Media Release

Law Council
OF AUSTRALIA

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Independence and high standards ensure lawyers help migrants access justice

An independent legal profession plays a vital role in ensuring everyone in Australia, including migrants, can understand and assert their rights under the law.

"Lawyers acting in migration matters are bound by the same stringent ethical and professional obligations as every other lawyer, including the duty never to mislead a court, tribunal or government decision-maker. Where those obligations are breached, there should be consequences, and the regulatory framework in every state and territory provides for them," Law Council President Tania Wolff said.

"If the Department holds evidence of misconduct, it should be referred to the relevant regulator without delay. Regulators can investigate and impose a range of sanctions, including fines, conditions on a practising certificate, suspension or removal from practice. Courts can also refer practitioners to regulators.

"Great care is needed, though, not to suggest a systemic failure across the profession. Migration law is complex, the stakes for clients are profound, and independent legal advice is part of how the system works fairly.

"A lawyer's paramount duty is to the court and the administration of justice. Lawyers must exercise independent judgement rather than act as a mouthpiece for their client, and must not engage in conduct likely to diminish public confidence in the administration of justice. In migration litigation, the *Migration Act 1958* (Cth) also requires lawyers to certify that proceedings have reasonable prospects of success, and those who encourage hopeless proceedings can face personal costs orders."

Ms Wolff said some of the matters raised today needed to be understood in context.

"Without knowing the facts of particular cases, it's important to understand that the Minister's personal power under section 351 of the Migration Act to make a more favourable decision in the public interest is generally only available after a visa has been refused and that refusal affirmed by the Administrative Review Tribunal. For people with genuinely compelling circumstances, that may be the only pathway available. Where a lawyer is open with the Department and the Tribunal about why an application is being made, following the process Parliament designed is not improper.

"The Law Council stands ready to discuss any genuine concerns with the Government. We urge consultation with the profession and underline the need to preserve its essential independence."

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