



Draft Minutes: Meeting with the Law Council of Australia and the NSW Legal Services Commission

Tuesday, 8 December 2015, Time (11.30-13.30)

Location: Level 10, Office of the MARA, 111 Elizabeth Street, Sydney

Attendees:

s. 22(1)(a)(ii) s, Regional Director NSW/ACT DIBP
s, Director Network Planning & Support, Correspondence a & VEVO, DIBP
e, Ass Dir Network Planning & Support, Correspondence a & VEVO, DIBP
A/Assistant Secretary, Planning Design & Assurance, DIBP

(Via teleconference)

s. 22(1)(a)(ii), Ass Dir Migration Planning and Stakeholder Engagement, DIBP
(Via teleconference)

s. 22(1)(a)(ii) Director Review Implementation, OMARA, DIBP

s. 22(1)(a)(ii), Director Registration, PD & Monitoring, OMARA (current),
Director Professional Standards and Integrity, OMARA, DIBP (from 1/01/2016)

s. 47F(1), Chairman of the Migration Law Committee of the Law Council of Australia
SW Specialist Accreditation Immigration Law Advisory Committee LCA
s, Past President of the Law Council of Australia, LCA
s, Migration Law Committee, LCA
s, NSW Legal Services Commissioner
Assistant Legal Services Commissioner (Complaints)

Agenda Item 1 – Introduction

Agenda Item 2 - Kendal Review: Recommendation 1

DIBP advised that it is hoped to have the relevant legislation introduced in the Autumn 2016 sittings, however it will be up to the Government to determine the priority of competing bills. DIBP advised that it is not possible to provide a more definite timeframe for the implementation of this Recommendation at this time.

DIBP confirmed that the legislation that is being drafted only relates to Recommendation 1 and legislative changes that may be required to implement other Kendall Review recommendations would be separately drafted.

DIBP also advised that the arrangements for the Independent Reference Group (IRG) for the OMARA have now been finalised and we are pleased that s. 47F(1) has accepted the offer of an appointment to this group. Recommendation 24 of the Kendall Review recommended the establishment of an IRG.

Action Item: DIBP to advise the LCA and Legal Services Commission/s of the progress of legislative changes and other matters related to the implementation of Recommendation 1.

Agenda Item 3 – Un-finalised OMARA Complaints in respect of lawyers – transitional arrangements

DIBP provided a current statistical overview of the numbers of agents who hold PCs and of the number of open complaints in regard to these agents.



DIBP also advised that every effort would be made to finalise complaints in regard to lawyers prior to the legislative changes coming into effect. However, both the LCA and the NSW LSC did accept that un-finalised complaints would be transferred to the relevant jurisdictions for consideration.

During the discussion it was noted that DIBP will need to liaise with the equivalent bodies to the NSW Legal Services Commission in each state and territory.

Following considerable discussion a number of action items were identified.

Action Items:

- DIBP to work with the LCA and the NSW LSC to develop scenarios that identify transitional issues – LCA will prepare the final document
- DIBP to seek legal and policy advice in regard to the issues outlined in these scenarios

Agenda Item 4 – Communication Strategies

DIBP advised that in transitioning to the new regulatory arrangements, specific communication strategies about the changes and the timing of these changes will need to be put in place for the following target groups:

- Consumers – including information in community languages
- Registered Migration Agents and Lawyers; and
- DIBP staff

DIBP also advised it will review Departmental information products and forms to ensure clear information to consumers. DIBP has noted a suggestion from the LCA that DIBP correspondence, forms and websites be amended where there is any mention of an RMA to refer to “an RMA or an Australian legal practitioner who practices in migration law”.

DIBP noted that the effectiveness of these communication strategies will be maximised if DIBP, the LCA and each of the Legal Services Commissions provide consistent messaging.

The NSW LSC advised that there is a monthly teleconference of all the Australian Legal regulators and this could provide an effective mechanism to engage with all of these bodies. The NSW LSC advised that the next scheduled teleconference is Friday, 18 December and an undertaking was given to advise the group of the matters raised at this meeting and seek their agreement for DIBP to participate in a future teleconference.

Action Items:

- DIBP to draft messaging and communication products and then consult with the LCA and the Legal Services Commissions for the input prior to finalising the communication strategies.
- DIBP to review and amend all Departmental forms, correspondence, other communication products and website material to reflect the arrangements post-implementation of the Recommendation 1 of the Review. DIBP to consult with LCA once a replacement text/s have been drafted for comment.



