

New Zealand Association of
Citizens Advice Bureaux Inc
Ngā Pokapū Whakahoki Pātai mai i te Iwi Whānui

3 March 2006

Clerk of the House
Transport and Industrial Relations Select Committee
Parliament Buildings
Wellington

SUBMISSION ON IMMIGRATION ADVISERS LICENSING BILL

BACKGROUND

- 1 The New Zealand Association of Citizens Advice Bureaux (CAB) – Ngā Pokapū Whakahoki Pātai mai i te Iwi Whānui welcomes the opportunity to comment on the Immigration Advisers Licensing Bill.
- 2 We would value the opportunity to appear before the committee to speak to this submission and can be contacted through:

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- 3 The aims of the Association are:

To ensure that individuals do not suffer through ignorance of their rights and responsibilities or of the services available; or through an inability to express their needs effectively — Me noho matāra kia kua te tangata e mate i tōna kore mōhio ki ngā āhuatanga e āhei atu ana ia, ki ngā mahi rānei e tika ana kia mahia e ia, ki ngā ratonga rānei e āhei atu ana ia; i te kore rānei ōna e āhei ki te whakaputu i ōna hiahia kia mārama mai ai te tangata.

To exert a responsible influence on the development of social policies and services, both locally and nationally — Kia tino whawāhi atu ki te auahatanga o ngā kaupapa-ā-iwi me ngā ratonga-ā-rohe, puta noa hoki i te motu.
- 4 Citizens Advice Bureaux provide free, confidential and impartial information, advice, advocacy and support to individuals, and use our experience with clients to advocate for socially just policies and services in Aotearoa New Zealand.

- 5 The national network of 86 Citizens Advice Bureaux aim to empower individuals to deal with their own problems and to strengthen communities by identifying and raising local and national issues. The person to person information, advice, advocacy and support service provided by 2,700 bureau volunteers is unique in New Zealand, as is our ability to provide a national snapshot of community issues and concerns.
- 6 In making our comments we draw on the knowledge and experience from bureaux' client contact and the fact that since 1995 Citizens Advice Bureaux have dealt with over 5 million enquiries from the public.

INTRODUCTION

- 7 Over the years our organisation has assisted many clients to address very serious problems they have had as a result of unscrupulous behaviour of immigration consultants, and we continue to do so. For this reason we have long called for and strongly support the regulation of immigration consultants.
- 8 Throughout the consultation process that led to the development of the Immigration Advisers Licensing Bill, the Association has recommended that government seek independent statutory regulation of the industry rather than industry self regulation. We expect that regulation of immigration consultants will be of significant benefit to the public.
- 9 However, we cannot support the Bill in its current form. We see that the Citizens Advice Bureau would also come under the auspices of the proposed legislation and licensing regime and that this has significant and negative implications for our organisation and for our clients, the general public. In this submission we expand on those implications and make some recommendations for an alternative approach to regulation of our volunteers.

IMMIGRATION ADVISERS LICENSING BILL AND THE CITIZENS ADVICE BUREAU (CAB)

- 10 The CAB has been advised that:
- (a) We come under the auspices of the Bill because even though ours is a generalist service involving provision of information to enable clients to make their own decisions about how to resolve the issues or problems they bring to us and, unlike paid immigration consultants, we do not take over the management of our clients' immigration-related matters; the fact that our assistance for clients can involve engaging with them and working through information and options with them means that, on matters relating to immigration applications, the service we provide includes the provision of immigration advice as per section 7 of the Bill.
- (b) CAB would not meet the criteria for an exemption from licensing of its volunteers because the exemption clause (section 11) is intended for organisations already governed by existing legislation, with independent processes for ensuring service quality and for dealing with complaints e.g. lawyers, government officials, and Members of Parliament. It is considered that organisations' internal processes are not robust enough to provide sufficient protection to the public and that it would be defeating the purpose of the legislation to allow organisations such as ours to gain exemption.

CAB UNABLE TO CONTINUE PROVIDING ASSISTANCE TO IMMIGRATION APPLICANTS

- 11 Citizens Advice Bureau would therefore be subject to the licensing criteria, financial/other compliance costs for registration and re-registration, and the sanctions and penalties under the Bill. We consider these costs and risks to be prohibitive for our organisation¹ and we will not be seeking licensing for our volunteers.
- 12 We note that the definition of immigration advice in the Bill does not include “providing information that is publicly available, or that is prepared or made available by the Department” or “directing a person to the Minister or the Department, or to an immigration officer, a visa officer, or a refugee status officer...or to a list of licensed immigration advisers” (section 7.b). These are activities that we undertake with many of our 16,000+ client enquiries we receive every year relating to immigration applications.
- 13 Even if all a client really needs when they approach a bureau for assistance is just a Department form or a referral to another organisation; to get to the point of handing over a form or some contact details, a volunteer may first have to engage with that client, asking questions, discussing the client’s situation, and identifying the issue, problem, or need that the client has, then making a judgement call as to what information to hand or assistance able to be given would be helpful to the client.
- 14 Based on our understanding of immigration advice in the Bill and the advice we have received, we see that, for the CAB, undertaking the straightforward kinds of activities described under section 7.b may also involve providing immigration advice - “using, or purporting to use, knowledge of or experience in immigration to advise, direct, assist, or represent another person in regard to an immigration matter relating to New Zealand, whether directly or indirectly and whether or not for gain or reward” (section 7.a).
- 15 Accordingly, *any* interactions with the public on matters relating to immigration applications may potentially open our volunteers up to an unacceptable level of risk in terms of being deemed to be providing immigration advice without a license. Therefore, if the Bill goes forward in its current form, the Association will advise it’s 2,700 volunteers around New Zealand to cease dealing with any enquiries relating to residence, temporary entry, citizenship, refugee status or related matters and, where possible, refer these on.

