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Director, Migration Assistance Policy Section
Immigration Planning and Policy Framework Branch | Immigration Integrity,
Assurance and Policy Division
Immigration and Settlement Services Group
Department of Home Affairs

By email: ██████████

Dear ██████████

Consultation reply: Migration Agents Instruments Review

The following submissions are intended to assist the Government in its consideration of the following initiatives as articulated in the call for submissions.

To assist in the consultation Migration Alliance will comment on the summaries of the reforms as they arise in the consultation report; please note that if there is no identification of a particular recommendation or position, then that can be construed as a “no comment”.

Migration Alliance supports the strengthening of all elements of the 5E model to achieve the status of a profession. Migration Alliance supports the Department in identifying and addressing gaps within all five elements.

A qualified industry

1.1 Qualifications

Migration Alliance is of the view that the Graduate Diploma and the Capstone are necessary to ensure that sound knowledge requirements are met at the time of initial registration. These two de-linked education requirements are necessary to protect persons (clients) who are socially and legally vulnerable. These exams should be distinct from supervised practice and/or tiering of the RMA profession post-initial registration.

1.2 English language

The Migration Alliance poll results show that 77.2 per cent of our members do not support increasing the English test minimum score requirements for new RMAs to IELTS 7.5 overall. Existing agents in good standing should not be required to meet any additional English language testing. We accept the idea that unless RMAs cannot meet Education Option 1 or Education Option 2 as set out under 1.2.2.1 of the review, they may not be able to demonstrate they meet the English language requirements. Neither the Diploma nor the Capstone are sufficient evidence of the

ability to meet the English language requirements. The Industry comparison of English language requirements table at 1.2.4 is accepted as a reasonable comparison to the migration advice profession. The international comparison to the United Kingdom, Canada, and New Zealand at 1.2.5 is accepted.

1.3 Supervised practice

Migration Alliance agrees with this proposal subject to their being appropriate arrangements in place to ensure that new practitioners are not exploited by existing members of the profession. We are of the view that supervised practice should be provided by a selected and approved panel of mentors, for quality assurance purposes. CPD during any period of supervised practice should be commensurate with Tier 1, to ensure education is levelled correctly for the needs of new RMAs. The issue of sole traders is not seen as relevant due to technological opportunity to meet online (ie Zoom, WebEx etc).

The comparison with relevant international regulatory frameworks at 1.3.5 is accepted. Australia lacks supervised practice.

Migration Alliance agrees with the introduction of a 12-month provisional licence for newly registered migration agents. We agree that newly registered migration agents should not be able to provide immigration assistance on matters before the AAT or make representations to the Minister as these would be considered Tier 3 skills under a TSAM.

2.1 Review of Registration Requirements

2.1 Migration Alliance does not agree that an RMA should be characterised as not being a “fit and proper person” by reason of their spouse having been the subject of an adverse finding. The association “test” should not be expanded to include other persons’ conduct as opposed to the individual conduct of an RMA in good standing. The introduction of AFP checks from 1 January 2021 is welcomed.

If an RMA’s mental health condition/s adversely affects their ability to adequately perform their duties as a RMA, an expert opinion from the qualified medical specialist should be asked to make a finding. An RMA can then be referred to appropriate treatment, rather than being sanctioned. The source issue needs to be addressed.

Under 2.1.6.2 Migration Alliance agrees with the removal of the 30 day publishing requirement.

Under 2.1.6.3 Migration Alliance supports the move to increasing the period of registration. We believe that the extensions should be commensurate with the Tiering of RMAs. A tier 1 RMA would need to re-register every year. A tier 2 RMA every 2 years and a Tier 3 RMA every 3 years. This incentivises RMAs to perform to

a peak standard and provides a re-registration period commensurate with skills and experience.

2.2.4 Migration Alliance believes the publication of fee information by the OMARA is useful, but agrees with the MIA that it is a somewhat blunt instrument. Under 2.2.8.1 Migration Alliance is concerned that RMAs rush these steps as part of the re-registration requirement, finding it burdensome and frustrating to complete 'average fees' as a part of the process. Answers may or may not be entirely accurate for this reason.

2.3 Developing a Fidelity Fund or other mechanisms for recompense

Migration Alliance agrees with not establishing a fidelity fund for the migration advice industry. We believe introducing a period of supervised practice, plus tiering under the CPD framework, and professional indemnity insurance of a kind prescribed by Regulation 6B is 'fit for purpose' regulatory policy

2.4 Introducing a tiering system

Migration Alliance supports a tiering system for RMAs. Migration Alliance supports a three (3) tier system in line with the three bullet points in the Executive summary at 2.4.1.

