



Law Council
OF AUSTRALIA

Office of the President

12 June 2018

Mr Paul Cullen
Committee Secretary
Joint Standing Committee on Migration
PO Box 6021
Parliament House
Canberra ACT 2600

By email: migration@aph.gov.au

Dear Mr Cullen

Supplementary submission: Efficacy of regulation of Australian migration agents

1. The Law Council wishes to make the following supplementary submission to the Joint Standing Committee on Migration in relation to its inquiry into the efficacy of current regulation of Australian migration agents.
2. On 11 May 2018, the Law Council provided the Joint Standing Committee with a submission covering a range of matters falling within the inquiry's terms of reference. The Law Council now seeks the opportunity to clarify one aspect of that submission, namely the role of migration agents in matters before courts and review authorities.¹
3. As noted in the Law Council's earlier submission, there are concerns in relation to the ability for migration agents without legal qualifications to effectively engage in review proceedings in light of the legal complexities involved in such advocacy. This was considered particularly critical in the context of merits review before the Administrative Appeals Tribunal (**AAT**), noting the limitations of judicial review should a client be inadequately represented at the AAT level.
4. To give effect to these concerns, the Law Council's recommendation to the Joint Standing Committee was therefore that:

To protect the interests of visa applicants and review applicants, only Australian legal practitioners should be authorised to represent applicants before a court or review authority.²
5. In reaching this recommendation, the Law Council had particular regard to the standing of non-lawyer migration agents in the General Division of the AAT, these most commonly being character cases related to section 501 of the *Migration Act 1958* (Cth) and citizenship cases pursuant to the *Citizenship Act 2007* (Cth). In these matters, the Australian Government is always legally represented by a solicitor and often also by a barrister. These matters run akin to a Federal Court trial with evidence

¹ Law Council submission to the Joint Standing Committee on Migration 'Efficacy of current regulation of Australian migration agents' (11 May 2018), submission 18, pages 8-9.

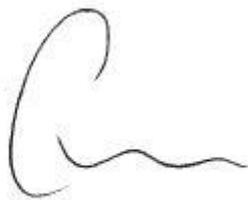
² Ibid, recommendation 4.

in chief, cross-examination and re-examination, at times with complex arguments on the admissibility of evidence and contested legal debate.

6. Noting these complexities do not exist across all Divisions of the AAT, the Law Council wishes to clarify that its earlier recommendation as it applies to merits review before the AAT relates only to the General Division. The Law Council does not hold the same level of concern with migration agents practising in the Migration and Refugee Division of the AAT as these proceedings do not typically possess the same level of legal intricacy, providing the necessary professional development training is in place to ensure migration agents understand the legislative process and procedures of the Migration and Refugee Division of the AAT and are not providing advice relating to judicial review.
7. It is the Law Council's view that the AAT (Migration and Refugee Division) may be an appropriate source to seek advice on appropriate training requirements needed for migration agents, or whether or not the jurisdiction requires a legal qualification.
8. Accordingly, the Law Council seeks to rephrase its earlier recommendation to the effect of:

To protect the interests of visa applicants and review applicants, only Australian legal practitioners should be authorised to represent applicants before a court or the General Division of the Administrative Appeals Tribunal.
9. The Law Council notes that one of its Constituent Bodies, the Law Institute of Victoria, does maintain a different position. The Law Council respects this view, however notes that it deviates from the Law Council's policy position in this regard.
10. Thank you for the opportunity to clarify the Law Council's earlier submissions in relation to this small, yet important point. Please contact Mr Nathan MacDonald at nathan.macdonald@lawcouncil.asn.au or on (02) 6246 3721 in the first instance, if you require further information or clarification.

Yours sincerely



Morry Bailes
President