REFERRAL OF CAB CLIENTS ON TO LICENSED (OR EXEMPT) IMMIGRATION ADVISERS

- 16 If we are unable to continue to assist clients on matters relating to immigration applications, then we will have to refer these clients on to other organisations who have ‘immigration advisers’ who are licensed or exempted under the legislation e.g. immigration advisers in immigration consultancies, MP electorate offices, the Department of Labour, lawyers with community law centres and so on. We deal with over 16,000 enquiries every year relating to immigration applications.
- 17 In the new environment this legislation would create, in some places immigration advice may only be available from for-profit operators. In effect then, this legislation may put some of our bureaux in the very undesirable position of having little option but to (a) watch potential clients, who simply can’t afford the services of a for-profit-operator, walk away unassisted or (b) refer people on to for-profit advisers, thus helping to increase

¹ Please refer to page 5 of this submission for detail which outlines some of the significant financial and practical implications of licensing of our volunteers.

the client base of the industry and the development of a monopoly by for-profit operators.

UNDERMINING OF THE ROLE OF THE CAB

- 18 The Association is of the opinion that this draft legislation fails to acknowledge and protect the role that the CAB plays as a provider of independent, free, confidential and impartial assistance to the public. We believe the Bill represents a move towards over-regulation with a likely outcome being the destruction of important community networks and activity.
- 19 We wish to point out that it was organisations such the CAB, with our direct and ongoing contact with the public that have highlighted to Government, over the years, the problems occurring within the immigration consultancy industry and the need for independent statutory regulation. We have always seen that one of the valuable roles we have to play in our society is to act on our experience and to alert government to systemic problems such as these. If we are required to pull back from providing the full CAB service to the general public, then our ability to keep a finger on the pulse of our communities is undermined and the information and advice we are able to provide to government is reduced.
- 20 We strongly support the need for not-for-profit services such as those we offer to be delivered in a professional way and within a sound framework for quality assurance and accountability. This is why our organisation has developed a system of internal checks and balances.² We do not believe that the approach taken in this legislation is the appropriate way to go about ensuring quality service for and protection of our clients and the general public.
- 21 The Association requires volunteers to provide a *professional service* to the public, but this legislation in effect will require volunteers to become *professionals*. There is an important distinction here, as professionalisation of volunteer workers carries with it wider implications i.e. individuals seeking payment for service, thus threatening the ability of the organisation to continue to provide its free service (which is a cornerstone of the CAB).

LOSS OF A PUBLIC GOOD

- 22 The Citizens Advice Bureau provides help to anyone, anywhere, about anything and this makes us unique in the New Zealand setting. Our bureaux and specialist services are places where members of the public can go to receive assistance within a confidential, friendly and independent setting – and not be charged for the privilege. However, if the legislation is passed in its current form we would be unable to continue providing this service to clients with enquiries relating to immigration applications. In

² This system includes (a) A Code of Ethics which exists to ensure, among other things, that the client's independence and right to choose their own course of action is respected, that client confidentiality and impartial treatment of the client is observed etc, (b) Membership Standards which define bureau responsibilities and provide guidelines to ensure the service is managed effectively. These standards must be met in order to operate as a Citizens Advice Bureau and to become a member Bureau of the Association, (c) Training, a probationary period and an assessment of suitability for all people who wish to become CAB volunteers, as well as refresher and ongoing training. (d) Ongoing monitoring, supervision and performance appraisals for volunteers. (e) A complaints procedure for addressing complaints from the public about service provided.

effect the legislation will remove a public good and we believe this would be an outcome that nobody wants.

PREVENTING THE DELIVERY OF A WIDER RANGE OF FREE SERVICES IN THE FUTURE

23 Additionally, this legislation may also prevent a wider range of free services from being offered to the public in the future. Increasingly, the activities we undertake with clients – provision of information, working through options etc – is not sufficient to meet our clients' complex needs and they are requesting of us more active, involved and ongoing assistance, i.e. advocacy. We would like to be able to further develop our service to better meet this need across a whole range of areas, but in the kind of regulatory environment the proposed legislation would establish, the CAB would be unable to offer this service to some of our clients.

THE COSTS AND RISKS INVOLVED IN REGISTRATION FOR CAB

24 As previously stated, we see that the costs and risks involved in registration would be prohibitive for our organisation and that therefore we would cease to undertake any activity or provide any services which would cause us to come under the auspices of the legislation. The following paragraphs give a sense of some of the significant financial and practical implications involved in the licensing of our volunteers.

