

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 Mr Mundy,

ANNUAL REVIEW OF REGULATORY BURDENS ON BUSINESS

I write to express strong support for Recommendation 4.2 of the Productivity Commission's draft report into its *Annual Review of Regulatory Burdens on Business* (the Review).

I am presently a barrister and Queen's Counsel at the Victorian Bar after commencing practice in 1964. I served as Commonwealth Solicitor-General for 13 years (1984-97) during which time I represented the Commonwealth in many proceedings both within Australia and in the International Court of Justice. I currently practice from both my chambers in Melbourne and London.

I have had significant experience in immigration matters over the course of my career and have given evidence to Parliamentary committees as to the proper mechanisms of regulation of legal practitioners practicing in immigration matter, including with respect to the 1992 legislation.

In my opinion, the decision to include legal professionals in the migration agents' registration scheme from its commencement in 1992 was seriously flawed. Its deficiencies inhibited the dedicated lawyers who choose to practise immigration law and discouraged talented lawyers from entering that specialised field of practice. The fact that the Commonwealth's power to regulate immigration lawyers under the *Migration Act 1958* was confirmed in *Cunliffe v The Commonwealth* (1994) 124 ALR 120, dealt with issues of power rather than policy. Indeed, I argued *Cunliffe* for the Commonwealth.



I have always regarded the dual regulation scheme regime as inherently self-contradictory and completely inapt for best-practice regulation. It effectively requires legal practitioners who are already within a comprehensive professional regulatory framework, to comply with and adhere to a redundant second-complaints handling scheme and code of conduct, administered at various times by agencies of the Commonwealth Government or the Migration Institute of Australia.

I do not perceive any benefit to consumers arising from dual regulation. Indeed, the confusion caused by the scheme undermines the complete and effective consumer protection that would otherwise be enjoyed if legal practitioners were excluded from the scheme. A relevant analogy would be to assimilate the regulation of air pilots to the regulatory regime for flight attendants. The regulation is not only otiose; it is inherently inconsistent.

I have read the submissions of the Law Council of Australia, and others, with respect to dual regulation. I completely agree with the arguments made and recognised within the Productivity Commission's excellent draft report. I entirely agree, with a current analysis which merely confirms my opinions and evidence to the Parliamentary Committee 8 years ago.

I am happy to enlarge my reasons.

Yours sincerely,

Dr Gavan Griffith QC