation in comparison with registered migration agents. This includes trust accounts, which are subject to annual independent auditing. Legal practitioners in Victoria are required to deposit part of their trust account funds into a statutory account administered by the Legal Services Board. The balances of legal practices' trust accounts are regularly monitored and a copy of the trust account must be forwarded to the Legal Services Board directly from the bank itself. There are strict rules governing the disbursement of trust account funds and in the application of these funds to costs. Legal practitioners also have rigorous cost disclosure requirements (see Part 3.4 of the Victorian *Legal Profession Act*). All of these requirements are designed to provide the highest possible protection to clients. They are not matched by the requirements of OMARA.

In addition, the Victorian *Legal Profession Act* imposes strict obligations on legal practitioners in all areas of practice. For example, legal practitioners are required to pay an annual legal practising certificate fee and other professional costs, such as professional indemnity insurance (see s.3.5.2). All legal practitioners who hold a Victorian legal practising certificate are required to complete ten hours of continuing professional development (CPD) activities every CPD year (even if the holder practises interstate or overseas) (see *Continuing Professional Development Rules* 2007). The CPD year runs from 1 April to 31 March. There are four compulsory units that must be completed in the year: ethics; professional skills; substantive law; and practice management and business skills.

A number of lawyer representative bodies, including the LIV, operate an Accredited Specialisation scheme for immigration lawyers. To be eligible for accredited specialisation in immigration law under the LIV's program, legal practitioners must (a) have five years experience in full-time practice and a substantial involvement in the area of specialisation, and (b) sit comprehensive assessment tasks in three areas covering interviewing techniques, a written examination on all aspects of immigration law, and a take-home examination covering a factual scenario common in day-to-day practice. In contrast, registered migration agents can use the title "immigration law specialist" without having to undergo specialist training equivalent to that of the LIV's Accredited Specialisation scheme in immigration law.

The LIV (as well as the LCA and other law societies) has member-based committees dedicated to migration law. The LIV's Migration Law Committee is made up of experienced immigration law practitioners who meet regularly with government bodies, including Department of Immigration and Citizenship (DIAC) representatives, the Commonwealth Ombudsman and representatives of the Migration Review Tribunal. The LIV's Migration Law Committee also responds to invitations to comment on proposed changes to law, and prepares submissions on existing law. Many of the Committee members are accredited specialists in immigration law and present high-level CPD seminars. Information about immigration issues is regularly disseminated to the legal profession through the LIV and its networks.

National Legal Profession Reform

The LIV emphasises the conclusion of the Productivity Commission that legal practitioners are bound by strict codes of ethics and conduct and that existing regulation of the legal profession offers consumers a level of protection at least as high as that afforded under the migration agents' scheme. We submit that the National Legal Profession Reforms will further improve consumer protection by ensuring consistency of approach in regulation of lawyers across Australia.

DIAC, in its submission to the Productivity Commission on this issue, acknowledges that the introduction of the National Legal Profession Reforms "may be an opportune time for the issue of lawyer inclusion in migration agent regulation to be examined". The Annual Review notes that extensive consultation on a draft model Legal Profession Bill is continuing.

The dual regulation of lawyer agents is financially onerous and a disincentive to young legal practitioners

Lawyer migration agents in Victoria pay a, OMARA registration fee and a practising certificate fee, seminar fees for *Legal Profession Act* CPD requirements and seminar fees for OMARA CPD requirements.

The LIV submits that it is in the interests of the migration advice industry to encourage law graduates to practise in this area of law. However, dual regulation is a significant disincentive for young legal practitioners to practise in the area of migration law. Law graduates have four to five years of high-level university training to gain their Bachelor of Laws degrees (often combined with another discipline) as well as the completion of supervised legal training or a practical legal training course, to obtain admission as a lawyer. By way of contrast, a non-legally qualified person who wishes to practise as a registered migration agent is required only to undertake a six-month course to obtain a Graduate Certificate in Australian Migration Law and Practice to be registered in accordance with section 289A of the *Migration Act* 1958 (Cth).

Lack of distinction between legal practitioners and migration agents

The LIV is concerned by OMARA's failure to date to make a distinction between legal practitioners who are migration agents and migration agents in general. This failure can give rise to a misapprehension among consumers that migration agents are lawyers, when in fact any migration agent registered before July 2006 (when the Graduate Certificate in Australian Migration Law and Practice was introduced as a mandatory requirement) need only have undertaken a six-week course in order to become registered. We understand, however, that OMARA is proposing to provide more distinguishing information on its website to assist consumers.

Conclusion

The LIV strongly supports a recommendation that "the Australian Government should amend the *Migration Act* 1958 to exempt lawyers holding a current legal practising certificate from the requirement to register as a migration agent in order to provide 'immigration assistance' under s 276" and we hope that the Government will move quickly to end the burden of dual regulation on immigration lawyers.

Yours faithfully



Steven Stevens
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