



RESPONSE TO MIGRATION AGENTS INSTRUMENT REVIEW

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1. INTRODUCTION

I wish to make a short submission in response to the Migration Agents Instruments Review, as I am also working with Dr Marianne Dickie, Mary Ann Kenny and a small group of other interested agents to make a joint response to topics raised in the discussion paper,

I am a registered migration agent working in the industry since 1991 and registered in 1993. I gained registration simply because I was already working in the industry and have never had any formal training in migration or refugee law. My background profession was a registered nurse.

I started work as a migration agent in a Non-Government Organisation and benefitted from mentoring by some very generous lawyer/ migration agents interstate. I started my own business in 1996 as a sole trader and formed Australian Migration Options Pty Ltd in 2009. With Government contracts to provide Immigration Advice and Assistance in Australian detention centres our company grew to 32 migration agents (a mixture of employees and subcontracted.). I have been on the board of MIA and active with CPD training.

I have thus had a wide range of experience in both the community and commercial sector of practical work as a migration agent and have been involved with policy and training.

Over the past 4-5 years I have noted a growing frustration and deep anger amongst Registered Migration Agents with what appears to be a constant put down of registered migration agents and their profession, a repeated encouragement of the Department of Immigration to advise clients to complain about migration agents but no equivalent platform to provide compliments and reports of satisfaction, and a failure to recognize the work of a Migration agent as a profession.

At the outset I submit that to have a world class migration advice industry Registered Migration Agents must be respected as professionals, there must be a mutual respect of each other's work and roles between Registered Migration Agents and Departmental staff or Tribunal staff. There must also be recognition of the fact that Lawyers are no longer part of the Registered Migration Agent Profession and thus there also needs to be a similar call to ensure they review their own professional standards when it comes to providing migration advice and assistance and not assume that just because they are lawyers they are competent at their work.

A world class migration advice industry requires ALL stakeholders to be included, and to work together with mutual respect and integrity and transparency.

It is also imperative that Immigration and the Tribunal conduct their own reviews (with feedback from lawyers and registered migration agents) into their own performance, decision making, knowledge of regulations and policy and their professional conduct.

We call for a recognition that all stake holders need to be reviewed alongside each other and without bias. To have a world class migration industry one side cannot do anything without the other.

Secondly, I also submit that as part of this review the title of the profession – Registered Migration Agents - needs to be reviewed and reference to people providing illegal advice should never be labelled as “unregistered migration agents”.

1. RESPONSE TO THE PAPER

I acknowledge that the review does give an opportunity to review the work and Professional standards of Registered Migration Agents. At the same time it hopefully gives the Department an opportunity to also review the myriads of people who seem to be able to provide advice either as “exempt persons” or simply just deciding to not bother with registration and they provide this advice with impunity.

It is good to note the review paper has acknowledged “the critical role that registered migration agents (RMAs) play in facilitating migration to Australia” and “..reflect that the vast majority of migration agents regularly provide valuable assistance and have never had a complaint against them”.

However, this raises the question firstly, as to why we are not already recognized as professionals and secondly why are Registered Migration Agents so often give a bad name.

The report states on page 11: *“The Review is guided by the Government’s vision as captured in the discussion paper, that is, of making the industry world class, to better protect consumers and ensure the integrity of the Australian migration program, while considering the regulatory impacts to the sector.”*

The report goes on to state: *The Department has assessed that the industry has not yet achieved ‘world class’ status, as there is room for improvement when it comes to protecting consumers from criminally complicit or incompetent RMAs.*

Such wording read by any member of the public implies that the Migration Agent profession is corrupt and has a history of incompetency. Statistics show that this is clearly NOT the case. In fact, percentage wise the Legal profession has faced far more complaints than registered Migration Agents.

A large part of the problem facing our profession is caused by people not legally qualified to provide migration advice and the fact that the Department and the Media label such people as “Unregistered migration agents”.

One rarely hears of lawyers described as either “registered or unregistered” and I strongly recommend that the Department stop referring to people giving illegal migration advice as “non registered migration agents”.

The Migration Agent Instruments Review paper does state, under “terminology” that those who are not registered migration agents are referred to as “unlawful providers of immigration assistance” however the term “unregistered migration assistance” is then used throughout the paper.

2. STATISTICS TO SUPPORT REFORM

One major concern I have in regards to the review are what statistics are Immigration using to justify the proposed changes in the review?

The paper states:

The majority of RMAs are professional and competent in what they do, and pride themselves in ethically helping people resettle in Australia. However, there remains a small cohort of RMAs involved in unethical and criminal behaviour, including migration fraud.

In the past five years, the AAT has referred 13 RMAs to the OMARA for suspected fraud or criminal behaviour. Twenty-nine per cent of current agents have been the subject of a complaint at some time while being registered, although 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, which was approximately nine per cent of the 447 total complaints received for this period. 10 Decision summaries for complaints finalised with a sanction (caution, suspension, cancellation, or barring) are available on the OMARA's website.