25 The draft legislation states that “a person may be licensed as an immigration adviser only if (a) the person is a natural person...” (Section 10.a). Accordingly, licensing is to be done on a per individual basis rather than per entity (business, organisation etc).

26 If CAB wished to continue providing the full CAB service to all of our clients, we would have to look at seeking registration for either all or some of our 2,700 volunteers. There would need to be at least once licensed volunteer on duty in a bureau or specialist service at any given time to deal with (or supervise) relevant immigration-related enquiries to the bureau or service.

27 If, for example, the organisation ceased providing the full service in bureaux with lower numbers of relevant immigration-related enquiries and only sought licensing for volunteers in bureaux that receive higher numbers of such enquiries – say, on average one relevant immigration-related enquiry per day - then at the absolute minimum the organisation would still need to seek registration for around 225 of its volunteers if not the full 2,700 of our workers.³

28 The legislation states that “not-for-profit immigration advisers will not have to bear the full costs of licensing, but may incur some compliance costs...” (Explanatory note, ‘Immigration Advisers’). Section 77.2 of the Bill states that “Fees, or the method of determining fees, may differ for different classes of applicant of licensee, and may take account of whether or not the person concerned charges or proposes to charge for the provision of immigration advice”. So at this stage we are not clear as to whether (a) not-for-profit volunteer workers will in fact be required to pay a registration and re-registration fee, and (b) if yes, how much they will be required to pay.

³ 15 Citizens Advice Bureaux and specialist services received one or more such enquiries, on average, per day in 2004-2005. Given that most bureaux operate 3 shifts of volunteers per day, that there are always at least two volunteers on duty together at any one time, and that most volunteers do one shift per week, then this means that each of these 15 bureaux would need 15 licensed volunteers – thus, 225 licensed volunteers in total.

- 29 What we can say is that the Association would not expect unpaid volunteers to have to pay a fee out of their own pockets in order to provide our free service to the public. The Association itself would have to absorb any such costs. In the event that not-for-profits are expected to meet at least some of the costs involved in registration and re-registration, the Association would face significant costs, even if the full CAB service was to be provided in only a restricted number of bureaux (as per the kind of scenario described above).
- 30 Below are some calculations of the potential range for registration costs based on a minimum part fee payment of \$250 per volunteer and a maximum of \$1000 per volunteer, and based on both a conservative estimate of licensing for 225 CAB volunteers, and a 'worst case scenario' of licensing for all 2,700 CAB volunteers:
- 31 Scenario: 225 licensed CAB volunteers
 \$250/volunteer = \$56,250
 \$500/volunteer = \$112,500
 \$750/volunteer = \$168,750
 \$1000/volunteer = \$225,000
- Scenario: 2,700 licensed CAB volunteers
 \$250/volunteer = \$675,000
 \$500/volunteer = \$1,350,000
 \$750/volunteer = \$2,025,000
 \$1000/volunteer = \$2,700,000
- 32 In terms of other compliance costs e.g. time taken to complete registration forms, a rough, conservative estimate of one hour of time for completion of each initial application would mean a minimum of about 225 hours (or 4 working weeks) and a maximum of 2,700 hours (or 67.5 working weeks) of additional time the organisation would need to spend for registration.
- 33 Even licensing on a more limited basis represents a significant time commitment for our organisation, particularly when it is viewed within the context of the wider service CAB provides i.e. that this is only one of many issues that our bureaux and specialist services assist the public with and also that our bureaux and the Association as a whole already face compliance costs in other areas.
- 34 We note that sanctions include a penalty payment of up to \$10,000 (section 43) and that penalties include imprisonment for up to 7 years and/or fines of up to \$100,000.

RECOMMENDATIONS

Change Key Definitions or Grant an Exemption for the CAB

- 35 The Association recommends that either the key definitions in the Bill relating to what is immigration advice and who is an immigration adviser must be changed, or that the CAB is granted an exemption, so that the provision of the generalist CAB service of information, guidance and support for members of the public with enquiries relating to immigration applications does not come under the auspices of the proposed legislation and licensing regime.

Support the CAB to Provide its Service to the Public

- 36 In the Association's response to the government's discussion document 'Options for Setting Enforceable Standards for Immigration Consultants' (June 2000), we suggested that formal relationships could be established between the Department of Labour and not-for-profits such as the CAB for provision of information, training etc as an alternative to regulation and licensing of the work that volunteers do.
- 37 We note that a report to the Canadian government in 2003 by the Advisory Committee on Regulating Immigration Consultants recommended that Non-Government Organisations who don't charge clients should be exempt from regulation, but that rather, their training and educational needs be addressed.⁴
- 38 Again, we recommend that alternatives such as this are explored as a way government can support and enhance our work and protect the ability of the public to continue to have access to independent, free, confidential and impartial community assistance.

CONCLUSION

If you have any questions relating to this submission, please do not hesitate to contact me at the Association office as per the contact details on the front page of this submission.

Yours sincerely,



Kerry Dalton
Chief Executive

⁴ 'Regulation of the Immigration Advice Industry', New Zealand Immigration Service, September 2003.