Feedback submission on:
Migration Agents Instrument Review Consultation Report of May 2021

24 May 2021

By:

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To:
Department of Home Affairs,
Australia.

Subject: Feedback submission on: Migration Agents Instrument Review Consultation Report dated May 2021

1. Introduction

1.1 I am making this submission in response to your Consultation Report on the Migration Agents Instrument Review dated May 2021 (hereafter referred to as "this Review" in this submission).

1.2 I am a Registered Migration Agent of Australia as well as a Licensed Immigration Adviser of New Zealand. I have been practicing with unblemished records as a Registered Migration Agent / Licensed Immigration Adviser for over seven years. I have also provided supervision, and continue to provide supervision, to provisional license holders under the supervised practice scheme of New Zealand's licensing system.

2. The focal point of this submission

2.1 The main intent of the submission is to address the issue of the proposed tiering scheme to be applied to Registered Migration Agents (RMAs).

2.2 With due respects to all concerned in this matter, this submission is intended to express my **strong disagreement with, and objection to,** the proposal to introduce and apply a **three-tiered structure** to **legacy RMAs** as noted and detailed in a section of your Consultation Report (hereafter mentioned as "your Report" in this submission). At the same time, this submission also aims to express my **support** for a modified version of the proposed **supervised practice** mentioned in your Report.

2.3 This submission now proceeds to elaborately discuss the reasons for my disagreement with the 3-tiered tiering proposal, and to further discuss the aspects of supervised practice that I perceive to be the most appropriate under the current circumstances.

3. Subjective interpretation of the term "Profession" in your Report

3.1 Before commencing my detailed discussion on the focal point of this submission, I recognise that there is a compelling need to address the matter of whether RMAs are to be described and referred to as a profession or an industry.

3.2 Your Report has used the 5E model developed by the Professional Standards Councils (PSC) to evaluate whether an occupational group is a "profession" or otherwise. In your Report, the 5E model has been outlined in Table 3 on page 18. On page 19 of your Report, an attempt has been to match the corresponding attributes of the RMA occupational group against each element of 5E model in Table 4.

3.3 With due respects, I observe that the attributes described in column 2 of Table 4 in your Report are highly subjective in nature. For example, the comment in your Report:

"*The introduction of a tiering system will ensure RMAs develop personal capabilities and obtain relevant experience and/or education before entering higher tiers and, in particular, before entering challenging discrete professional areas, such as ministerial interventions and tribunal reviews".*

is noted to be unfounded, involves assumptive elements, is subjectively deduced, and denotes a foregone conclusion about a future action yet to be implemented.

3.4 Your Report has also pointed out in the same table (Table 4) that more time is required to evaluate the effectiveness of the Graduate Diploma. The same reasoning should then apply to the introduction of a tiering system as well. A reasonable time (at least a few years) would be required after implementation of a new tiering system to evaluate its effectiveness. Thus, the words "will ensure" in your statement is assumptive and indicates a predetermined decision.

3.5 In my opinion, there is a simpler and more acceptable way to evaluate whether the occupational group of RMAs is a profession or otherwise. The term "Continuing Professional Development" or "CPD" can be effectively used to identify whether an occupational group is a profession. The descriptor "Continuing" preceding the term "Professional Development" is self-revealing and self-explanatory. The term "Continuing" unerringly indicates that the development is continuing for a person who is an existing professional. Otherwise, the term would have just been "Professional Development" where a non-professional is being converted into a professional. In industries, for non-professional occupational groups, a term like "further training", or "occupational training" or simply, "training" would be more appropriate and fitting.

3.6 Given that RMAs have to undergo CPDs as a mandatory part of their occupational development, it stands to irrefutable reasoning that the occupational group of RMAs is a profession, and not an industry.

3.7 In view of this simpler, easier and indisputable means available to evaluate and determine that the RMA category is indeed a profession, there is no logical need to further use the 5E model of PSC.

3.8 I state with concern that such misleading comments used in your Report is indicative of an underlying motive to deliberately portray the occupational group of RMAs as having inferior standards in need of professionalisation, with the intention of imposing the structured tiering scheme on the RMA profession. The aspect of purposeful demeaning of the RMA profession has been used in some other parts of your Report as well, and these will be addressed later in this submission.

