

Statement of the nature and magnitude of the problem and the need for government action

From 2000 to 2002/03, the proportion of applications using immigration agents rose from 27 to 38 percent in the case of residence applications, and from 10 to 18 percent in the case of temporary entry applications. Around 10,000 residence applications, and around 66,000 temporary entry applications, used an immigration agent in 2002/03. Immigration advice is provided by people in a wide range of occupational groupings including immigration consultants, lawyers, education recruitment agents and not-for-profit organisations, as well as personal contacts. The number of active immigration agents at any one time varies in response to immigration policy changes and other external factors. Despite likely reductions in the number of agents active in the last year, the industry appears to have grown from around 500 agents in 2000¹ to around 600 agents in 2002/03.² In 2000, around 70 percent of the agents were located onshore, and the remainder offshore.

Immigration agents offer a wide range of services to actual and potential migrants, temporary entrants (students, visitors and workers), refugee status claimants, and residence and refugee status appellants (collectively referred to below as immigration applicants). Among other things, their services include advice, assistance or representation regarding all immigration applications and appeals.

There are, however, few market incentives for agents to provide good services because immigration applicants often use their services only once, and often have insufficient information to make a well-informed choice of agent. Some immigration agents belong to industry or professional bodies which set standards for their members, but standards are variable. Immigration applicants are often unable to make use of New Zealand's consumer protection measures (such as the Fair Trading Act 1986, the Consumer Guarantees Act 1993 and the Disputes Tribunal) once harm has occurred as they are likely to be offshore, in New Zealand illegally, and/or unaware of existing legal remedies. Section 142(1)(j) of the Immigration Act 1987 makes an offence of wilfully misleading, or acting negligently or unprofessionally while assisting a person in a visa or permit application or appeal. This section has not been tested since its introduction in 1999, however, as its wording makes proof of an offence problematic.

Complaints have been made to the Minister of Immigration about both onshore and offshore agents. They have included: lodging unfounded or abusive refugee status claims without the knowledge of the client, inaccurate advice about immigration policy leading to poor and costly decisions, theft of money and documents, failing to lodge applications and appeals, failing to pass on information from the NZIS to the client, and knowingly submitting false information or fraudulent documents to the NZIS. In some cases, applicants have faced serious financial loss due to high fees, relocating countries, lengthy periods of time without employment, and then having to return home and resettle. Some have also suffered irreparable damage to careers, family dislocation, and significant personal hardship. The cumulative harm caused is significant in many cases and irreversible in some.

...[information withheld under section 9(2)(f)(iv) of the Official Information Act 1982]...

In many of these cases, when interviewed, the client had no knowledge of the refugee claim but thought they were applying for a work or residence permit. **...[information withheld under section 9(2)(g)(i) of the Official Information Act 1982]...** the "Wat Thai"

¹ Department of Labour (Immigration Research Programme) *The Immigration Consulting Industry in New Zealand* (July 2001).

² In 2002/03 600 agents lodged 50 or more temporary entry or residence applications each. This figure represents organisations rather than individuals, unless the agent did not belong to an organisation.

scam where a small group of agents lodged several hundred abusive refugee claims. All of the claims that have been determined have been declined. These people have either left New Zealand, been removed, or remain here illegally (and will be removed in the future where possible). Where a person is removed, they receive a five year ban from the country for overstaying, and are unlikely to be able to re-enter New Zealand as they would be deemed high risk.

Statement of the public policy objective

The policy objective is to establish an effective regulator of immigration agents that will:

- enhance the ability of immigration applicants to make a well-informed choice of immigration agent;
- reduce the risk of serious harm to those who use an immigration agent by creating effective incentives for agents to provide competent and ethical services; and
- provide clear and accessible complaint and redress procedures for those who use an immigration agent.

