



Administrative
Appeals Tribunal

Submission to the Migration Agents Instruments Review

Introduction

1. The Administrative Appeals Tribunal (AAT) welcomes this opportunity to provide further submissions to the Department of Home Affairs in relation to its review of the migration advice industry.
2. The AAT's submission regarding the *Creating a world class migration advice industry* discussion paper (the initial submission) outlined observations regarding the practices of migration agents who act as representatives of applicants in the Migration & Refugee Division (MRD). While the proposed measures set out in the Migration Agents Instruments Review consultation report (the consultation report) are largely consistent with the observations contained in the AAT's initial submission, we have addressed several proposed measures in greater detail below.

Theme One: A Qualified Industry

1.3 Supervised practice

3. As noted in the AAT's initial submission, supervised practice is a feature of other occupational registration schemes, including Australian legal practitioners. The AAT remains of the view that a supervised practice regime could improve the level of support provided to new Registered Migration Agents (RMA) in preparing for all facets of practice. This extends to restrictions placed on the provision of immigration assistance by RMAs subject to supervision requirements, such as limiting immigration assistance by provided by supervised RMAs to applications to the Department and related matters.

Theme Two: A Professional Industry

2.1 Review of registration requirements

4. Without taking a view, we note that the Department has identified section 501(6) of the *Migration Act 1958 (Cth)* as a potential basis for revised "Fit and Proper Person" criteria. "Fit and Proper" principles are concepts well-known across a range of regulatory schemes. While the consultation report does contemplate certain licensing regimes, consideration should also be given to whether the Fit and Proper Person Test should apply in a manner similar to other regulated occupations. This includes other professions involved in the provision of advice, such as legal practitioners who may also provide immigration assistance.

2.4 Introducing a tiering system and 2.5 Review of Continuing Professional Development (CPD) arrangements

5. We note the AAT's initial submission supported further consideration of tiered registration for RMAs. Our submission also noted that a tiering system would allow for the 'tailoring' of CPD syllabus content to better meet the requirements of RMAs engaged in work relevant at each tier.

6. Without taking a view on the specific options tabled regarding the use of the CPD system to deliver the required training for any tiering system, the AAT further observes the value in establishing CPD activities tailored to AAT-specific knowledge requirements. The AAT remains of the view that tailored CPD activities would support higher quality advice and assistance in more complex areas of work, including involvement in cases at the AAT. CPD activities specific to the AAT could take the form of educational sessions, as outlined in section 3.5.5.4. We would welcome the opportunity to be involved in the development or design of the CPD framework, content, and standards for work at the AAT.

Theme Three: Combatting misconduct and unlawful activity

7. In the AAT's initial submission, we highlighted several issues regarding "Shadow Representatives": persons who provide immigration assistance in relation to cases before the AAT but are not identified as a representative. Measures that would address broader integrity issues and ensure that immigration advice is provided by those who are properly qualified would be supported by the AAT. For example, we recognise the value of proposed measures aimed at limiting the potential for unlawful immigration assistance to be disguised as clerical work, particularly as issues with Shadow Representatives remain ongoing.

Conclusion

8. A competent and highly professional migration advice industry promotes fair, just and timely merits review of migration and refugee decisions for the benefit of applicants, Tribunal decision-makers and the wider community. The AAT would be happy to provide any further information or views that would be of assistance.