



# Migration Agents Instruments Review

## Theme 3 – Combatting misconduct and unlawful activity

### Offshore unregistered migration agents

For details, please refer to Chapter 3.2 of the Review Report.

#### Issue

Providing immigration assistance while not registered with the Office of the Migration Agents Registration Authority (the OMARA) is illegal in Australia (unless an ‘exempt person’ or a legal practitioner from 22 March 2021). However, the Australian Government has no jurisdiction over unregistered immigration assistance conducted offshore, as Part 3 of the *Migration Act 1958* (the Act) does not have extraterritorial effect. As a result, there are limited consumer protections in place for visa applicants seeking assistance from offshore unregistered migration agents.

Unregistered offshore immigration assistance poses a risk to consumers as there is no assurance that unregistered providers perform their services ethically, competently and in adherence with Australian law.

#### Matters for public feedback

We welcome the public’s feedback on the following reform options.

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

The Department of Home Affairs does *not* recommend making the OMARA regulatory framework apply offshore. The Australian Government would not be able to apply and enforce the law without the consent of the country where the person of interest is located. The Department further does not recommend allowing offshore unregistered migration agents to be listed/accredited with the OMARA. As an alternative, it may be possible to increase awareness of the risks associated with the use of unregistered offshore and unlawful onshore providers of immigration assistance, and encourage the use of the OMARA’s *Register of migration agents* to find and contact a registered migration agent (RMA).

The Department does not recommend introducing categories of persons permitted to be authorised recipients. Instead, it is suggested to ensure that delegates have adequate training to identify if authorised recipients are legitimate and identify suspicious authorised recipients, as well as to revise or potentially amend the relevant provision of the Act.

There is potential to introduce other legislative and system changes to target unlawful onshore and unregistered offshore immigration assistance. However, these measures are beyond the scope of the Review and are suggested for further examination by the Department:

- legislative and system changes to allow the Department to accept visa applications only from the applicants, RMAs, legal practitioners or exempt persons
- introducing an unregistered immigration assistance Public Interest Criterion that would enable refusal of a visa if the visa applicant knowingly receives unregistered or unlawful immigration assistance despite understanding the registration requirement for migration agents

- requiring visa applicants to attest in a declaration (or a statutory declaration where appropriate) as to whether or not they have received immigration assistance or other relevant assistance
- developing risk profiles for individuals, occupations and industries where the risk of unregistered immigration assistance practice is high, and conducting audits of high-risk visa applications as part of other caseload integrity assessments.