Statement of feasible options (regulatory and/or non-regulatory) that may constitute viable means for achieving the desired objective

Non-regulatory options

Status Quo (voluntary self-regulation)

The current regulation that impacts on immigration agents is as follows:

- Immigration agents operating in New Zealand are subject to normal business legal requirements and the offence provisions under section 142 of the Immigration Act 1987. Section 142(1)(j) makes an offence of wilfully misleading, or acting negligently or unprofessionally while assisting a person in a visa or permit application or appeal. A person who commits an offence under this section is liable to imprisonment for a term not exceeding three months, a fine not exceeding \$5,000, or both.
- Consumer protection measures, such as the Fair Trading Act 1986, the Consumer Guarantees Act 1993 and the Disputes Tribunal.
- Members of the New Zealand Association of Migration and Investment, the New Zealand Immigration Institute and voluntary associations of education agents are subject to their organisation's standards. Lawyers are also subject to their professional body's disciplinary processes.

The status quo was rejected in favour of the preferred option because its retention would not achieve the public policy objective.

Enhanced voluntary regulation

- Key stakeholders (existing industry and professional bodies, unaffiliated agents, not-for-profit organisations, and consumer representatives) would develop a governing body and a registration scheme for members.
- The governing body would be responsible for setting and administering entry standards, a code of conduct, and complaint and disciplinary procedures.
- The scheme would be voluntary and would not require legislation.

This option was discarded for two reasons. Firstly, an effective governing body could not be established as the industry is diverse and lacks cohesion. Secondly, there was no support for this option from stakeholders as they considered it would make no improvement on the status quo.

Regulatory options

Certification

Under this option a new Act would be developed to provide for a certification scheme for immigration agents. The Act would: reserve a title for the sole use of certified immigration agents; empower an agency to certify that individuals had satisfied certain requirements before they could use the reserved title; and empower the agency to remove the reserved title if an immigration agent fell below the acceptable standards. Certification would not be compulsory. Those who were not certified would be able to offer their services in competition with certified immigration agents, but under a different title.

Certification was discarded because it would not prevent the practices of those agents of most concern. Stakeholders did not support this option, as they considered it would allow some agents to continue to provide incompetent and unethical services, and would not address the problem.

Preferred option: licensing

Under this option a new Act would be developed to provide for the licensing of immigration agents. The detail of the legislative framework is yet to be developed. A further RIS will be prepared once that work has been undertaken.

The key features of this option would be likely to include:

- a title reserved for the sole use of licensed immigration agents;
- sanctions and penalties for unlicensed immigration agents, including allowing the NZIS to refuse to accept applications lodged by unlicensed immigration agents;
- a governing body to maintain a register of immigration agents; set entry and re-registration standards for immigration agents; and develop a code of conduct that agents would be required to adhere to;
- disclosure requirements for licensed agents such as the disclosure of immigration application success and failure rates;
- definitions of what immigration advice is, and what it is not, and therefore who is an immigration agent:
 - Immigration advice is likely to be defined as: “Advice, assistance or representations, including oral and written submissions and advice given in regard to an immigration application or potential immigration application. These include applications for temporary entry, residence, appeals, exemptions, refugee status claims and appeals, and advice given to third parties such as sponsors, employers and education providers”.
 - What is not immigration advice is likely to be defined as: “The provision of information prepared by the NZIS; directing a person to the NZIS or a list of licensed immigration agents; clerical work; translation or interpreting services; and settlement services.”
 - An immigration agent is likely to be defined as a person who provides immigration advice as defined above.
- a requirement for all immigration agents, including not-for-profit agents, offshore agents and education agents, to be licensed with the following exemptions:
 - personal contacts (a friend or relative who provides advice without charge and is not acting in their capacity as a professional or representative of an organisation); and
 - practising lawyers;
- a requirement for for-profit agents to be charged a licensing fee that covered the costs of their regulation;

- a requirement for government to contribute to establishment costs, and the costs of regulating not-for-profit agents, investigating and prosecuting unlicensed agents, and departmental costs; and
- a transitional period for those who are currently practising as immigration agents.

