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Australian Government
Department of Home Affairs

PDR: MB20-001391

Information Request

On Friday 28 August 2020, your Office requested talking points for Senator the Hon Linda Reynolds CSC to respond to s. 47F(1) email of 3 August 2020 regarding the Migration Agents Instruments Review. Ministerial correspondence (MC20-023446) addressing s. 47F(1) email was sent to s. 47F(1) on 9 September 2020

Response

1. Talking points are as follows:

- The Migration Agents Instruments Review (the Review) and the related discussion paper 'Creating a World Class Migration Advice Industry' is a review of the existing regulatory framework.
- The current Review is **not** founded on the passage of the Migration Amendment (Regulation of Migration Agents) Bill 2019 (the legislation) through Parliament on 15 June 2020.
 - Removal of lawyers from the scheme was a recommendation of the 2014 Independent Review of the Office of the Migration Agent's Registration Authority (the Kendall Review).
 - The legislation was initially introduced under the previous Parliament and was again introduced with minor amendments in February 2019.
 - The legislation removes unrestricted legal practitioners from the regulatory scheme governing migration agents, which will occur from March 2021. Accordingly, unrestricted legal practitioners are not within the scope of the Review.
 - This change resembles arrangements in Canada, the United Kingdom and New Zealand, where there is no dual regulation of lawyers for lawyers providing immigration assistance.
 - Australia has been the only country to require migration lawyers to be regulated as migration agents in order to practice in this area.
- The Department of Home Affairs is conducting the Review to develop reform proposals for strengthening the legislative framework governing Australia's migration advice industry.
 - The Government has a vision of making the industry world class, to better protect consumers and ensure the integrity of the Australian migration program.
 - The review is designed to better support the sector, while also taking into account any regulatory impacts that may impact upon practitioners.
 - Registered Migration Agents (RMAs) are integral to effectively delivering the Government's economic objectives by facilitating legitimate and beneficial migration to Australia. In the first half of 2019-20 (prior to COVID-19), RMAs lodged more than 220,000 visa applications, just under 10 per cent of all visa applications lodged.

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- However, there are some RMAs and unlawful providers of immigration assistance who exploit both Australia's immigration system and vulnerable people seeking to come to Australia.
 - The Review is necessary to strengthen the migration advice industry and improve consumer protections.
- The discussion paper sets out the approach for the Review and seeks stakeholder views on the scope for industry reform, including a range of suggestions for creating a world class industry.
 - These suggestions were received from a range of sources, do not necessarily represent Government policy and do not presuppose any specific outcome.
 - Views of all stakeholders received during the public consultation will be taken into account.
- The Government has just completed a public nomination process for representatives from the sector and the community to make up a Migration Advice Industry Advisory Group to the Assistant Minister for Customs, Community Safety and Multicultural Affairs.
 - This Group will have a wide range of representation from across the migration advice industry to reflect diverse industry needs.
 - Membership of this Group will be announced this year.

Cleared By:	Alison Garrod
Position:	A/g Assistant Secretary
Branch:	Immigration Policy Framework Branch
Date:	15/09/2020
Phone:	Ph: s. 22(1)(a)(ii)



MEETING BRIEF

MINISTER: Jason Wood

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

Migration Advice Industry Advisory Group Meeting
11.00am-12.30pm Thursday 19th November – Videoconference (Webex)

Person/ Organisation

Attendees are members of the Migration Advice Industry Advisory Group (Advisory Group), and include representatives of industry, non-government organisations, academia, culturally and linguistically diverse community members, and the Administrative Appeals Tribunal.

Has the Minister met with this person/organisation in the past?

You met with a number of the attendees during the migration advice industry meeting that you chaired on 23 July 2020 under the auspices of the Advisory Group, prior to formalising the Group. This is the first meeting of the appointed membership group. You also most recently attended and delivered a speech at the:

- Migration Alliance National Conference (via Webex) on 9 October 2020
- Immigration Law Conference, March 2020, organised by the Law Council of Australia.

Purpose of Meeting

- Discuss key reforms under the Review of Migration Agents Instruments (the Review) being undertaken by the Department of Home Affairs (the Department). Talking Points are at [Attachment A](#). The meeting agenda and list of attendees is at [Attachment B](#). Biographies of Advisory Group Members are at [Attachment C](#).
- First Assistant Secretary, Immigration and Community Protection Policy Division, Michael Willard will provide an overview of the Review and the initial public response to key reform proposals being considered under each of the Review themes. He will also facilitate a discussion on the concepts of *supervised practise* and *tiering* under the Review, supported by the discussion guide at [Attachment D](#).

What are the Government's objectives?

- To obtain the Advisory Group membership's views on proposals to support a highly qualified and professional industry, and combat serious misconduct by registered migration agents and providers of unlawful immigration assistance.

Key Messages

Review of Migration Agents Instruments - Stakeholder Engagement Strategy

- The Migration Advice Industry Advisory Group was formally established at your request to provide insights into matters relating to the migration advice industry, and guide industry reform.
- The Department ran a public nomination process to recruit suitable members to the Advisory Group during August and September 2020. More than 100 nominations were received.
- This is the first meeting of the appointed membership and will provide a further opportunity for you to share your vision of a world class migration advice industry and exchange views with participants on core elements of the Review.
- Core elements being discussed at this meeting are included in the meeting agenda ([Attachment B](#)) and include supervised practise and tiering.
- These concepts are being considered to provide a more supportive framework for the professionalisation of the migration advice industry, and better protection for consumers.
- Proposals being discussed do not necessarily reflect the Government's views or presuppose a specific outcome.