3.9 Having said this, I consider it proper to state in this context that, from the consumer's perspective, the matter of terminology is of secondary importance. The question of prime importance is whether consumers would be truly and genuinely benefitted by any changes sought by this Review. From this perspective, for the purposes of this submission, I prefer to use the term "Migration Advice Service Sector", rather than using the controversial term "Migration Advice Industry" (as used in your Report) or the term "Migration Advice Profession" (which I consider as reasonably correct). The underlying fundamental purpose of the Review being to enhance consumer protection and improve quality of migration advice services, I consider that using the term "Migration Advice Service Sector" would serve the said purpose in a more fitting manner. Therefore, going by the consumers' standpoint, it would be more consistent for the goal of this Review to be: "To create a World Class Migration Advice Service Sector".

4. The Migration Advice Market of Australia and the scope of this Review

4.1 The Migration Advice Service Sector (MASS) of Australia is made up of two categories of service providers, namely, the Registered Migration Agents (RMAs) and Unrestricted Legal Practitioners (ULPs).

4.2 As per data available from OMARA, in December 2020, there were a total of 6,888 RMAs[1]. This figure is inclusive of the then existing 2,126 legal practitioners who were registered as RMAs as well. Post-deregulation, with the removal of ULPs from the regulatory scheme governing RMAs, the number of RMAs works out to only 4,762 (after deducting the number of ULPs with RMA registration from the total of 6,888 RMAs).

4.3 As per the information available in the National Profile of Solicitors report, there were a total of 76,303 lawyers as of October 2018[2].

4.4 The total number of migration advice providers post-deregulation (RMAs plus ULPs) in the Migration Advice Service Sector sums up to 81,065. Thus, seen as a percentage, the RMA subsector consists of only 5.9% (or less than 6%) of the total migration advice service providers.

[1] https://www.mara.gov.au/notices-reports-subsite/Files/MAAR_Jul_Dec_2020_Web.pdf

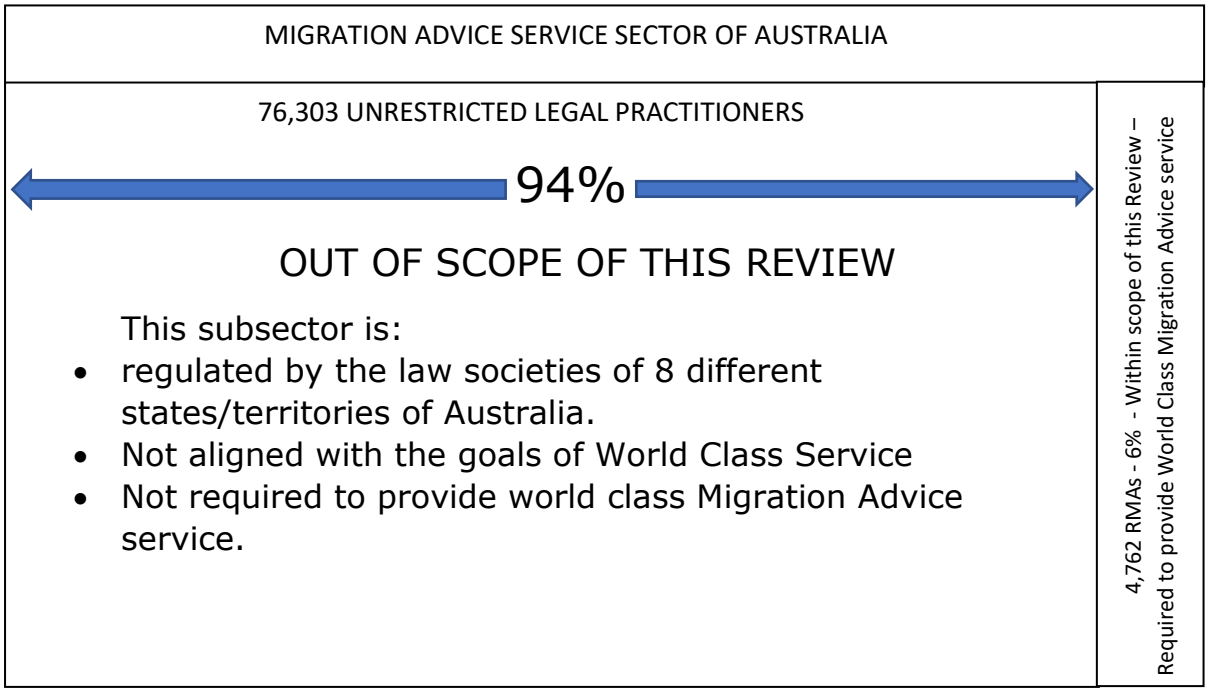
[2] Information obtained from the Consultation Report Nay 2021

4.5 Your Report states that the scope of the Review is confined to the RMA subsector only, and the deregulated ULP subsector is out of scope. In other words, it is envisioned to have a world class migration advice sector only within the 6% of the total market participants. Therefore, it follows that approximately 94% of the migration advice providers are NOT aligned with the goals of achieving a world class migration advice service sector.

