

ARTHUR ROBINSON & HEDDERWICKS
LTD

1992

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

MIGRATION AMENDMENT BILL (No 3) 1992

MIGRATION AGENTS REGISTRATION (APPLICATION) LEVY BILL 1992

MIGRATION AGENTS REGISTRATION (RENEWAL) LEVY BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister
for Immigration, Local Government and Ethnic Affairs
the Honourable Gerry Hand MP)



MIGRATION AMENDMENT BILL (No 3) 1992
MIGRATION AGENTS REGISTRATION (APPLICATION) LEVY BILL 1992
MIGRATION AGENTS REGISTRATION (RENEWAL) LEVY BILL 1992

OUTLINE

These Bills will establish a comprehensive regime to regulate the conduct of migration agents.

Migration agents are identified in the Migration Amendment Bill (No 3) 1992 as persons who provide 'immigration assistance'. 'Immigration assistance' is defined to mean the use, or purported use, of knowledge or experience in migration procedure to assist, in specified ways, an applicant for a visa or an entry permit or for refugee status. The definition covers assistance with preparing an application, advising the applicant about the application, preparing for proceedings in relation to the application, and representing the applicant in such proceedings.

The central feature of the proposed regime is that it will require migration agents to be registered on a Register of Migration Agents to be maintained by the Secretary of the Department of Immigration, Local Government and Ethnic Affairs.

It will be a criminal offence (maximum penalty \$5000) to practise as a migration agent without being registered. Exemptions are provided for:

- . lawyers providing 'immigration legal assistance' (a term defined in the Bill);
- . Parliamentarians (unless they charge fees);
- . officials acting in the course of their duties; and
- . persons who do not charge fees provided that the immigration assistance is given neither as an employee of, or voluntary worker for, another person or organisation nor in the course of, or associated with, a business or profession.

Apart from these exemptions, the offence provision will compel all migration agents to register. By requiring all migration agents to register the Bill will assist in ensuring that appropriate professional standards are maintained.

It will also be a criminal offence for a migration agent to charge fees without being registered. An exemption is provided for lawyers, who may charge for the giving of immigration legal assistance. The maximum penalty for the offence will be ten years imprisonment or \$60,000, or both. The severe penalty for this offence reflects the fact that it is directed to those agents who practise for profit and who stand to make very large profits from unscrupulous practices.

In relation to the criminal offences to be created by this Bill, it is to be noted that in most cases it has been

regarded as sufficient to rely upon the common law so far as the necessary mental element for the commission of the offence is concerned. Recent court decisions lead to the conclusion that, generally, statutory silence on the issue of mens rea will result in that element being presumptively imported into the offence in question, ie that the person intended to do what has been forbidden by the statute (He Kaw Teh v The Queen (1985) 59 ALJR 620). Therefore, for a person to be found guilty of an offence created by this Bill it is necessary to prove knowledge or intention if no other mental element is specified. In addition, it cannot be implied from the inclusion of a specified mental element ('knowingly or recklessly') in some offence provisions in this Bill that there is no mental element necessary for the proof of an offence under other provisions.

Individuals who are at least 18 years of age and who are Australian citizens or permanent residents may be registered if they satisfy certain prerequisites. Firstly, an applicant must hold prescribed qualifications, or have a sound knowledge of migration law and procedure, or have had substantial experience as a migration agent over a period of at least two years immediately before making the application. Secondly, the applicant must be a person of integrity and a fit and proper person to be registered as a migration agent.

Application fees will be payable by all applicants, unless exempted. A charge will also be made on the annual renewal of registration, subject to the same exemptions. These fees are characterised as taxes and are imposed by two separate Bills to satisfy the requirements of section 55 of the Constitution. The Bills are the Migration Agents Registration (Application) Levy Bill 1992 and the Migration Agents Registration (Renewal) Levy Bill 1992.