Agenda Item 5 – Information Sharing

DIBP advised that post the implementation of Recommendation 1 of the Review there would be a need for certain information to be shared between the DIBP and the LSC/or equivalent in each state and territory.

The consensus reached at the meeting was that Memorandums of Understanding with each jurisdiction may be required to define and also facilitate any necessary information exchange in the future.

The NSW LSC advised that it would be important for DIBP to engage with the Trust Account Inspectors in each jurisdiction to inform them of the impending jurisdictional changes and to discuss any relevant issues that may emerge from their point of view.

Action Items:

- DIBP to work with the LCA and the NSW LSC to develop scenarios to identify examples where future on-going information exchange may be required to inform the drafting of MOUs with all Australian Legal regulators.

Agenda Item 6 – Other Business

- DIBP asked if PC holders have a unique identifier, such as a MARN, that could in the future assist DIBP to identify individual PC holders.

The LCA advised that there are differing practices in each state and territory. The LCA undertook to provide a summary of the practices in each state and territory.

- The LCA requested a state by state summary of the numbers of current PC holders who are currently registered with the OMARA. DIBP agreed to provide this summary.
- DIBP Planning, Design and Assurance Branch advised that it is actively looking for opportunities to engage with stakeholders in the new year.
- Next meeting: the end of February 2016 tentatively identified for the next meeting.

Action Items:

- LCA to provide DIBP with a document summarising how PC holders are identified in each jurisdiction across Australia
- DIBP to provide the LCA with a state by state summary of the numbers of current PC holders who are currently registered with the OMARA
- DIBP to distribute minutes and arrange next meeting



MIGRATION PROFESSION REFORM

THE CASE FOR AN INDEPENDENT
IMMIGRATION COMMISSION

Migration **Alliance**



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under the Freedom of Information Act 1982

THE CASE FOR AN INDEPENDENT IMMIGRATION COMMISSION (IC) Call for submissions

Introduction - The IC's Remit

Migration Alliance holds the view that the profession requires an Independent Immigration Services Commissioner (IC). It is our view that this be established under the Migration Act 1958 (the Act) as an independent, Executive Non-Departmental Public Body (ENDPB).

We believe that the IC should be sponsored by the Department of Immigration and Border Protection (DIBP). The Immigration Services Commissioner and the Deputy Commissioner would be appointed by **the Minister for a fixed term** and through that, be accountable to Parliament.

Consumers of immigration advice and services are often among the most vulnerable - and often disadvantaged - members of our society. The IC would have two primary functions.

First, protecting those who seek, or may seek, immigration advice and/or services by ensuring that those who are allowed entry into, and to remain in, the regulatory scheme are fit and competent to operate at their IC authorised 'Advice Level' as a Registered Migration Agent.

Second, working with other law enforcement organisations such as the police and DIBP Investigations and Compliance branches, to identify, deter and, as necessary, take action against those who seek to operate illegally.

The IC would therefore perform an important role in maintaining continued confidence in the Australian immigration advice sector for users, the Government, the judiciary and the public generally.

The Commissioner would have statutory regulatory, ombudsman and law enforcement responsibilities. The latter two are closely allied to, and directly supportive of, the Commissioner's regulatory duties.

The Commissioner's main roles would be:

- To maintain a robust regulatory regime;
- Operate a complaints scheme;
- To seek out and take action against those operating illegally; and
- To promote best practice, as far as possible, within the immigration advice sector.

The IC regulatory requirements would need to be contained in a newly established Commissioner's *Code of Practice* and *Rules*. The IC would assist the public by providing information including a list of Registered Migration Agents, to help them make informed decisions.

As of 30 June 2013 there were 4899 persons registered as migration agents (4.3% increase in number of agents in previous year).

As at 30 June 2014 it was reported at the NSW CRG by the CEO of the OMARA, that there are now 5200 migration agents. What is not clear from the Office of the MARA's annual report is the number of organisations directly involved in the provision of migration advice in Australia.

It is our view that organisations also need to be regulated by the proposed IC. The great majority of these organisations are small and medium sized organisations which play an important role in their respective communities.

The Commissioner would also have regulatory oversight responsibilities for those who are regulated by the Designated Professional Body in New Zealand and require mutual recognition in Australia.