4.6 Your Report does not include any information as to whether the 8 different regulating authorities of ULPs are aware of, and aligned with, the goals of the Department of Home Affairs (DHA) in relation creating a World Class Migration Advice Service Sector. In the absence of such information, it follows that the 8 different law societies regulating the ULP sector are NOT aligned with the DHA's goal of having a World Class Migration Advice Service Sector. There is no Memorandum of Understanding (MoU) between the DHA and Attorney-General's Department to ensure that identical measures to those proposed in this Review are implemented by all the law societies so as to have uniformity in the quality of migration advice services to ALL consumers.

4.7 Figure 1 below is a graphical representation of the two subsectors within the Migration Advice Service Sector. Although Figure 1 is not to scale, it is aimed to present the reader with a fairly clear picture of the situation when viewed in relation to this Review.

Figure 1 (Not to scale)



4.8 It is clear from Figure 1 that the migration advice service sector is not being considered in its entirety. Reforms are aimed at a very small (or tiny) percentage of this sector by this Review. This means that consumer

interests are not fully addressed by this Review. Stated differently, a VERY large part of the consumer interests is ignored by this Review under the embellished pretext of creating a World Class Migration Advice Industry [sic].

4.9 From a rational viewpoint, the notion of pursuing significant and dramatic reforms in a service sector without having all the service providers participate in the pursuit is rather illogical. Furthermore, leaving a substantially large portion (of 94%) of the service providers out of scope of such pursuit is plainly absurd. Notwithstanding the absurdity, carrying out such pursuit nevertheless would be indicative of implicit ulterior motives.

4.10 Therefore, I reasonably note that this Review does not objectively serve the purpose of delivering true and genuine benefits to ALL consumers across the whole of the Migration Advice Market Sector. In other words, the underlying purpose of this Review appears to be driven by the motive of imposing stringent reforms on the minority RMA subsector consisting of only 6% of the total migration advice providers.

5. Stringent review of only 6% migration advice providers groundless

5.1 The proposal to introduce and impose a tiering structure on **legacy RMAs** constitutes a very harsh measure due to the following reasons:

5.2 A tiered structure is restrictive in nature and would restrict the income of self-employed RMAs and adversely affect their livelihood. Some of the legacy RMAs could find themselves with very little or no income at all. Therefore, this measure is **punitive** in nature and without a justifiable cause.

5.3 Imposing punishment by weaning the livelihood of lawfully working advice providers with no instances of professional misconduct or proven incompetence would be **unfair and discriminatory**.

5.4 As explained earlier, the occupational group of RMAs is already a profession, but is deliberately being portrayed as an industry requiring significant reforms in order to justify the stringent measures being contemplated on the RMA subsector.

5.5 As reasoned above, the Review does not serve the deemed purpose of delivering benefit to ALL consumers, being confined to consumers served by only 6% of the service sector. I perceive such stringent review of only 6% of the sector participants as being unreasonable and biased.

5.6 Your Report states on Page 10 that: "In the 12 months to 30 June 2020, 16 RMAs or former RMAs were barred or suspended". Given that the total number of RMAs at that time were 6,712 as per data available from the OMARA website[3], the number of RMAs barred or suspended constitutes less than 1%, in fact, only as low as 0.24% of the total number of RMAs. From a reasonable standpoint, a volume of misconduct or incompetence of as low as 0.24% should not warrant stringent and

[3] https://www.mara.gov.au/notices-reports-subsite/Files/MAAR_Jan_to_Jun_2020_Web.pdf

punitive measures on the unblemished 99.76% of RMAs who have been lawful, competent, diligent, and serving consumers to the best of their capability.

5.7 Consumer protection requires all miscreants to be identified across the entire Migration Advice Service Sector including the RMA and the ULP subsectors. One can reasonably argue that as a matter of uniformity, if the percentage of ULPs with misconduct happens to equate to 0.24% of the total ULPs in a given state/territory, then the law society of that state should implement a tiering system for the ULPs in order to render uniform benefits to ALL consumers across the entire sector. However, there is no indication, whatsoever, that such uniformity is being contemplated at all. Objectively speaking, consumers have to be protected in a uniform manner from misconduct by any migration advice provider across the Migration Advice Service Sector.