The exemptions from the fees are also set out in those Bills. They apply to persons who are employed by, or are voluntary workers for, persons or organisations that do not charge fees for the giving of immigration assistance. The fees are set at \$1000 for a self-employed person, a partner, or an executive officer, and \$500 for an employee.

Responsibility for registering agents will be divided between the Secretary and a Migration Agents Registration Board (the Board) which will comprise the Secretary or his or her delegate, the Principal Member or a Senior Member of the Immigration Review Tribunal (as appointed by the Minister), and three other members appointed by the Minister. The Secretary will register applicants whose applications raise no doubts about whether the applicant meets the criteria for registration. Applications about which the Secretary entertains any doubts will be referred to the Board.

Once registered, a migration agent will be required to comply with ethical and professional standards to be prescribed in a Code of Conduct. The Board will have powers to monitor and investigate the conduct of migration agents and may caution, suspend, or deregister an agent if the Code of Conduct has not

been honoured or if the agent is otherwise not a person of integrity or a fit and proper person to continue as a migration agent.

Decisions of the Board rejecting applications for registration and decisions to take disciplinary action against agents will be reviewable by the Administrative Appeals Tribunal.

The Migration Amendment Bill (No 3) 1992 also includes a sunset clause which will bring the proposed regime to an end after three years of operation.

FINANCIAL IMPACT STATEMENT

The application fees and the fees to be charged for the renewal of registration are designed to ensure that no net costs are imposed on the Budget. Revenue of \$1m has been assumed, which may represent a small surplus, to be directed to grants for community immigration advisory services. The actual level of revenue raised depends critically on the structural effects the fees will have on the activities of migration agents, such as the level of specialisation that it encourages. The Government will be monitoring the level of revenue raised with a view to ensuring that future levels do not significantly differ from the total costs of the scheme.

MIGRATION AMENDMENT BILL (NO 3) 1992

NOTES ON INDIVIDUAL CLAUSES

Clause 1 Short Title

1 This clause provides that the Act may be cited as the Migration Amendment Act (No 3) 1992 and defines the term 'Principal Act' to mean the Migration Act 1958.

Clause 2 Commencement

2 This clause provides that the Act is to commence on a day to be fixed by Proclamation. The clause also provides that, if no proclamation has been made within six months from the day of Royal Assent, the Act will commence on the first day after Royal Assent.

3 Commencement by Proclamation has been chosen to ensure that sufficient time is available to put in place necessary administrative procedures and finalise the Code of Conduct which will bind registered agents (see section 114ZR below).

Clause 3 Repeal

4 This clause repeals Division 9 of Part 2 of the Principal Act which deals with the conduct of third parties in connection with the making of decisions. The provisions which are of continuing relevance have been incorporated into a new Part 2B.

Clause 4 Part 2A - Migration Agents and Immigration Assistance

5 This clause inserts new Parts, Part 2A and Part 2B, into the Migration Act 1958. Part 2A establishes a scheme for the registration of Migration Agents. Part 2B is titled 'Offences Relating To Decisions Under The Act'. It incorporates some of the provisions of the repealed Division 9 (see clause 3 above).

6 The following clause notes relate to the sections of the new Parts 2A and 2B.

DIVISION 1 Preliminary

Section 114A Interpretation

7 This section defines several words and terms used in Part 2A including 'entrance applicant', 'entrance application', and 'migration procedure'. These terms are central to the concept of 'immigration assistance' (see section 114B below). 'Entrance applicant' is defined to mean an applicant for a visa or entry permit under the Migration Act 1958, and also an applicant for a determination by the Minister that the applicant is a refugee. An "entrance application" is an application by an entrance applicant for a visa, entry permit, or determination of refugee status. 'Migration procedure' is

defined to mean the law, and administrative practice, relating to immigration.