The IC should take a proportionate, risk-based, targeted and transparent approach to its regulatory activities, focusing its finite resources on those areas where clients are at greatest risk.

While the IC would operate independently of government, the IC would need to take special note of the DIBP's objectives in developing the planned IC.

Preparing for the IC's Future

Like other professional bodies, the IC should be included in what we propose as a Coalition Government's 'Arm's Length Body Review'.

The IC would need to be mindful that it is public taxpayers' money plus fees for re-registration by Registered Agents that will fund its work. It must continually seek to find efficiencies and make savings. A significant business improvement exercise would need to be undertaken to examine the current Office of the MARA processes with particular reference to the work of its operational teams. At first assessment, having reviewed the annual reports of the OMARA over the last 3 years, we propose that a newly formed IC would need to extensively refine its casework and complaint processes and structures to be more in line with those such as the Law Society of NSW and other peak associations in the Legal Professions across Australia.

That exercise would assist the proposed IC to deliver much greater efficiencies than the way the Office of the MARA currently works and, in so doing would allowed it to maintain the quality of its work while coping operationally within budgetary constraints.

The proposed plan for a newly formed IC needs to focus on improving the organisation's effectiveness. Migration Alliance is convinced that this is the right path for this profession, as immigration controls tighten and people become more desperate to gain entry or remain in Australia, the importance of good immigration advice will only intensify.

Further, initiatives being developed by other regulators, such as the Legal Practitioners Board, Law Societies and Law Council will require the IC to work with them as legal sector stake holders. Others will no doubt be influential regarding future thinking and actions.

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The Landscape

In considering what is the best strategy for achieving greater effectiveness, careful consideration needs to be given to the current OMARA and future IC operating environments. Particular note should be taken of the following:

- Public sector finances – the IC budget is not large, and there is no current expectation that it will increase significantly from the time it takes over from the Office of the MARA and the period of years thereafter
- The Migration Advice Sector – the expectation is of a continual decrease in the number of not-for-profit (NFP) organisations due to reductions in their sources of funding and the re-definition of 'not-for-profit' in the context of those agents who are salaried by NFP.
- New methods of giving immigration advice and assistance - technology and social media are likely increasingly to influence the means and methods of giving immigration advice and services and how immigration organisations operate.
- Litigation – based on recent experience, we expect the volume of serious and complicated civil and criminal litigation with which it is involved (ranging from Tribunal appeals, criminal prosecutions, civil litigation and judicial reviews) to increase.
- Government immigration policy – changes in Government immigration policy and in Australia's operations and policies would affect the IC, and we would need to be able to respond rapidly to such developments in order to be ready for their impact on the sector and thus its regulation.
- IC's operational logistics – the current Office of the MARA lease on their current offices is an overwhelming and unnecessary blow-out expense. Migration Alliance views this as an opportunity to reconsider working patterns and practices, location and prestige of office space and reduction in overheads whilst maintaining and exceeding integrity and performance levels.

The matters listed above are relevant. We hope that there will be an opportunity for a change to our legislation to initiate the new Commissioner's powers.

Delivering our Work

The public interest and those we regulate would be at the centre of the IC's work. Any plans designed would need to keep in mind the landscape described above. If an IC is appointed then it would need to strive to continue to improve the efficiency and effectiveness of the OMARA's current regulatory activities in accordance with a newly developed statutory remit in order to provide excellent value for money regulation. In line with this an IC would need to continue to operate a fair and proportionate regulatory scheme for the Australian immigration advice and services sector, maintain appropriate corporate governance and reporting systems and ensure that the IC remains financially viable and compliant with government and legal requirements.

Migration Alliance believes that a new IC's attention should be on refocusing activities and targets in line with the strategies described in this proposal. This would require reconsideration as to what constitutes successful outcomes for the IC, as against what constituted successful outcomes for the Office of the MARA. The IC would need to re-evaluate the current work streams – operational and support, including the use of contractors to fulfil duties which could be performed internally within the IC. We expect this will lead to substantial reprioritisation and redirection of the proposed IC's activities the IC doing more in some areas and less in others or working differently.

