



Migration Agents Instruments Review

Theme 3 – Combatting misconduct and unlawful activity

Penalties for unlawful immigration assistance providers

For details, please refer to Chapter 3.3 of the Review Report.

Issue

Unlawful immigration assistance can cause considerable harm to often vulnerable people, and to Australia's national interests. A person who is not properly qualified and registered to provide immigration assistance, yet does so, can cause significant financial loss and negative immigration outcomes for their client, which can in turn significantly affect their quality of life, livelihood and that of their family.

Threats posed by corrupt registered migration agents (RMAs) and unlawful providers of immigration assistance are assessed by Government crime intelligence agencies as high risk due to their potential enabling of organised crime groups and related unlawful activities.

Under the *Migration Act 1958* (the Act), the Office of the Migration Agents Registration Authority (the OMARA) has no jurisdiction to investigate non-registered immigration assistance; this is within the purview of the Australian Border Force (the ABF). While the OMARA collaborates with the ABF on investigations into visa and migration fraud committed or facilitated by RMAs, the ABF works with the Australian Federal Police to execute search warrants and/or arrest alleged offenders of unlawful immigration assistance.

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.

Australia's financial penalties are significantly lower than those of like-minded countries under the Act. Further, both the legal profession and tax agent services attract much higher financial penalties than the immigration advice sector. Therefore, there may be a case for increasing financial penalties for unlawful (unregistered) providers of immigration assistance in section 280(1) of the Act from 60 penalty units (a \$13,320 fine) to 250 penalty units (\$55,500). Further options for reform include:

- applying penalties to businesses, not just individuals
- requiring payment of reparation (payment for harm or damage) and commercial gain
- removing differentiation between fee-for-service and no fee-for-service in relation to penalties
- introducing the ability to apply both financial infringements (penalty units) and/or imprisonment for offences, under sections 281(1), 281(2), 282(1), 283(1), 284(1) and 285(1) of the Act
- introducing provisions to make it a criminal offence to knowingly provide immigration assistance for the purposes of enabling serious and organised crime.

In addition to the options explicitly relating to unlawful assistance, it may be beneficial to further consider increasing financial penalties for RMAs in sections 312A and 312B of the Act from 60 penalty units to 250 penalty units. These penalties differ from those in sections 280-285 of the Act, because they apply to lawful (registered) providers of immigration assistance as opposed to unlawful (unregistered) providers of immigration assistance. These penalties are important because they allow the ABF to prosecute RMAs who fail to disclose their assistance, thereby avoiding scrutiny, including in association with unmeritorious visa applications.