

23/06/2021

**To : Department of Home Affairs, Australia**

I am a Registered Migration Agent since 2008. I like to begin my submission with first of all thanking the Department in giving the opportunity to comment on this Review report but hope it is not a mere eye-wash and formality but rather a sincere effort to consider the views of others, in particular, the RMAs.

**1. Creating a world class migration advice industry.**

The Executive Summary of the Review states that the Review is founded on the Australian Government's commitment to creating a world class migration advice industry, specifically, as to how legislation can:

- support a highly qualified and professional industry; and
- ensure the Australian Government can effectively combat misconduct and unlawful operators.

The report goes on to say on page 4 that the key issues for consideration and potential reform measures examined during the Review have been 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 and unlawful activity : reducing the instances of, and responding to, serious misconduct and unlawful activity by RMAs and unlawful providers of immigration assistance.

**Issue/Comment/Questions :**

If the purpose of the Review is to create a 'world class' migration advice industry why did OMARA or the Department take the 'unrestricted legal practitioners' out of this review ? Not only the timing of Review carried out to create the 'world class' is questionable but the fact that the legal practitioners are taken out of the review before this Review is undertaken just brings to question the motive and agenda behind the review. It is a mockery that these legal practitioners are out of the 'migration industry' yet provide immigration advice and assistance.

- Are these legal practitioners going to have the same standards imposed on them by the respective Bar Councils in respect of the migration assistance and services they are going to provide/offer to the customers and public ?
- How does one create professionalism in the industry when another one-third, and now, thousands of them are not in this new regime to create a world class migration advice industry but providing the same service ?

23062021

- Are these legal practitioners going to confine their practice or involvement merely to what lawyers do – legal advice, litigation courts, tribunals, and the like or are they going to be involved visa applications, advice, etc. ?
- Are we now going to have one group of world class migration professionals and another group below standard ?

Please allow me to share my personal experience. I know one or two lawyers in practice for about 10+ years. They do not know anything about migration. They come to me for advice and then take it to their clients. Now these same lawyers can offer immigration assistance, employ RMAs to carry our immigration work, offer supervised practice under the new proposal, etc. Does it make any sense ?

Having said that I have come across and dealt with a few lawyers who offer immigration advice on certain specific areas, especially in litigation and matters that have to be taken up to the courts and tribunals. They are really good. They are quite specialized in immigration matters. But I don't think they are involved in the day-to-day visa applications, visa options and advice, etc. They handle areas where the migration agents cannot handle, especially litigation, the courts and appeals.

## 2. **Creating a Benchmark**

It is said in the Review report that the first practical step in implementing this vision is to clearly define what 'world class' means for the industry by creating a benchmark against international regulatory frameworks that are similar to Australia's namely Canada, New Zealand and the United Kingdom.

### **Issue/Comment/Questions :**

- Are the regulatory frameworks and practice of these three countries benchmark for a world class ?
- How did we come to this conclusion ?
- What is the measure or criteria used to determine that ?
- Is the current Australian regulatory framework in any way inferior to these countries ?

Simply because they are a preferred destination doesn't make them a world class. We have to examine our immigration policies instead. Based on the three considerations outlined above (a qualified industry, a professional industry and combatting misconduct and unlawful activity), doesn't Australian migration framework have these considerations well built in their regime currently ?

Doesn't the current Australian framework :

- ensure a strong qualification for the entry into the industry ?
- have policies, controls, ethics, code of conduct and regulations ensure that the migration business be conducted with care, skill, integrity, diligence, and maintain proper and current professional knowledge ?
- provide for combatting of misconduct and unlawful activity ?

Will our migration industry become 'world class' by just following what the other three countries are doing ? The reports on the other three countries have been merely on what they have done in terms of the rules and requirements of being a migration agent but not the results of their actions nor the effectiveness of their framework in combatting fraud, misconduct or unlawful activity or how professional they are. There is nothing reported on this.

### **3. English Language**

The Review reports that :

- many RMAs are migrants themselves;
- 4762 non-lawyer agents registered with the OMARA at the end of 2020 supported their registration application with evidence of English as a second language;

#### **Issue/Comment/Questions :**

- Will changing the current level of English at 7.0 overall with a minimum score of 6.5 in all four components to 'proficient' English of 7s in all components make the industry more professional than what it is now ?
- To get an overall score of 7, one must score at least a 7.5 in two of the test components and at least 6.5 in the other two. How will the increase by 0.5 make the difference to the profession ?
- Have the merits and advantages of these agents having this level of English and being able to speak other languages of their clients been taken into consideration ?
- What about a situation where someone has perfect English of 9,9,9,9 but cannot speak the language of their clients or customers ?
  - How do they deal with their clients or manage them ?
  - Don't they not use interpreters ? Doesn't the department of Immigration use them as well ?
    - What is the level of English these interpreters who now have to understand and translate the English and then re-translate the customer's language back to English have ?
    - Do these interpreters have an IELTS of 7,7,7,7 to understand what is being asked of them to interpret ? How many of us have had experience of interpreters not competent or proficient enough to do that ?
- Currently, there are exceptions to the English language requirements (please refer page 29 , that is, Education Option 1 and Education Option 2).
  - Does these options in any way prove the English proficiency of someone in all the four components of the English test – reading, writing, speaking and listening ?
- Item 1.2.3 on page 30 of the Review report suggesting that the English Language be assessed prior to acceptance into the Graduate Diploma is acceptable.

However, the second suggestion to demonstrate a high standard of English through an agent's career sounds crazy.

- How does one do that ?
- Is it being done for all other professions – lawyers, accountants, doctors, nurses, etc ?
- What are we trying to make this industry into – English specialists ?
- Isn't the continuous practice of the profession on a day-to-day basis sufficient enough to prove that they continue to communicate in the language ?

#### 4. Current status of the RMAs

The review report states :

- that RMAs are responsible for 58 per cent of all temporary and 17 per cent of all permanent Protection visa applications lodged in Australia;
- that RMAs assist 80 per cent of business migrants that employ local staff, and a third of international student enrolments having positive effects for the Australian economy, supporting countless small and family-run businesses, promoting regional growth, and lifting the living standards of Australians;
- that RMAs are also qualified to assist clients at the AAT, with 49 per cent of the AAT's Migration and Refugee Division's (MRD) 63,179 active cases represented by an RMA in the third quarter of 2020;
- that in the **past five years**, the AAT has referred **13 RMAs** to the OMARA for suspected fraud or criminal behaviour.  
**Note** : only 13 cases in the past five years.

#### Issue/Comment/Questions :

- If the report card above is so good, why are we working so hard to disrupt it ?
  - Can the changes proposed bring about a 'zero' result in fraud and criminal behaviour ?
- What is the statistics for the lawyers involved in suspected fraud/malpractice or unethical and/or criminal behaviour ?
  - For the matter how about accountants, civil servants, etc ?
  - How does it compare with the RMAs ?
- Have these 13 cases been broken down into who these agents are – new agents, senior, RMAs, lawyers, onshore, offshore to specifically target and address the problems that maybe arising from such agents ?
- How have the other three countries performed in this area as compared to Australia ?

It is also reported that the majority of RMAs are professional and competent in what they do, and pride themselves in ethically helping people resettle in Australia. It states that **there remains a small cohort of RMAs** involved in unethical and criminal behaviour, including migration fraud.

- If the findings are that the majority of the RMAs are professional and competent and it is only a small cohort of RMAs involved in unethical behaviour and criminal behaviour, what is the purpose of this entire review ?

- Hasn't OMARA been identifying these small cohort and action taken against them ?
- Isn't the customers well protected now ?

The report further states that 29 percent of current agents have been the subject of a complaint at some time while being registered, but it also says that a large number of complaints are dismissed. In the 12 months to 30 June 2020, 16 RMAs and former RMAs were barred or suspended or had their registration cancelled ?

- What is the large number that was dismissed ?
- Who are these RMAs who have been dismissed, suspended or had their registration cancelled ?

The Review Report further states that the Department continues to work with its partners in Australia, including the Australian Federal Police (AFP) and other agencies in the Home Affairs portfolio, and its overseas counterparts to address criminal behaviour in the migration advice space.

**Note : Judging from the statistics above, and the actions taken by OMARA and the Department, it appears that the system is not just working but working very well. What is the idea of changing something for the sake of changing it 'if not' simply making it tougher for one to enter the profession whilst at the same time making it lenient for another sector to continue to offer and/or monopolize the immigration advice industry ?**

## 5. Challenges Facing the Industry

The report also acknowledged that the industry is not without its challenges, with the global pandemic deeply impacting the livelihood of RMAs, and rapid and ongoing changes to global travel affecting the industry's short term feasibility (page 10 para 4).

These included the following :

- Recent regulatory reforms, including increased knowledge requirements to register as an RMA;
- removal of legal practitioners from the regulatory scheme governing migration agents; and
- the strengthening of evidentiary requirements for migrants seeking permanent residency in Australia.

The Executive Summary also (page 3) clearly states that the Review has coincided with a particularly disruptive and distressing period for many RMAs... Further, that the Review is cognisant that there has been a range of relevant reviews and reforms in recent years within the regulatory environment, including the introduction in 2018 of enhanced knowledge requirements to register as an agent.

### Issue/Comment/Questions :

The Review acknowledges that the vast majority of migration agents regularly provide valuable assistance and have never had a complaint against them.

- If this is the finding why are we burdening the RMAs further ?
- What is the idea of introducing these changes on English, education, tiering, etc. at a very challenging time and when the vast majority of the agents do not have a complaint against them ?
- Shouldn't the focus be on combatting fraud and/or criminal behaviour and the unethical and illegal assistance to better protect the customers ?

## 6. **Supervised practice**

The Review suggests the introduction of a mandatory 12-month provisional licence for newly registered migration agents. That the provisional licensees will operate under the supervision of a fully licensed RMA and provide immigration assistance only with applications to the Department and related matters. The Committee has formed the view that all new migration agents be required to complete a period of supervised practice before being permitted to practise on their own. Supervised practice is said to provide much needed support to new migration agents in navigating the extensive immigration system. More experienced migration agents have the added benefit of providing improved customer service to their clients.

### **Issue/Comment/Questions :**

Supervised practice is a good idea but there are many areas of concerns :

- Is it going to be a paid employment ?
- Will it be a full-time ?

There are not many RMA firms/companies who can employ the new entrants.

- How will we deal with such a situation ?
- What happens to those who have undertaken all the necessary actions – Grad Diploma, the English, etc and not being able to have get a supervised practice ?

**Suggestion** : perhaps, this should be integrated as part of the course to have practical experience and the College/University help these new entrants to get placements if they cannot do it on their own.

**Note** : With regards to allowing legal practitioners to supervise RMAs, I don't see any reason why they should be allowed if they are not under OMARA or the RMA framework. How are they going to training one to be 'world class' if they are not part of this proposed reforms ?

## 7. **Qualifications**

Australia introduced the Graduate Diploma of Australian Migration Law and Practice (Graduate Diploma) and an examination known as the Capstone Assessment (the Capstone) in 2018, supposedly, later than similar requirements were introduced in Canada and New Zealand. These, in the report, are said to be important steps towards meeting the international benchmark when it comes to education and examination.

### **Issue/Comment/Questions :**

- Is the present qualification insufficient and inadequate or is it simply to impose so high a qualification making it impossible for one to enter the industry / profession ?

I believe most RMAs will already have a basic degree, if not a few, before they take up the Graduate Diploma in Migration.

- Why should we have anything else beyond this ?
- How does it work with lawyers ? They finish a degree, move on to do a 'restricted practice' and then move on to their practice.
- Is there any other course like the Capstone exam ? If the lawyers can be allowed to get into practice straight away after their supervised practice, what is so difficult about an RMA doing what he/she does that require another exam over and above the Graduate Diploma ?
- Are we now putting in place a 'standard' and 'benchmark' that is to be higher than the lawyers or all other professions ?

## **8. Introducing a tiering system**

Totally disagree. I cannot see any merit in it at all except to smell everything not right about it.

If at all, all it takes is to just impose a condition that RMAs need to be in practice for at least two years before they can take up matters with AAT. There is no need for another further wait period, fees, application for the different tiers, etc.

### **Issue/Comment/Questions :**

I wonder if the Advisory Group really know how tough it is to be a RMA.

- By the way, can a new lawyer having completed the restricted practice give migration advice, handle applications, appear in tribunals and courts ?
  - Do they have any tiering system ?
  - If they can appear to almost any levels of the Courts if he/she feel fit to do so, why should migration agents be any different ?
- Why should there be a tiering to provide immigration assistance before the Minister ?

## **9. Offshore unregistered migration agents**

Agreed with recommendations. Most often these offshore agents are those who short-change the clients. There should be a strict control and monitoring of these agents. Should be the kind of things OMARA should be focussing on.

## **10. Penalties for unlawful immigration assistance**

Agreed. Is long overdue and should be the kind of things OMARA should be focussing on. Take a look some of the sites on 'facebook' and you will see every Tom, Dick and

Harry giving immigration advice. I am a migration agent but I still do not give advice to someone I do not know or his/her full circumstances. All these should stop. People are not aware that they cannot give such advice.

In conclusion, I am of the view that the Department should not disturb nor disrupt the current migration advice industry. It should be focussing the entire effort on stopping, curbing and preventing fraud, malpractice and criminal behaviour. It should, in addition, monitor offshore agents and those giving unlawful immigration assistance. This is what the customers need at the moment. If there is any poor advice or incompetency by migration agents, customers can easily complain to OMARA as happened in the past. Judging the statistics, it seems that OMARA has been very effective with their actions of suspensions, dismissal, non-renewal, etc. taken against these agents.

Regards

████████████████████