Section 114B Immigration assistance

8 This section defines the term 'immigration assistance'. Subject to exemptions it is an offence for a person who is not a registered agent to give immigration assistance (see section 114F below). A person gives immigration assistance if the person uses knowledge of, or experience in migration procedure to assist an applicant in any of four specified ways:

- . preparing or helping to prepare the application;
- . advising the applicant about the application;
- . preparing for proceedings before a court or review authority in relation to the application ('review authority' is defined in the Migration Act 1958 and includes both the Migration Internal Review Office and the Immigration Review Tribunal); or
- . representing the applicant in proceedings before a court or review authority in relation to the application.

9 A person also gives immigration assistance if the person purports to use knowledge or experience of migration procedure to assist an applicant in any of the specified ways. Thus a person who may not in fact have any relevant knowledge or experience will be covered if the person acts as if he or she did have the knowledge or experience.

Section 114C Immigration legal assistance

10 This section defines 'immigration legal assistance'. A lawyer who gives immigration legal assistance is exempted from the need to register as a migration agent (see subsection 114F(3) below). 'Immigration legal assistance' comprises three elements:

- preparing for court proceedings;
- representing, or otherwise acting for, the applicant in court proceedings; and
- providing general legal advice to the applicant which is unrelated to the preparation of the application and unrelated to proceedings before the Migration Internal Review Office or the Immigration Review Tribunal.

11 The Bill, through this definition, recognises the traditional function of lawyers in representing clients before the courts and in providing legal advice. Barristers called on to provide legal advice to a solicitor representing an entrance applicant are regarded in this context as giving immigration legal assistance.

Section 114D Relation by employment

12 This section defines the circumstances in which a person is to be regarded as 'related by employment' to another person. The circumstances include all possible combinations

of employment relationships involving employers, employees, partners, and executive officers.

13 The definition is employed in section 114S, section 114V, and section 114ZE to clarify that, in deciding whether an applicant for registration or a registered agent is a fit and proper person to be a migration agent, it may be appropriate to consider persons associated with the applicant or migration agent. This is particularly the case where a person who would not be permitted to become a registered migration agent may seek to evade this restriction by operating through other registered agents.

14 There are no consequences flowing automatically from a finding by the Board that an individual, related by employment to an applicant or a registered agent, is not a person of integrity. It is a matter to be considered by the Board in assessing whether the applicant or registered agent is a fit and proper person to be registered as, or to continue to be registered as, a migration agent. The reference to relation by employment is not intended to limit the matters which the Board may consider in assessing whether an applicant or registered agent is a fit and proper person. For example, it may be equally significant that the applicant or registered agent has a contractual relationship with, or is known to associate with a person who is not a person of integrity.

Section 114E Part VIIC of the Crimes Act 1914 to apply to this Part

15 This section provides that Part VIIC of the Crimes Act 1914 applies to the provisions dealing with the registration of migration agents. Part VIIC of the Crimes Act 1914 deals with 'spent' convictions, ie convictions for Commonwealth offences which do not need to be disclosed after a specified period of time has elapsed. State and Territory legislation dealing with 'spent' convictions is also given effect to, by virtue of section 85ZV of the Crimes Act 1914. Other decision making powers in the Migration Act 1958, eg decisions to grant visas or entry permits, are not subject of the 'spent' convictions provisions, by virtue of paragraph 85ZZH(d) of the Crimes Act 1914.

DIVISION 2 - Restrictions on giving of immigration assistance or making of immigration representations

Section 114F Restrictions on giving of immigration assistance

16 This section prohibits the giving of immigration assistance by a person other than a registered migration agent. The maximum penalty is \$5000. The section is qualified so that it does not prohibit the giving of immigration assistance by Parliamentarians or by officials acting in the course of their duties. 'Official' is defined

in section 114A to include a member of the public service of a State or Territory. For the purposes of this definition, persons employed by Legal Aid Commissions of the States and Territories are regarded as being members of the public service. The section also does not prohibit a lawyer from giving immigration legal assistance (see section 114C above). Finally, the section does not prohibit persons who are acting outside the course of a business or profession from providing immigration assistance without charge, on a 'one-off' or ad hoc basis, eg a family member assisting other family members.