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Background

- The Prime Minister authorised the scope of the Review in March 2020 (MS19-003989 refers).
- The Review will consider potential reforms to the immigration assistance legislative framework that governs Australia's migration advice industry, under three themes:
 - **A qualified industry** – ensuring individuals have strong qualifications to enter and remain in the migration advice profession.
 - **A professional industry** – ensuring that registered migration agents conduct their businesses ethically with care, skill, integrity and diligence, and maintain proper and current professional knowledge.
 - **Combatting misconduct and unlawful activity** – reducing the instances of, and responding to, serious misconduct by registered migration agents and unlawful providers of immigration assistance.
- On 23 July 2020, you chaired an ad hoc meeting of the Migration Advice Industry Advisory Group as part of the Review's stakeholder engagement strategy (MS20-000478 refers). The purpose of that meeting was to consult on the discussion paper, *Creating a world class migration advice industry*, which closed for public consultation on 27 July 2020 (MS20-001497 refers).
- You subsequently agreed to formalise membership of the Advisory Group (MS20-001431) as part of ongoing Review consultation, and agreed to the Terms of Reference and nomination form (MS20-001524).
- Nominees were assessed by the Department against their demonstrated experience in the provision of immigration assistance; ability to collaborate with Government; and understanding of relevant legislation governing the migration advice industry.
- On 9 October 2020, you agreed to appoint the 26 experts at Attachment C to the Advisory Group (MS20-001679 refers).
- The Review was placed on hold in early April 2020 while the Department of Home Affairs refocused its efforts to support the Government's response to the COVID-19 pandemic and critical functions (MS20-000697 refers).
- The Department will finalise the Review following comprehensive public and government consultation in early 2021 (MS20-0005522 refers).

Consultation

- Office of the Migration Agents Registration Authority (OMARA).

Clearance

Clearance officer:  Michael Willard First Assistant Secretary, Immigration and Community Protection Policy Division Phone: s. 22(1)(a)(ii) Date: 12 November	Contact officer: Alison Garrod Assistant Secretary, Immigration Policy Framework Division: Immigration and Community Protection Policy Branch: Immigration Policy Framework Mobile Phone: s. 22(1)(a)(ii)
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Attachments:

- A: Talking Points
- B: Meeting Agenda and Attendee list
- C: Biographies of Advisory Group members
- D: Supervised practise and tiering system discussion guide

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Attachment A

Talking points

- Congratulations on your appointment to the new Migration Advice Industry Advisory Group.
- I felt it was important to bring this group together to:
 - provide expert advice to the Australian Government on matters relating to the migration advice industry, and
 - support the Department of Home Affairs (the Department) as it undertakes the Review of Migration Agents Instruments (the Review).
- Your participation over the next 12 months will be crucial to the successful delivery of any reform measures the Government decides to implement as a result of the Review.
- This Government is committed to developing a world class migration advice industry that is qualified and professional.
- I recognise that this industry provides an essential service in assisting migrants navigate Australia's visa system.
- This Government is highly supportive of the work of registered migration agents.
 - We recognise the valuable contribution they make in shaping our communities and building Australia's economic prosperity by supporting Australia's migration program.
- It's an industry I want to see thrive – it's in the interest of every Australian, including the culturally and linguistically diverse community.
- We want to ensure there are mechanisms in place to support the professional development and practice of all agents.
- But unfortunately, and as with every industry, there is a small proportion of people who aren't doing the right thing.
- We need to crack down on those people who are taking advantage of prospective migrants and undermining the reputation of the industry by exploiting the immigration system.
- That's why the Department is reviewing the legislative framework that governs the industry, and released a discussion paper: *Creating a World Class Migration Advice Industry*, in June this year.
- The discussion paper highlighted key considerations for legislative reform, and sought the views of industry, the community and all other stakeholders on the scope for industry reform, including:
 - qualification standards required for entry to practice as a registered migration agent
 - professional standards required of a migration agent
 - how the Government combats serious misconduct by registered migration agents and unlawful providers of immigration assistance
- I then met with a group of industry experts on 23 July, via Webex, to run through some of the concepts put forward during that consultation process before undertaking the formal nomination process through which you have been selected as the expert membership.

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- Today, we will drill down further into the concepts of supervised practise and tiering, in a discussion led by First Assistant Secretary, Michael Willard, from the Department.
- I look forward to hearing your views on supervised practise and tiering during the meeting.

Closing remarks

- Thank you all for a very productive meeting, and for sharing your views on the concepts of supervised practise and tiering.
- It's been a robust conversation and I will take on board all of your comments and concerns.
- Your participation in these conversations helps Government support a highly qualified and professional migration advice industry.
- We do not seek to impose unnecessary administrative burdens or red tape on practitioners.
- However, checks and balances need to be in place so that clients can have confidence in the advice and services they receive.
- The Government will continue to work closely with you, and industry more broadly, to implement any changes as a result of the Review.
- I look forward to working together towards a shared vision of a successful and ethical migration advice industry, and a prosperous Australia that recognises the true value of our migrants.



