Migration Institute of Australia

RESPONSE

Migration Agents Instruments Review – Consultation Report

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Migration Institute of Australia

The Migration Institute of Australia (MIA) is the longest running professional association representing migration professionals in Australia, being initially established as the Australian Migration Consultants Association in 1987, before changing its name to the MIA in 1992. Through its public profile the MIA advocates the value of migration, thereby supporting the wider migration advice profession, migrants and prospective migrants to Australia. The MIA represents its members through regular government liaison, advocacy, public speaking and media engagements. The MIA supports its members through its separate but interlinked sections: professional support; education; membership; communications; media; business development and marketing.

The MIA operates as a company limited by guarantee under the Corporations Act 2001 and complies with all Australian Securities and Investments Commission (ASIC) requirements. Under its Constitution it is not empowered to pay any dividends. The MIA and its elected office bearers are guided by the legal framework set out in the Corporations Act 2001, the MIA Constitution and Rules, the Corporate Governance Statement and Board Charter.

MIA members hold a further responsibility to their clients and the Australian community to abide by ethical professional conduct and to act in a manner which at all times enhances the integrity of the migration advice profession and the Institute. MIA members are bound by both statutory Code of Conduct of the Office of the Migration Agents Registration Authority which sets the profession's standards of behaviour and the MIA Members' Code of Ethics and Practice.

The majority of MIA members currently practise as Registered Migration Agents (RMAs), while around one in five members hold unrestricted legal practicing certificates and a smaller though significant cohort practising as RMAs while holding restricted practising certificates. MIA members also represent the majority of the large migration advice providers in this unique marketplace and committed practitioners within the profession. As such MIA members provide a well represented sample of those who provide migration advice and services within this sector.

Statement of Recognition

The Migration Institute of Australia acknowledges the Traditional Custodians of the lands and waters throughout Australia. We pay our respect to Elders, past, present and emerging, acknowledging their continuing relationship to this land and the ongoing living cultures of Aboriginal and Torres Strait Islander peoples across Australia

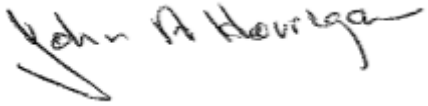
Migration Agents Instruments Review – Consultation Report June 2021

The Migration Institute of Australia (MIA) welcomes this opportunity to provide input into this consultation on the Migration Agents Instruments Review and the proposals that arose from the 'Creating a World Class Migration Advice Industry' Inquiry.

Three quarters of the MIA membership is comprised of Registered Migration Agents, with the balance holding legal practicing certificates. MIA members represent the majority of the large migration advice companies in this unique marketplace and committed practitioners within the profession. These MIA members therefore, provide a representative sample of the wider migration advice profession.

This submission reflects the collective opinions of MIA members. These have been obtained through input from national meetings of members held to formally collect comment on the proposals in this Consultation Report, from the MIA Board of Directors, meetings of each MIA State Branch and Chapter and through submissions from individual MIA members. The content of this submission reports their well-considered thoughts on the various proposals presented in the Consultation Report.

Please feel free to contact the MIA on 9249 9000 if further assistance is required in relation to this matter.



John Hourigan FMIA
National President
Migration Institute of Australia
28 June 2021

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Introduction

The MIA welcomes the opportunity to provide this response to the Department of Home Affairs Migration Agents Instruments Review consultation.

The MIA notes at the outset that the number of migration agent instruments to be considered by this Report is cumbersome and overwhelming in both size and content. While it is reasonable to attempt to examine all these instruments related to migration agents in their totality because of their interrelated content, this creates difficulties in responding effectively and with brevity to the large numbers of matters raised within this consultation Report.

The MIA suggests that little will be achieved if this review adopts the approach of attempting to address and resolve all the raised issues at once. The MIA recommends that the various sections of the Report be addressed as separate matters beginning with the more important issues followed at a later juncture with those less important. The Department of Home Affairs (the Department) has already adopted this approach by removing the issues of review of the Capstone Assessment until a later more appropriate time and addressing the concerns of the Administrative Appeals Tribunal (AAT).

The implementation of yet another review[1] of registered migration agents who are by and large well regulated and highly compliant, distracts from the government's persistent refusal to address the issue of fraudulent and unlawful operators and the devastating consequences of their actions for consumers. This review of migration agents instruments will do nothing to address the unlawful operators who continue to have unfettered freedom to hawk their trade.

The labelling of this review initially as 'Creating a World Class Migration Advice Industry' has also skewed the overall focus of this Report towards the already well regulated practitioner cohort and other marginal matters. The protection of consumers from unregulated[2] and unlawful practice is the overarching issue impacting the Australian migration advice system and this continues to be ignored. Further regulation of Registered Migration Agents (RMA) and increasing the powers of the Office of the Migration Agents Regulatory Authority (OMARA) will have little impact where change is needed most, unlawful migration practice and the fraudulent activities of these operators.

The MIA contends that this current and preceding reviews have not proven case that the professional capabilities of RMAs are broadly and dangerously lacking and warrant the level of response suggested. A tiny fraction, on average 0.29% of RMAs are sanctioned by the

[1] Reviews of the Registered Migration Agent sector are occurring at a rate of approximately every 4 years or less, eg the Kendall Review 2014, JSCM Inquiry into the Efficacy of the Regulation of Migration Agents 2018, Creating a World Class Migration Advice Industry 2020.

[2] Given the removal of legal practitioners from the OMARA registration system, the term 'unregistered practice' would appear no longer to be applicable in this context. Legal practitioners are now also 'unregistered', but not unlawful practitioners within this sector.

OMARA annually and over 70% of RMAs having never been the subject of a complaint.[3] This is largely consistent with the small proportion of legal practitioners sanctioned per year by the relevant authorities.[4] Freedom of Information data on OMARA sanctions over the past 10 years also reveals that legal practitioner RMAs represented a not insignificant proportion of those RMAs who had been sanctioned for serious misconduct.[5]

In the interests of efficiency and effectiveness the MIA has chosen to provide its response to the issues it has identified as central to migration practice and services in the body of this submission, those of:

- unregulated and unlawful practice
- the OMARA powers
- mandatory qualifications
- continuing professional development
- commentary surrounding the notion of professions

Further responses and comments on the peripheral issues raised in the consultation are provided in attached Appendix A, which addresses the more than 30 areas for comment in the Consultation Report Fact Sheets.

This response to the consultation Report reflects the collective opinions of MIA members. The content of this submission Reports their well-considered thoughts which were obtained through national meetings of members held to formally collect input, from the MIA Board, each MIA State Branch and Chapter and through submissions from individual MIA members.

The MIA is the longest running professional body for migration professionals with majority of members currently RMAs, around one in five members holding unrestricted legal practicing certificates, while a smaller though significant cohort are practising as RMAs while holding restricted practising certificates. MIA members also represent the majority of the large migration advice providers in this unique marketplace and committed practitioners within the profession. As such MIA members provide a well represented sample of those who provide migration advice and services within this sector.

Before proceeding with its response, the MIA highlights two problematic issues with the conduct of this consultation process. The first, that the new Code of Conduct for Registered Migration Agents has been referred to in the Consultation Report but has not released in time for consideration in conjunction with this Report. This makes it difficult for the MIA to comment on proposed 'fit and proper person' requirements for registration at Chapter 2.1.

The second issue of concern is the inherent conflict of interest in permitting legal practitioner representative bodies to have input into this review. It may be argued that there has been less than transparent attempts to have the professional practice of registered migration agents restricted and in some cases curtailed, through suggestions put by a cohort

[3] Department of Home Affairs, Migration Agents Instruments Review – Consultation Report, 2021, p11. OMARA Migration Agent Activity Reports 2014-2020.