Options for the governing body

Industry governing body

The governing body would comprise representatives of the immigration advice industry. In addition to the key features outlined above, it would have responsibility for investigating complaints and disciplining licensed agents regarding breaches of the code of conduct. Investigation and prosecution of unlicensed agents would sit with government. This option was not recommended on the basis that the immigration advice industry is too diverse and lacks the homogenous objectives required for an industry body to function as an effective governing body that could administer the statutory framework.

Preferred option: Independent governing body

The governing body would be established either as a Crown entity or as statutory body within a government department. The body would be independent from industry and maintain functional independence from the NZIS. It would have responsibility for investigating complaints about and disciplining licensed agents, as well as investigating and prosecuting unlicensed agents. An independent governing body is likely to be informed by an advisory panel comprising consumer and industry representatives.

Statement of the net benefit of the proposal, including the total regulatory costs (administrative, compliance and economic costs) and benefits (including non-quantifiable benefits) of the proposal, and other feasible options

Immigration applicants

The cost of using the services of immigration agents is expected to increase as agents are likely to pass on the costs of licensing through increased fees. There may also be an increase in visa and permit application fees of \$2 to \$4 per application if the annual costs of regulation are recovered through third party revenue. The percentage increase would vary according to the application type: for example, the current application fee is \$85 for a visitor visa, \$140 for a student visa, \$660 for an application under the Skilled Migrant Category and \$2200 for the Investor Category.

Combined with disclosure requirements, however, licensing would improve an immigration applicant's ability to make a well-informed choice of agent. Moreover, as licensing requires minimum standards of practice from all immigration agents (including not-for-profit agents), the risk that the services of an immigration agent would be carried out incompetently or unethically would be reduced, thus reducing the risk of harm. Immigration applicants who use the services of an agent would also have a clear and accessible avenue for complaint and redress if necessary. An independent regulatory body would provide immigration applicants with enhanced confidence in the standards set and maintained for the industry, and in the administration of the complaints procedure.

Immigration agents

Under the proposal, immigration agents would bear the costs of a new licensing fee, and meeting entry, re-registration and code of conduct standards. These costs are not quantifiable at this stage, as the detail is yet to be developed, but attention will be given to ensure they are not prohibitive. It is expected that the licensing fee would be comparable, if not lower, than those set in Australia and Britain. In both Australia and Britain, the costs of licensing have not been detrimental to the immigration advice industry, rather the introduction of licensing regimes for immigration agents has been followed by an increase in the number of industry players.

By setting minimum standards and introducing clear complaints and redress procedures, licensing is expected to reduce the risk of incompetent and unethical advice being given, which would enhance the reputation of an occupation that has been widely criticised due to the practices of some agents. The proposal therefore particularly benefits those agents who already provide competent and ethical services by enhancing the reputation of the industry as a whole. Establishing an independent governing body would also ensure that the views of the diverse range of immigration agents are addressed, and that regulation could focus on problematic agents. Lawyers who practise as immigration agents would not be affected by the proposals as they are exempt from the need to meet a second set of regulatory requirements.

Government

Under the proposal government is likely to bear at least some of the costs of establishing the licensing regime (one-off costs), and the annual (ongoing) costs of requiring not-for-profit agents to participate, investigating and prosecuting unlicensed agents, and departmental costs. Establishment costs are estimated to be between \$1.9 and \$2.9 million. Annual costs for the regulation of onshore agents are estimated to be between \$1.2 and \$2.2 million for the governing body and \$0.1 and \$0.2 million in departmental costs. If offshore agents are to be included in the licensing regime, there would be additional operating costs, which will be identified in the next stage of work.

These costs could be outweighed by: savings from a decrease immigration fraud (savings could be anticipated in Crown funded areas such as border and investigations and refugee determination, and in the health, welfare and justice systems); and the benefits resulting from enhancements to New Zealand's reputation as an attractive destination for both temporary and permanent migrants. Reduced abuse of immigration policy is likely to assist government to meet its goal of maintaining trust in government. The attraction of skilled migrants, skilled temporary workers, international students and visitors to New Zealand is likely to contribute to growing an inclusive, innovative economy, and improving New Zealand's skills.