5.8 Your Report has rightly pointed out that the Covid-19 pandemic period "has coincided with a particularly disruptive and distressing period for many RMAs, whose livelihood has been hurt by the global pandemic and the associated uncertainty within the immigration and travel environment". I sincerely appreciate the empathy shown in your Report towards the affected migration advice providers. However, ironically, the same level of empathy is totally absent while your Report proposes and strongly supports the structured tiering scheme for legacy RMAs, which would hurt the legacy RMAs even more, and compel them to seek social security support from the Australian government. I perceive this as a clear trend towards a negative economy and particularly detrimental to post-pandemic economic recovery.

5.9 Furthermore, the few legacy RMAs who may still happen to survive the punitively regulated environment, are more than likely to be working in a stressful environment generated by this Review; an environment devoid of cordiality or a motivation to deliver quality services to consumers. This, in turn, is likely to reflect adversely on their dedication to the profession leading to a lowered class of migration advice, which would tend to be detrimental to consumer interests.

5.10 It is vital to note that there is, rationally, a better alternative to the proposed tiering scheme, being an alternative, which is more likely to offer genuine benefits to consumers. The New Zealand model of supervised practice with no further structural tiering has proven to be very effective in achieving the goals of higher levels of consumer protection and migration advice service. At the same time, the supervised practice model of New Zealand does not have a punitive element that a structured tiering imposed on legacy RMAs in your Report would have. In a later part, this submission details a slightly modified version of the New Zealand model that I consider would be more suited to the Australian migration environment, and one that would not be punitive to legacy RMAs.

5.11 With due respects, I find the methodology employed by this Review to be controversial by virtue of being supportive of misuse of market power

by a major market sector. My detailed reasons for making this statement are given in a separate heading of this submission.

5.12 In view of the above reasons, I perceive the stringent measure of imposing a structured tiering on **legacy RMAs** as groundless, unwarranted and inappropriate at this time.

6. The procedure used in this Review is highly contentious.

Support of misuse of market power

6.1 A major concern regarding this Review is that it is supportive of misuse of market power by the major and dominant subsector of the Migration Advice Service Sector. To the best of my interpretation and understanding, the Law Council of Australia (LCA) representing the large 94% subsector is in breach of the Australian Competition law by virtue of trying to influence the regulators to bring about a substantial lessening of competition in the Migration Advice Service Sector.

6.2 Section 46 of the Competition and Consumer Act 2010 (Cth) (hereafter referred to as CCA in this submission) states that:

(1) A corporation that has a substantial degree of power in a market must not engage in conduct that has the purpose, or has or is likely to have the effect, of substantially lessening competition in:

(a) that market; or

(b) any other market in which that corporation, or a body corporate that is related to that corporation:

(i) supplies goods or services, or is likely to supply goods or services; or

(ii) supplies goods or services, or is likely to supply goods or services, indirectly through one or more other persons; or

(c) any other market in which that corporation, or a body corporate that is related to that corporation:

(i) acquires goods or services, or is likely to acquire goods or services; or

(ii) acquires goods or services, or is likely to acquire goods or services, indirectly through one or more other persons.

(3) A corporation is taken for the purposes of this section to have a substantial degree of power in a market if:

(a) a body corporate that is related to that corporation has, or 2 or more bodies corporate each of which is related to that corporation together have, a substantial degree of power in that market; or

(b) that corporation and a body corporate that is, or that corporation and 2 or more bodies corporate each of which is, related to that corporation, together have a substantial degree of power in that market.

(4) In determining for the purposes of this section the degree of power that a body corporate or bodies corporate have in a market:

(a) regard must be had to the extent to which the conduct of the body corporate or of any of those bodies corporate in that market is constrained by the conduct of:

(i) competitors, or potential competitors, of the body corporate or of any of those bodies corporate in that market; or

(ii) persons to whom or from whom the body corporate or any of those bodies corporate supplies or acquires goods or services in that market; and

(b) regard may be had to the power the body corporate or bodies corporate have in that market that results from:

(i) any contracts, arrangements or understandings that the body corporate or bodies corporate have with another party or other parties; or

(ii) any proposed contracts, arrangements or understandings that the body corporate or bodies corporate may have with another party or other parties.

(5) For the purposes of this section, a body corporate may have a substantial degree of power in a market even though:

(a) the body corporate does not substantially control that market; or

(b) the body corporate does not have absolute freedom from constraint by the conduct of:

(i) competitors, or potential competitors, of the body corporate in that market; or

(ii) persons to whom or from whom the body corporate supplies or acquires goods or services in that market.

(6) Subsections (4) and (5) do not limit the matters to which regard may be had in determining, for the purposes of this section, the degree of power that a body corporate or bodies corporate has or have in a market.

(7) To avoid doubt, for the purposes of this section, more than one corporation may have a substantial degree of power in a market.