[4] MIA collected data collected from all Australian state and territory law regulatory authorities for 2015 - 2020.

[5] Department of Home Affairs, Freedom of Information Request: FA 21105100862

of this profession to various government inquiries and the Department's Code of Conduct consultations. Some of these suggested restrictions go so far as to essentially seek to legalise the review of Departmental decisions by barring RMAs from undertaking Administrative Appeals Tribunal and Ministerial Intervention work, in opposition to the universal aim of tribunals, (and the Deregulation Agenda) that of the informal, efficient and inexpensive settlement of disputes.[6] The review of Departmental decisions must remain accessible for all.

The Migration Amendment (Regulation Migration Agents) Act in March 2021 removed legal practitioners from the OMARA regulatory system. As such, that Act also removed the legal profession as a stakeholder in matters related to the education and regulation of Registered Migration Agents. This Consultation Report has also acknowledged that legal practitioners are not part of the migration advice industry or within the scope this Review or Report.[7] The MIA therefore requests that any input from conflicted professional authorities be discarded from the deliberations of this consultation and that the Department acknowledge that it is inappropriate to continue to permit one profession (ie the legal profession) to hold sway over the regulation of another commercially competitive profession (ie the RMA profession).

[6] J. Garry Downes, Tribunals in Australia: Their Roles and Responsibilities, Administrative Appeals Tribunal, accessed 23 June 2021, https://www.aat.gov.au/about-the-aat/engagement/speeches-and-papers/the-honourable-justice-garry-downes-am-former-pres/tribunals-in-australia-their-roles-and-responsibil

[7] Department of Home Affairs, Migration Agents Instrument Review, 2021, p 5. https://www.homeaffairs.gov.au/reports-and-pubs/files/migrations-agents-instruments-review-report/consultation_report.pdf

Combatting misconduct and unlawful activity (Theme 3)

Unlawful activity

It is with considerable frustration and indeed anger in some cases, that the MIA and its members find themselves again arguing the case for the Government and Department to implement measures to prevent unlawful provision of migration advice and assistance.

The MIA has over many years provided practical suggestions on how to reduce unlawful practice:

- in meetings with successive Immigration / Home Affairs Ministers and Assistant Ministers and their Shadow counterparts, and
- in a multitude of stakeholder consultation meetings with the Department on the issue, and
- in submissions provided to multiple Parliamentary and Departmental inquiries and reviews

This current consultation Report states that strong consumer protections define the benchmark for a 'world class migration advice industry',[8] yet there appears little but lip service paid by the government and its representatives to addressing unlawful migration practice.

The Australian Border Force (ABF) is insufficiently resourced and structural and legislative barriers exist to investigating and prosecuting any but the highest levels of unlawful practice related to instances of high level fraud and exploitation. In its submission to the Joint Standing Committee on Migration Inquiry, the Department of Home Affairs detailed the many restrictions the ABF faces in investigating misconduct and unregulated migration practice, such as lack of jurisdiction to obtain search warrants and the right to enter properties.[9] A whole of government approach is required to combat unlawful and unregulated practice given that this may be central to the operation of more organised forms of crime such as people trafficking, modern slavery, worker exploitation and money laundering.

The 'lack of jurisdiction' explanation is also constantly provided as to why unlawful practice and fraud cannot be addressed, displaying a truculence on the part of Australian governments and the Department to address the matter with onshore solutions as do jurisdictions like Canada and New Zealand, where applications are only accepted from suitably accredited or licensed professional practitioners.[10]

[8] Ibid, p11.

[9] Department of Home Affairs and Border Control (2018) Submission to the Joint Standing Committee on Migration Inquiry into the Efficacy of current regulation of Australian migration agents, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Migration/Migrationagentregulatio/Submissions Submission No 6.

[10] Department of Home Affairs, Migration Agents Instrument Review, 2021, p109, 110. https://www.homeaffairs.gov.au/reports-and-pubs/files/migrations-agents-instruments-review-report/consultation_report.pdf

It is extremely disappointing that the measures the MIA has been recommending for many years and that have now finally made their way into this Report, are not considered to be within the scope of this review,[11] offering further confirmation of the low priority given to addressing the issue of continuing unlawful practice.

The MIA urges the Department to institute further examination *immediately* of the measures listed in the Consultation Report including:

- legislative and system changes to allow the Department to accept visa applications only from the applicants, RMAs, legal practitioners or exempt persons
- requiring visa applicants to attest in a declaration (or a statutory declaration where appropriate) as to whether or not they have received immigration assistance or other relevant assistance
- developing risk profiles for individuals, occupations and industries where the risk of unregistered immigration assistance practice is high, and conducting audits of high-risk visa applications as part of other caseload integrity assessments[12]

While the MIA can understand the logic of the further suggestion of introducing a Public Interest Criterion (PIC) for applicants who knowingly receive unlawful migration assistance, [13] the implementation and prosecution of such a PIC could be highly problematic. While useful in cases of systematic migration and other fraud, the average visa applicant may not have the understanding of the implications of their actions, particularly when applying from offshore. While the MIA supports this proposal in principle it must be questioned whether the standard of 'knowingly receiving' unlawful immigration assistance or understanding the registration requirements for migration agents can be practically determined and are therefore will be of any effect in protecting consumers.

While the MIA accepts that not all fraud will be eliminated, refusing to accept applications from the individual or a suitably regulated migration practitioner would go a long way towards addressing a large proportion of these practices, especially in tandem with a Departmental awareness campaign and messaging on all its migration related collateral.

Penalties for unlawful practice and misconduct

The MIA welcomes the inclusion of previous MIA recommendations to increase the financial penalties for unlawful immigration assistance provision (3.3.9.1).[14] The current paltry 60 penalty points, which appears rarely if ever imposed, provides little disincentive to those intent on unlawful practices. The MIA would go further and suggest that the amount be raised to the more substantial 450 penalty points (~$100,000) or even 1000 penalty points (~$222,000).

The MIA also welcomes the idea of strengthening and criminalisation of the provisions for 'knowingly providing' migration assistance in relation to serious or organised criminal

[11] Ibid, p 101
[12] Ibid, p 101
[13] Ibid, p 101
[14] MIA Submission, Creating a World Class Migration Advice Industry 2020, p9.

activities (3.3.9.5). This being said, imprisonment is rarely imposed for migration fraud in Australia so is unlikely to provide any major disincentive, particularly for those involved in systematic fraud such as protection and work visa scams.

The MIA further strongly supports the proposal to include reforms to apply penalties to businesses (3.3.9.2). This would permit, for example, businesses that advertise migration services but that are not migration practices such as education agencies, to be penalised. A common business model for these types of companies is to operate with subcontracted RMAs. The RMAs have may have little direct access with the clients or client accounts but are liable in the event of a complaint to the OMARA. These businesses are free to discontinue the RMAs services at any time and remove their access to the case files, even while the case is active. This can leave the RMA responsible for breaches of the Code of Conduct, for example by failing to advise the client they are no longer representing them resulting in the client failing to meet crucial deadlines. These businesses are also notorious for continuing to use the MARNs of previous RMA employees and contractors on their websites and marketing collateral which has proved incredibly difficult to rectify for many RMAs. The MIA has assisted many of its members with these types of issues.

The MIA also urges the Department to recognise in the new Code of Conduct that many RMAs work as employees. The Code as it is currently written assumes that all RMAs are sole traders and in control of all aspects of their professional practice. There is no recognition of the restrictions practising as an employee imposes on RMAs.

Powers of the OMARA

The OMARA already has significant powers to discipline RMAs for breaches of the Code of Conduct and to refer criminal matters to the relevant authorities. The MIA supports these OMARA powers.