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Attachment B

Migration Advice Industry Advisory Group Meeting Agenda

Date: Thursday 19 November 2020

Time: 11:00am to 12:30pm

Location: Videoconference (via Webex)

Agenda Item	Lead	Attendees
1 Welcome and introduction (5 minutes)	The Hon Jason Wood MP	All
2 Opening statement (5 minutes)	The Hon Jason Wood MP	All
3 Overview of Migration Agents Instruments Review (10 minutes)	First Assistant Secretary, Immigration and Community Protection Policy Division (FAS ICPPD), Michael Willard	All
4 Overview of public response to key reform proposals (20 minutes)	FAS ICPPD	All
5 Discussion on tiering and supervised practise (40 minutes)	FAS ICPPD	All
6 Next steps and closing (10 minutes)	The Hon Jason Wood MP	All

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**Migration Advice Industry Advisory Group Meeting
Attendee List**

Organization	Name	Position
Chair Home Affairs Portfolio	The Hon Jason Wood MP	Assistant Minister for Customs, Community Safety and Multicultural Affairs
Department of Home Affairs	Michael Willard	First Assistant Secretary, Immigration and Community Protection Policy
Department of Home Affairs	Alison Garrod	Acting Assistant Secretary, Immigration Policy Framework
Department of Home Affairs (Office of the Migration Agents Registration Authority – OMARA)	Justine Jones	Acting First Assistant Secretary, Immigration Integrity and Community Protection Division
Department of Home Affairs	s. 22(1)(a)(ii)	Acting Assistant Secretary, Status Resolution

S. 47F(1)



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Attachment D

Migration Advice Industry Advisory Group: Supervised practise and tiering system discussion guide

November 2020

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Purpose: To facilitate a discussion of the Migration Advice Industry Advisory Group on the concept of a period of supervised practise and/or a tiering system for registered migration agents (RMA).¹ It does not necessarily reflect Government views or presuppose a specific outcome regarding the use or otherwise of a tiering system or supervised practise. Focus of this discussion is on design and implementation should either proposal be progressed.

Design intent: A tiering system should be designed in an efficient, cost-effective and timely way, to provide better protection for consumers and a supportive framework for the professionalisation of the migration advice industry. It should further assist to enhance the standard of representation in complex cases, including matters before review bodies including the Administrative Appeals Tribunal or courts.

Questions for discussion:

1. What are the most important objectives for a period of supervised practise? For a tiering system? Does one achieve what the other does not?
2. What are the most important considerations in designing a period of supervised practise? What (additional) considerations are required for a tiering system? Consider:
 - a. RMAs in regional Australia and cultural and linguistically diverse communities
 - b. Who should be entitled to provide supervised practise?
 - c. What should be the duration of supervised practise?
3. How could a tiering system be leveraged by industry as a professional development and economic tool? What design elements would support this? Consider CPD requirements, duration of each tier and any other factors.
4. Consider options for 'Legacy RMAs' – registered prior to the introduction of the tiering system
 - a. Those who have completed the Graduate Diploma in Migration Law and Practice and Capstone Assessment
 - b. All other RMAs, either in entirety, by number of years registered or any other suggestions.
 - c. A significant proportion of RMAs with active cases before the AAT have been registered for fewer than four years – what are the implications of this for a tiering system?

¹ **Out of scope:** From 22 March 2021, legal practitioners with unrestricted legal practising certificates will be removed from the regulatory scheme governing RMAs by Schedule 1 to the Migration Amendment (Regulation of Migration Agents) Act 2020. Accordingly, they are not within scope of this proposal or the Migration Agents Instruments Review more broadly.

For discussion purposes only – Tiering system models

The following table provides a non-exhaustive list of models for a tiering system, to support Advisory Group discussion regarding the design and implementation of any such system.

Model	Summary
1. Two tiered system	<p>Tier 1 – Provisional licence under supervision with immigration assistance limited to non-complex matters before the Department</p> <p>Tier 2 – All other agents, immigration assistance in connection with matters (matters) before the Department, Administrative Appeals Tribunal (AAT) Migration and Refugee Division (MRD), Immigration Assessment Authority (IAA) and the Minister</p>
2. Three tiered system, tier entry via time served and targeted CPD / peer review	<p>Tier 1 – Provisional licence under supervision on matters before the Department</p> <p>Tier 2 – Matters before the Department only</p> <p>Tier 3 – Matters before the Department, the AAT MRD, the IAA and the Minister</p>
3. Three tiered system, tier entry via time served and targeted CPD / peer review	<p>Tier 1 – Matters before the Department – Visitor, Student and skilled visas only</p> <p>Tier 2 – Matters before the Department – the above, plus Family and Employer-Sponsored visas only</p> <p>Tier 3 – Matters before the Department, the AAT MRD, the IAA and the Minister</p>
4. Three tiered system, with tier entry exams by regulator	<p>Tier 1: Matters before the Department</p> <p>Tier 2: Matters before the Department, the AAT MRD and the IAA</p> <p>Tier 3: Matters before the Department, the AAT MRD, the IAA and the Minister – with legal practitioner advice on judicial review availability and their judicial review prospects before the RMA can apply for MI on their behalf.</p>

Summary of stakeholder-proposed tiering systems (July 2020 consultation)

The following table outlines the models for a tiering system (or similar concepts) proposed by stakeholder submissions in response to the discussion paper *Creating a world class migration advice industry*.

Stakeholder	Tiering model summary
Link to submission	
s. 47F(1)	Tiering could be similar to a chartered system. This would require extra study and exams if an RMA wanted to be a chartered migration agent. The system should be independently run by the profession (rather than OMARA) as is the case with other professions.
	Tier 1- Visitor, Student and skilled visas, as the majority of them do not deal with complexities, such as health or character waivers.
	Tier 2 - Family and Employer-Sponsored visas. These visas require a better understanding and thorough assessment of potential applicants and their sponsors, inclusive of schedule 3, 4, 5 and 8 assessment and possible waiver requests. These visas also cost more in Government fees, hence the frequent and continuous evaluation of compliance, even after the application is made.
	Tier 3 - All of the above plus applications to the AAT and Ministerial Intervention.
	All graduates would enter Tier 1, after completing the Capstone. Entrance to Tier 2 and 3 could be achieved through a peer review system.
	The government should take urgent steps to introduce a system of tiered registration in relation to the categories of services individual registered migration agents are permitted to provide. Entry to the higher tiers should be restricted to those members of the industry with sufficient competency to conduct cases before the AAT (Migration and Refugee Division), the Immigration Assessment Authority and requests for Ministerial intervention under sections 195A, 197AB, 197AD, 351 or 417 of the Migration Act 1958 (Cth).

