



Migration Agents Instruments Review – FAQs

What is the Migration Agents Instruments Review (the Review)?

The Department of Home Affairs (the Department) is conducting a Migration Agents Instruments Review (the Review) to develop reform proposals for strengthening the legislative framework governing Australia's migration advice industry. The Review is also exploring regulatory measures to create a world class industry, to better protect consumers and ensure the integrity of the Australian migration program, while considering the regulatory impacts to the sector.

What is the migration advice industry?

For the purposes of the Review, the migration advice industry consists of registered migration agents (RMAs) regulated by the Migration Agents Registration Authority under Part 3 of the *Migration Act 1958* (the Act). It does not include legal practitioners who provide immigration assistance in connection with legal practice, except those restricted practising certificate holders who choose to remain registered with the Office of the Migration Agents Registration Authority (OMARA). Legal practitioners not registered with the OMARA are regulated solely by their respective state and territory legal professional associations.

Certain persons are permitted under the Act to provide immigration assistance without being a registered migration agent or a legal practitioner. These include parliamentarians, officials and close family members. These people are also not considered part of the migration advice industry.

Why are unrestricted legal practitioners excluded?

On 22 March 2021, amendments to the Act took effect, allowing legal practitioners to provide immigration assistance in connection with legal practice without being registered with the OMARA. Legal practitioners who hold a restricted practising certificate may choose to remain registered with the OMARA for a transitional period of two years, extendable by the OMARA to up to four years in reasonable circumstances¹.

What services do RMAs provide?

RMAs can assist clients navigate Australia's complex visa laws. RMAs have specialist knowledge that can help their clients understand Australian legislation and the Department's visa-related policies and processes. For example, they can help overseas visitors apply for the right entry visa, assist international students to gain visas to undertake study opportunities in Australia, and work with Australian employers to assist them in hiring skilled overseas staff for specialist roles. They are often the first point of contact for non-citizens interacting with Australia and the first to offer assistance to people looking to call Australia home.

RMAs are bound by the Code of Conduct for registered migration agents, which regulates their practice, requiring that RMAs charge fees that are fair for the work they do, keep proper client records for seven years, and keep their immigration knowledge up to date. This helps consumers who rely on RMAs by safeguarding their rights and ensuring transparency throughout the application process.

¹ The transitional period commenced on 22 March 2021 if a person already held a restricted practising certificate on 22 March 2021 or on the date a person obtains a restricted practising certificate, if obtained after 22 March 2021.

Between 1 January and 31 December 2020, almost a quarter of visa applications were lodged with the assistance of RMAs. Prior to the COVID-19 pandemic, out of the 4.4 million total applications lodged between 1 January and 31 December 2019, 428,598 applications were lodged with the assistance of RMAs (approximately 10 per cent).

Why is there a need to review the migration advice industry?

Due to the important role RMAs play in facilitating Australia's migration program and contributing to the country's economic prosperity, it is important that they are empowered to do their job effectively and efficiently. The Review of legislation governing the industry focuses on different options that may be progressed to make it easier for both RMAs and consumers of migration advice to effectively meet their business and migration goals.

The Review also focuses on RMAs and unlawful providers of immigration assistance who seek to exploit both Australia's immigration system and vulnerable people seeking to come to or remain in Australia. Enhancing legislation to target unscrupulous agents is necessary to ensure that at-risk consumers are better protected.

What is the scope of the Review?