The MIA does not support the overreach and extension of OMARA powers to require RMAs to produce documents that are confidential between agent and client, unless specifically compelled by law (3.4.4.1).

Mandatory Qualifications and Continuing Professional Development (Themes 1 and 2)

Mandatory Qualifications

The MIA agrees that it is not appropriate to review the mandatory Graduate Diploma in Migration Law and Practice or the Capstone Assessment so soon after their implementation and the recent change of provider. However, the MIA does wish to comment on the relationship between the two and the impacts on any potential implementation of supervised practice requirements.

A capstone subject/assessment/project is generally used at the completion of an academic program of study to draw all elements of that study together for assessment. Competency assessment, on which the Capstone Assessment is based, is a differentiated form of assessment, measuring the technical or physical ability of an individual to undertake identified competencies relevant to an occupation.[15]

The low success rate of the Capstone Assessment over the last three years suggests that there is something structurally wrong with this system of tertiary education followed by Capstone Assessment. The MIA believes the current low success rate is the result of a disconnect between the Graduate Diploma content and what is assessed in the Capstone, because the process has not been implemented as per Recommendation 16 of the Kendall Report, with the period of supervised practice prior to the Capstone. The Capstone as it stands, is attempting to assess candidates' theory and practice, when they have only completed the theoretical part of their learning.

The very nature of competency assessment is that it tests the technical and practical ability, of the candidate to apply theoretical knowledge. Yet these Capstone candidates are not required to have any practical experience in the competency tasks being tested, such as managing clients, establishing appropriate communication channels with relevant authorities, monitoring the progress of cases and preparing clients for appearances before the Department or other authorities, all competencies contained in the Occupational Competency Standards for Registered Migration Agents (OCS).[16]

If supervised practice is not undertaken before the Capstone to provide experience of the OCS, the assessment of competency against the OCS is defective and prejudicial to the candidates. It is not equitable for the Capstone Assessment to continue to apply a competency assessment of the practical application of theoretical knowledge where the candidate has not had the opportunity to practice those skills. If this process is to continue without the intervening supervised practice, the Capstone assessment must be amended to only test the overall theoretical knowledge gained during the Graduate Diploma.

[15] Gonczi A, Competency Based Assessment in the Professions in Australia, in Assessment in Education Principles Policy and Practice Journal, 1994.

[16] Department of Immigration and Border Protection, Occupational Competency Standards for Registered Migration Agents, 2016

The MIA also believe there has been a fundamental misinterpretation of Dr Kendall's recommendation that '*…this prescribed examination should be a stand-alone assessment de-linked from the Prescribed Course or any of the service providers currently offering the Prescribed Course'*.[17] To date this appears to have been interpreted as no communication should occur between the Graduate Diploma providers and the Capstone providers, although this may have been an artifice of the previous provider. The MIA believes that this recommendation is simply intended to mean that the Capstone Assessment be conducted independently of any of the educational providers and centrally to ensure the standardised testing for all potential new entrants to the profession. Adopting this latter interpretation would provide for improved communication between course providers and the assessment providers, allowing the issue of inappropriate assessment and poor pass rates to be addressed.

Continuing Professional Development

The MIA supports measures to improve the quality of Continuing Professional Development (CPD) across the migration advice sector to enhance the professional practice of RMAs. A number of proposals presented in the Consultation Report are already addressed in the Continuing Professional Development Provider Standards[18] and OMARA approval process. These include the linking of CPD activities to the OCS framework, minimum expertise levels for presenters and refund policies (2.5.7.2). The MIA as an approved CPD provider finds these to be currently well regulated by the OMARA.

However, these Standards and the CPD Provider approval process are largely procedural and do not necessarily address the educational quality or effectiveness of the educational experience. The MIA was gravely concerned about the direction of the CPD provision post the 2018 'deregulation' of CPD provision following that recommendation of the Kendall Review. Post deregulation of CPD offerings the market was flooded with a low-cost, high-volume provision of CPD activities. Some CPD providers pursued pricing strategies that offered CPD products at seemingly unrealistic pricing levels. This has stabilised over time with the significant proportion of RMAs realising that high quality educational offerings that support and enhance their professional practice do not equate with low priced offerings.

Unfortunately, there are still RMAs who view the annual CPD requirements as a burden to be met in the quickest and cheapest way possible, most usually by undertaking a '10 point' single day of CPD annually. As acknowledged in the Consultation Report cognitive overload and fatigue negatively impacts the effectiveness of learning under such conditions.[19] The MIA strongly supports the proposal to limit the number of CPD points that can be delivered in a day and suggests that the limit should be put at a maximum of six CPD points.

[17] Kendall C, Independent Review of the Office of the Migration Agents Registration Authority, 2014, accessed 24 June 2021, p 30. https://www.homeaffairs.gov.au/reports-and-pubs/files/omara-review.pdf
[18] Migration Agents (IMMI 17/047: CPD Activities, Approval of CPD Providers and CPD Provider Standards) Instrument 2017
[19] Migration Agents Instruments Review – Consultation report p 89

Requiring RMA to compulsorily submit a CPD plan (2.5.7.2) each year to the OMARA with their registration renewal is impractical, places another administrative burden on the OMARA and is again out of alignment with the government's Deregulation Agenda. No evidence has been provided that there is a general or extensive lack of knowledge requiring such a response. The MIA is happy to engage with an evidence based review with respect to this proposal.

Migration law changes constantly and very quickly. Indeed, in the current pandemic environment the MIA would even suggest that migration law/policy changes is dynamic with currently heightened concerns and sovereign border controls in place. This makes it almost as impossible for RMAs to predict what education they will need through CPDs a year in advance, as it does for CPD providers to develop such CPD content twelve months in advance. As a major OMARA accredited CPD provider the MIA is constantly commissioning new and updating current CPD content in order to provide quality offerings that address this rapidly changing migration landscape. In this environment twelve month mandatory CPD plan would be based on inaccurate guesses with the potential to stifle the ability of RMAs to choose highly relevant and newly emerging CPDs throughout the year. The shortcoming of such a plan is that RMAs would be incentivised to focus on meeting the requirements of their OMARA 'lodged' CPD plan rather than meeting quality learning objectives.

Surveys of MIA members have determined that the majority undertake more than their required CPD points each year indicating a keen interest in their professional development. MIA CPD topics on new and emerging changes within the sector are frequently sold out immediately requiring further multiple sessions to be scheduled. Those RMAs only interested in meeting the minimum requirements in the shortest possible time will continue to do so. Implementing a compulsory annual CPD plan and submission requirement is not only onerous but also unnecessary RMAs. This proposal is again another example of a heavy handed approach to attempting to resolve issues associated with only a minute proportion of RMAs and in conflict with the Deregulation Agenda. The MIA therefore strongly rejects this proposal.

The MIA has observed exploitation of the Provider Standards since they were implemented and has regularly bought this to the attention of the OMARA. The current CPD provider standards lack definition and clarity surrounding the content and delivery of these activities. This is nowhere more obvious than in categorisation of offerings by some approved CPD providers as Category A and B activities (2.5.7.4).

Category A activities are required to be '*interactive*' and award one point per hour of attendance. Category B activities in contrast do not have the interactive requirement and also award one point but for the longer period of every one and a half hours of attendance.

Given that RMAs are required to undertake five Category A activities annually and that points for this category are awarded for shorter attendance, strong demand has been created for these activities. The CPD market has being flooded with 60 minute Category

A offerings, many of which were previously presented as 90 minute sessions with little interactive content.