(8) In this section:

(a) a reference to power is a reference to market power; and

(b) a reference to a market is a reference to a market for goods or services; and

(c) a reference to power in relation to, or to conduct in, a market is a reference to power, or to conduct, in that market either as a supplier or as an acquirer of goods or services in that market.

6.3 It is factually indisputable that the ULP subsector has acquired a substantial degree of market power post-deregulation. As the LCA represents the entire ULP subsector that comprises 76,303 lawyers making up 94% of the Migration Advice Service Sector, it is evident that LCA has a substantial degree of market power when compared to the only competitor consisting of merely 6% of the Sector. Therefore, the 82-page submission given by the LCA (as a stakeholder of the Migration Advice Industry [sic]) detailing how the RMA sector should be further regulated constitutes a violation of section 46 of the CCA, given the fact that the submission includes proposals for a number of entry barriers to the RMA profession as well as stringent restrictive measures to be imposed on the RMA subsector. These harsh measures proposed by this submission are also unethical in addition to being a breach of law, given

the fact that these measures have the potential to adversely impact on the livelihood of unblemished legacy RMAs.

6.4 The DHA has been strongly supportive of the LCA's proposals of harsh measures to be imposed on the RMA subsector (including legacy RMAs). Controversially, the LCA's 82-page submission is now on the verge of being converted into a potential reality through this Review. This is evident from the fact that the LCA's submission is listed as a "Stakeholder Tiering Model" on page 160 of your Report. Additionally, your Report mentions LCA and its proposals in various places throughout the report. In other words, this Review reinforces the breach of law by the LCA. Such support of the regulators towards the LCA's breach of law is contentious, because I consider that the support by itself is inconsistent with law. To the best of my understanding, this Review seeks to impose stringent regulations on the 6% RMA subsector by being a party to the breach of law by the major market power in the migration advice market.

6.5 Going by the same reasoning, I consider that it would be inappropriate for the DHA to have regard to, or to accommodate proposals from, any ULP from within the ULP subsector. Even if an individual ULP is able to influence the regulators to introduce harsh reforms on the RMA subsector, this would also constitute a breach of s46 of the CCA, because, to my interpretation, the alliance of the individual ULP with the regulators would still comprise a major market power. The aspect of conflict of interests is too prominent to be ignored particularly in a duopolistic market structure, and this would be eventually detrimental to consumer interests.

6.6 In clarification of my stance, I point out that, for any regulatory reform contemplated on the ULPs by the concerned regulatory bodies for ULPs, I have never seen any RMA being allowed or encouraged to offer proposals or recommendations on regulatory reforms to the ULP subsector. It is to be noted that, post-deregulation, RMAs are also "stakeholders" of ULP matters by virtue of both being part of the Migration Advice Service Sector. From an objective viewpoint, it is unethical and objectionable to allow a market competitor to influence the regulators to decide about the market opponent's future.

6.7 Therefore, in addition to fostering the misuse of market power by the LCA, the matter of allowing any individual ULP from proposing reforms on the RMA subsector is contentious. In stark disregard to this rational standpoint, the DHA has encouraged the LCA, as well as individual ULPs to offer their proposals, thereby supporting a potentially substantial lessening of competition in the migration advice market. Consumers stand to be distinctly disadvantaged by this trend towards monopolising the migration advice service sector and would be left with the only option of paying the high level of service fees to be charged by the ULP subsector.

6.8 Therefore, fairness demands that ALL the submissions, proposals and recommendations made by the LCA, as well as by any ULP individually,

towards this Review be fully disregarded and expunged forthwith. From an objective standpoint, this is the only way to steer this Review towards an unflawed direction, and one devoid of contention. Solely, those proposals/recommendations given by stakeholders falling outside the scope of the ULP subsector can be held to be legitimately worthy of consideration for this Review which is targeted on the RMA subsector exclusively.

The issues related to the Migration Advisory Industry Group (AG)

6.9 Another point of concern is the way in which the AG has been formed and functioning. It is to be noted that, the 26 members were "selected" by the DHA, but not "elected" as representatives by the RMAs. No consent has been sought from RMAs (as stakeholders) to authorise any of these "members" to represent them. As such, the selected persons cannot be considered as representatives of RMAs.

6.10 In this context, I wish to explicitly clarify that this submission does not intend any disrespect to the selected AG members. I acknowledge that the individual knowledge and expertise of all selected AG members might be well deserving respect. Moreover, this submission does not oppose or object to any proposals made by the AG members (except any ULP being an AG member) for new entrants and future generation RMAs. My objection is confined to the empowerment of these AG members to make recommendations about the future of fully compliant **legacy RMAs** that would impact adversely on their livelihood.