New Zealand society

New Zealand society as a whole could benefit from savings to the immigration, health, welfare and justice systems due to reduced immigration fraud. Reduced fraud relating to health and character requirements (such as declarations of diseases and criminal offences) could increase the general safety and security of New Zealanders. Moreover, New Zealand as a whole benefits both economically and culturally when skilled migrants, skilled temporary workers, international students and visitors are attracted to New Zealand.

Consultation undertaken

The Ministries of Economic Development, Justice, Social Development, Foreign Affairs and Trade, Education, Consumer Affairs, Tourism and Pacific Island Affairs, the Department of Internal Affairs (Identity Services), the State Services Commission, the Treasury, the New Zealand Police and New Zealand Trade and Enterprise were consulted in the preparation of this paper and generally agree with it. However, the Ministries of Foreign Affairs and Trade, and Economic Development, the Treasury and New Zealand Trade and Enterprise opposed the inclusion of offshore education agents in the licensing regime. It is proposed to address the concerns raised by these agencies, including risks to the international education industry and impacts on New Zealand's bilateral relationships, in the next stage of developing the model. The Department of the Prime Minister and Cabinet and the Department of Internal Affairs (Office of Ethnic Affairs) were also consulted.

In addition, a limited number of stakeholders including professionals working in the immigration advice industry, ethnic community groups, and the not-for-profit sector were sent the discussion document *Regulation of the Immigration Advice Industry* (September 2003). Feedback on the

discussion document was gathered via focus group meetings held throughout the country in October 2003 and a limited number of written submissions. Participants included members of: the New Zealand Association for Migration and Investment, the New Zealand Immigration Institute, the New Zealand Law Society, District Law Societies, Community Law Centres, the New Zealand Association of Citizens Advice Bureaux, Ethnic Councils and Pacific representatives. Most focus group participants and written submissions supported the proposal. Concern was expressed, however, that the costs should not be prohibitive, and should be shared between government, the industry and immigration applicants who use an agent. These concerns have been addressed in part by clarifying which costs will sit with government and which costs will sit with industry. The next stage of development will need to further address these concerns when assessing likely fee structures.

The proposals have also been discussed with the Australian Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) in light of New Zealand's obligations under the Trans-Tasman Mutual Recognition Arrangement. Under the TTMRA, both countries need to be confident that the outcome of each other's regulatory system jointly meets our respective objectives. DIMIA has therefore confirmed it wishes to maximise the extent to which the New Zealand and Australian regulatory requirements share similar standards and processes, and are interested in developing strategies to ensure that agents seeking reciprocal registration develop local knowledge. DIMIA are also keen to work closely with New Zealand on the regulations of offshore agents and education agents. Further consultation will be undertaken with Australia as the detail of the proposed regulatory model is developed.

BUSINESS COMPLIANCE COST STATEMENT

Business compliance costs would be incurred by immigration agents under the proposal. It is, however, too early in the policy development process to be able to identify the sources of compliance costs, other than the requirement for immigration agents to learn their new obligations and costs related to: travel for and arranging places on training courses; registration requirements (such as form filling); and training of staff in the new system and its requirements. A further RIS/BCCS will be prepared with the details of the proposal as they are further developed.

An estimated 400 agents are likely to be affected by the proposals. This estimate is based on the number of agents active in 2002/03 less the estimated number of lawyers who act as immigration agents. The number of agents active in 2002/03 represents organisations rather than individuals, unless the agent did not belong to an organisation. Organisations are likely to range from single agent organisations to firms with up to 30 staff. Further work on the actual number of active immigration agents is to be undertaken in tandem with the next stage of the proposal's development.

It is too early in the policy development process to be able to provide estimates of the compliance costs. Estimates of the compliance costs will be discussed in detail in the further RIS/BCCS.

To minimise compliance costs, it is proposed to exempt lawyers from the requirement to be licensed as an immigration agent, because they are already subject to adequate minimum standards and a disciplinary system.

The Minister of Immigration will provide a public statement on the scope of the licensing proposal once decisions have been made and further information will be provided to affected parties as the proposal is further developed.