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Stakeholder	Tiering model summary
Link to submission	
	Non-legally qualified agents should be prohibited from acting in the General Division of the AAT or to advise on Australian Citizenship. General Division matters are adversarial and involve complex character related matters, business visa cancellations and citizenship refusals. The Department is always represented by a solicitor or barrister. General Division reviews require advocacy skills and involve examination in chief and cross examination. Non-legally trained migration agents do not have the skills or training for this sort of representation.
Migration Alliance Submission	Current arrangements with respect to CPD continue but that consideration at least be given to the development of specific “tiers” of CPD that reflect the level of expertise of the RMA. This must be addressed as this is on the agenda. A survey of the profession in relation to tiering accompanies this draft submission. The concept of tiering is commonplace in other professions but in this case is restricted to the idea that professionals as they progress through the profession will inevitably have different CPD needs at different times. To encourage practitioners to engage with their CPD “needs”, consideration may be given to Practitioners being “tiered” according to the number of years of registration so that they undertake CPD consistent with their experience rather than entry level subjects. Consideration may be given to the weighting of CPD in order to achieve that outcome.
s. 47F(1) Submission	Does not support tiering generally or the LCA model. However, supports accreditation to do AATs and Ministerial intervention which he states is, in effect, a type of tiering. Accreditation should be required for a person who is going to run a case for a client that is effectively in a type of court with submissions that must be of a very high standard and often need to involve high-level legal research related to case law. The specialisation could be something as simple as being required to do X number of extra, regular professional development (PD) activities specifically related to AAT (Ministerial) and Case Law research. He recommends five day full-time equivalent PD to gain this accreditation.
Law Council of Australia Submission	<p>LCA proposes a new tiered registration system to govern the types of immigration assistance an RMA will be authorised to provide during their career and thereby inform the occupational competency standards framework, the registration process, and the CPD framework for CPD providers and CPD obligations of each RMA.</p> <p>A tiered system should properly reflect the escalating complexity and risk involved when providing immigration assistance as well as the competency and practice capability of each RMA as they progress during their career. RMAs would then progressively qualify to assist and represent clients with matters before the Department; matters before the AAT MRD and the Immigration Assessment Authority (IAA); and requests for Ministerial intervention (MI).</p>

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Stakeholder	Tiering model summary
Link to submission	<p>Tier 1: Immigration assistance in connection with matters before the Department</p> <p>Tier 2: Immigration assistance in connection with matters before the Department, the AAT MRD and the IAA</p> <p>Tier 3: Immigration assistance in connection with matters before the Department, the AAT MRD, the IAA and the Minister – with legal practitioner advice on judicial review availability and their judicial review prospects before the RMA can apply for MI on their behalf.</p> <p>The system would have entry requirements, applications and exams for each tier, with a staggered registration application fees payable to enter each tier and initial concessions to legacy RMAs. There would be exemptions on entry exams for legacy RMAs, and an EOI process for legacy RMAs to apply to enter a tier. The regulator would, in association with the Department and AAT, assess each RMA's competence to practice in their chosen tier.</p>
<p>s. 47F(1)</p> <p>Submission and submission (identical content)</p>	<p>Do not support tiering, but suggest a new professional structure: Provisional Immigration Practitioner (PIP), Certified Immigration Practitioner (CIP) and Fellow Immigration Practitioner (FIP), through implementing Continuing Professional Development (CPD) specialised areas (SA). The professional structure should be managed by the successful completion of specialised areas and related real-life cases. New RMAs are PIPs – after 12 months supervision, apply for CIP. CIP must do all five CPD SA: upon completion of all SA with related real-life cases, CIP apply for FIP. FIP should maintain CPD SA annually to retain title. FIP able to represent clients in immigration court matters. FIP certificate should be considered as equivalent to legal practicing certificate for purposes of immigration assistance, and the Minister should facilitate. OMARA to maintain register of the professional structure.</p>



THE HON JASON WOOD MP
ASSISTANT MINISTER FOR CUSTOMS, COMMUNITY SAFETY AND
MULTICULTURAL AFFAIRS

Ref No: MC20-029729

s. 47F(1)

s. 47F(1)

Thank you for your correspondence of 21 September 2020 concerning changes to migration agent legislation. I appreciate the time you have taken to bring this matter to my attention.

There are no preparations underway to remove non-lawyer Registered Migration Agents (RMAs) from the industry. RMAs provide an excellent service and are essential in assisting migrants to navigate Australia's visa system. However, there are some RMAs and unlawful providers of immigration assistance who exploit both Australia's immigration system, and vulnerable people seeking to come to Australia.

The *Migration Amendment (Regulation of Migration Agents) Act 2020* (the Act) received Royal Assent on 22 June 2020, along with the *Migration Agents Registration Application Charge Amendment (Rates of Charge) Act 2020* (together 'the Acts Package') after the passage of the originating bills through Parliament.

The key change the Acts Package will make is the removal of unrestricted lawyers from the regulatory scheme governing migration agents. This change will create an approach consistent with the three other countries that have comparable registration schemes for migration agents: New Zealand, Canada and the United Kingdom. Removal of unrestricted lawyers from the regulatory scheme will not make any changes to the qualification requirements required to provide immigration assistance, and will not affect their Continuing Professional Development requirements.