6.11 I submit that it is unfair for these "selected non-representative members" to be given the right to make suggestions about the future of legacy RMAs. As I have not authorised or elected any of these members to make recommendations about my future, I am unable to accept any proposal/recommendation made by them that would adversely affect my income and livelihood. I consider that imposing any proposal made by these non-representative members upon unblemished legacy RMAs would be inconsistent with the Australian fairness principles.

6.12 The proceedings and discussions of the Advisory Group (AG) have been classified as a "SENSITIVE" matter. As a result, the details of the minutes of meeting among the AG members and those between the AG members and the regulators are not published. In other words, the fate of RMAs (including legacy RMAs) is being decided in a non-transparent manner.

6.13 I reasonably oppose the future of unblemished legacy RMAs being discussed and decided by "selected non-representative members" in a secretive manner. I respectfully submit that such method of conducting this Review is contrary to the Australian core values of fairness and justice. From the fairness perspective, **nobody,** I repeat, **nobody** has the right to propose measures that have the potential to adversely affect the livelihood of other law-abiding persons including unblemished, fully compliant RMAs who uphold consumer interests at all times.

6.14 For empowering the AG to make recommendations about the future of legacy RMAs, I reasonably propose that: (i) an elective process be employed

for appointing a fresh set of members, with participating rights excluded to market competitors of the RMA subsector; alternatively, if a selection process is employed, then each selected member be authorised in writing by all legacy RMAs to represent them; (ii) minutes of meeting of AG be published; (iii) Legacy RMAs with no instances of misconduct or incompetence be left out of the scope of this Review. For reasons given in section 6 (and particularly, in subsection 6.5) of this submission it would inappropriate and inconsistent with s46 of the CCA to a member of the AG.

7. The concerns about the proposed 3-tiered structure for new entrants

The longest and the most difficult career pathway

7.1 The career pathway and timeframes for the RMA subsector as proposed in your report is as follows:
- An undergraduate degree (usually 3-4 years), followed in order by:
- A postgraduate Diploma course of 1 year,
- A capstone assessment;
- A supervised practice of 1 year (this is also Tier-1);
- Tier-2 (presumed to be at least 1 year or more)
- Tier-3 (Full Licence).

7.2 For a new entrant commencing their career with a bachelor's degree course, it will take a minimum of 7-8 years to become a fully licensed RMA. This is the minimum period, all going ideally well. However, in reality it could take up to 10 years or even more. For instance, clearing the Capstone examination could take a few attempts given the high and unrealistic standards of this examination. Thereafter finding a supervisor for supervised practice could take more time; finding the right clientele for each tier could take time as well.

7.3 The occupation, being specialised in immigration matters exclusively, narrows down the employment prospects of an incumbent to a single field of work. Unlike most other occupations where there are a number of alternative employment options available, with this occupation, there is none. During the tier 1 and tier 2 periods, the income of an RMA could be very little, or even nil. Given the post-deregulation scenario of a stiff competition from more than 76,000 ULPs, the RMA profession would be anything but lucrative. Furthermore, given the uncertainties and the unstable nature of migration planning and policies, a new entrant would find this as an extremely unattractive and unrewarding career option that can take up to around 10 years to be practising without restrictions. As an alternative option, it would be easier and quicker for a new incumbent to take up career as a lawyer instead. The pathways to becoming an unrestricted legal practitioner is 5-6 years. There is no tiering for ULPs. An ULP can provide full migration advice from day one of their career. For a new entrant to become an unrestricted legal practitioner in Australia, the pathway is as below:

- Complete a Bachelor of Law (LLB) undergraduate degree or a Juris Doctor (JD) postgraduate degree. Both courses are 3 or 4 years long.
- Complete Practical Legal Training (PLT). This can be completed in less than a year.
- Gain admission from the relevant state or territories Admissions Authority; Apply for a Practising Certificate from the local Law Society.
- Complete 18 to 24 months of supervised practice at a law firm. It may be preferable to complete this in a law firm that specialises in your chosen field.

The career pathway comparison of the UK

7.4 For a new entrant to become a level-3 Registered Immigration Adviser in the UK, it typically takes around 4-5 years. It is to be noted that the UK structural model is very dissimilar to our existing model. The first point of dissimilarity is that a newcomer to the profession can start by working under supervision without completing any course of study. The second difference is that there is no qualification requirement, and courses of study are as short as 1 or 2 days. The third difference is that their assessment itself has a multi-level pattern, the respective level being based on the skill and training of the candidate.