The MIA has repeatedly raised issues about the lack of definition of 'interactivity' in current CPD Provider Standards with the OMARA since their introduction (2.5.1). Without any definition of what constitutes the **interactive** element of Category A activities in the legislative instrument or regulations, neither CPD providers, RMAs or the OMARA have any current benchmark by which to determine whether an activity meets or does not meet this requirement. As such, there is no effective method for the OMARA to differentiate or audit Category A workshop content from that of Category B seminars. Some providers have outrageously exploited this loophole.

The term **workshop** is also problematic in this context. Under the previous CPD provision guidelines, workshops were of longer duration than seminar type offerings and were designed to be highly interactive. They were required to be a minimum of 3 hours in duration and to include 80% (or around 144 minutes) small group interaction and discussion and 20% (or around 36 minutes) upfront teaching.[20] Without these previous restrictions, Category A workshops may now be as short as one hour in duration with the time available for interactive activities severely curtailed. The MIA considers the extent to which the educative and interactive elements of a workshop could be successfully incorporated in that timeframe is debatable.

All MIA workshops incorporate interactive elements based on the previous CPD provider guidelines. Currently all MIA workshops are conducted online due to the COVID-19 restrictions and include interactive components in each session including small group activities such as small group case studies, scenarios and simulations in online 'rooms', participating in online discussions through the Zoom platform and quizzes.

It would be a simple matter for the OMARA to incorporate definitions of 'interactive' content and 'workshops' into a CPD policy document and create a solid benchmark and standard for the provision of CPD activities as existed in the pre 2018 CPD approval conditions.

[20] CPD Application Form Office of the OMARA, October 2011.

Professional practice (Themes 1 and 2)

The Consultation Report has provided a confusing array of potential proposals for restricting the practice of newly registered RMAs: provisional registration with restrictions; supervised practice both with and without restrictions; and tiered practicing levels that restrict the practice of both newly registered and experienced RMAs. For the various proposals offered in this Report the MIA provides the following comment:

- the MIA does not support tiering of Australian RMAs
- the MIA does support in principle either supervised practice or provisional registration for newly registered RMA
- the MIA does not support both supervised practice and provisional for newly registered RMAs.

The implementation of dual methods of restricting practice is heavy handed and not in alignment with the Australian Government's Deregulation Agenda to implement regulation with the lightest touch'[21] or to meet the Agenda's further objectives to reduce the burden that impedes business competitiveness and economic productivity.[22]

Introducing a tiering system (2.4)

Despite previous submission by the MIA it is again noted that while the educational requirements of Australia, Canada and New Zealand are closely aligned, the British system is vastly different, casting doubt on its application within the Australian context.

From a comparative analysis implementing the United Kingdom's tiering system as a basis for supervised practice in Australia is flawed and the MIA calls on the Department to remove it from consideration given its irrelevance to RMA practice in Australia. In the interests of clarity, it is again stated that the United Kingdom ***does NOT have an entry level or other educational requirement to the profession of licensed migration adviser, INSTEAD using a tiered supervised practice system.*** The United Kingdom system has more in common with systems of apprenticeships, traineeships and that county's historical Guild system than it does with the Australian, Canadian or New Zealand professional practitioner systems.

The United Kingdom's advisor licensing model uses tiering as there is no baseline entry qualifications for the profession, other than three to six months of practical work experience in a licensed immigration organisation or equivalent experience in a government department. In the United Kingdom no degree qualification and certainly no specialist Graduate Diploma qualification is required, as in the Canadian, New Zealand or Australian systems. RMAs in Australia, as in Canada and New Zealand, have the equivalent to at least four years of tertiary education (3 year undergraduate degree + 1 year post graduate study)

[21] Department of Home Affairs Migration Agent Instruments Review Consultation Report, p 75
[22] Australian National Audit Office, Implementing the Deregulation Agenda: Cutting Red tape accessed 22 June 2021, https://www.anao.gov.au/work/performance-audit/implementing-deregulation-agenda-cutting-red-tape

before undertaking the Capstone Assessment to become registered. Attempts to superimpose the less formally educated British system of tiering on highly educated Australian RMAs would be little short of perverse, to the extent that the motives of the Minister in introducing this restriction on RMA practice would need to be questioned.

The system of tiering suggested in this Report is strongly rejected by the MIA. Tiering would not only place a large impost on newly qualified RMAs but also severely impact current practitioners, many of whom have been practising as RMAs since registration was introduced in 1992. This tiering proposal is particularly at odds with the Deregulation Agenda's imposing a higher level of regulation on not only newly registered RMAs but also legacy RMAs, many of whom have much more experience in migration law than generalist legal practitioners, a cohort who are free to practice in this field without any restraint or even indeed any legal migration training.

The administrative practicality of introducing such a system would be inordinate and have broad ranging effects. The proposal to place all RMAs in the second tier and only permit those who have undertaken relevant CPD and/or relevant experience via supervision or work placement to be admitted to the third tier[23] will have major impacts on the migration advice sector, including that it will:

1. discriminate against 'legacy' RMA who have previously practiced at a tier three level
2. impose significant restrictions on RMA practice where there had previously been none
3. place a large administrative burden on the OMARA in the first instance in identifying and aligning the registration of existing practitioners with the relevant tiers
4. place another ongoing administrative burden of the OMARA for then assessing the eligibility of the large number of 'legacy' RMAs and future RMAs who will need to apply to move from second to third tier registration
5. the Department's IT system will again need to be modified before the recent rebuild has even been completed. Modifications to this system to accommodate legal practitioners have already blown out to a November 2021 completion date after the March 2021 removal of legal practitioners from its regulation
6. impose further delays in the AAT where a large proportion of AAT applications will be left without suitable RMA representatives while this 'tiering' occurs. The AAT currently reports a backlog of 58,000 cases with RMAs representing almost 50% of these cases.[24]
7. create even further confusion for consumers who would not only need to discern whether a prospective practitioner requires registration or not, but then also decide whether they required a tier one, two and three RMA or legal practitioner to handle their matter.

[23] Department of Home Affairs Migration Agents, Instruments Review- Consultation Report 2021, p 75.
[24] Ibid p 10, and AAT, MRD Caseload Report 2020-21, online document accessed 22 June 2021 https://www.aat.gov.au/AAT/media/AAT/Files/Statistics/MRD-detailed-caseload-statistics-2020-21.pdf

Finally the MIA questions the enthusiasm of legal representative bodies to impose this system of tiering on RMAs, given the already identified conflict of professional interest from those who this Consultation Report acknowledge are not part of the 'migration advice industry'. Should such any further consideration be given to the imposition of professional tiering, the MIA strongly supports consultation only being undertaken with those who represent the migration advice industry and specifically excluding the independently regulated legal profession.

Supervised practice

The MIA supports reasonable and responsible supervised practice requirements for newly registered RMAs. The MIA maintains that supervised practice should be undertaken as recommended in the Kendall Review,[25] **between** completion of the Graduate Diploma and before undertaking the Capstone Assessment so that the combination of theory and practice is effectively assessed. If this model was not to be accepted and supervised practice was to be implemented after the capstone Assessment, as previously discussed the MIA recommends the focus of the Capstone Assessment be reviewed to only assess the theoretical knowledge of the candidates.

The MIA is also concerned that any form of supervised practice implemented in the future be robust and sustainable and provides all new RMAs with enough opportunity to undertake this practice, be protected from exploitation and be provided a variety of practical experience. Only RMAs should be eligible to act as supervisors and be suitably qualified and experienced, for example have been registered for a minimum of five years or be an Associate Fellow of the MIA. Legal practitioners should only be eligible to supervise an RMA, where the RMA is working in their legal practice. There should be no generic eligibility for legal practitioners to supervise RMAs given that few legal practitioners solely practice migration law. Supervisors must be required to undertake specific CPD training as part of their role and a supervision agreement detailing the supervision arrangements and expectations.