Aim One: *Place greater emphasis on ensuring that those who wish to enter the IC scheme, or are regulated and wish to move to a higher IC Advice Level, being able sufficiently to demonstrate that they are suitably fit and proper, competent persons.*

Competence

Ensuring that clients receive good advice and assistance from Registered Migration Agents is the primary focus of the regulatory scheme. This aim builds on solid, established foundations to ensure that those wishing to give immigration advice and/or services are capable of doing so.

Evidence of Eligibility

The evidence produced by applicants – advisers and organisations – for entry into the scheme would need to be carefully examined and evaluated; and the same would be true if an adviser wished to work at a higher Advice Level.

Character Checks

The OMARA currently require the production of a satisfactory Criminal Records check; full, verifiable details of the applicant adviser's training and experience; as well as requiring everyone in the scheme to have been tested on their competence.

Audits

Business details including financial information must be provided, and, if required, compliance with a pre-registration audit.

- The work to be done by the proposed IC regulated organisations would need to be subject to regular audits.
- The frequency of audit is determined according to an assessment of risk to clients and to the public.
- All regulated organisations would need to receive a premises audit by the end of their first year in the scheme.

CPD

All Registered Agents – for profit and not-for-profit - must meet annual Continuing Professional Development (CPD) requirements.

Complaints

The IC would need to investigate complaints of allegations made by clients and others of improper behaviour relating to service or conduct, and such investigations would be one of the Commissioner's most important monitoring tools.

Eligibility for Applicants

Based on the information contained in the Office of the MARA annual report 2012-2013, it is proposed that a newly established IC would need to make changes to how it considers applications to join the regulatory scheme and from those wishing to increase their authorisation. This will focus on the following:

- Developing definitions of the terms "fitness" and "competence" and "proper person" under the Act
- Increasing the checks carried out on applicant organisations and the individuals within them including Directors and Trustees

- Implementing a new competence assessment regime for newly registering agents that will test both knowledge and written English skills. The assessments will only be available to those who have demonstrated a clear commitment to becoming an immigration adviser through experience, qualifications and/or training

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High Level Objectives

- implement changes to operational approaches and activities to align them with this Aim, as appropriate
- identify outcomes that, if achieved, will demonstrate that the IC has met this Aim
- during the year pilot new measures that will confirm what progress is being made towards achieving those outcomes

Aim Two:

Require regulated advisers and their organisations to assume greater responsibility for ensuring their own continued fitness and competence

The IC would need to provide increased support to regulated advisers in how to deal with client dissatisfaction and formal complaints by, for example, developing a model "investigation findings" template document.

Consideration will be given to authorised supervision of a prospective adviser for CPD purposes, and to exploring access to courses on business and financial management which new advisers would be expected to take within a specified period of admission to the regulatory scheme.

A new IC CPD website is proposed. This will provide advisers with immigration courses that can be updated quickly to reflect changes to Australian Migration Acts, Regulations and Policies without the current 6+ week's delays for approval for such courses by the Office of the MARA.

High Level Objectives within first two years of IC operation

- Continue to review operational approaches and activities and to align them with this Aim, as appropriate
- identify outcomes that, if achieved, will demonstrate that the IC has met this Aim
- during the year pilot new measures that will confirm what progress is being made towards achieving those outcomes

Aim Three:

Identify and take enforcement action against persons and organisations acting improperly focusing particularly on those that may be causing the most harm or posing the greatest threat to consumers; and, wherever possible, doing so by taking a collaborative, multi-disciplinary approach both internally and externally.

This aim is focused on improving the enforcement regime currently in place at the OMARA; ensuring that the IC's regime is more robust and effective. The aim is two-pronged including both regulated advisers who may be falling below the required standard of competence and fitness for their Advice Level and persons or bodies operating outside of the regulatory regime and thus illegally.

The IC would need to begin implementing practices that will make it more proactive and focussed in gathering information to identify individuals and organisations causing the most harm both in the regulated and the unregulated sector.

As part of this, the proposed IC would work to increase links with other regulatory bodies to gain and have a better well informed understanding of the legal advice sector. The IC would also begin to put in place arrangements that make it easier to access information about suspected harmful activities to report same to the IC.

The IC will use the information gathered to help identify individual advisers and organisations that are causing serious harm to clients and to the immigration process and to identify trends in how abuse is being carried with the result of ensuring a greater clarity about problem areas.