The benefit the legislation provides lawyers is that unrestricted lawyers will no longer have to pay two sets of registration fees to provide immigration assistance. Lawyers providing immigration assistance will continue to be regulated by their state and territory legal professional bodies. While all unrestricted lawyers will legally be able to provide migration advice without any additional registration fees once these changes come into effect, it does not mean that all lawyers with an unrestricted practicing certificate will seek to operate in the migration advice industry.

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The Australian Government does not plan to revisit the decision to remove unrestricted lawyers from the Office of Migration Agents Registration Authority regulatory scheme. The Kendall Review included a public consultation process in 2014 that canvassed the views of stakeholders across the migration advice industry. The Senate Legal and Constitutional Affairs Legislation Committee (the Committee) subsequently ran a public inquiry into the legislation between November 2019 and February 2020, upon referral by the Senate. The Committee's report, released on 27 February 2020, stated that the Committee 'recognises the overwhelming support for this legislation expressed in most of the submissions' and recommended the Senate pass the legislation without delay.

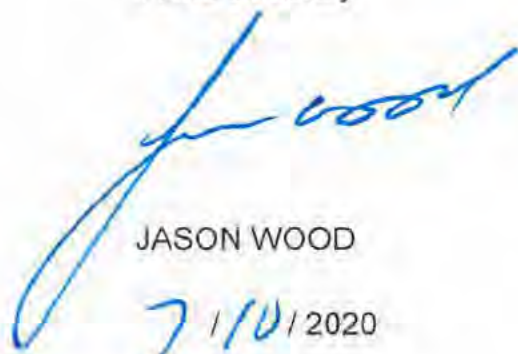
The Review of Migration Agents Instruments (the Review) being undertaken by the Department of Home Affairs, is examining the existing regulatory framework governing the migration advice industry. The Review is not founded on the passage of the Acts Package, and is necessary to strengthen the migration advice industry and improve consumer protections. Since unrestricted lawyers will be removed from the regulatory framework governing RMAs on 22 March 2021, they will not be affected by any potential legislative reform post 22 March 2021 that may result from the Review.

The related discussion paper, 'Creating a world class migration advice industry', set out the approach for the Review and sought stakeholder views on how the Government can support a highly qualified and professional migration advice industry and effectively combat misconduct and unlawful activity. The suggestions outlined in the paper do not necessarily represent Government policy and do not presuppose any specific outcome. The Department received more than 50 submissions from industry and community stakeholders, which will inform the Review.

The Government has also recently completed a public nomination process for representatives from the sector and the community to establish a Migration Advice Industry Advisory Group (the Advisory Group) that will provide advice to me on relevant matters. The establishment of this Advisory Group reaffirms the Government's commitment to work collaboratively with RMAs and the community. The outcomes of the nomination process will be announced in due course.

Thank you for raising this matter.

Yours sincerely



JASON WOOD

7/10/2020

Minister Jason Wood

PDR Number MC20-029729

Subject OMARA Enquiry - Creating a World Class Migration Advice Industry -
s. 47F(1)

Initiator s. 47F(1)

Action Officer: s. 22(1)(a)(ii)
Phone:

Clearance Officer: Alison Garrod
Phone: s. 22(1)(a)(ii)

Division/Branch Immigration & Community Protection Policy Division / Immigration
Policy Framework Branch

Date received in Department: 29 September 2020

Date response provided to MO: 7/10/2020

Copies/referral required: ☐

Adviser/DLO Comments:

**Return to
Dept for:**

Redraft ☐

NFA ☐

Minister Jason Wood

PDR Number MC20-029768

Subject OMARA Enquiry - s. 22(1)(a)(ii) obo s. 47F(1) re Creating a World Class Migration Advice industry

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

Action Officer: s. 22(1)(a)(ii)
Phone:

Clearance Officer: Alison Garrod
Phone: s. 22(1)(a)(ii)

Division/Branch Immigration & Community Protection Policy Division / Immigration Policy Framework Branch

Date received in Department: 25 September 2020

Date response provided to MO: 7/10/2020

Copies/referral required: ☐

Adviser/DLO Comments:

**Return to
Dept for:**

Redraft ☐

NFA ☐



THE HON JASON WOOD MP
ASSISTANT MINISTER FOR CUSTOMS, COMMUNITY SAFETY AND
MULTICULTURAL AFFAIRS

Ref No: MC20-029768

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

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

Dear

Thank you for your representation of 24 September 2020 on behalf of your constituent, **s. 47F(1)**, concerning recent publication of the discussion paper, 'Creating a World Class Migration Advice Industry'. Your correspondence has been referred to me as the Assistant Minister for Customs, Community Safety and Multicultural Affairs as the matter falls within my portfolio responsibilities.

The discussion paper, released on the Department of Home Affairs' website on 25 June 2020, is part of a broad departmental review of the legislative framework governing the migration advice industry. It was published to invite stakeholder views on how the Australian Government can ensure the migration advice industry is highly qualified and professional, and to provide recommendations to the Government on how it can effectively combat misconduct and unlawful activity. The suggestions outlined in the paper do not necessarily represent Government policy and do not presuppose any specific outcome. The Department received more than 50 submissions from industry and community stakeholders, which will inform the legislative analysis component of the Review.


The Government has also recently completed a public nomination process for representatives from the sector and the community to establish a Migration Advice Industry Advisory Group (the Advisory Group) that will provide advice to me on relevant matters. The establishment of the Advisory Group reaffirms the Government's commitment to work collaboratively with registered migration agents (RMAs) and the community. The outcomes of the nomination process will be announced in due course.