17 The section does apply to persons who are employed by, or voluntary workers for, other persons or agencies (eg church or other welfare organisations), even if no fee is charged for the giving of the immigration assistance. The section also applies to person who gives immigration assistance in the course of, or in association with, the conduct of a profession or business, even if no fee is charged for the giving of the immigration assistance. For example, a solicitor who was not registered as migration agent could not, in the course of undertaking other work for a client, provide immigration assistance to that client even on the basis that the immigration assistance component of the solicitor's work would be without charge.

Section 114G Restrictions on charging fees for immigration assistance

18 This section prohibits the asking for, or receiving of any fee or reward for the giving of immigration assistance by a person who is not a registered migration agent. The offence covers both the person giving the immigration assistance and any third party (eg an employer of the person giving the assistance) who may ask for the fee or reward. The offence overlaps the offence of giving immigration assistance without being registered (see section 114F above). However that offence is directed primarily at persons who do not charge fees. Accordingly the offence created by this section carries a much higher penalty. The maximum penalty is imprisonment for 10 years or a fine of \$60,000 or both. The availability of the financial penalty is derived from subsection 4B(2) of the Crimes Act 1914, which provides the option of a penalty of \$3,000 for every six months of imprisonment.

19 By comparison with the section 114F offence, the only exemption provided in this section is for lawyers, ie a lawyer is not prohibited from charging for immigration legal assistance. A parliamentarian or an official who wished to charge fees for giving immigration assistance would need to be registered.

Section 114H Restriction on charging fees for immigration representations

20 This section prohibits persons other than registered agents from seeking a fee or reward for making representations to the Minister or the Department in relation to an entrance application. The activity which is prohibited will be closely

related to the giving of immigration assistance in many situations, ie a migration agent who assists in preparing an entrance application may seek to communicate with the Minister or the Department in order to influence or expedite consideration of the application. Unless this activity is regulated it may be open to unscrupulous agents to seek to avoid the other prohibitions in this Bill by purporting to limit their activities to making representations to the Minister or Department. The maximum penalty is the same as that provided for in section 114G, i.e. 10 years imprisonment or \$60,000, or both.

Section 114J False representation that a person is registered agent

21 This section makes it an offence for a person falsely to represent himself or herself or another person to be a registered agent. The maximum penalty is imprisonment for 2 years or a fine of \$12,000, or both. The financial penalty is derived from subsection 4B(2) of the Crimes Act 1914.

Section 114 K Restriction on self-advertising of the giving of immigration assistance

Section 114 L Restriction on other advertising of immigration assistance

22 These sections prohibit (with appropriate exceptions for parliamentarians and officials) advertising which indicates that immigration assistance will be given by a person who is not a registered migration agent. The sections do not prohibit the advertising of the provision of immigration legal assistance by a lawyer. The maximum penalty is 2 years imprisonment or \$12,000, or both. The financial penalty is derived from subsection 4B(2) of the Crimes Act 1914.

DIVISION 3 - Registration of Migration Agents

Section 114M Individuals may be registered as migration agents

23 This section provides for the registration of individuals as migration agents. Only natural persons may be registered, and not corporate bodies.

Section 114N Register of Migration Agents

24 This section establishes the Register of Migration Agents to be kept by the Secretary, and details the information to be kept on the Register. The section also provides for public access to the Register.

Section 114P Application for registration

25 This section sets out that applications for registration must be made to the Secretary in the approved form. An application form for this purpose will be approved by the Minister under section 175 of the Migration Act. The form

will seek all information required for the assessment of an application. The section requires that the form must seek the details required to establish whether the applicant is liable to the application/registration fee of \$1,000, or the application/registration fee of \$500, or alternatively, is exempt from the fees. The fees are imposed under separate taxing legislation, ie the Migration Agents Registration (Application) Levy Bill 1992 and the Migration Agents Registration (Renewal) Levy Bill 1992.