How many of these RMA mentioned above were lawyers, how many were Registered Migration Agents and how many were unauthorized providers of immigration advice such as Education agents?

Out of the 29% of complaints made what was the percentage that were dismissed.?

One should also compare the number of lawyers in Australia to the numbers of registered migration agents and see the comparative complaint rates in the two cohorts.

I believe these are extremely important statistics to have.

I know that for me personally I have had two complaints made against me simply because I was the Director of the company – the complaints were both directed at **LAWYER RMA's** working as subcontractors for me. I have never had a complaint directed at me personally in the 30 years I have worked as a an RMA and I have never had complaints about any of the RMA working for me.

We are facing a review with far reaching adverse consequences for those who have endeavoured to follow a career as Registered Migration Agents, and yet the review is not based on any clear evidence or statistics.

4. ISSUES RAISED IN THE MIGRATION AGENTS INSTRUMENT REVIEW PAPER

The issues raised come under the headings of:-

- a qualified Industry
- a professional Industry
- Combatting misconduct and unlawful activity

4.1 A QUALIFIED INDUSTRY

4.1.1 Registration Requirements

I raise the question that, if the Government is going to demand higher qualifications for people who are providing migration advice to prospective applicants or sponsors, is there also going to be a minimum qualification criteria for the Decision makers within the Department and Tribunal?

I accept that as the regulation and policy become more and more complex and legal, there should be a minimum qualification although I did not require that qualification and neither did either of my daughters, in order to start practicing as registered migration agents.

I question though the value of the training and education in the courses currently provided. I have had agents working with me who have shown me some of the essay topics and questions put to them in the course and I doubt that many registered migration agents or lawyers could answer the questions and in my long experience as an agent I had never heard of some of the topics and could not see their relevance at all. The agents I know who completed the Diploma and Graduate Diploma courses were certainly not practice ready on completion of the course.

I thus strongly submit that any education course requirements that are put in place MUST be relevant to the work the person will face in the industry, give them the skills to understand the Migration Act, Regulations and Policy, skills in the practicalities of form filling, submission preparation, document preparation etc and skills to work with people from other cultures and backgrounds.

Of more importance I think is the ongoing comprehensive professional development for those giving advice and those making decisions. Amongst the Registered Migration Agents there is sadly too often an attitude that you just go to a CPD provider who is cheap and where you can get as many points as possible in one day. The value and importance of an excellent standard of ongoing professional development I believe is far more important than an entry level qualification based on an exam result.

4.1.2 English Language requirement

I suggest that English language of minimum level 6 in all 4 components must be an essential requirement for a Registered Migration Agent. I doubt it is possible to understand the migration regulations and law without being competent in English.

4.1.3 Character Requirements

I strongly oppose that Migration Agents be tested against the character requirements as defined in S510 of the Migration Act. There are already rules about character in the current registration scheme that require us to declare criminal offences, bankruptcy etc of ourselves, or any staff. I submit they are sufficient. To look into family relationships of Migration Agents is not supported by any evidence provided by the Department.

4.2 PUBLISHING OF PRICING

I suggest this is a futile exercise as the OMARA have already done this in the past and it would appear migration agents were simply not honest about their pricing. The current wording about pricing varying because of experience, complexity of the case, size of the business etc is satisfactory.

4.3 A PROFESSIONAL INDUSTRY

I find it rather staggering that after 30 years working as a migration agent I am not regarded as a professional or part of a profession. I suggest registered Migration Agents as a profession already meet the five elements of professionalism as outlined in the paper.

I also find it very strange and rather offensive that comparative occupations provided in the paper are to do with warehouse operators, custom brokers, maritime security etc. What do these occupations have in common with the Migration Agent profession? The review needs to compare our profession with legal practitioners, overseas migration agents with other countries, tax practitioners and the like.

4.4 TIERING

I strongly disagree with the concept of “tiering”, but this issue will be dealt with in the joint response with which I am involved.

4.5 SUPERVISED PRACTICE

In theory I think this is an excellent idea, but I cannot see how in practice it will work. Most sole practitioners are unable to take on the work of supervision and other Registered Migrations with small companies are also mainly not in a position to pay for this supervision. When one hears of law students finding it difficult to get two years supervised practice, I believe it will be much more difficult for migration agents.

4.6 UNREGISTERED PROVIDERS OF IMMIGRATION ASSISTANCE

This is one of the biggest problems facing registered Migration Agents as most of the malpractice and substandard work is seen from this sector but it continually either intentionally or unintentionally gets linked to the profile of Registered Migration Agents. As OMARA states they have no jurisdiction over “unregistered Practice” and very few seem to face prosecution, and thus it has left a lot of registered migration agents wondering why we bother registering.

The ABF officer who spoke to the committee shocked us all with the very few cases they were investigating that were related to unregistered providers – it either shows a lack of resources or a lack of interest on the part of the Department to stop this practice.

The Department also needs to review the Education Agent and Travel Agent industry where migration advice and assistance is given with impunity and so often causing disastrous consequences for the unsuspecting client.



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