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under the Freedom of Information Act 1982

RMA's provide an excellent service and are essential in assisting migrants to navigate Australia's visa system. The Government will work closely with industry to implement any reforms as a result of the review and welcomes views from all members of the industry.

Thank you for bringing s. 47F(1) concerns to my attention.

Yours sincerely



JASON WOOD

7/10 / 2020

P.S I have personally
spoken with s. 47F(1)

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Australian Government
Department of Home Affairs

Submission

For decision

PDMS Ref. Number MS20-001679

Date of Clearance: 09/10/2020

To Assistant Minister for Customs, Community Safety and Multicultural Affairs


Subject Migration Advice Industry Advisory Group membership

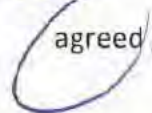
Timing By 16 October 2020.

Recommendations

That you:

1. agree to the updated Migration Advice Industry Advisory Group (Advisory Group) Terms of Reference that incorporate your request for expanded membership at Attachment A.
2. agree to the proposed Advisory Group membership, including additional multicultural representatives, as listed at Attachment B.


 agreed / not agreed


 agreed / not agreed

Assistant Minister for Customs, Community Safety and Multicultural Affairs

Signature.....


Date: 9/10/2020

Please also include the following



s. 47F(1)

s. 47F(1)

s. 47F(1)

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Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. This submission seeks your agreement to appoint the Migration Advice Industry Advisory Group (the Advisory Group) membership. The establishment of the Advisory Group was announced on the Department of Home Affairs (the Department) website on 19 August 2020, concurrent with a call for public nominations to fill 18 positions in the Advisory Group. The nomination period closed 5pm 4 September 2020.
2. On 18 September 2020, this submission was provided to your Office to seek your agreement to appoint 18 migration advice experts as per the Terms of Reference agreed by you on 13 August 2020 (MS20-001524) and the public announcement. On 6 October 2020, you requested that this submission be updated to include more multicultural representatives, with the Advisory Group membership to be expanded to 23 people to ensure appropriate balance. Updated Terms of Reference that reflect this increased membership are at **Attachment A**.
3. The Department received 106 public nominations for membership within the required timeframe, including 60 nominations from registered migration agents or their associations (RMAs), 30 from the legal profession (including those currently practicing as RMAs), four from academia, and six from community or settlement services, and others including invalid entries. The list of nominees and recommended membership is at **Attachment B**.
4. The Department assessed each nomination (at **Attachment C**) and identified 50 highly suitable migration advice experts in accordance with the following assessment criteria:
 - experience and expertise in, or understanding of, the provision of immigration assistance in Australia
 - demonstrated capacity to work collaboratively with government, business or the community
 - understanding of the *Migration Act 1958* and the *Migration Agents Regulations 1998*.

5. Based on the assessment results, the Department initially recommended 18 highly suitable nominees to form the Advisory Group, who in combination provide a balanced representation of RMAs with legal and non-legal qualifications, RMAs from regions and small, medium and large firms, peak bodies, academics, community sector, and government representatives. Of the five additional multicultural representatives in this submission, one was assessed as highly suitable and the remainder assessed as suitable.
6. Following your agreement to the membership, the Department will provide you with draft letters of appointment to successful applicants and will directly notify unsuccessful applicants via email.
7. The Department proposes to convene the first official meeting of the Advisory Group in late October or early November 2020 via Webex. This proposed timing is subject to your agreement to the membership, timely notification to successful nominees, and signing and issuing of invitations. The Department will also provide a draft media release to your office to announce the establishment of the Advisory Group prior to the first meeting.

Background

8. The purpose of the Advisory Group is to provide advice to the Australian Government on matters relating to the migration advice industry, including potential reforms to the legislative framework governing the industry. As per the Terms of Reference, the members will serve for a maximum of 12 months or until otherwise notified by you, or the Department on your behalf, in writing.

Consultation – internal/external

9. Media and Engagement Branch have been advised of the impending establishment of the Advisory Group and are available to support media engagement through the development of a media release and talking points. The Office of the Migration Agents Registration Authority has reviewed the nominees and advised where there are integrity concerns or open complaints relating to those who are RMAs. There are no significant sensitivities associated with any recommended nominees. We recommend you seek further advice from the Department should you wish to select alternative nominees from the list provided. Legal Group was consulted on the contents of this submission.

Consultation – Secretary

10. The Secretary was not consulted on the approach in the submission.

Client service implications

11. There are no client service implications.

Sensitivities

12. There were more nominations than positions available on the Advisory Group, and 35 nominations were found not suitable, either because they were invalid or did not meet the selection criteria. All nominations have been assessed against the same selection criteria as defined in **Attachment C**. To ensure transparency and fairness, no late submissions were accepted.

ATTACHMENT B

Migration Advice Industry Advisory Group: nomination assessment

The Department of Home Affairs assessed all nomination forms against three criteria to identify recognised migration assistance experts. Recommended nominees were selected not only on their high suitability but to ensure a balanced representation of peak bodies, academia, regional experts, large and small migration advice firms, registered migration agents (RMAs) and legal practitioners. The below nomination summaries are drawn from the information provided by candidates in their nomination forms.

Integrity caveat: The Office of the Migration Agents Registration Authority (OMARA) has reviewed the nominees and advised where there are integrity concerns or open complaints relating to those who are RMAs. There are no significant sensitivities associated with any recommended candidates. We recommend you seek further advice from the Department should you wish to select another nominee.