Section 114Q Notification of registration applications

26 This section requires the Secretary to Gazette all registration applications on receipt, with a statement that there is a 6 week period for the lodgement of any objections. Any person may object to the registration of an individual as a migration agent. If objections are received the application must be dealt with by the Migration Agents Registration Board which must consider the objections in deciding whether or not to register the applicant (see section 114V below).

27 This section also provides that, unless the relevant fee has been paid, an application is not considered to have been made. The purpose of this provision is to relieve the Secretary of the obligation to notify the person's application in the Gazette if the application fee is not paid.

Section 114R Secretary to consider certain registration applications

28 This section requires the Secretary to deal with all routine applications. Other applications are handled by the Board (refer ss 114T and 114U).

Section 114S Board to consider certain registration applications

29 This section provides that, where sections 114T or 114U apply, the Secretary must refer the application to the Board, which must deal with it as soon as practicable.

Section 114T Certain registration applications to be referred to Board

30 This section specifies which applications must be referred to the Board for consideration. For example, if certain facts exist, such as the applicant having a criminal record, or ever having been bankrupt, or if an objection is lodged against the applicant, the application must be referred to the Board.

31 The Secretary also has a discretion to refer applications to the Board if he or she considers that there is any doubt that the applicant is a person of integrity or a fit and proper person to be registered as a migration agent. The Secretary does not need to be satisfied that there is a significant doubt about the applicant. It is intended that the Secretary refer applications to the Board if there is the

slightest doubt about an applicant or if there is any evidence or other relevant matter which warrants further investigation.

Section 114U Board may intervene in registration application

32 Under this section, the Board is permitted to intervene, within 8 weeks of Gazettal under section 114Q, to prevent the Secretary from dealing with an application. The purpose of this section is to allow the Board to take over an application if the Board has information, or receives information, which was not available to the Secretary with the result that the application was not referred by the Secretary under section 114S.

Section 114V Qualifications of migration agent

33 This section provides that an applicant may only be registered if he or she is over 18 years of age, and an Australian citizen or permanent resident. An applicant cannot be registered within 12 months of a previous refusal of registration, or within 5 years of registration having been cancelled.

34 Where an application is being dealt with by the Board, it must be satisfied that the applicant is a person of integrity and is otherwise a fit and proper person to be registered as a migration agent.

Section 114W Matters taken into account in considering applications

35 This section sets out further matters that the Board must take into account when it is considering an application, for example any objections which have been lodged and the extent of the applicant's knowledge of migration procedure. The Board also has a very broad discretion to consider any other matter which may be relevant to an applicant's fitness to give immigration advice.

Section 114X Registration by Secretary

36 This section provides that, for applications being dealt with by the Secretary, where applicants meet the criteria, they must be registered within 8 weeks of Gazettal or as soon as practicable after the end of that period. It may not be practicable to register at the end of the 8 week period if, for example, it has not been possible to finalise the checking of statements in the application concerning whether or not the applicant has a criminal record.

Section 114Y Registration by Board

37 This section provides that, where an application is considered by the Board, it must register the applicant if it is satisfied that the applicant is a suitable person. Registration occurs when the applicant's name is entered in the Register of Migration Agents.

Section 114Z Notification of refusals

38 Under this section, an applicant must be notified of a decision to refuse registration, and of the reasons for the decision.

Section 114ZA Period of registration

39 This section sets out that the period of registration will be 12 months from the date of registration or renewal. Any period of suspension is excluded from the calculation.

Section 114ZB Renewal of registration

40 This section provides that unless the Board has decided to deregister the agent, the agent's registration will be renewed at the end of the current period of registration.

Section 114ZC Notification of renewal of registration

41 This section provides that agents, who are not about to be deregistered, will be notified a month in advance that their registration will be renewed, and of the fee payable.

Section 114ZD Automatic deregistration

42 This section sets out the circumstances in which an agent will be automatically deregistered, including failure to pay the renewal fee within 2 months after renewal.