The tiering system should be simple in design and have an outcome which best protects consumers. In reference to Stakeholder views at 2.4.3.1 where almost of submissions to the discussion paper commented on a tiering approach, and 70 per cent of those submissions supporting the measure or providing supportive commentary, Migration Alliance supports this sentiment.

Migration Alliance agrees with the submissions made by the AAT, and the LCA in relation to a three-tier model, in which RMAs would progressively qualify to assist clients at increasingly complex levels. Migration Alliance believes tiering would be via CPD activities conducted by suitably qualified instructors and assessors for each tier.

Migration Alliance agrees with the comments made by members of the Migration Advice Industry Advisory Group at 2.4.3.2. Tiering should be based on whether the agent can demonstrate core competences for immigration assistance provided at a particular tier. We support the comments made regarding supervised practice.

We agree that a rigid time-frame will not necessarily reap the desired outcomes, rather a Skills Acquisition model, based on CPD training specific to each tier level. CPD trainers/instructors/assessors would need to be vetted for suitability to train RMAs at each level, in particular Tier 3.

Migration Alliance supports the models in operation in New Zealand and the United Kingdom, each having three tiers.

Migration Alliance supports the implementation of a tiering system to provide better protection for consumers and a supportive, easy-to-implement framework for professionalisation of the migration advice industry.

Migration Alliance generally supports the conditions of each tier as set out at 2.4.5.1.1. Migration Alliance supports the tiering system as set out at Table 10 “Proposed delineation between the tiers”. We agree with tier 1 being supervised and as part of the supervised practice component for new RMAs. We believe those in tier 3 should provide advice and be involved in matters before the AAT, IAA and/or the Minister.

Legacy RMAs for entry to tier 3 would be able to pass tier 3 CPD activities to demonstrate competence, even if they could demonstrate prior experience with AAT representations, and Ministerial Interventions. Prior experience does not mean prior successful experience, and does not take into account the AAT, IAA and Minister’s views on the RMA’s ability in those matters.

At 2.4.5.1.3 we agree that only tier 3 RMAs provide CPD training. For Tier 3 CPD training, only RMAs with ten years experience, and approved by the OMARA as appropriate, or are an Accredited Specialist Immigration Lawyer should provide such training.

Submissions to the Minister, IAA and AAT should include a copy of evidence of the RMAs tier level as part of the initial application.

2.5 Enhanced proficiency through Continuing Professional Development

Migration Alliance agrees with the tiering of CPD. We disagree with the comment at 2.5.1 that providers limit the number of CPD points which can be provided in one day. This is impossible due to distance learning being available, in most cases, 24 hours a day. Some CPD providers run multiple events on the same day, with different presenters, and on different topics. There can be overlap with two different topics running at the same time, with two different presenters in two different rooms. By way of example, presenter one can be delivering topic one in zoom workshop one. Presenter two can be delivering topic two in zoom workshop two. Both topics may start at the same time but cater to different RMA needs and subject matter expertise. Some CPD providers are willing to conduct CPD training before and after ordinary business hours to allow agents to attend learning activities when they are not at work. This can mean some providers will deliver more CPD activities than others who limit their training to ordinary business hours. Migration Alliance believes that market forces will determine whether an RMA chooses to attend at a place and time suitable to them and their learning needs. Migration Alliance believes the

comments about ‘limiting the number of points delivered in one day’ are anti-competitive, and are more about limiting competitive advantage of certain providers, than about delivering the best, most suitable learning outcomes for RMAs in line with RMA needs.

Migration Alliance believes that the CPD system be used to deliver the required training for a three tiered system.

At 2.5.7.1.1 A, we broadly agree that the PRP can be repurposed for level 1 of a tiering system. It is possible for online multiple choice examinations to be conducted with a pass/fail at say, for example, 75 per cent, embedded within the online testing system. Migration Alliance agrees with Option C, allowing RMAs to take CPD activities delivered at a higher tier as a prerequisite to moving to that tier.

At 2.5.7.1.3 Fifteen out of the seventeen discussion papers argued for reform. Migration Alliance agrees with Astute. With respect, Migration Alliance disagrees with the comments made by Jack Li and Monica Gruszka as this model lends itself to a “Jack of All Trades, Master of None’ education for RMAs. Migration Alliance agrees generally with the comments made by the LCA. Migration Alliance agrees with the comments made by the AAT.

