

REFUGEE ADVICE + CASEWORK SERVICE (AUST) INC.



Mr Warren Mundy
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Dear Mr Mundy

ANNUAL REVIEW OF REGULATORY BURDENS ON BUSINESS –SUBMISSION IN SUPPORT OF SUBMISSIONS PROVIDED BY LAW COUNCIL OF AUSTRALIA

We thank you for the opportunity to provide a submission to this review.

1. Refugee Advice and Casework Service (Australia) Inc. (RACS)

This submission is made on behalf of the Refugee Advice and Casework Service (Australia) Inc ("RACS"). RACS is Australia's oldest specialised legal service for asylum seekers and refugees, established over 20 years ago. It provides free advice and assistance to asylum seekers in the community and in immigration detention centres at Villawood and on Christmas Island, under a contract with the Department of Immigration and Citizenship. In 2009–10, RACS assisted over 2,000 people from over 61 countries of origin, including new clients in detention.

RACS operates a full time casework service from Monday to Friday between the hours of 9am to 6 pm. We have a telephone advice service between 10 am and 12 pm on Tuesdays and Thursdays. We also operate a face to face advice and limited assistance clinic by appointment on Mondays between 2pm and 8pm that is run by staff and volunteers.

All of the services provided by RACS involve the provision of migration advice and assistance within the meaning of those terms under the *Migration Act 1958 (Cth)*.

RACS is a community legal centre legal practice and all our caseworkers are both legal practitioners as well as non-commercial registered migration agents. RACS' staffing is comprised of a Director, a Principal Solicitor, 4 full time caseworkers, 1 part time caseworker and 1 administrative assistant. From time to time, we also benefit from the assistance of an additional caseworker seconded from one of a number of law firms. Given the size of our organization and our limited financial resources, RACS relies upon the invaluable support of a range of volunteers as well as in kind support, including lawyers on secondment from law firms, to be able to provide the quantity of advice and assistance to disadvantaged and vulnerable asylum seekers throughout the state of NSW and across Australia.

2. Support for Productivity Commission Recommendation- as it relates to non commercial migration advice and assistance

Our submission to this Review is made from the perspective of the impact of dual regulation on our access to lawyers to assist us in the work that we do. In this context, we commend and support the Productivity Commission's recommendation that lawyers be exempt from the regulatory scheme. In our view removal of the requirement for separate registration will help us to attract lawyers to work with us on as volunteers and pro bono to provide migration advice and assistance, and in that way would expand the availability of non commercial migration advice and assistance available to disadvantaged and vulnerable individuals and communities.

3. RACS reliance on and use of Volunteer Lawyers

On Monday evenings between 6pm and 8pm, RACS coordinates an advice and limited assistance clinic for asylum seekers in the community who are intending to lodge, or have commenced, an application for a Protection visa without the services of a migration agent. This clinic is staffed by volunteers who assist these self represented clients by checking their forms, helping them to complete forms, assisting them to draft statements of claim and providing assistance with requests for Ministerial intervention. Under current *Migration Act 1958* requirements these volunteers must be registered migration agents. RACS recruits, trains and supervises all volunteer agents involved in these clinics. Many of our clinic volunteers are lawyers who obtain their registration as a migration agent for the sole purpose of assisting RACS in this clinic. All advice and assistance provided by volunteers in the context of the clinic is directly supervised by a staff lawyer/registered migration agent, and is provided within RACS' legal practice, and within the responsibility of the Centre's Principal Solicitor. RACS also provides regular Continuing Professional Development training sessions for its staff and volunteers to ensure all advisors are up to date with developments in the law and a high standard of migration advice and assistance is provided.

4. Need for more Non Commercial Migration Advice Services, including in Regional and Remote NSW

We submit that one of the adverse consequences of dual regulation is fewer non commercial migration advice and assistance services available to the community. We note that the low number of non commercial migration agents was an issue that was recognized in the Department of Immigration and Citizenship's 2007-08 Review of Statutory Self Regulation of the Migration Advice Industry, and a matter that the new Office of the Migration Agents Registration Authority (OMARA) established following that review, is committed to address.¹

In our view, the requirement of dual regulation is a burden and potentially a barrier for lawyers who may otherwise be willing and able to provide volunteer or pro bono assistance to services such as RACS.

As a specialist community legal centre, RACS would like to encourage and support lawyers in community legal centres around NSW, and particularly in regional and remote areas to provide migration advice and assistance services to vulnerable and disadvantaged members of their communities. We believe the requirements for dual regulation make it harder for us to convince lawyers in other legal centres to get involved in the migration advice area. The fact that a separate registration process is required, in addition to fee and CDP requirements are among the burdens that dual regulation imposes.

5. Support for Submissions of the Law Council of Australia

We have had the benefit of reading the Submissions of the Law Council of Australia and the Department of Immigration and Citizenship regarding the inclusion of lawyers within the migration agent regulatory framework.

We believe the arguments made by the Law Council of Australia against the requirement of dual regulation of lawyers who wish to provide migration advice and assistance are compelling and we endorse their submissions as they relate to lawyers, including barristers, who intend to provide migration advice and assistance on a non commercial basis under the auspices of, or on behalf of, specialist non profit migration and refugee legal centres such as RACS.

As observed by the Law Council of Australia the current requirements of dual regulation make it difficult for organizations like RACS to attract volunteer lawyers who may otherwise be willing and available to offer their services to us and allow us to provide services to a greater number of clients.

¹ On 3 June 2010 OMARA held a forum for Not for Profit Organisations Providing Pro Bono Services to discuss, among other things, options to support volunteer participation in services

For all the reasons discussed above, we submit that a lawyer who holds a current practicing certificate and intends to provide migration advice and assistance only on a non-commercial basis should be exempt from the requirement to register as a migration agent, in the following circumstances:

- where the advice and assistance is provided in the context of *free services by a non-profit specialist community legal centre* operating as a legal practice; and where it is provided
- *under direct supervision* of staff registered migration agents; and
- where the volunteer advice and assistance is *covered by the organization's professional indemnity insurance*; and
- where the organization supports volunteers with *regular training and support*

We would be happy to provide any further information or respond to any questions arising from our submissions above.

Yours sincerely,

REFUGEE ADVICE AND CASEWORK SERVICE (AUST) INC

Per:

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Director

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