Based on reports from migration practitioners in other jurisdictions, the MIA is also gravely concerned about the potential for exploitation of new RMAs under supervisory arrangements. To reduce this potential the MIA does not support supervised practice arrangements being limited to employer/employee relationships, internships or cadetships. The MIA also believes it is unlikely that offering CPD points for supervision will be sufficient incentive for RMAs to act as supervisors. This in turn suggests that new RMAs will be required to pay some form of fee to be supervised, again providing the potential for exploitation. It has been reported to the MIA by Australian RMAs undergoing supervised practice in New Zealand, for example that some NZ supervisors charge as much as 70% of the supervised RMAs revenue to review their case files.

[25] Recommendation 17, Kendall C, Independent Review of the Office of the Migration Agents Registration Authority, 2014, accessed 24 June 2021, p 31. https://www.homeaffairs.gov.au/reports-and-pubs/files/omara-review.pdf

The number of RMAs a single supervisor may take on concurrently should also be limited. to ensure supervision does not become a primary income stream for certain practitioners and the new RMA receives sufficient supervisory attention. If supervised practice is to be introduced the OMARA will need to develop strict guidelines around supervision arrangements to protect these new RMAs.

The MIA, for example has a membership advancement program whereby members can apply to be Associate Fellows and Fellows; and we would be encouraging our senior members to consider making themselves available as supervisors to newly registered RMAs.

Provisional registration (1.3)

Provisional registration of newly registered RMAs is in effect an alternative form of tiering, in that it restricts the practice of these new agents until they have greater experience in their field. While the MIA has previously supported the notion of provisional registration with restrictions on the type of work new RMAs may undertake, it does so where no other tiering or supervised practice arrangements are implemented. The advantage of provisional registration is that it is only imposed on the group of RMAs that may be at greatest risk of inexperience within the field, not on all experienced RMAs as does the tiering proposal.

'Provisional' registration would also be easier for consumers to understand than tiered levels of practice, as is the notion extended to other provisional licenses such as drivers licenses, that signal that the person is newly qualified and possibly not experienced enough to undertake complex matters.

It is suggested that while provisional registration could be based on time served such as twelve to twenty four months, that alternate methods of moving to full registration earlier than time served could be developed. This could include undertaking CPDs or practical migration training on advanced migration occupational competencies such as preparing cases for the AAT and Ministerial Intervention. Again advancement through demonstrating competency, not just time served, is at the centre of occupational competency principles.

Migration Advice Industry and Professionalism

The MIA considers the commentary in the Consultation Report on whether Registered Migration Agents are a profession or an industry is both distracting and immaterial to addressing the major issue that confronts the migration advice sector – unregulated and unlawful practice.

It is clear that much of this discussion and distraction has its basis in semantics. The choice of the original inquiry title 'Creating a World Class Migration Advice Industry' is at issue and created the wrong impression of what the review would encompass. The Cambridge English Dictionary defines the term 'industry' as:

> *'the companies and activities involved in the process of producing goods for sale, especially in a factory or special area'*[26]

It is common that specific business activities are referred to in this way, for example the 'banking industry', the 'financial service' industry, the 'medical services' industry, indeed even the Law Council of Australia refers to the 'legal services' industry.[27]

It was then highly unexpected to find that the Ministerial review entitled 'Creating a World Class Migration Advice Industry' did not intend to review operation of the whole of the migration advice industry sector and the business aspects that impact the operation and performance of this 'industry'. Instead yet another exercise in justifying the increased regulation of RMAs was revealed, perpetuated by the conflicted and biased agitation of a specific cohort within the legal profession with the aim of its own advantage. It is worth repeating again that neither the Minister, the Department or that cohort have produced any robust or damning evidence that RMAs warrant yet another review, ***the third in under seven years.*** It is also hardly a ringing endorsement for the government's Deregulation Agenda. It would also appear that the Department is only just developing KPIs[28] and metrics to determine how to actually measure the extent of the problem with RMAs, if indeed one exists at all.

Evidence that RMAs do practice professionally is readily available. The OMARA reports the insignificant percentage of RMAs that are sanctioned annually with an average of just 0.29% of these in each year from 2014-2020.[29] The OMARA has consistently also noted over the same period that more than 70% of RMAs have never had a complaint made against them, a consistent 70% in an occupation that suffers significant churn triennially.

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[26] Cambridge Online Dictionary, accessed 21 June 2021.
https://dictionary.cambridge.org/dictionary/english/industry

[27] LCA, What is the export values of the legal services industry? Online article accessed 21 June 2021.
https://www.lawcouncil.asn.au/resources/faqs/what-is-the-export-value-of-the-legal-services-industry

[28] Department of Home Affairs, Migration Agents Instruments Review – Consultation Report, 2021, p 17.

[29] OMARA Migration Agent Activity Reports, 2014-2020. Note 2016 data not included due to data corruption for that year.

While the OMARA has commented that the incidents for which RMAs are being sanctioned are 'getting worse', no definitive measure of this behaviour has been made publicly available to justify further regulation. For an evidence-based informed discussion to exist the evidence in question is clearly required. Notwithstanding, the simple solution to these breaches is to provide further disincentives for those few unprofessional practitioners by increasing the OMARA powers to act against those involved in serious breaches of the Code of Conduct and referral for criminal prosecution, not the wholesale imposition of even more heavy handed regulation on the remaining 97% of all RMAs.

Rather than wasting time discussing whether RMAs constitute a profession, the energy would have been better spent if the review had asked if …'RMAs provide a valuable and ethical professional service to migration advice consumers'. There is no doubt that RMAs are professionals working within an industry, the migration advice industry sector. Typically definitions of professional identity are related to the roles, responsibilities, values and ethical issues of unique to a particular profession.[30] The MIA would agree that this is a new and emerging profession lacking the long history, for example of the medical and legal profession.[31] However, this does not disqualify it from being considered a profession. The traits of a profession as developed by the Australian Council of Professions have been referenced in the Consultation Report. The MIA notes that it as the representative of its members retained membership of this Council for almost a decade.

The Professional Standards Council's (PSC) 5E Model of Professionalism has also been used in the Consultation Report as a measure of whether RMAs constitute a profession. The MIA notes with interest that the Professional Standards Councils generally uses this model 'to assess and approve applications from associations for Professional Standards Schemes that limit the civil liability of members', **not** to determine if the members of an association constitute a profession. The PSC's recognition of professions is founded on the principles of a) consumer protection and b) self regulation.[32] As the Department appears to be solely concerned with consumer protection and not using the 5E model to investigate the self regulation of RMAs, the MIA suggests that the suitability for its use should be questioned.

Nevertheless, if the Department wishes to adopt this model, the MIA maintains that RMAs do meet the five standards within the parameters of the 5E model as they relate to consumer protection. RMAs display all the qualities of a profession within this context:

Education – RMAs are required to undertake specific post graduate education with the Graduate Diploma of Migration Law and Practice

Ethics – RMAs professional practice is governed by the standards enshrined in an enforceable Code of Conduct

[30] Forming and Developing Your Professional Identity: Easy as PI Heather Honoré Goltz, PhD, LMSW, MEd, Matthew Lee Smith, PhD, MPH, CHES, online article accessed 22 June 2021, https://journals.sagepub.com/doi/10.1177/1524839914541279

[31] Van Gallen Dickie, M, quoted in Department of Immigration, Migration Agents Instruments Review – Consultation Report, 2021, p 11.