Section 114ZE Discretionary cancellation or suspension of registration

43 This section empowers the Board to cancel or suspend registration or to caution an agent in certain circumstances, including where the agent becomes bankrupt, or fails to comply with the Code of Conduct.

Section 114ZF Period of suspension

44 This section sets out the period and conditions that may apply to a suspension.

Section 114ZG Publication of cancellation or suspension of registration

45 This section provides that the Board must publish details of the cancellation or suspension of an agent's registration, including the reasons and findings on material questions of fact, and referring to the evidence on which the findings of fact were based. The requirement to publish would be satisfied by making available to the public on request, from the Board or the Department, a statement setting out those matters. However it would also be open to the Board to choose a more extensive means of publication, eg in a newspaper or journal.

46 The section also provides that the publication must not occur until the Board's decision is no longer capable of being

set aside on appeal. This refers to the Administrative Appeals Tribunal jurisdiction and to any legal challenges against the Board's decision.

Section 1142H Review by the Administrative Appeals Tribunal

47 Under this section, application for review of any decision made by the Board under Division 3 may be made to the Administrative Appeals Tribunal.

DIVISION 4 - Investigations and decision-making by the Board

Section 1142J Investigations

48 This section enables the Board to arrange for the Secretary to carry out investigations in relation to a registration application or disciplinary action. The Board can require the Secretary to arrange for the investigation, and the Secretary is to provide the report to the Board, together with any relevant material.

Section 1142K Board may require agent to give information

49 This section enables the Board, at any time, to require an agent to answer questions by statutory declaration or by appearing before the Board. It can also require an agent to provide specified documents or records.

Section 1142L Persons may make submissions

50 This section provides for natural justice, in cases where a refusal, suspension or cancellation is being considered, allowing an agent to make a written submission.

Section 1142M Persons may appear before the Board

51 This section provides that, where no submission has been received, a decision can be made on the papers before the Board. Where a submission has been received, the Board may decide on the papers or may invite the agent to appear before it.

52 The common law requirements relating to natural justice will apply so that the Board will need to carefully consider whether, in the circumstances of the particular case, it is necessary to allow the applicant or agent to appear before the Board or to be legally represented.

Section 1142N Board not bound by legal forms etc

53 This section is an evidentiary provision which provides that, in considering applications or disciplinary action, the Board must not be bound by technicalities, but must act according to substantial justice and the merits of the case.

DIVISION 5 - Obligations of Registered Agents

Section 1142P Notification obligations

54 This section places an obligation on registered agents to notify the Board if specified events occur which may affect the appropriateness of the agent continuing to be registered, eg bankruptcy, conviction for a criminal offence, or changes in the person's employment.

55 Failure to notify the Board as required will be an offence (maximum penalty \$10,000).

56 This section also provides that a registered agent must within 2 months of renewal, provide the Board with information showing that the applicant is exempt from the renewal fee, or alternatively, that the agent is entitled to pay the lesser of the two registration fees.

Section 1142Q Persons charged for services to be given detailed statement of services

57 This section requires registered agents, as a precondition to entitlement to payment, to provide clients with a detailed statement of services and the charges for those services. To remove any possible doubt, the section also provides that the requirement does not apply to a lawyer giving immigration legal assistance.

58 The section also provides that, where an applicant has not received the statement of services within 28 days of the making of the final decision on the application, the applicant may sue to recover the monies paid to the agent.

Section 1142R Code of conduct for migration agents

59 This section provides that a Code of Conduct may be prescribed by regulation, and that a registered agent must comply with the code. Failure to comply may result in deregistration (s1142B).

DIVISION 6 - Migration Agents Registration Board

Section 1142S Migration Agents Registration Board

60 This section establishes the Board.

Section 1142T Functions of Board

61 This section sets out the functions of the Board, which include dealing with applications, monitoring the conduct of registered agents, investigating complaints and ensuring that appropriate disciplinary action is taken, and advising the Minister on the adequacy of the Code of Conduct.