High Level Objectives Continued

- implement changes to operational and support service activities in line with the strategic aim
- continue to improve intelligence links with Australian regions that specialise in casework
- during the first year pilot new measures that will demonstrate progress towards meeting this Aim

Aim Four:

Advertise, promote and spread the message about using a Registered Migration Agent and good practice throughout the sector.

The proposed IC would establish workshops and a Commissioners' programme of informal meetings with small groups of advisers, together with a rolling programme of published guidance notes, advertising and other adviser oriented publications to educate the public and contribute to the proposed IC's delivery of sector improvements. The IC would need to intend to continue these initiatives as well as working with a Commissioner's Adviser Panel.

High Level Objectives – Continued

- Create a cycle of workshop events and a Commissioners' programme of meetings with advisers
- concerning the creation of the *Commissioner's Code* and Rules, conduct the first consultation on the underlying principles and content of those documents and prepare, in light of responses received to that consultation, for the second consultation on the draft Codes and Rules

Aim Five:

Seek to raise further the IC's profile and influence.

It is important that those who may need immigration advice or services, those who wish to complain about the advice or services they have received, those who may be considering working in the immigration advice sector and those involved in the wider immigration environment know about the IC's existence and what it does and is doing. Considering the IC's limited resources, it has always taken a targeted approach to reaching relevant audiences.

High Level Objectives – Continued

- concentrate on highlighting the proposed IC's work to Government Ministers and MPs, DIBP, officials of other departments and other stakeholders, as relevant
- keep under review and develop communication links with sector stakeholders and media outlets, particularly those aimed at immigrant communities.

Aim Six:

Maintain motivated and dedicated staff equipped to do the job.

The IC would need to provide suitable accommodation for staff and invest in their learning and development with a view to assisting them not only in the delivery of business outcomes but also for their own personal growth and development.

High level Objectives - Continued

- Review of Training and Development:
 - o consideration of a restructuring of the induction programme for new staff to specifically incorporate consideration of their particular training needs
 - o create greater consistency across both the Operations and Support teams by developing a better system for prioritisation of training and development; and
 - o develop a more systematic approach to staff applications permission for learning and development opportunities
- successfully relocate to suitable new, less expensive accommodation by the end of the first financial year
- work towards the development of an IC specific pay remit for implementation within the period of the first two years

How We Will Monitor Performance

During the first two years of the proposed IC it would need to work towards finalising performance measures that will demonstrate specific outcomes of the implemented strategies. The intention is for all or some of those measures to be piloted in the second half of the time period. Until then it would be proposed that the IC would develop and improve the OMARA's current KPI systems. A proposed KPI table can be found at Annexure A.

Managing Risk

The IC would need to address the following:

- To take responsibility for risk management seriously and put in place comprehensive arrangements to achieve this.
- All IC staff would need to have responsibility for the identification, monitoring and mitigation of risks to the IC's work programme.

- Each team within the organisation would need to maintain a detailed register of risks associated with its day-to-day operations, ensuring that all are familiar with the IC's appetite for risk and the part all play in its control.
- The risks identified at team level feed in to the corporate risk register maintained by senior management and would need to be reviewed on a quarterly basis by them and the IC's Audit Committee (proposed to be composed of independent, non-executive members) respectively.

Annex A

| | Target |
|--|--------|
| KPI 1*: New Applications | |
| a) Percentage of completed Level 1 applications closed within 3 months of receipt | 75.0 |
| b) Percentage of all completed applications closed within 6 months of receipt | 85.0 |
| KPI 2*: Continued Registration | |
| a) Percentage of "straightforward" completed applications decided within 15 working days of receipt | 90.0 |
| b) Percentage of completed applications decided within 3 months of receipt | 80.0 |
| c) Percentage of completed applications decided within 5 months of receipt | 95.0 |
| KPI 3: Audits | |
| Number of audits to be undertaken in the Business Year | 350 |
| KPI 4: Complaints | |
| a) Percentage of complaints about IC advisers closed within 6 months of receipt | 75.0 |
| b) Percentage of complaints about IC advisers closed within 12 months of receipt | 95.0 |
| KPI 5: Appeals | |
| Percentage of Commissioner's decisions to stand following an appeal lodged with the First-tier Tribunal (Immigration Services) | 75.0 |
| KPI 6: Unregulated Organisations | |
| Number of unregulated organisations identified in the Business Year | 400 |
| KPI 7: Unregulated Organisations | |
| Resolve the status of unregulated organisations | 200 |
| KPI 8: Internal Response Targets | |
| a) Percentage of applications acknowledged within 5 working days of receipt | 95.0 |
| b) Percentage of written complaints acknowledged within 5 working days of receipt | 95.0 |
| KPI 9: Internal Response Targets | |
| a) Percentage of undisputed invoices paid within 10 working days | 70.0 |
| b) Percentage of undisputed invoices paid within 20 working days | 90.0 |
| c) Percentage of undisputed invoices paid within 30 working days | 100.0 |

