



Mr Warren Mundy
Associate Commissioner
Regulatory Burdens: Business and Consumer Services
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

By email to: regulatoryburdens@pc.gov.au

Dear Mr Mundy

ANNUAL REVIEW OF REGULATORY BURDENS ON BUSINESS

I refer to the Law Council of Australia's submission of 20 April 2010 and supplementary submission of 15 June 2010 to the Productivity Commission's *Annual Review of Regulatory Burdens on Business*.

The Law Council welcomes the conclusions of the Productivity Commission in its Draft Research Report, *Annual Review of Regulatory Burdens on Business*, with respect to dual regulation of migration lawyers. In particular, the Law Council strongly supports the thrust of draft Recommendation 4.2, which provides:

"The Australian Government should amend the Migration Act 1958 to exempt lawyer migration agents from the Migration Agents' Registration Scheme. An independent review of the performance of lawyer agents, complaints handling and disciplinary procedures should be conducted three years after an exemption becomes effective."

While the recommendation is welcome, the Law Council suggests some minor amendments for the reasons outlined below.

The Law Council suggests that the recommendation should refer to 'lawyers holding a current legal practising certificate', as opposed to referring to 'lawyer migration agents' or 'lawyer agents', whereby the recommendation would read (for example):

"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 section 276. An independent review of the performance of legal professional

complaints handling and disciplinary procedures, with respect to immigration lawyers, should be conducted three years after an exemption becomes effective.”

The Law Council recommends this amendment be made because there are registered migration agents who have law degrees but who do not hold a current legal practising certificate, or have never held a legal practising certificate. In addition, some registered migration agents may have been struck off the roll or had their practising certificate revoked for disciplinary purposes. The Law Council believes that this amendment will make clear that the exception applies only to lawyers holding a current legal practising certificate, who are subject to legal profession regulation.

The Law Council believes the proposed amendments will also clarify that the exception applies to practising lawyers, not to lawyer agents. On one interpretation, the present wording of the recommendation may imply that a legal practitioner becomes exempt from regulation by the OMARA only after registering as an agent. It is considered that the thrust of the Productivity Commission’s recommendation is to ensure that legal practitioners are exempt from registration requirements altogether and are subject to regulation only by the legal services regulators (as is the case in all other jurisdictions).

The Law Council would be pleased to provide further information as necessary. Please contact Emma Hlubucek ((02) 6246 3726; emma.hlubucek@lawcouncil.asn.au) should you have any queries.

Yours sincerely,

Bill Grant
Secretary-General

30 July 2010