The career pathway comparison of Canada

7.5 For a new entrant to become a Regulated Canadian Immigration Consultant, it typically takes around 4 years, as follows:
- A Bachelor's degree, followed in order by
- A Graduate Diploma in immigration and citizenship law (1 year); and
- Entry-To-Practice exam.

The career pathway comparison of New Zealand

7.6 The career pathway in New Zealand for a new entrant aiming to become a Licensed Immigration Adviser is as follows:
- An undergraduate degree (or an acceptable work experience of 3 years); followed by
- A Graduate Diploma of 1 year
  After completing 6 months of the Graduate Diploma, the candidate can apply for a Provisional License, and
- work under supervision for 2 years, and simultaneously complete the remaining 6 months of the Graduate Diploma.

It typically takes around 5.5 years for a new entrant to become a fully licensed Immigration Adviser of New Zealand.

7.7 The following table (Table-1) shows a quick comparison of the timeframes for a new entrant to become a fully functional migration advice provider:

Table-1 (Career pathway timeframes comparison)

RMA in Australia (proposed)	Australian Legal Practitioner	Registered Immigration Adviser (UK)	Regulated Canadian Immigration Consultant	Licensed Immigration Adviser (New Zealand)
7-10 years	5-6 years	4-5 years	4 years	5.5 years

7.8 The proposed career pathway timeframe for a new entrant RMA in Australia, when matched with those of the other comparable countries is the longest and most difficult to complete, and this is likely to render the proposed tiering structure unrealistic, thereby, making it hard to sustain the RMA subsector.

7.9 I reasonably perceive the proposed tiering structure to be a huge disincentive for new entrants looking to start a career in the migration advice profession. On a rational basis, this proposed 3-tier structure could very well result in a substantial lessening of competition from RMAs, and the eventual extinction of the RMA profession, thereby effectively making the way for a fully monopolistic regime by ULPs.

8. The issues with the proposed 3-tiered structure for legacy RMAs

8.1 For legacy RMAs, a number of significant issues with the proposed 3-tiered structure are imminent. These include: (i) being punitive in nature, (ii) being imposed without a demonstrated or rational need, (iii) being supportive of the breach of section 46 of the CCA; (iv) being conducted with a flawed formation of AG; (v) being based on subjective interpretation that RMAs are presently in an unprofessional state and in need of professionalisation; (v) being a supportive of a negative economic impact particularly during the post-pandemic period.

<u>Punitive in nature</u>

8.2 As mentioned in subsections 5.2 and 5.3 of this submission, a tiered structure is restrictive in nature and would restrict the income of self-employed RMAs and adversely affect their livelihood. Such restriction is being imposed for no fault on the part on unblemished legacy RMAs.

8.3 This is likely to result in some of the legacy RMAs facing a dramatic fall in their income level being a "reward" for having worked for many years with dedication, sincerity and in compliance with the law. Therefore, imposing a tiered structure on fully compliant legacy RMAs is **punitive** in nature, **unfair** and **discriminatory**.

<u>No demonstrated or rational need</u>

8.4 As explained in sub-section 5.6 of this submission, the size of proven misconduct and incompetence (combined) during the 12-month period

ending 30 June 2020 was as low as 0.24% of the then total number of RMAs. This rate of non-compliance being well below 1% (in fact, below a quarter of one percent).

8.5 In my reasonable view, a non-compliance rate of as low as 0.24% does not warrant a massive reform of the professional structure. Even if any kind of reform were deemed to be necessary, it would be only reasonable to confine these reforms to new entrant or future RMAs. I voice my concern that, with a meagre non-compliance rate of 0.24%, imposing punitive regulatory measures on fully compliant, unblemished legacy RMAs to the extent of weaning away their livelihood is far from reasonable.

8.6 I note that, Your Report states on page 10 that:

> *"In the 12 months to 30 June 2020, 16 RMAs and former RMAs were barred or suspended or had their registration cancelled, which was approximately nine per cent of the 447 total complaints received for this period".*

I consider it inappropriate and misleading to compare the number of non-compliant RMAs with the number of complaints made against in order to justify the introduction of stringent reforms. The number of complaints received is irrelevant in this context owing to the distinct possibility of consumer expectations being unreasonable or unfounded. From a logical perspective, it would be more relevant in the current context to consider the proportion of RMA non-compliance in relation the total number of RMAs during the period under consideration. Therefore, 16 RMAs comprise only 0.24% of the total of 6,712 RMAs during the said period of 12 months to 30 June 2020.