62 The functions of the Board also include a limited role in the investigation of lawyers providing immigration legal

assistance. As immigration legal assistance will often be provided by a lawyer who is also a registered agent providing immigration assistance, the Board may become aware of matters in relation to the provision of the immigration legal assistance which would justify the Board in referring the matter to the appropriate professional legal body.

Section 1142U Directions by the Minister

63 This section empowers the Minister to direct the Board to investigate a particular registered agent or applicant.

Section 1142V Constitution of Board

64 This section sets out that the Board will consist of 5 members, representing a balance between the interest groups involved. The members will be a Chairperson (who will be the Secretary or his or her delegate), a member of the Immigration Review Tribunal, and 3 ordinary members - a lawyer, a person with associations with ethnic community organisations, and a registered agent. The Board can function with a quorum of the Chairperson and two other members (one of whom must be the lawyer). As a transitional measure it will be necessary to the Board to begin operating without a registered agent as a member. The Minister will appoint an appropriate registered agent to the Board as soon as possible after the initial applicants for registration have been registered.

Section 1142W The Chairperson

65 Under this section, the Chairperson is the Secretary or a Departmental officer appointed by the Secretary. In the latter case, the conditions of office are specified in the appointment.

Section 1142X The Board member of the Immigration Review Tribunal

66 The Minister can appoint either the Principal Member or one of the Senior Members of the Immigration Review Tribunal as a member, to hold office under conditions set out in the appointment.

Section 1142Y Appointment of ordinary members

67 The three ordinary members are appointed in writing by the Minister.

Section 1142Z Term of office

68 Ordinary members are appointed for three years, and may be re-appointed. Where an ordinary member ceases to hold office early, a replacement may be appointed for a further three years. The terms and conditions of the appointed members will make it clear that there is no entitlement to further remuneration if the legislation ceases to operate because of the sunset clause (see section 1142ZL) or is otherwise repealed.

Section 114ZZA Remuneration and allowances

69 The remuneration and allowances for all Board members are determined by the Minister.

Section 114ZZB Leave of absence

70 Ordinary members may be granted leave from a Board meeting by the Minister.

Section 114ZZC Other terms and conditions

71 Any terms and conditions of office for ordinary members, beyond those under this Act, are determined by the Minister.

Section 114ZZD Board members not to be sued

72 This section protects Board members from any legal action in relation to any actions carried out in good faith under this Part.

Section 114ZZE Resignation

73 Ordinary members may resign by sending a signed resignation to the Minister.

Section 114ZZF Disclosure of interests

74 For the purposes of this section, a conflict of interest in relation to a matter before the Board is defined as being where a member 'has any interest, pecuniary or otherwise, that could conflict with the proper performance of the member's functions in relation to that matter'.

75 If the Chairperson has a conflict of interest, it must be disclosed to the applicant and to the Minister, and the Chairperson must not take part in the discussion or action on the matter unless the applicant and the Minister consent.

76 Where any other member has such a conflict, it must be disclosed to the applicant and the Chairperson, who must also give consent for that member to participate in the discussion or action on the matter.

Section 114ZZG Removal from office

77 This section gives the Minister the power to remove an ordinary member from office on a number of grounds including proved misbehaviour, physical or mental incapacity, bankruptcy and failure to disclose a conflict of interest.

Section 114ZZH Meetings of Board

78 This section deals with the formalities of Board meetings, eg meetings may be called at any time by the Chairman, who is to preside.

Section 1142ZJ Powers of the Board

79 This section gives the Board the power to do whatever is necessary or convenient for the performance of its functions.

Section 1142ZK Secretarial assistance

80 This section provides that the Department will supply the Board with the accommodation and services required to perform its functions.

DIVISION 7 - Miscellaneous

Section 1142ZL Part ceases to be in force 3 years after commencement

81 This section provides a 'sunset clause' whereby the registration regime will cease operating 3 years from commencing. Any investigations or disciplinary action underway at the time will lapse. However, any penalties imposed or liabilities incurred during the 3 years remain operative.