[32] Professional Standards Councils, What is a Profession? Online document accessed 22 June 2021. https://www.psc.gov.au/what-is-a-profession

Experience – while RMAs may not bring specific experience to their early migration practice, as post graduate entrants to the profession they bring a myriad of other professional experience relevant to their practice as an RMA. Many RMAs come to the profession with backgrounds in other professional careers, for example in accountancy, banking, law and finance, extremely valuable experience in advising clients for example on Business Innovation and Investment Programs and employer sponsored programs, where 80% of applications are lodged by RMAs.[33] Others have professional experience in areas such as engineering, IT, allied health and the nursing, again extremely helpful understanding the nuances and needs of those industries such as the skills equivalency requirements for overseas trained applicants and the registration or licensing requirements specific to those professionals. The humanitarian and refugee sector of the profession contains many RMAs with professional social work, psychology and counselling qualifications.

The MIA argues that a legal practitioner who has never been exposed to the migration law sector enters migration law practice no more professionally qualified than any other new RMAs. The MIA in providing its professional support function to its members finds that while legal practitioners may be skilled in interpreting law, they often find having to practice within the framework of legislation, regulations and policy challenging. Many are also initially quite poor at dealing with the practical administrative burden of tasks such as lodging migration applications, advising on skills assessment requirements and navigating state and territory nominations systems.

Examination – the Capstone Assessment has been notionally designed to assess that successful applicants are suitably qualified to enter the profession. The Graduate Diploma threshold qualification requirement and attainment is also subject to examination requirements.

Entity – the OMARA provides the regulatory entity that oversees and administers the professional entity, standards and compliance expectations on behalf of the public.

The MIA contends that when measured against the migration advice professions of comparable overseas countries, the Australian RMA profession is extremely well regulated and monitored to ensure best practice advice and consumer protections are promoted and enforced. Departmental language is littered with professional references applied to RMAs – the Code of Conduct Part 2 – Professional Standards, Continuing Professional Development and references to the professional obligations of RMAs in disciplinary decisions.[34] The term 'Migration Advice Profession' was used in the Kendall Review. Yet this latest Consultation Review and Report has suddenly determined without appropriate evidence-based support that RMAs have not as are not yet attained the reputation and standing as a profession.[35]

[33] Department of Home Affairs, Migration Agents Instruments Review – Consultation Report, 2021, p 10
[34] Code of Conduct for Registered Migration Agents, p 5. Also, Disciplinary decision CMP-34439 - Ravinderjit Toor - Decision Records -anonymised.pdf (584.79 KB) at item 193, p33.
[35] Department of Home Affairs, Migration Agents Instruments Review – Consultation Report, 2021, p 12.

The Department is using failings of the 'migration industry' that are largely outside the control of RMAs as measures of their professionalism. RMAs are expected to provide world class migration advice to consumers of Australian visa services in a vacuum. They only receive advice on new legislation, policy initiatives and amendments at the same time as the Government releases this to the public at large and seemingly after it has been released to SBS Punjabi, a news service that always seems to have advanced notice of migration changes, even ahead of the Australian media. Important announcements are made in Ministerial media releases yet the legislation to support these changes may not appear until months later, during which time RMAs have to manage the expectations, maintain the lawful status and allay their clients anxieties without any information other than a media announcement. [36]

However, the issue that has the most impact on the professional practice of RMAs is their inability to communicate with Departmental officers in any meaningful way. Emails to generic mailboxes only elicit replies, if a reply is received, signed with a delegate's christian name or numerical ID. It is paradoxical that the OMARA provides a webpage for RMAs on improving working with clients that advises … 'great communication with your clients is an important to success as an agent' (sic).[37]

It is a measure of the professionalism of RMAs that they are able to uphold the standards of a profession and provide professional services to their clients, within this current Australian migration system. Should the Government desire a world class migration advice profession it falls on it to address the other failings within the system and work with RMAs to build that world class migration system.

[36] Acting Minister for Immigration Alan Tudge announced in March 2020 that concessions would be made available Temporary Resident Transition stream Subclass 186 applicants, the legislative instruments LIN 20/190 and LIN 18/052 effecting the concessions was eventually released on 13 November 2020.

[37] OMARA, Tools for Registered Agents, website accessed 21 June 2021. https://www.mara.gov.au/tools-for-registered-agents/improve-working-with-clients

APPENDIX A

Migration Agents Instruments Review – Consultation Report – Summary of Reform Options	
Theme 1 – A qualified industry	
1.1 Review of mandatory qualifications for entry into the migration advice industry	
It may be beneficial to maintain the current entry qualifications pending a comprehensive review in 2023 at the earliest, no less than five years after the introduction of the Graduate Diploma and the Capstone, to enable adequate assessment of the efficacy of the existing requirements.	Supported in principle - the MIA expresses concern that the recent change in Capstone provider may affect the validity of such a review and as such the review be conducted no earlier than 2024 when that contract expires.
The first cohort of RMAs that have been subject to the higher knowledge requirements are only in their first year of practice. It would be premature to make further changes to the entry requirements for RMAs before the impact of the higher knowledge requirements on the professional conduct of RMAs has been fully assessed.	Supported
Undertaking a review in 2023 would enable analysis of a greater cohort size of RMAs, and a comparison of the scale of complaints against RMAs who were subject to the higher knowledge requirements and those that entered the industry prior to these requirements. It would also provide the opportunity to evaluate the impact of the change of Capstone provider and other potential reforms recommended by this Review, to inform the future qualifications review.	Supported
1.2 English requirements for the migration advice industry	
Updating the Occupational Competency Standards for RMAs to include English language expectations, supported by the development of a new practice guide to educate RMAs. This approach would be consistent with comparable overseas frameworks and would provide RMAs with a clear guidance to ensure that their English language skills meet and remain at certain set standards.	Supported in principle

Increasing the English language requirements for entry to the industry to 'proficient English' to align with the Department's English assessment model for relevant visa applicants (IELTS 7 or equivalent). This would promote better language skills amongst RMAs, protect consumers and raise industry standards.	Not supported – there is no objective data that would indicate that increasing the English language level would provide additional protection to consumers or raise industry standards. The MIA would prefer that entrants to the Graduate Diploma in Migration Law and Practice undertake English testing to this level prior to entering the course to ensure that they have a sufficient standard of English language proficiency to ensure the effective learning outcomes.
Expanding the list of English language test providers that the OMARA would accept for registration as a migration agent, to include all test providers accepted by the Department for visa purposes.	Supported
1.3 Introducing a provisional license with supervision requirement	
The Department of Home Affairs could introduce a mandatory 12-month provisional licence during which an RMA would be permitted to provide immigration assistance only under the supervision of an experienced RMA or a legal practitioner. The provisional licence requirement could be introduced either as a stand-alone scheme or as part of a tiering system, should one be agreed by Government.	Supported in principle - This proposal has been discussed in detail in the main section of this response submission.
In addition to the supervisory requirement, provisionally licensed agents would be restricted in the kinds of immigration assistance they could provide. In particular, it is proposed that provisionally licensed RMAs would not be permitted to provide immigration assistance on matters before the Administrative Appeals Tribunal and representations to the Minister. A supervisory framework would support this arrangement by providing an appropriate standard of oversight and guidance, while limiting regulatory and administrative burden.	Not supported - This proposal has been discussed in detail in the main section of this response submission.

