

## **Feedback Submission re: Migration Agents Instrument Review – Consultation report June 2021**

**The Migration Agents Instrument Review Report if adopted will unintentionally deliver poor outcomes for potential migrants and an administrative nightmare for the Commonwealth, and leave a fractured industry that will not be able to economically survive. It is of importance that consideration be given to issues raised in this submission.**

This Report claims to be the outcome of a consultation process arising from the discussion paper **Creating a World Class Migration Advice Industry**. The scope of the paper covered a review of the legislative framework governing the Australian migration advice industry, registration of migration agents and the functions of the migration advice regulatory authority OMARA.

The Review report acknowledges a highly qualified and professional migration advice sector and seeks to support it through further regulation. The intent is of value however; one element of the industry is now excluded from specific review. This is senseless considering the recent deregulation of legal practitioners.

Generally speaking, Registered Migration Agents welcome opportunities for improvement and positive reform to their profession however, this review has operated to impose views of those outside of the defined migration advice industry and seeks to restrict trade of RMAs through further regulation.

Since the amendments of the Migration legislation came into effect on 22<sup>nd</sup> March 2021, consequently deregulating the provision of migration advice and the removal of legal practitioners from scope of the OMARA, the review consultation process is rendered inconsistent. The report itself then can be questioned or even considered flawed.

**Recommendation: That the Consultation report be deemed redundant and new review established.**

The Review seeks to reform the “migration advice industry”, however, legislation came into effect that has changed the definition of the ‘migration advice industry’. The consultation process did not take this change into account and continued to seek advice and consider the views of the legal profession after they were removed from the register in shaping the outcome of this Report.

Legal practitioners are now outside the scope of this review; i.e they are no longer regulated by OMARA and are therefore no longer included in this review. Furthermore, there is a conflict of interest for members of the legal profession to have input in the regulation of registered migration agents as they share the provision of migration assistance. Legal practitioners must not be included in the consultation process as they are no longer part of the migration advice industry as defined by the Review. It is inappropriate for a profession to seek to impose undue influence in the regulation of another. The regard given to the LCAs recommendations and inclusion of legal practitioners in the advisory committee of this review concerning the regulation of Registered Migration Agents has compromised the consultation process.

The purpose of regulation is to ensure a standard of best practice and protect consumers from unqualified and unscrupulous operators. The migration advice sector has been regulated since 1992. Since then, Registered Migration Agents (RMAs) have become qualified professionals with entry requirements at a Postgraduate Diploma in Migration Law and Practice through recognised Australian universities. In addition, Registered Migration Agents are required to abide by a strict code of conduct and ethical standards and undertake continuing professional development.

Registration by OMARA of **all** migration advice providers ensured that a consistent standard of knowledge was met upon entry into the profession. Deregulation of migration services removed lawyers from the register of the migration advice profession. This has effectively divided the provision of migration advice between Registered Migration Agents, who come under the auspice of OMARA, and legal practitioners, who come under the auspice of their individual states. The inconsistency

in standards means the migration advice sector can no longer meet the Australian Qualifications Framework and best practice standards.

The goal towards creating a world class industry is destined to fail when the regulatory framework for the provision of migration assistance is inconsistent. OMARA only oversees the regulation of approximately 5000 RMAs while potentially 70,000 lawyers can provide migration advice without having to meet the same migration advice standards. Consumers have increased vulnerability and cannot be protected by OMARA as it has no jurisdiction over legal practitioners who provide migration advice.

It needs to be reiterated that the consultation strategy for this Review has been inefficient and lacking transparency. It has not followed the Australian Government best practice guidelines for consultation processes. There has been no consultation plan made available to us as to how many consultation rounds are included and a timeline for each. The process of appointing the advisory committee appears to have been improvised along the way.

Best practice principles state that consultations by Australian Government policy makers must be conducted in a genuine and timely manner to allow for input from affected stakeholders including businesses, community organisations and individuals. The Review process has been burdensome on registered migration agents who are key stakeholders and predominantly small business proprietors. The timeframes set for consultations have been towards the end of the financial year during the middle of a global pandemic and are inadequate to allow a considered response input into a paper that proposed to overhaul the entire RMA profession and significantly affect their livelihood.

The Government needs to monitor and combat unlawful operators. This should be addressed separately to the regulation of Registered Migration Agents. RMAs are highly regulated by OMARA. They must meet educational standards, abide by a code of conduct and are subject to misconduct sanctions. Unlawful operators are **not** RMAs and the Minister should consider addressing this issue through a separate process removed from the regulation of RMAs.

**Recommendation: That Migration Agents Instrument Review consultation be abandoned and that a new process be commenced proper terms of reference and consultation of stakeholders.**

The Review has been further compromised by input from the Administrative Appeals Tribunal into the conduct of RMAs. The AAT is an arm of the Judiciary in so being an independent authority created to review administrative decisions by the department including OMARA. It is a conflict of interest for the AAT to comment on the regulation of Registered Migration Agents and provide input on a tiering system. The AAT is not only a review body for decisions made on visa applications, it is also hearing appeals made by RMAs against OMARA decisions. In carrying out its duties the AAT must be accessible, fair and maintain public trust. It should not be having input into the regulation and licencing of RMAs.

Registered Migration Agents are in the best position to determine whether tiering should be implemented. There has been no evidence to suggest that RMAs support tiering. The proposed tiering system is anti-competitive and would be detrimental as it seeks to limit their capacity to assist consumers. Consumers will be faced with less options to choose from and may become vulnerable to exploitation by unscrupulous providers. This demonstrates further inconsistency in the provision of migration assistance standards.

Furthermore, this review has lacked input from a major stakeholder, consumers. It is essential that consumers are consulted the process. The Report does not appear to include any consumer feedback.

**Recommendation: That any new process of consultation must include a consumer strategy.**

The issue of English language skills has been addressed through the current registration and educational requirements. There is no research-based evidence to

suggest a general lack of professionalism, poor work and poor English throughout the RMA profession.

Another issue raised in this report is the provision of migration assistance by Members of Parliament. The Review appears to be overextending in attempting to curb the powers of elected representatives to provide assistance to their electorates.

#### Summary of recommendations

- **That the Consultation report be deemed redundant and new review established.**
- **That Migration Agents Instrument Review consultation be abandoned and that a new process be commenced with proper terms of reference and consultation of relevant stakeholders.**
- **That any new process of consultation must include a consumer strategy.**

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