*Explanatory Note

It is expected that during the second half of the time period that the IC would need to pilot several KPIs that are more outcome focused. Changes to the competence assessment test programme for Levels 2 and 3 advisers, which need to be implemented in the second period. Levels 2 and 3 competence assessment tests will be offered on a quarterly basis. Agents applying to work at those levels will also be expected to have passed the Level 1 assessment before attempting the higher level test. This means that an agent's application for Level 2 or 3 regulation could take as little as six weeks to process or as much as 14 or more weeks depending on when their completed application was received. Further, it is expected that additional checks will be introduced on new applications in order to provide the IC with greater assurance of fitness and competent, and that these will also lengthen the process. Target 1b has therefore been set to 85%.

From: s. 22(1)(a)(ii)
To:
Cc:
Subject: RE: Case studies on complaints arrangements under the Migration Agent reforms [SEC=UNCLASSIFIED]
Date: Friday, 22 April 2016 1:13:57 PM

Dear s. 22(1)(a)(ii)

Thank you for the comments on the case studies work – I'm happy that I don't need to do detailed business process designs for the various scenarios, which will save me quite some time!

s. 45(1)

Do you have a timeframe by which you need comments and suggestions?

Kind regards

s. 47F(1)



s. 47F(1) **Director Regulatory Policy and Research**
 Law Council of Australia
 19 Torrens Street Braddon ACT 2612

s. 47F(1)

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From: s. 22(1)(a)(ii)
Sent: Tuesday, 5 April 2016 5:17 PM
To: s. 47F(1)
Cc: s. 22(1)(a)(ii)
Subject: Case studies on complaints arrangements under the Migration Agent reforms [SEC=UNCLASSIFIED]

UNCLASSIFIED

Dear s. 47F(1)

You sent us some case studies for comment in January relating to the implementation of Review Recommendation 1 – removal of lawyers from migration agents registration. I apologise for the delay in responding to you.

We have now considered the case study ideas you proposed and can provide our feedback.

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In summary, we are seeing the situation a little more simply than the 12 case studies you suggested. We consider that after implementation of the legislation, the OMARA will no longer have any jurisdiction over lawyers who were former migration agents. There will be no opportunity to continue to deal with cases on hand at the time the reforms commence as we will no longer have any jurisdiction. We therefore propose to hand over any cases involving lawyer migration agents who hold a PC, to the respective Legal Services Commissioner. Similarly, any cases involving lawyer agents that are received after implementation will need to be handed over. You may recall from our meeting in Sydney, we plan to ensure that as few cases as possible will need to be handed over, by finalising or closing as many as we can in the lead up to the implementation date.

Further, we propose that there should be no joint handling of cases – either the LSC investigates or OMARA investigates, but not both. This would apply in the situation of Case Study 3, where a non-lawyer RMA works in a law firm and the complaint is about immigration assistance. We propose that the body receiving the complaint should assess it and either decide to take action or refer the matter. So if the OMARA received the complaint and decided to investigate the RMA's behaviour under our Code of Conduct, it would do so and then make the findings available to the LSC. They could then consider the matter within the legal profession legislation to determine if action needed to be taken against the law practice.

We acknowledge that there are differences between our respective complaint handling processes, remedies and sanctions. It will not be possible to align these in the lead up to the implementation of Recommendation 1, so they will remain out of scope. The remedies and sanctions that are applied will depend on the jurisdiction handling the complaint.

We do however, recognise that some legislative change may be required to facilitate the sharing of information and we will pass these onto our Policy area to inform the legislative drafters. Specifically, we thought change may be required in these areas of the Migration Act:

- S319 - our power to refer the conduct of an RMA who holds a PC to the Legal Services Commissioners. This may need to be amended to allow for those RMAs working in legal firms who do not hold a practising certificate.
- S321A and Reg 9B of the Migration Agents Regulations – our powers of disclosure. This may need to allow for OMARA to be able to provide information to the relevant Law Society or LSC.
- S305C – requiring RMAs to give information or documents. We will need to require law firms who employ RMAs to give us information, or access to files or records especially if the RMA is no longer employed by that law firm. Is there any scope for the LCA to retrieve files or information and then we establish an MOU with the LCA?

