Australian Government
Department of Home Affairs

CONSULTATION REPORT:
FACT SHEET

Migration Agents Instruments Review

Theme 2 – A Professional Industry

Developing a fidelity fund or other mechanisms for recompense

For details, please refer to Chapter 2.3 of the Review Report.

Issue

The purpose of a fidelity fund is to provide compensation to people who have suffered financial loss due to a dishonest or fraudulent act or omission. A fidelity fund does not reimburse a person for losses suffered as the result of negligence. Claims resulting from negligence or breach of duty arising from an act, error or omission in the performance of professional services are covered by professional indemnity insurance.

The *Code of Conduct for registered migration agents* requires that a person provide evidence of current professional indemnity insurance when applying to register or re-register as a migration agent. Unlike other industries such as the legal profession, a registered migration agent (RMA) is not required to contribute to a fidelity fund. As such, the Review has examined whether establishing a fidelity fund for the migration advice industry is reasonable, proportionate and necessary to achieving adequate consumer protection measures for consumers of immigration assistance.

Matters for public feedback

We welcome the public's feedback on the following reform option. Submissions can be provided online using the feedback page by no later than 5pm AEST, 25 June 2021.

Establishing a fidelity fund is not recommended due to the high cost of implementation relative to the size and risk profile of the migration advice industry. There is a lack of evidence to support establishment of a fidelity fund given that:

- as at 31 December 2021, 71 per cent of RMAs have never had even a minor complaint made against them.
- Disputes between RMAs and clients resulting in complaints to the Office of the Migration Agents Registration Authority do not generally concern a loss of money or property as a result of dishonest or fraudulent act or omission by an RMA. Most client complaints are due to RMAs not entering into a service agreement, failure to issue receipts, and failing to keep clients informed about the progress of their applications.
- Client monies held by an RMA are of a significantly smaller amount than those held by other industries that maintain a fidelity fund. For example, a trust account held by a legal firm could hold millions of dollars in relation to real estate transactions.

In addition to the lack of evidence to support establishing a fidelity fund, establishing a fidelity fund would introduce additional costs that would need to be funded by the migration advice industry through increased registration fees, at a time when the migration advice industry is facing financial challenges due to the global pandemic.

In lieu of a fidelity fund, clients seeking a refund of money paid to an RMA could continue to seek compensation through existing Commonwealth, State and Territory-based consumer protection law or by initiating civil fraud proceedings. Consumer protection improvements would likely be more appropriately achieved through other initiatives being considered separately in the Review.