Criteria	Maximum score	Criteria description
Experience and expertise in, or understanding of, the provision of immigration assistance in Australia	5	Individuals with a score of 5 will have extensive experience relating to the migration advice industry, with factors to be considered including: <ul style="list-style-type: none"> - demonstrated and substantial practical experience working with or for businesses, academia, recognised not-for-profit organisations and advocacy groups, either in or in relation to the migration advice industry (includes legal practitioners currently registered as RMAs or relevant legal associations); and/or - qualifications such as a Bachelor or higher in Migration Law or a relevant field; or tertiary employment in delivering this training; and/or - senior representation within a recognised or certified industry association board that has a demonstrated track record of engagement on industry reform; and/or - senior position within or demonstrated extensive engagement on behalf of a recognised CALD community or migrant advocacy group
Ability to collaborate with Government and/or business	2	Individuals with a score of 2 will have demonstrated the ability to work effectively and collaboratively with Government or other groups including business and/or the culturally and linguistically diverse community. Senior representation or a senior boards, as per Criteria 1, applies to this criteria.
Understanding of the Migration Act 1958 and the Migration Agents Regulations 1998	3	Individuals with a score of 3 will have an in-depth understanding of the legislation, including by their practical application of the legislation in the profession environment, as a result of contributions to the drafting process, or by leading their entity's work to comply with the legislation or advocating for legislative reform. Expertise may also be demonstrated by research undertaken or contribution to recognised migration law publications in migration law or migration assistance policy. Experience and expertise demonstrated in Criteria 1, may be further assessed against this criteria.

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Australian Government
Department of Home Affairs

Submission

For decision

PDMS Ref. Number MS20-002461

Date of Clearance: 22/10/2020

To Assistant Minister for Customs, Community Safety and Multicultural Affairs

Subject Migration Advice Industry Advisory Group membership - letters of appointment and invitation

Timing For your signature by 30 October 2020, to enable timely issuance of letters and public announcement of Advisory Group establishment.

Recommendations

That you:

1. note that on 9 October 2020, you agreed to appoint 23 experts to the Migration Advice Industry Advisory Group (Advisory Group) for a 12-month term (MS20-001679); noted / please discuss
2. note that, on the same date, you requested the appointment of a further five nominees to the Advisory Group; noted / please discuss
3. agree to **not** appoint two of these additional appointees, s. 47F(1) [REDACTED], s. 47F(1) [REDACTED]; agreed / not agreed
4. agree to the updated Terms of Reference **Attachment A**, which incorporate your additional request for expanded membership; agreed / not agreed
5. sign the letters at **Attachment B** to the successful nominees advising them of their appointment to the Advisory Group; signed / not signed
6. agree the Department will consult comprehensively with the Advisory Group during the Review of Migration Agents Instruments (Review); and agreed / not agreed

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7. note the anticipated timing of an Advisory Group meeting in November 2020, and a potential public consultation in early 2021, after which the Department will finalise the Review Report and recommendations for reform.

noted // please discuss

Assistant Minister for Customs, Community Safety and Multicultural Affairs

Signature.....

Date 27/12/2020

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Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. On 9 October 2020 (MS20-001679), you agreed to:

- appoint the following 23 experts to the Migration Advice Industry Advisory Group (Advisory Group) for a 12-month term: s. 47F(1)

s. 47F(1)

- amend the Advisory Group's Terms of Reference to reflect the increase in membership from 18 to 23 members.

2. You further requested that the following nominees be added to the Advisory Group's membership: s. 47F(1), s. 47F(1), and s. 47F(1)

3 s. 47F(1)

s. 47F(1)

S. 47F(1)

4. The Terms of Reference at **Attachment A** have been further updated to expand the membership to a maximum of 28 members. Should you agree not to appoint s. 47F(1) [REDACTED] there will be 26 members. The extensive multicultural membership you have already agreed means replacements for s. 47F(1) [REDACTED] are not considered necessary by the Department.
5. The letters at **Attachment B** congratulate appointees and provide further information about the operation of the Advisory Group. Appointees will also need to return their signed Conflict of Interest Assurance form (included in the Terms of Reference document) before their membership takes effect. The Department will notify unsuccessful applicants via email. Should further public consultation be held, these applicants will be alerted to the opportunity to make a submission.
6. The Department of Home Affairs (the Department) proposes you announce the membership of the Advisory Group by media release and will provide a draft media release to your Office following receipt of the signed forms from members.
7. During the establishment of the Advisory Group, the Department has continued to develop reform proposals under the Review of Migration Agents Instruments, for which the Report was due to be released in December. The Department will consult comprehensively with the Advisory Group prior to finalising the Review report which, given the timing of the Advisory Group's establishment, will delay the release of this Report.
8. You may also wish to undertake a public consultation on the draft report before it is finalised. To ensure a sufficient period for consideration of the reforms and development of responses, this public consultation would be undertaken in early 2021 for a period of six weeks. Further advice will be provided to your Office on this public consultation for your consideration.

9. Subject to the availability of members, the Department will convene the first meeting of the Advisory Group with its formal membership in November (you hosted a meeting of ad hoc invitees under the auspices of the Advisory Group on 23 July 2020). The Department will liaise with your Office about options for your involvement, including opportunities to formally open the meeting.

Consultation – internal/external

10. The Department has consulted with Media and Engagement Branch, which will provide your Office with a draft media release. The ABF, OMARA and Legal Group were consulted on the contents of this submission.