82 The section also provides that the regulations may provide for the refund of any fees paid more than two years after commencement.

PART 2B - Offences relating to Decisions under the Act

Section 1142ZM Offences in relation to false or misleading statements regarding the making of decisions

83 This section, and the subsequent two sections, carry over provisions from the repealed Division 9 of Part 2 of the Migration Act 1958. This section makes it an offence for a person to claim to be able to influence the outcome of the decision-making process in regard to any immigration decision. The role of agents is only to assist entrance applicants present their case. Decisions on entrance applications are arrived at independently by Departmental officials. The offence will also apply to any person (not just agents) who engages in this form of deceit. A penalty of 2 years imprisonment is attached, or a \$12,000 fine, or both. The financial penalty is derived through the operation of subsection 4B(2) of the Crimes Act 1914.

Section 1142ZN Offence of undertaking, for reward, to cause decisions to be made etc

84 This section prohibits a person undertaking for reward that an immigration decision will be made in a particular way. A penalty of 2 years imprisonment is attached, or a \$12,000 fine, or both. The financial penalty is derived through the operation of subsection 4B(2) of the Crimes Act 1914.

Section 114ZZP

**Court may order reparation for loss
suffered**

85 This section empowers the Court to order reparation, where a person has suffered as a result of offences against this Division and has not otherwise recovered that amount.

**Clause 5 Transitional provision on practice as a
migration agent**

86 This clause allows a person, who has been practicing as a migration agent immediately prior to the commencement of the Act, 12 weeks in which to apply for registration. Division 2 of Part 2A will not apply to them during the 12 weeks, or if they make an application, until their application is decided or the Board directs the person to cease practising as a migration agent.

MIGRATION AGENTS REGISTRATION (APPLICATION) LEVY BILL 1992

NOTES ON INDIVIDUAL CLAUSES

Clause 1 Short title

This clause provides that the Act may be cited as the Migration Agents Registration (Application) Levy Act 1992.

Clause 2 Commencement

This clause provides that the Act commences on the same day as the Migration Amendment Act (No 3) 1992.

Clause 3 Interpretation

This clause provides that certain phrases in this Act are to have the same meaning as under Part 2A of the Migration Act 1958.

Clause 4 Imposition of levy

This clause imposes a levy on an individual's making of an application for registration.

Clause 5 Exemption

This clause exempts from the levy applicants whose assistance will only be given in their capacity as an employee of, or voluntary worker for a person or organisation which does not charge for the provision of immigration assistance.

Clause 6 Amount of levy

This clause sets the application fee to be levied at \$1000, except where the individual applying is an employee of a registered agent or of a partnership with at least one registered member, or a corporation with at least one registered executive officer. In these cases the fee is set at \$500.

Clause 7 By whom the levy is payable

This clause provides that the levy is payable by the person making the application.

MIGRATION AGENTS REGISTRATION (RENEWAL) LEVY BILL 1992

NOTES ON INDIVIDUAL CLAUSES

Clause 1 Short title

This clause provides that the Act may be cited as the Migration Agents Registration (Renewal) Levy Act 1992.

Clause 2 Commencement

This clause provides that the Act commences on the same day as the Migration Amendment Act (No 3) 1992.

Clause 3 Interpretation

This clause provides that certain phrases in this Act are to have the same meaning as under Part 2A of the Migration Act 1958.

Clause 4 Imposition of levy

This clause imposes a levy on the renewal of an individual's making of an application for registration.

Clause 5 Exemption

This clause exempts from the levy registered agents whose assistance is only given in their capacity as an employee of, or voluntary worker for a person or organisation which does not charge for the provision of immigration assistance.

Clause 6 Amount of levy

This clause sets the renewal fee to be levied at \$1000, except where the individual is an employee of a registered agent or of a partnership with at least one registered member, or a corporation with at least one registered executive officer. In this case the fee is set at \$500.

Clause 7 By whom the levy is payable

This clause provides that the levy is payable by the person whose registration is renewed.