We also recognise that there could be RMAs who later obtain a PC, so they may fall under our jurisdiction as a former RMA (inactive agent) but also fall under the legal profession jurisdiction. The reverse may also apply where a lawyer agent chooses to relinquish their PC to remain as an RMA. We should consider how these cases would be handled. While we want to ensure that no agent is penalised twice under both jurisdictions, we also need to avoid a potential loophole, so that an RMA who is performing poorly is not able to work in a legal practice and escape OMARA's jurisdiction.

Kind regards

s. 22(1)(a)(ii)

Assistant Director Review Implementation

Office of the MARA

Department of Immigration and Border Protection

P: **s. 22(1)(a)(ii)**

E: **s. 22(1)(a)(ii)** [@mara.gov.au](mailto:s.22(1)(a)(ii)@mara.gov.au)

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SUMMARY OF DISCUSSIONS – OMARA AND LCA

MEETING IN CANBERRA ON 17 MARCH 2016 RE CODE OF CONDUCT

In attendance: s. 22(1)(a)(ii), s. 22(1)(a)(ii) (LCA), s. 22(1)(a)(ii), s. 22(1)(a)(ii) (OMARA)

- Code of Conduct should be principles based to avoid argument over words. Further explanation and definitions can be provided in supporting documents.
- Need to be more prescriptive over the role of an RMA – no reason to ever be an authorised recipient, can't ever opt out of RMA role as employer or AR.
- Current Code is a mix of standards and practice which should be separated. The Code should be the rules. Behaviour should be covered in supporting documents.
- Fit and proper should be defined in legislation as for lawyers. This is supported by the Courts.
- Those who are not fit and proper would be more likely to lodge visas that are not in the national security interest. We should advocate for change to be the best regulated system in the world.
- No problem with removing the Code from the Regulations into an Instrument. BUT need to also fix our sanction regime as part of Omnibus legislative change.
- Lawyer conduct rules do not countenance best practice or minimum standard. Courts look at best practice and competence.
- We need to raise the profession from being a number (MARN focus) to the privilege of being licensed to practise where others are refused.
- Part 10 – s. 47C(1) [REDACTED]. Agents should have a statutory obligation to step in and help others. It is the mark of a profession and part of raising the standards.
- Commissions are a problem if not disclosed. Lawyer rules require disclosure and informed consent of client. Lawyers must take reasonable steps to ensure the client understands.
- Since the introduction of the Conduct Rules, numbers of prosecutions have reduced as well as insurance claims.

COMMENTS ON SANCTION REGIME

- Need to be able to deal with unsatisfactory professional conduct, not just misconduct.
- Legal profession suspends immediately if criminal charges, and then investigates for cancellation following conviction. Lawyer must 'show cause' why they shouldn't be suspended.
- We should look to limit review rights to certain sanctions only.
- Sanction decisions could be made by a three person tribunal/committee perhaps chaired by a retired judge, with review rights to the Federal Circuit Court.
- Need to deal with agents with off-shore practices in legislation. RMA is responsible for ALL aspects, regardless of their relationship to the business if their MARN is used. That is, they do not need to be the employer.
- In legal profession, certain behaviours are classified as misconduct.
- There is a greater range of complaint remedies for lawyers such as:
 - Compensation orders

- Redo work at no cost
 - Suspend until training undertaken
 - Find a supervisor (and have no direct client contact).
- RMAs who lack sound knowledge should be restricted to only work in certain visa sub-classes for a period of time.
- Need more power to sanction without exhaustive witness statements, eg on referral from Tribunals.

ACTION ITEMS

- s. 47F(1) will send an email about exchanging information with the LSCs. Possibly this needs to be included in the current Bill, rather than in MOUs.
- The LCA is working on a matrix of other professions and their sanction regimes. This would be a useful lever for broader legislative change.
- Arrangements for access to files after dual regulation ceases, where an RMA works in a lawyer business, need to be resolved. s. 47F(1) is working on this and will share information.