



# THE OFFICE OF THE LEGAL SERVICES COMMISSIONER

Regulatory Burdens: Business & Consumer  
Productivity Commission  
GPO Box 1428  
Canberra City NSW 2601

26 July 2010

Dear Sir/Madam,

## **The inclusion of lawyers within the migration agent regulatory framework**

I refer to your draft research report entitled *Annual Review of Regulatory Burdens on Business: Business and Consumer Services* and in particular, the discussion therein regarding the regulatory framework for migration agents.

In November 2007 the Office of the Legal Services Commissioner (OLSC) made a submission to the *Review of Statutory Self-Regulation of the Migration Advice Profession* expressing the view that independent state regulators of the legal profession should assume the role of exclusively regulating all legal practitioners within their jurisdiction as well as regulating all people who provide legal services, such as 'migration legal assistance.'

However, I have recently become aware that you have received a submission concerning the inclusion of lawyers within the migration agent regulatory framework which refers to the position of the OLSC.

The submission states that "the definition of 'immigration assistance' and 'immigration legal assistance' under the *Migration Act 1958* precludes [the OLSC] taking any action against lawyers who provide 'immigration assistance' unless it is so egregious that it goes towards their capacity to operate as a lawyer."

The submission then states that, “in NSW, and any other jurisdiction which opts to take the same interpretation, the impact of ‘dual regulation’ is seen to be minimal.”

With all due respect this is not correct. The OLSC is not in favour of dual regulation and in fact, as stated above, is strongly of the belief that all legal practitioners in NSW, including legal practitioners performing migration agent work, should be regulated by the OLSC and the professional associations.

Accordingly, we support the recommendation in your draft report which states “[t]he 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.”

If you require any additional information please do not hesitate to contact us.

Yours sincerely,

Steve Mark  
**Commissioner**