



# Migration Agents Instruments Review

## Theme 3 – Combatting misconduct and unlawful activity

### Immigration assistance: definition and scope

For details, please refer to Chapter 3.1 of the Review Report.

#### Issue

The definition of immigration assistance in Part 3 of the *Migration Act 1958* (the Act) is one of the central concepts in the migration advice framework. It outlines the scope of work that only registered migration agents (RMAs), exempt persons and Australian legal practitioners, can perform lawfully.

Some parts of the legislative framework governing RMAs may be taken advantage of by unscrupulous actors, including when it comes to the definition and scope of immigration assistance and related concepts. Examples include conducting immigration assistance disguised as clerical work, avoiding providing records to the Office of the Migration Agents Registration Authority (the OMARA) and evading disciplinary actions for misconduct through the use of business structures. Currently, businesses cannot register with the OMARA, which means the OMARA cannot take disciplinary action against them.

#### Matters for public feedback

We welcome the public's feedback on the following options for reform.

Submissions can be provided online using the [feedback page](#) by no later than 5pm AEST, 25 June 2021.

- amending the Act to provide that clerical work in relation to a visa application can only be provided under the supervision of an RMA or a legal practitioner; defining the term 'clerical work'; renaming 'clerical work' to 'administrative assistance' or a similar modern term; and limiting the number of clerical workers that an RMA can supervise.
- extending the powers of the OMARA to include regulation of businesses, and limiting the types of business structures an RMA can enter into, to ensure there is always at least one RMA legally and ethically responsible for each client – being a sole practitioner, a partner or a supervising/ principal practitioner.

It could also be possible to clarify the law through:

- a new factsheet to help RMAs distinguish between general assistance with the *Australian Citizenship Act 2007* (Citizenship Act) and legal advice on the Citizenship Act
- making changes and clarifications to current exemptions within the Act and associated Regulations, including removing exemptions that involve risks to vulnerable visa applicants; clarifying the terminology; and removing redundant provisions
- replacing the terms 'visa applicant' and 'cancellation review applicant' with 'person' to ensure the terminology covers the full breadth of immigration assistance.