The introduction of supervised practice would serve a dual purpose: protection of consumers of immigration assistance and professional development of newly-registered migration agents. The supervised practice period would be an opportunity for new RMAs to have their work reviewed by a supervisor before finalisation to avoid mistakes resulting from inexperience. Supervised practice would not be just an educational tool. It would be integral to the professional culture and conduct of the industry. Supervisors would also be mentors, providing foundational professional guidance and networks that would benefit the new RMA throughout their career. For new industry entrants intending to become sole traders, an initial stint under the guidance of an experienced supervisor would provide an invaluable introduction to the industry, to business more generally, and the potential for ongoing mentorship.	Supported in principle - This proposal has been discussed in detail in the main section of this response submission.
Should this option be progressed, the Department would work closely with industry to form a comprehensive plan. Consideration could be given to broadly modelling Australia's approach on elements of the established supervisory frameworks administered by the New Zealand Immigration Advisers Authority and the United Kingdom's Office of the Immigration Services Commissioner. Practical considerations, including those relating to sole traders and remotely located RMAs, would be addressed through the design of a supervised practice model.	Supported

Theme 2 – A professional industry	
2.1 Review of registration requirements	
Modelling the fit and proper person requirements on the character test for visa applicants, tailored to the migration advice industry and strengthened to include bankruptcy checks, and spouse and associate details. This would address the rise in serious misconduct within a small cohort of RMAs.	Supported in principle – the MIA notes that the principles of natural justice and review rights must be provided for applicants who fail the character test. ***Not supported*** – the proposal to include the spouses of RMAs in the fit and proper test, this oversteps privacy principles.
Giving the OMARA the power to refuse or cancel an applicant's registration as an RMA, in the event the OMARA becomes aware of an active and substantive criminal investigation into the applicant's conduct. This would help protect vulnerable clients and maintain the integrity of the industry	Not supported – the principles of natural justice, procedural fairness and the presumption of innocence must be afforded the RMA. The OMARA should only have the power to suspend an RMA refuse or cancel their registration where allegation is *proven*, not while only under investigation. It is also noted that this power could be misused by vexatious applicants for matters with no merit.
Updating the OMARA's process of character checks for applicants, to include a strengthened identity verification process and criminal history checks for all applicants at the time of initial and subsequent registration	Supported in principle – criminal checks for registration renewal should not be required annually unless the RMA is identified as an agent of concern.
Removing the 30-day publication requirement currently required before initial registration as an RMA to increase efficiency and reflect modern day assessment practices	Supported

Increasing the period of registration from 12 months to 36 months for agents who have not had any substantive complaints or referrals made against them for the five year period immediately before their registration application is assessed. This would recognise 'good behaviour' of RMAs and reduce unnecessary burden on the industry.	Not supported – a three year renewal period reduces the administrative burden and associated cost of processing renewals for the Department of Home Affairs and this should be reflected in reduced three year registration costs for RMAs. If the three year renewal fee is merely three times the annual price there is no incentive for RMAs to take up this option and the financial burden of a $4785.00 (3 x $1595.00) particularly for practitioners affected by the COVID-19 downturn. MIA members have indicated that they will be unlikely to take up the three year option without any financial incentive to do so. It must also be noted that no other professional body or regulator appears to provide for three year registrations and as such the OMARA would be out of step with other professional regulatory authorities if this was implemented.
2.2 Publishing information on pricing arrangements	
There is potential for the OMARA to publish aggregated information on the pricing arrangements for RMAs. Specifically, a new requirement could be introduced that an agent submit, when applying for repeat registration, the range of fees charged by that agent across all visa classes in the preceding 12 months of practice as an RMA, for the purpose of the OMARA publishing average fee information on its website. It is not suggested the Government regulate the fees charged by an RMA. However, providing consumers with a single point of reference to access information on the average fees charged by an RMA would enable consumers to more easily compare prices and make an educated choice. It would also enable a shift from handling of complaints, to a more proactive approach that aims to prevent the consumer from being overcharged in	Not supported – the OMARA previously collected this information on renewal of registration and reported that it was unmanageable.* There does not appear to the MIA to have been any appreciable change to consumer protection levels since fee publication was ceased. The collection of fee information in this context has proven a blunt instrument in the past as it has been collected on a narrow range of matters and visa classes. The information collected was not statistically valid as it only collected a small sample from the almost one hundred visa classes and did not address the cost of the myriad of 'non-visa lodgement' matters on which consumers consult RMAs.

the first place, rather than the consumer paying an RMA and then having to seek redress through the relevant consumer fair trading agency or tribunal if they believe that they have been overcharged.	This data collection imposes an unnecessary administrative burden in the OMARA and on practitioners, particularly sole practitioners with no administrative support. Data collected in this way does not display the granularity of the variety factors that impact the costs of individual migration services including: • the type of application or service • the level of service required • the amount of time required to prepare the application or undertake the service • the complexity of the personal circumstances of the client/s • the number of applicants included in the application • the experience, qualifications and seniority of the registered migration agent or now if they are a legal practitioner. The MIA prefers the OMARA's current response of recommending consumers obtain several quotes to determine the market rate for their migration matter. *[1] Former Director OMARA – MIA/OMARA quarterly meeting

2.3 Developing a fidelity fund or other mechanisms for recompense	
Establishing a fidelity fund is not recommended due to the high cost of implementation relative to the size and risk profile of the migration advice industry. There is a lack of evidence to support establishment of a fidelity fund given that: • as at 31 December 2021, 71 per cent of RMAs have never had even a minor complaint made against them. • Disputes between RMAs and clients resulting in complaints to the Office of the Migration Agents Registration Authority do not generally concern a loss of money or property as a result of dishonest or fraudulent act or omission by an RMA. Most client complaints are due to RMAs not entering into a service agreement, failure to issue receipts, and failing to keep clients informed about the progress of their applications. • Client monies held by an RMA are of a significantly smaller amount than those held by other industries that maintain a fidelity fund. For example, a trust account held by a legal firm could hold millions of dollars in relation to real estate transactions. In addition to the lack of evidence to support establishing a fidelity fund, establishing a fidelity fund would introduce additional costs that would need to be funded by the migration advice industry through increased registration fees, at a time when the migration advice industry is facing financial challenges due to the global pandemic. In lieu of a fidelity fund, clients seeking a refund of money paid to an RMA could continue to seek compensation through existing Commonwealth, State and Territory-based consumer protection law or by initiating civil fraud proceedings. Consumer protection improvements would likely be more appropriately achieved through other initiatives being considered separately in the Review	Not supported – The MIA supports the recommendation against implementing a fidelity fund based on the size and risk profile of the migration services industry. The implementation of a fidelity fund would only serve to increase costs to consumers of providing migration services. Given the very small number of prospective clients affected by dishonest or fraudulent practices, the MIA supports the current processes for clients to seek redress through existing consumer compensation protection or civil proceedings.

2.4 Establishing a tiering system	
It may be possible to introduce a tiering system for RMAs to provide better protection for consumers and a supportive framework for professionalisation of the migration advice industry. The tiering system would support RMAs by providing a defined career pathway for new or less experienced agents. A tiering system would also provide guidance for RMAs to offer high quality assistance in more complex fields through targeted training and escalating practical experience. In doing so, a tiering system would increase protection and support for the most vulnerable in Australia's culturally and linguistically diverse community and for those seeking to visit or settle in Australia.	Not supported – This proposal has been discussed in detail in the main section of this response submission.
2.5 Enhanced proficiency through Continuing Professional Development	
While it is not proposed to make any changes in the governance of the current framework, such as reinstating the role of the OMARA in deciding CPD activities, it may be possible to introduce measures that would give the industry tools to enable it to self-regulate more effectively, and to ensure the appropriate quality of CPD offerings, such as the: • introduction of quality control requirements for CPD activities, which may include limiting the number of CPD points delivered in one day, requiring RMAs to prepare CPD plans, introducing minimum requirements for a refund policy and Occupational Competency Standards (OCS) for particular areas of practice, and requiring providers to: - link activities to the OCS framework - mark CPD offerings according to their complexity - require providers to have a certain level of experience in the subject before delivering a CPD activity • clarification of the CPD provider standards, including the meaning of 'interactive' and 'workshop' and other potential ambiguities • increasing the number of compliance audits of CPD providers and making the audit results publicly available.	Supported - This proposal has been discussed in detail in the main section of this response submission.

