Migration Alliance

Advancing common goals and securing common interests for migration agents

26 June 2009

Mr Peter Hallahan
Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs

Dear Mr Secretary,

RE: Amendments to Migration Regulations

Our Ref: MA Reps 1

I am writing to you in my capacity as the Founder Convener of Migration Alliance, a membership organisation for Registered Migration Agents.

We seek to have the amendments to the Migration Regulations (attachment A) referred to the Senate Standing Committee as a matter of urgency.

Our concerns are as follows:

1. The amendments were formulated without reference to the Migration advice industry, represented by the Migration Institute of Australia (MIA), or any other industry "stakeholder".

2. The Migration Alliance represents 500 Registered Migration Agents and many thousands of clients.

3. The amended regulations are stated to bring in line the "policy intent" and the wording of the Regulation. The policy intent is not stated but appears to be driven by the "contribution" component of this visa subclass which amounts to $32,725 in respect of every adult person included in the application.

4. The amended regulations create a retrospective effect to the extent that the amendments will apply in respect of undecided applications not in respect of future applications.

5. The resort to amendments in respect of unresolved applications adversely affects the interests of Australian Citizens (The Sponsors) and imposes on them a substantial impost ($32,725 minimum) by reason of both processing delays by DIAC (18 months) and "capping" gazetted for this visa class.

6. The rolling up of the applicants both future and past creates a "bound in" retrospective effect which is not clearly stated in the regulations and is prima facie offensive (in the legislative sense) because it traverses the presumption against retrospectivity enshrined in *Maxwell v Murphy (1957) 96 CLR 261*.

His Honour Dixon CJ stated the principle thus:

"The general rule of the common law is that the statute changing the law ought not, unless the intention appears with reasonable certainty, to be understood as apply to facts or events that have already occurred in such a way to confer or impose or otherwise affect rights or liabilities which the law has defined by reference to past events."

Briefly stated, the position of Migration Alliance is that the regulations as proposed are repugnant and oppressive to the legitimate interests of Australian Citizens.

We propose that the relevant legislative changes apply in respect of applications lodged on or after 1 July 2009.

We look forward to hearing from you.

Yours faithfully

Christopher Levingston

Founder Convenor
Migration Alliance