At 2.5.7.2 Migration Alliance agrees with quality controls for CPD activities. For reasons previously mentioned at 2.5.1 above, we disagree with the quality control which limits the number of CPD points which can be delivered in one day. Days can be broken up into different sessions, with different topics and different presenters. Theoretically, a CPD provider may be able to deliver up to 30 points of CPD a day in different locations, zoom rooms, distance learning and seminars online with multiple presenters and multiple topics. Migration Alliance believes that with breaks and different presenters, cognitive fatigue is mitigated. If cognitive fatigue were the real reason, then professions worldwide would not be conducting all-day or week-long conferences with breakfast, lunches and dinner events attached to the learnings. All day events are completely normal in professions. In addition there is no “requirement” that RMAs attend every single activity in one day. Many only attend the events they are interested in over a one day period, opting out of the training that doesn’t suit their learning requirements. The length of a school day for children is not relevant. Universities offer training and classes from very early in the morning to very late at night, with lectures and tutorials running sometimes until 8:30PM. If CPD providers can’t offer CPD training before and after ordinary business hours, and therefore don’t meet the needs of RMAs, then they should not attempt to limit those CPD providers who do.

Migration Alliance believes that each CPD presenter be required to be a subject matter expert, and be in tier 3 to deliver training to lower tiers. CPD presenters in tier 3 should be at a higher level again, as previously mentioned in this submission.

At 2.5.7.3, these comments are not accepted. As previously covered, one CPD provider can offer multiple activity topics per day, across multiple locations, and with multiple presenters. One presenter can cover a morning. Another presenter can cover an afternoon. Different RMAs can be in different classes, and some RMAs attend only what they need from topics available to them in a 24 hour period.

With Category A CPD activities being interactive and of shorter duration being the most popular method of learning, this assists to ensure learning outcomes are met.

3.1 Immigration Assistance: definition and scope

Under 3.1.2.1.2 Migration Alliance agrees with the introduction of a definition of 'clerical work', including listing particular acts.

Under 3.1.2.1.4 Migration Alliance agrees with limiting the number of clerical workers an RMA can supervise.

Under 3.1.4.3 Migration Alliance supports the removal of the exemption for a sponsor, nominator or HR Managers to act on behalf of a visa applicant (person). We also support the removal of the exemption for members of parliament or their staff to provide immigration advice or assistance. Political staff or 'staffers' as they are described, have little to no knowledge on Australian Migration Law or policy. It is our position that only a RMA or lawyer provide a person with immigration advice and assistance to avoid exploitation and errors.

3.2 Migration Alliance is of the opinion that all persons providing immigration assistance whether onshore or offshore be registered as an RMA and that the OMARA regulatory framework in a model consistent with the Canadian and New Zealand regulation of Immigration assistance professionals.

Migration Alliance supports the LCA's submissions at 3.2.1.2.

Migration Alliance stands by its original submissions at 3.2.4.1 and 3.2.4.2.1. Migration Alliance supports the submissions by the MIA, the LCA and Newland Chase.

Migration Alliance agrees with the MIA's JSCOM submission and Stakeholder views at 3.2.4.5.1

3.4 Migration Alliance is of the opinion that given the lack of independence of the OMARA from the Department of Home Affairs, and the potential for a conflict of interest, that current powers of investigation not be strengthened and there be a prohibition on the secondary use of information (including dissemination) obtained under powers of compulsion by Law enforcement and prosecutorial authorities both State and Federal.

Migration Alliance refrains from comment in relation to the powers of the OMARA to address RMA misconduct.

3.5 Compliance with AAT practice directions can be met by tiering the RMA profession and permitting only RMAs at tier 3, as per 3.5.5.3.

3.6 Migration Alliance is of the opinion that an independent regulator be appointed to oversee the reception of complaints; investigation and decision making with respect to the imposition of penalties concerning allegations of professional misconduct etc. The current arrangements are unacceptable in that the current regulator is not independent of the Department. In this regard Migration Alliance broadly supports the Stakeholder submission views at Table 17, by Fragomen, the LCA, MIA, Newland Chase and Aguilas Solutions.

In the Summary of regulatory authorities in like-minded Commonwealth countries at Table 18, Migration Alliance supports a model similar to New Zealand or the United Kingdom.

Budget

Any implementation of new frameworks within the RMA profession will place a burden on the Office of the MARA, our regulator. It is our recommendation that there be an increase in staffing, and an increase in funding be made available to the Office of the MARA. The Regulator needs the appropriate resources and funding to properly execute its duties and responsibilities not only to administering and upholding the standards of our profession, but in the best interest of consumer protection.

Thank you for the opportunity to make these submissions.

Yours faithfully

DIGITALLY SIGNED

Migration Alliance