Subject to the Government's agreement to a tiering system, the CPD framework could also support a defined career pathway for RMAs who are new to the industry or who would like to specialise in tribunal representation, supporting all RMAs to provide higher quality assistance in more complex fields through targeted training. The knowledge requirements would be prescribed in the OCS for RMAs.	Not supported – The MIA does not support the introduction of a tiering system for RMAs. This proposal has been discussed in detail in the main section of this response submission.
Theme Three - Combatting misconduct and unlawful activity	
3.1 Immigration assistance: definition and scope	
• Amending the Act to provide that clerical work in relation to a visa application can only be provided under the supervision of an RMA or a legal practitioner; defining the term 'clerical work'; renaming 'clerical work' to 'administrative assistance' or a similar modern term; and limiting the number of clerical workers that an RMA can supervise.	Supported
• Extending the powers of the OMARA to include regulation of businesses, and limiting the types of business structures an RMA can enter into, to ensure there is always at least one RMA legally and ethically responsible for each client – being a sole practitioner, a partner or a supervising/ principal practitioner.	Supported – This proposal has been discussed in detail in the main section of this response submission.
• It could also be possible to clarify the law through a new factsheet to help RMAs distinguish between general assistance with the Australian Citizenship Act 2007 (Citizenship Act) and legal advice on the Citizenship Act	Supported
• Making changes and clarifications to current exemptions within the Act and associated Regulations, including removing exemptions that involve risks to vulnerable visa applicants; clarifying the terminology; and removing redundant provisions	Supported in principle – further detail of these changes are required
• Replacing the terms 'visa applicant' and 'cancellation review applicant' with 'person' to ensure the terminology covers the full breadth of immigration assistance.	Supported

3.2 Measure to address unlawful and offshore immigration assistance	
The Department of Home Affairs does not recommend making the OMARA regulatory framework apply offshore. The Australian Government would not be able to apply and enforce the law without the consent of the country where the person of interest is located. The Department further does not recommend allowing offshore unregistered migration agents to be listed/accredited with the OMARA. As an alternative, it may be possible to increase awareness of the risks associated with the use of unregistered offshore and unlawful onshore providers of immigration assistance, and encourage the use of the OMARA's Register of migration agents to find and contact a registered migration agent (RMA). The Department does not recommend introducing categories of persons permitted to be authorised recipients. Instead, it is suggested to ensure that delegates have adequate training to identify if authorised recipients are legitimate and identify suspicious authorised recipients, as well as to revise or potentially amend the relevant provision of the Act. There is potential to introduce other legislative and system changes to target unlawful onshore and unregistered offshore immigration assistance. However, these measures are beyond the scope of the Review and are suggested for further examination by the Department: • legislative and system changes to allow the Department to accept visa applications only from the applicants, RMAs, legal practitioners or exempt persons • introducing an unregistered immigration assistance Public Interest Criterion that would enable refusal of a visa if the visa applicant knowingly receives unregistered or unlawful immigration assistance despite understanding the registration requirement for migration agents	Supported - The MIA strongly supports any action to address the unlawful provision of immigration assistance both on and offshore This proposal has been discussed in detail in the main section of this response submission.

• requiring visa applicants to attest in a declaration (or a statutory declaration where appropriate) as to whether or not they have received immigration assistance or other relevant assistance • developing risk profiles for individuals, occupations and industries where the risk of unregistered immigration assistance practice is high, and conducting audits of high-risk visa applications as part of other caseload integrity assessments.	
3.3 Penalties for unlawful immigration assistance	
Australia's financial penalties are significantly lower than those of like-minded countries under the Act. Further, both the legal profession and tax agent services attract much higher financial penalties than the immigration advice sector. Therefore, there may be a case for increasing financial penalties for unlawful (unregistered) providers of immigration assistance in section 280(1) of the Act from 60 penalty units (a $13,320 fine) to 250 penalty units ($55,500). Further options for reform include: • applying penalties to businesses, not just individuals • requiring payment of reparation (payment for harm or damage) and commercial gain • removing differentiation between fee-for-service and no fee-for-service in relation to penalties • introducing the ability to apply both financial infringements (penalty units) and/or imprisonment for offences, under sections 281(1), 281(2), 282(1), 283(1), 284(1) and 285(1) of the Act • Introducing provisions to make it a criminal offence to knowingly provide immigration assistance for the purposes of enabling serious and organised crime. In addition to the options explicitly relating to unlawful assistance, it may be beneficial to further consider increasing financial penalties for RMAs in sections 312A and 312B of the Act from 60 penalty units to 250 penalty units. These penalties differ from those in sections 280-285 of the Act, because they apply to lawful (registered) providers of immigration assistance as opposed to unlawful (unregistered) providers of immigration	Supported – This proposal has been discussed in detail in the main section of this response submission.

assistance. These penalties are important because they allow the ABF to prosecute RMAs who fail to disclose their assistance, thereby avoiding scrutiny, including in association with unmeritorious visa applications.	
3.4 The powers of OMARA to address RMA misconduct	
Simplifying and strengthening the information gathering powers and penalties available to the OMARA under legislation, to empower the OMARA to compel the provision of documents from RMAs. Sanctioning RMAs who do not provide requested documents would enable the OMARA to finalise cases, ensuring disciplinary actions can be progressed in a timely manner.	Not supported - This proposal has been discussed in detail in the main section of this response submission.
Simplifying the legislation to refer directly to the OMARA in the Act, and making further amendments to include provisions to bar RMAs based on fitness and propriety. The wording could also be simplified to clarify that the OMARA may bar agents for complaints received during their period of registration and after their registration has lapsed.	Supported in principle
3.5 Improving compliance with AAT Practice Directions	
The Department has not found a need for further reform directly relating to this issue under the Review, but will continue to monitor RMA engagement with the AAT and the implementation of existing reform activities. The following existing measures are designed to ensure the AAT's Practice Directions are understood and observed by RMAs in their dealings with the AAT, and that misconduct is promptly addressed. They include: • the release of supplementary policy guidelines that explain these instructions in simple terms • enhanced liaison between the OMARA and the AAT to allow for efficient referral of allegations of non-compliance by agents • the revised Code of Conduct for RMAs, scheduled for release this year, which will require RMAs to deal with the AAT in a manner that is consistent with the professional obligations imposed on all professional advocates participating in migration related merits review before the AAT	Supported - The MIA supports the Department of Home Affairs *not to seek* further reform directly related to AAT practice directions. The MIA supports further investigation of the requirements of the AAT practice directions. The MIA notes that without the Code of Conduct being available for review that it cannot comment on this section of the proposal Supported – educational sessions as an alternative to the introduction of a tiering system.

• initiatives discussed in other chapters of the Review report, such as provisional licensing and a proposed tiering system • educational sessions for RMAs, involving AAT speakers, are also proposed as a component of, or alternative to, the tiering system.	
3.6 Establishing an independent regulator	
The Department of Home Affairs has examined a range of options and does not recommend establishing an independent regulator under the auspices of a Complaints Commissioner. Given the current financial environment, and the relatively small size of the migration advice industry, the cost of establishing such an authority cannot be justified.	Not supported – The MIA supports the establishment of a regulator and complaints commissioner independent of the Department of Home Affairs, to ensure the transparency in government decision making and enforcement of consumer protections.