The Review encompasses the legislative framework governing the migration advice industry, including:

- *Migration Act 1958* – Part 3 – Migration Agents and Immigration Assistance
- The instruments referred to by the *Legislation (Migration Agents Instruments) Sunset-altering Declaration 2019*:
 - *Migration Agents Regulations 1998*
 - *Migration Agents Registration Application Charge Regulations 1998*
 - *Migration Agents (IMMI 17/047: CPD Activities, Approval of CPD Providers and CPD Provider Standards) Instrument 2017*
 - *Migration (IMMI 18/003: Specified courses and exams for registration as a migration agent) Instrument 2018*
- *Migration Agents Registration Application Charge Act 1997*

In addition to reviewing the legislation itself, the Review is considering a range of potential reform options, organised under three themes:

- **A Qualified Industry:** ensuring individuals have strong qualifications to enter and remain in the migration advice industry.
- **A Professional Industry:** ensuring that RMAs conduct their businesses ethically with care, skill, integrity and diligence, and maintain proper and current professional knowledge.
- **Combatting Misconduct:** reducing the instances of, and responding to, serious misconduct by RMAs and unlawful providers of immigration assistance.

These options are proposals only at this stage, on which public feedback is being sought. They do not necessarily represent Government policy nor do they presuppose any specific outcome.

Why is now a good time for the Review?

The *Legislation (Migration Agents Instruments) Sunset-altering Declaration 2019* deferred the sunset (ceasing) date of four legislative instruments until 2024. The objective of issuing a sunset altering-declaration is to facilitate either: the undertaking of a single thematic review into the fitness-for-purpose of two or more instruments relevant to a particular industry, enabling Act or theme; or the implementation of the reviews findings. This reduces the administrative burden as well as legislative inconsistencies that can arise from reviewing and remaking related legislation independently at different times.²

If these instruments are not remade, they will be repealed on their new sunset date of 1 April 2024. Conducting the Review now allows for sufficient time to assess and progress any reform proposals and prepare amendments to legislation before the sunset date of the instruments.

Who is responsible for the Review?

The Assistant Minister for Customs, Community Safety and Multicultural Affairs is overseeing the Review, with responsibility for day-to-day management of the process resting with the Department.

What does the Review mean for the migration advice industry?

The Review considers how legislation can support a highly qualified and professional industry and ensure Government can effectively combat misconduct and unlawful operators. Depending on the outcomes of the Review, there may be changes to the regulatory framework. These changes may be related to the qualification standards required for entry to practice as an RMA, the continuing professional development standards required of an RMA, and the adequacy of disciplinary actions and penalties.

Is the industry being consulted as part of the Review?

Yes. To date, industry and the public has had the opportunity to comment on the short discussion paper, [Creating a World Class Migration Advice Industry](#) (the discussion paper), which was released in mid-2020 and highlighted key considerations for legislative reform.

There have also been three consultation meetings on reform concepts: the first with an ad hoc group of industry experts, and two meetings of the Migration Advice Industry Advisory Group (Advisory Group), formed in 2020 following a public nomination process. The Advisory Group comprises representatives from peak industry bodies, and a cross sector of the industry, as well as the Administrative Appeals Tribunal.

What is the timeframe for the public consultation?

Feedback is now being canvassed on the proposed options for reform, as discussed in the consultation report. Departmental stakeholders and the general public are encouraged to provide submissions on any or all options, noting that many measures are connected, such as supervised practice and a tiering system.

Submissions can be provided online by no later than **5pm AEST, 25 June 2021**.

How does the Review differ from previous reviews of the industry?

The review of the instruments was mandated under the *Legislation (Migration Agents Instruments) Sunset-altering Declaration 2019*. Given the Review's legislative focus, the Government is expanding the scope of this departmental review to encompass other relevant legislation and reform measures suggested by stakeholders that could contribute to the development of a world class migration advice industry.

² *Explanatory Statement, Legislation (Migration Agents Instruments) Sunset-altering Declaration 2019*

Who has authority to implement reforms?

The Australian Government. The objective of the Review is to assess reform options in consultation with stakeholders, and provide recommendations for Government consideration.

Will the outcomes of the Review be shared with the public?

The consultation report will be available for public comment over the next six weeks. The Department will consider all feedback received from stakeholders and members of the public in developing reform proposals that will then be provided to the Government for consideration.

Stakeholders and the community will be advised of any measures subsequently progressed by Government in support of a world class migration advice industry.