



MIGRATION PROFESSION REFORM

THE CASE FOR AN INDEPENDENT
IMMIGRATION COMMISSION

Migration **Alliance**



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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.

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%.