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Ministry of Business, Innovation & Employment  
**Wellington**

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Dear Jocelyn

**Potential Industry Partnership between INZ and the Immigration Professionals Industry – discussion document**

Thank you for the opportunity to comment on Immigration New Zealand's *Potential Industry Partnership between INZ and the Immigration Professionals Industry* discussion document.

The proposal outlined in the discussion document is for Immigration New Zealand (INZ) to outsource assessment tasks associated with certain applications that are lower risk and received in higher volumes, through an industry partnership. This reflects INZ's Vision 2015 of moving to an operating model based on partnerships with industry stakeholders, with the intention of facilitating INZ sharing risk and benefits with partners to enable faster and more efficient processing of low risk, high quality visa applications. It is envisaged that there will be faster and more efficient processing of specific types of applications prepared by experienced immigration professionals ("trusted partners").<sup>1</sup>

Members of the Law Society's national Immigration and Refugee Law Committee have discussed the Trusted Partnership proposal with a number of immigration lawyers, and the feedback received mirrors the concerns already discussed with you at Immigration Reference Group meetings and the recent industry workshop in Wellington. We thought it would be helpful to summarise the concerns.

**Conflicts of interest**

The first and most fundamental concern is rooted in immigration lawyers' and licensed immigration advisers' obligations to their clients, to be found in:

- The Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008: chapters 5 ("Independence") and 6 ("Client Interests"). The Rules require that lawyers "must be independent and free from compromising influences or loyalties" when providing services to clients (r.5) and must "protect and promote the interests of the client to the exclusion of the interests of third parties" (r.6).

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<sup>1</sup> Discussion document, at [3], [10].

- The Licensed Immigration Advisers Code of Conduct 2014, clauses 5, 6 and 7. The requirements are summarised in the Immigration Advisers Authority’s 2014 Code of Conduct “toolkit” at page 32, as follows: *“The principle of good faith includes the concept of ‘undivided loyalty’. That is, the adviser owes a duty to his or her client to act in the client’s best interests, free from any competing loyalties to anyone else, including themselves.”*

The Law Society considers that the delegation of immigration officers' assessment tasks and decision-making functions to Trusted Partner immigration lawyers and licensed immigration advisers would place those lawyers and advisers in an impermissible conflict of interest, as they will owe conflicting duties both to their clients and to Immigration New Zealand.

The Trusted Partner immigration lawyers and licensed immigration advisers would also be conflicted by the need to maintain their Trusted Partner status. The critical difference between immigration lawyers and licensed immigration advisers, and the airlines, education providers and accredited employers who are currently Trusted Partners, is the fiduciary duties immigration lawyers and licensed immigration advisers owe their clients. It is the responsibility of immigration lawyers and licensed immigration advisers to act in their clients’ interests, free from compromising influences or loyalties.

### **Entry criteria for Trusted Partnership**

*A minimum 90% approval rate for all applications for each of the past five years*

The requirement for entry (and continued status) as a Trusted Partner that there be a minimum 90% approval rate for all applications for each of the past five years<sup>2</sup> is highly problematic. It will incentivise and reward practitioners who refuse to work for applicants whose cases may be less than gold-plated. Immigration lawyers cannot refuse to advise and advocate for visa applicants who are not guaranteed approval. Rule 4.1.1(c) of the Lawyers: Conduct and Client Care Rules 2008 provides that lawyers are not entitled to refuse to act because of “the merits of the matter upon which the lawyer is consulted”.

As noted above, lawyers must also “be independent and free from compromising influences or loyalties” when providing services to clients (r.5) and must “protect and promote the interests of the client to the exclusion of the interests of third parties” (r.6). Accordingly, immigration lawyers may not meet the 90% approval rate because they must comply with the Conduct and Client Care Rules.

In our view, the inclusion of a 90% approval rate criterion to qualify as a Trusted Provider may be anti-competitive in relation to immigration lawyers.<sup>3</sup> The potential implications of the proposal in terms of the Commerce Act will need to be explored. The requirements of the State Sector Act 1988 for the lawful delegation of statutory functions or powers to Trusted Partners will also need to be considered.<sup>4</sup>

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<sup>2</sup> At [12(h)].

<sup>3</sup> See s 27(1), Commerce Act 1986 (No person shall enter into a contract or arrangement, or arrive at an understanding, containing a provision that has the purpose, or has or is likely to have the effect, of substantially lessening competition in a market.)

<sup>4</sup> Section 41, State Sector Act 1988.

*The company / partnership / legal entity criterion*

One of the stated benefits of the proposal to INZ is the development of “an aspirational set of entry criteria to raise the level of quality within the industry.”<sup>5</sup> The nexus between this and the requirement that the Trusted Partner be a company/partnership/legal entity is not readily apparent. Being in a company or partnership is not an indicator of an “experienced immigration professional” and there is no justification for excluding sole practitioners from the Trusted Partner programme. The exclusion of sole practitioners may be anti-competitive.

*The Trusted Partner must be based in New Zealand*

The justification for requiring that the Trusted Partner be based in New Zealand<sup>6</sup> is also unclear. This criterion does not contribute to either of the “benefits to INZ” stated at paragraph 14(a) and (b) of the discussion document. The exclusion of offshore immigration professionals from the Trusted Partner programme may also be anti-competitive.

*The Trusted Partner must have an approved internal management structure and systems including the ability to have cases 2 person checked*

It is unclear how sole practitioners or companies with one qualifying adviser/lawyer will meet this criterion. Will they have to enter into arrangements with third party advisers to peer review cases? Such arrangements raise issues of confidentiality and additional unnecessary cost to clients.

It is also unclear how much experience the second person must have. Would that person also have to have five years’ continuous registration with the Immigration Advisers Authority (IAA) or New Zealand Law Society (NZLS)? If that were the case, in reality the minimum criterion for a Trusted Partner would be two people with five years’ continuous registration with IAA or NZLS.

**Unfair commercial advantage**

The Trusted Partner proposal, if implemented, could force some immigration lawyers and licensed immigration advisers out of the market purely because they have not entered into a commercial agreement with Immigration New Zealand. A significant reduction in the pool of immigration professionals would mean a reduction in the choice available to applicants.

A related concern is that the proposal could lead to Trusted Partners becoming a monopoly provider of all types of immigration services. The status of the “Trusted Partner” brand is likely to be used improperly as a marketing tool, and will have consequences which are not currently anticipated by Immigration New Zealand.

**Conclusion**

Unfortunately it is our view that the proposal scoped in the discussion paper should not proceed any further. The Law Society does however appreciate INZ’s consultation with the immigration industry, including through the Immigration Reference Group, and we are strongly in favour of initiatives to improve the quality of applications submitted to INZ and INZ’s service delivery. There may be alternative proposals that better advance those aims, and we would be happy to work with INZ on any such proposals in future.

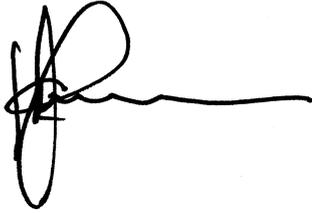
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<sup>5</sup> At [14(b)].

<sup>6</sup> At [12(b)].

If you do wish to discuss these comments, please do not hesitate to contact the convenor of the Law Society's Immigration and Refugee Law Committee, Marcus Beveridge, through the Committee secretary, Rhyn Visser (phone (04) 463 2962 or email [rhyn.visser@lawsociety.org.nz](mailto:rhyn.visser@lawsociety.org.nz)).

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized initial 'C' followed by a horizontal line extending to the right.

Chris Moore  
**President**