Consultation – Secretary

11. The Secretary was not consulted on the approach in the submission.

Client service implications

12. There are no client service implications.

Sensitivities

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

14. In accordance with our long standing practices, should you wish for unclassified media lines to be prepared in relation to this issue please contact the Home Affairs Media Coordination team – media@homeaffairs.gov.au.
15. There may be some speculation in the industry regarding the implications of the selected membership for the current migration advice industry regulatory reform program. The Department will monitor and address these concerns where appropriate through direct engagement with the industry.

Financial/systems/legislation/deregulation/media implications

16. There are no financial, system, or legal implications associated with this proposal. There may be some media interest in the establishment and membership of the Advisory Group.

Attachments

Attachment A Further update to Terms of Reference

Attachment B Letters to appointees to the Advisory Group

Authorising Officer

Cleared by:

Michael Willard

First Assistant Secretary, Immigration and Community Protection Policy Division

Date: 22 October 2020

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

Contact Officer Alison Garrod, A/g Assistant Secretary, Immigration Policy Framework Branch, s. 22(1)(a)(ii)

CC

Minister for Home Affairs

Secretary

Deputy Secretaries

A/g First Assistant Secretary Immigration Integrity and Community Protection

First Assistant Secretary Legal

Assistant Secretary Media and Engagement

A/g Assistant Secretary Status Resolution



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Migration Advice Industry Advisory Group

Terms of Reference

Role

The purpose of the Migration Advice Industry Advisory Group (the Advisory Group) is to provide advice to the Australian Government on matters relating to the migration advice industry, including potential reforms to the legislative framework governing the industry.

Responsibilities

The primary responsibility and key function of the Advisory Group is to provide expert, confidential and timely advice to the Australian Government on matters relating to the migration advice industry, including potential reforms to the legislative framework governing the industry. This may include:

- supporting the Review of Migration Agents Instruments being undertaken by the Department of Home Affairs, including the *Migration Act 1958*, the *Migration Agents Regulations 1998* and associated instruments
- providing advice on developing a world class migration advice industry including improvements to qualification standards, professional standards and addressing misconduct and unlawful activity
- shaping the Government's strategy for engagement with the industry
- providing fair and frank advice on all other matters related to the efficient functioning of the industry.

The Advisory Group's responsibilities are solely advisory in nature and its recommendations are non-binding. The Advisory Group is not authorised to act on behalf of, or represent, the Australian Government or the Department of Home Affairs (the Department).

Authority

The Advisory Group is established by the Assistant Minister for Customs, Community Safety and Multicultural Affairs (the Assistant Minister) under the authority of the Advisory Group Terms of Reference.

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Membership

Subject to receipt of nominations, membership will include nominees and senior representatives of the three peak bodies in the migration advice industry (the Migration Alliance, the Law Council of Australia, and the Migration Institute of Australia) and esteemed members of the migration advice industry, including Registered Migration Agents who have legal or non-legal qualifications, as well as government, academic, and community representatives. Guests may also be invited to participate or present at meetings on an ad hoc basis.

Members and guests will not be reimbursed for costs incurred to attend meetings. The Department will not pay for Members' or guests' travel and accommodation costs.

The Advisory Group will comprise a minimum of 18 members and a maximum of 28 members. Membership will remain in effect for a maximum of 12 months or until otherwise notified by the Assistant Minister, or the Department on behalf of the Assistant Minister, in writing. The Assistant Minister can revoke membership at any time and may choose to alter the composition and structure of the Advisory Group as required.

Conflict of Interest

Members are required to declare any existing or potential conflict of interests to the Department and explain any steps they are taking to address the conflict. Members should consider past employment, consultancy arrangements and related party issues when making these declarations. The Assistant Minister must be satisfied that there are sufficient processes in place to manage any existing or potential conflicts of interest for a Member to continue to participate. Members are required to declare in writing any existing or potential conflicts of interest that may arise in relation to the work of the Advisory Group. Members must provide an initial declaration before their membership is confirmed. Members should notify the Department in writing of any subsequent existing or potential conflicts of interest as they arise.

Members must refrain from promoting their membership of the Advisory Group in any way that could reasonably be perceived as leading to real or potential financial gain to themselves or others. This includes situations where a Member may use their membership to promote consultancy or other fee for service work.

The Assistant Minister may determine that Members, and any other invitees, may be excluded from participating in discussion on items where there are existing or potential conflicts of interest.

Meetings

The Advisory Group will meet at intervals determined by the Assistant Minister. The meetings will initially be held via teleconference or videoconference in line with COVID-19 precautions. When the situation permits, the Advisory Group may meet in person in either Canberra or Melbourne.

Meetings of the Advisory Group will be chaired by the Assistant Minister, or a senior official of the Department. The Department will provide secretariat support to the Advisory Group. Any relevant papers, reports or work packages will be distributed to Members by email by the Secretariat, prior to the scheduled meetings.

The Advisory Group will conduct work out of session via email as required. Advisory Group members will be expected to contribute up to 5-10 hours of time per quarter to Advisory Group work, in addition to attending meetings.

Review of the Terms of Reference

The Department will review the Terms of Reference as required to determine whether any amendments are necessary to accurately reflect the purpose and strategic direction of the Advisory Group. Any amendments to the Terms of Reference will be distributed to Members for review before they come into effect.

Conflict of Interest Assurance

I advise that to the best of my knowledge my private, business and financial interest would not conflict with my public duties or otherwise cause embarrassment to myself or to the Australian Government during my term of appointment.

I also undertake to advise the Department of Home Affairs in writing should a situation arise in the future which might cause a conflict of interest with my responsibilities under this appointment. I have outlined any circumstances which may give rise to existing or potential conflicts of interest below:

Name:

Signature:

Date: