To: Department of Home Affairs, Australia.

Subject: Feedback submission on: Migration Agents Instrument Review Consultation Report dated May 2021

1. Introduction

The [redacted] was created purely by non-lawyer Registered Migration Agents ("RMAs") with a shared goal of protecting our own profession i.e., the migration advise profession.

RMA's have been frustrated for a long time with the inaction of professional associations such as Migration Alliance ("MA") and Migration Institute of Australia ("MIA").

We believe that our voice has not been heard and hence, we have been disadvantaged by these associations which are meant to advocate for our profession. In short, it appears that there is a clear conflict of interest and a betrayal of trust.

It is the same associations that also represent lawyers who decided to branch out and practice in our profession. Many of these lawyers do not have the appropriate qualification or experience to practice in the migration profession.

With the passing of the deregulation bill, lawyers no longer have to be registered with OMARA and as such RMA's could not leave the submission up to MA and MIA as we believe they will not cater for our interests. The [redacted] was created purely for non-lawyer RMA's to look after our interest.

2. The focal point of this submission

2.1 Is Migration a Profession or Industry

2.2 World Class Profession

2.3 Tiering

2.4 Capstone

[redacted] [redacted]

2.5 Advisory Group

2.6 Migration Services in Other Countries

2.7 Competition and Consumer Act

2.8 Proposed New Zealand Supervised Model

2.9 Concluding Remarks

3. Is Migration a Profession or Industry

A basic dictionary meaning of the two:

A profession is a group of qualified people who practice a particular set of skills (e.g. lawyer, dentist, accountant, architect, physician).

An industry is a group of companies and organizations that all work on similar things.

3.1 We recognise that there is a compelling need to address the matter of whether RMAs are to be described and referred to as a profession or an industry.

3.2 The consultation report (**the Report**) has used the 5E model developed by the Professional Standards Councils (PSC) to evaluate whether an occupational group is a "profession" or otherwise. In the Report, the 5E model has been outlined in Table 3 on page 18. On page 19 of the report, an attempt has been to match the corresponding attributes of the RMA occupational group against each element of 5E model in Table 4.

3.3 We observe that the attributes described in column 2 of Table 4 in the report are highly subjective in nature. For example, the comment in the report:

> *"The introduction of a tiering system <u>will ensure</u> RMAs develop personal capabilities and obtain relevant experience and/or education before entering higher tiers and, in particular, before entering challenging discrete professional areas, such as ministerial interventions and tribunal reviews".*

is noted to be unfounded, involves assumptive elements, is subjectively deduced, and denotes a foregone conclusion about a future action yet to be implemented.

3.4 The report also points out in the same table (Table 4) that more time is required to evaluate the effectiveness of the Graduate Diploma. The same reasoning should then apply to the introduction of a tiering system as well. A reasonable time (at least a few years) would be required <u>after</u> implementation of a new tiering system to evaluate its effectiveness. Thus, the words "will ensure" in the statement is assumptive and indicates a predetermined decision.

3.5 In our opinion, there is a simpler and more acceptable way to evaluate whether the occupational group of RMAs is a profession or otherwise. The term "Continuing Professional Development" or "CPD" can be effectively used to identify whether an occupational group is a profession. The descriptor "Continuing" preceding the term "Professional Development" is self-revealing and self-explanatory. The term "Continuing" unerringly indicates that the development is <u>continuing</u> for a person who is an <u>existing professional</u>. Otherwise, the term

would have just been “Professional Development” where a non-professional is being converted into a professional. In industries, for non-professional occupational groups, a term like “further training”, or “occupational training” or simply, “training” would be more appropriate and fitting.

3.6 Given that RMAs have to undergo CPDs as a mandatory part of their occupational development, it stands to irrefutable reasoning that the occupational group of RMAs is a profession, and not an industry.

3.7 In view of this simpler, easier and indisputable means available to evaluate and determine that the RMA category is indeed a profession, there is no logical need to further use the 5E model of PSC. Even the basic dictionary meaning has given us a clear cut answer.

3.8 Given that all indications point to Migration as a profession rather than an industry, we are dumb founded as to why the question has been raised in the first place. Is there an ulterior motive by the department?

3.9 We are genuinely concerned that such misleading comments used in the report is indicative of an underlying motive to deliberately portray the occupational group of RMAs as having inferior standards in need of professionalisation, with the intention of imposing the structured tiering scheme on the RMA profession. The aspect of purposeful demeaning of the RMA profession has been used in some other parts of the report as well.

4. World Class Profession

4.1 We strongly believe that a qualified Industry is one where **all the stakeholders** have the same minimum level of qualification. Stakeholders in the migration profession does not limit to immigration advisers (registered migration agents and immigration lawyers) but includes the **migration decision makers** as well.

4.2 We support minimum qualification which is **non-discriminate** to any one stakeholder group and does not give a potential for business monopoly to a stakeholder or stakeholder group.

4.3 The Migration Advice Service Sector (MASS) of Australia is made up of two categories of service providers, namely, the Registered Migration Agents (RMAs) and Unrestricted Legal Practitioners (ULPs).

4.4 As per data available from OMARA, in December 2020, there were a total of 6,888 RMAs. This figure is inclusive of the then existing 2,126 legal practitioners who were registered as RMAs as well. Post-deregulation, with the removal of ULPs from the regulatory scheme governing RMAs, the number of RMAs works out to only 4,762 (after deducting the number of ULPs with RMA registration from the total of 6,888 RMAs).

4.5 As per the information available in the National Profile of Solicitors report, there were a total of 76,303 lawyers as of October 2018.

4.6 The total number of migration advice providers post-deregulation (RMAs plus ULPs) in the Migration Advice Service Sector sums up to 81,065. Thus, seen as a percentage, the RMA subsector consists of only 5.9% (or less than 6%) of the total migration advice service providers.

[redacted] [redacted]

4.7 The report states that the scope of the Review is confined to the RMA subsector only, and the deregulated ULP subsector is out of scope. In other words, it is envisioned to have a world class migration advice sector only within the 6% of the total market participants. Therefore, it follows that approximately 94% of the migration advice providers are NOT aligned with the goals of achieving a world class migration advice service sector.

4.8 The report does not include any information as to whether the 8 different regulating authorities of ULPs are aware of, and aligned with, the goals of the Department of Home Affairs (DHA) in relation creating a World Class Migration Advice Service Sector. In the absence of such information, it follows that the 8 different law societies regulating the ULP sector are NOT aligned with the DHA's goal of having a World Class Migration Advice Service Sector. There is no Memorandum of Understanding (MoU) between the DHA and Attorney-General's Department to ensure that identical measures to those proposed in this Review are implemented by all the law societies so as to have uniformity in the quality of migration advice services to ALL consumers.

4.9 From a rational viewpoint, the notion of pursuing significant and dramatic reforms in a service sector without having all the service providers participate in the pursuit is rather illogical. It is absurd that a substantially large portion (of 94%) of the service providers are left out of scope. Notwithstanding the absurdity, carrying out such pursuit nevertheless would be indicative of implicit ulterior motives, or **does it mean that the RMA's are of such are high standard that the 6 % who are reformed will balance out the sector as the 94% of other immigration advice providers are of such a low standard?**

4.10 Therefore, we reasonably note that this Review does not objectively serve the purpose of delivering true and genuine benefits to ALL consumers across the whole of the Migration Advice Market Sector. In other words, the underlying purpose of this Review appears to be driven by the motive of imposing stringent reforms on the minority RMAs.

5. Tiering

5.1 Tiering has been suggested as a tool to enhance the quality of service that a professional will provide to consumers. The focal point is the service that is to be received by the consumer.

5.2 If tiering is to be adopted then it has to be applicable to **each and every person** who provides migration services irrespective of whether they are lawyers or RMA's. Anything short of this is nothing but discrimination against people who are tiered.

5.3 It is a fact that most lawyers will be **tier one or less** as they do not have the necessary qualification or experience in migration law.

5.4 Any changes that are to be implemented in the migration space has to be for the services provided and not people specific. Changes cannot be implemented for RMA's only and that the lawyers are exempt for providing similar services.

6. Capstone

6.1 The Australian Qualification Framework (AQF) is to ensure national recognition and consistency as well as common understanding across Australia of what defines each qualification. According to AQF the levels are:

[redacted] [redacted]

- Level 5 – Diploma
- Level 6 – Advance Diploma, Associate Degree
- Level 7 – Bachelor Degree.
- Level 8 – Bachelor Honours Degree, Graduate Certificate, Graduate Diploma.
- Level 9 – Masters Degree.

6.2 The current requirement for registration as a migration adviser is the completion of a Graduate Diploma in Migration Law and Practice which is **AQF level 8**.

6.3 The graduate diploma in migration is quite an extensive and expensive course. It is expected that by the time students finish this course that they are able to provide sound migration advice. It should also be recognised that anyone undergoing this and other courses offered in migration law would have a substantial advantage over anyone who had not undertaken specific migration law studies.

6.4 Undertaking a law degree should not automatically qualify a person to provide migration advice because of the complexity and fluidity of migration law.

6.5 The Capstone Assessment which was administered by the College of Law has been introduced as a mandatory (competency) prerequisite to migration agents **only**. This is **discrimination** to say the least. If this is to be a prerequisite, then it should apply to all stakeholders not only to Registered Migration Agents.

6.6 The capstone exam has an extremely high failure rate which is an exhibition of the setting of an unrealistic standard for an **entry level applicant**.

6.7 After the graduate diploma, a set period of two years supervision should be enough for a migration professional to start practicing. This should be the requirement to start practice rather than another exam such as Capstone.

6.8 Capstone should be abolished and a supervision period to be mandated for entry into the migration profession.

7. Advisory Group

7.1 For advisory group members to be effective, they have to be elected by the members of the profession.

7.2 The advisory group must not be made up of any lawyers as they are not part of the scope. Any recommendations the lawyers make will be seen as to only benefit them in light of the deregulation.

7.3 Any proposals that are put to the advisory group members must then be discussed with migration professionals and agreed before the advisory members can then take the proposal back for discussions.

7.4 There must not be any secrecy in the operation of the advisory group. The proceedings and discussions of the Advisory Group (AG) have been classified as a “SENSITIVE” matter. As a result, the details of the minutes of meeting among the AG members and those between the

[redacted] [redacted]

AG members and the regulators are not published. In other words, the fate of RMAs (including legacy RMAs) is being decided in a non-transparent manner.

7.5 It is unfair for these "selected non-representative members" to be given the right to make suggestions about the future of legacy RMAs. As we have not authorised or elected any of these members to make recommendations about our future, we cannot accept any proposal/recommendation made by them that would adversely affect our members.

7.6 For empowering the AG to make recommendations about the future of RMAs, there must be:
(i) an elective process be employed for appointing a fresh set of members, with participating rights excluded to market competitors of the RMA subsector; alternatively, if a selection process is employed, then each selected member be authorised in writing by RMAs to represent them;

(ii) minutes of meeting of AG be published;

8. Migration Services in other Countries

The career pathway comparison of the UK

For a new entrant to become a level-3 Registered Immigration Adviser in the UK, it typically takes around 4-5 years. It is to be noted that the UK structural model is very dissimilar to our existing model. The first point of dissimilarity is that a newcomer to the profession can start by working under supervision without completing any course of study. The second difference is that there is no qualification requirement, and courses of study are as short as 1 or 2 days. The third difference is that their assessment itself has a multi-level pattern, the respective level being based on the skill and training of the candidate.

The career pathway comparison of Canada

For a new entrant to become a Regulated Canadian Immigration Consultant, it typically takes around 4 years, as follows:

- A Bachelor's degree, followed in order by
- A Graduate Diploma in immigration and citizenship law (1 year); and - Entry-To-Practice exam.

The career pathway comparison of New Zealsnd

The career pathway in New Zealand for a new entrant aiming to become a Licensed Immigration Adviser is as follows:

- An undergraduate degree (or an acceptable work experience of 3 years; followed by
- A graduate Diploma of 1 year After completing 6 months of the Graduate Diploma, the candidate can apply for a Provisional License, and
- work under supervision for 2 years, and simultaneously complete the remaining 6 months of the Graduate Diploma.

[redacted] [redacted]

It typically takes around 5.5 years for a new entrant to become a fully licensed Immigration Adviser of New Zealand.

The following table (Table-1) shows a quick comparison of the timeframes for a new entrant to become a fully functional migration advice provider:

Table-1 (Career pathway timeframes comparison)

RMA in Australia (proposed)	**Australian Legal Practitioner**	**Registered Immigration Adviser (UK)**	**Regulated Canadian Immigration Consultant**	**Licensed Immigration Adviser (New Zealand)**
7-10 years	5-6 years	4-5 years	4 years	5.5 years

The proposed career pathway timeframe for a new entrant RMA in Australia, when matched with those of the other comparable countries is the longest and most difficult to complete, and this is likely to render the proposed tiering structure unrealistic, thereby, making it hard to sustain the RMA subsector.

We reasonably perceive the proposed tiering structure to be a huge disincentive for new entrants looking to start a career in the migration advice profession. On a rational basis, this proposed 3-tier structure could very well result in a substantial lessening of competition from RMAs, and the eventual extinction of the RMA profession, thereby effectively making the way for a fully **monopolistic** regime by ULPs.

9. Competition and Consumer Act 2000

The 82-page submission of the LCA has introduced and detailed the proposal of a 3tiered structure for its market competitor, the RMA subsector, and this includes details of how **RMA**s should fit into the 3-tiered structure. This review has been supportive of misuse of market power by the LCA. Clearly, the regulators have been supportive of this breach. Based on a support for an unlawful behaviour by the LCA, this Review seeks to impose punitive measures on RMAs. We **strongly oppose this** support for the 3-tier system.

It seems that this review seeks to pursue an unconstitutional procedure for imposing an unjustified punitive reform on fully compliant, unblemished legacy RMAs.

10. New Zealand Supervised Model Proposed

The visa patterns of NZ are substantially similar although finer differences do exist. The skilled visas (including points-based GSM), work visas, and various other visas of NZ and Australia have a close resemblance.

The two countries also have a mutual agreement in place for cross licensing/registration of migration agents aka immigration advisers. This agreement is called as the Trans-Tasman Mutual Recognition Act 1977 (TTMRA).

[redacted]

The Supervisory Practice (SP) model of NZ to be very meaningful and beneficial to both the supervisor and the supervisee. The SP model effectively places the responsibility of the migration advice on the supervisor, while the supervisee gets a good deal of training, mentoring and practical experience that cannot be substituted by classroom learning.

It generally takes a minimum of 2 years for a new entrant to get familiarized with the immigration department's work patterns, and those of related bodies like assessment authorities, state nomination bodies and Regional Certification bodies. The actual dealings with such bodies can seldom be replaced by classroom learning.

An exhaustive agreement between the supervisor and the supervisee (that is approved by the licensing authority) lays down the obligations and responsibilities of both parties to the agreement.

The SP model of NZ is not restrictive or punitive in nature, as would be the proposed 3-tier structured model. We consider it inappropriate to call the SP model of NZ as a form of tiering. In reality, it is purely a career pathway for fresh entrants to the profession. A pathway that supports genuine practical learning to become an independent professional; a pathway that is truly beneficial to the end consumer.

It is our opinion that a 2-year SP can safely eliminate the need for a Capstone assessment.

Therefore, we recommend a 2-year supervised practice model for Australia without any Capstone examination. In other words, a post-graduate Diploma holder in migration law and practice who meets the stipulated English language requirement be issued with a provisional license for 2 years.

There will be instances where the supervisee may not get an opportunity to handle some vital areas of migration such as AAT or Ministerial Intervention (or both) due to want of suitable clients. In such cases, we recommend that the supervisee, prior to gaining a full licence, be required to undertake a specialised CPD (similar to the PRP model) focused exclusively on AAT and MI areas and having a total duration of at least 10-12 hours. Provisional license holders who have handled at least one case of AAT and one MI matter during the 2-year supervision period may be considered eligible for a full licence. Alternatively, a provisional license holder who has completed the specialised CPD of AAT and MI may also qualify for a full licence upon completion of 2 years of supervision.

Full licence may be issued only after an audited scrutiny of at least one client matter handled by the supervisee (for example, a visa application from the start to finish).

Figure-2 below summarizes the proposed Supervised Practice model:

[redacted]

Figure-2

Supervised Practice model recommended:

- Post-Graduate Diploma in Migration Law and Practice – 1 year
- Candidate meeting English requirement applies for Provisional License.
- Provisional License for 2 years (no restriction of areas of practice)
- At the end of 2 years: if no AAT handled – specialised AAT CPD for 6 hours (PRP model).
- At the end of 2 years: if no MI handled – specialised MI CPD for 6 hours (PRP model)
- At the end of 2 years if no AAT and no MI handled – specialised CPD for 12 hours focused exclusively on AAT and MI (PRP model)
- No specialised CPD for provisional license holders who have handled at least 1 AAT matter and 1 MI matter.
- Candidate applies for full license for providing unrestricted migration advice.
- CPD points to be applicable to both (supervisor and supervisee) for each hour of supervised practice (as per NZ SP model).
- NO FURTHER TIERING OR RESTRICTIONS

11. Conclusion

Based on our detailed submission above, we believe that the Migration sector is a profession and not an industry. For the Migration Profession to be World Class, all stakeholders must have the minimum qualification and experience.

If tiering is to be implemented, then it has to be applicable for each and everyone who practices in the migration sector. Anything less is purely discrimination against the people who are to be tiered.

Capstone has to be abolished and the supervision system to be implemented.

Advisory group members must be chosen by the stakeholders in the migration sector. If decisions are to be made which only affect RMA's then the representatives must be chosen by RMAs.

Your Sincerely,

[redacted]

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President

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