8.7 The data of nine percent of the complaints received is irrelevant in this context, while the figure 0.24% is contextually relevant and pertinent. I note that your Report appears to have avoided presenting the true non-compliance data of 0.24% of the total number of RMAs. With no disrespect intended, I find such careful avoidance of presenting an extremely significant data to be indicative of an intentional misrepresentation in order to justify the imposition of stringent reforms on the RMA subsector.

8.8 In view of the above explanation, I submit that there is no demonstrated or rational need to impose the proposed 3-tiered structure on **legacy RMAs.**

<u>Supportive of breach of the Competition and Consumer Act 2010</u>

8.9 As detailed in section 6 of this submission, this Review has been supportive of misuse of market power by the LCA. The 82-page submission of the LCA has introduced and detailed the proposal of a 3-tiered structure for its market competitor, the RMA subsector, and this includes details of how **legacy RMA**s should fit into the 3-tiered structure. Clearly, the regulators have been supportive of this breach.

Based on a support for an unlawful behaviour by the LCA, this Review seeks to impose punitive measures on legacy RMAs. I hereby voice my **strong opposition** to such support and to the 3-tier system being imposed upon legacy RMAs.

8.10 Simply put, this Review seeks to pursue an unconstitutional procedure for imposing an unjustified punitive reform on fully compliant, unblemished legacy RMAs.

Flawed empowerment of Advisory Group

8.11 As explained in sub-sections 6.9 to 6.14 of this submission, the empowerment of the AG members to make recommendations on legacy RMAs is flawed owing to the fact that these members are neither elected nor authorised by legacy RMAs,

8.12 There are ULP members in the AG as well, and as pointed out in sub-sections 6.5 to 6.8 of this submission, it is inconsistent with the provisions of the CCA for regulators to support a market competitor, because by virtue of this support, the individual competitor acquires a substantial degree of market power.

8.13 I perceive that the regulators taking on board any proposals made through a flawed empowerment of AG members is **unfair** and **discriminatory**.

Based on subjective interpretation of the term "profession"

8.14 As reasonably argued in section 3 of this submission, the term "profession" has been incorrectly construed, and the RMA subsector has been deliberately portrayed in your Report as a non-professional occupational group that is in need of "professionalisation". A predetermined conclusion has been made in your Report based on assumptive and subjectively deduced interpretation. Through a reasonable argument, it has been shown that the RMA occupation group is indeed a profession. Therefore, there is no need for "professionalisation" of an existing profession.

8.15 As your Report is entirely based on the flawed premise of "professionalisation" of the RMAs, it follows that your Report is groundless in entirety. As the occupational group of RMAs is already a profession, the notion of "professionalisation" of an existing profession is rationally absurd. It further reasonably follows that the proposal of a 3-tiered structure to be imposed on legacy RMAs as part of a "professionalisation" process is totally unfounded.

Detrimental to the Australian economy

8.16 As discussed and detailed earlier, restricting the scope of work of a legacy RMA would adversely impact their income and livelihood. Many

hitherto financially self-sufficient RMAs might be forced to seek social security payments for their subsistence and survival, as well as that of their dependent family members. This denotes a negative economic impact, particularly during the Covid1-9 pandemic and post-pandemic periods.

8.17 Therefore, in my view, this Review would consequently compel legacy RMAs to become a burden to the Australian community. At the same time, it would facilitate the ULP subsector to become a monopolistic market player to the eventual detriment of consumers. Such substantial lessening of competition in the Migration Advice Service Sector would be in stark disregard to the purposes and provisions of s46 of the CCA.

9. The Supervised Practice model that I recommend.

9.1 In order to offer true and genuine benefits to the consumer, I recommend the New Zealand (NZ) model of supervised practice, with slight modification. I explain below the reasons for my recommendations. This explanation starts with a discussion as to why I do not consider the UK model of migration advice service is not suitable to be applied in Australia. This is followed by an explanation of why I consider the NZ model to be suitable for being followed in Australia. Following these discussions, I then proceed to make my recommendation of a supervised practice model for Australia.

Why the UK tiered model is not suitable for Australia.

9.2 From a generic and rational viewpoint, the UK tiering model is not suitable to be applied in Australia, for the simple reason that the overall UK immigration advice service sector has a high level of dissimilarities as compared with the Australian Migration Advice Service Sector. While all the differences are not discussed here, some of the significantly relevant dissimilarities are worth noting. These include:

(i) All solicitors are NOT exempted from regulation by the Office of the Immigration Services Commissioner regulation (OISC). Only certain classes of solicitors are exempted from OISC regulation, whereas in Australia, all ULPs are exempted from the regulatory regime applicable to RMAs. A copy of a document from the Government of UK titled as: "OISC Regulation and Solicitors" is provided in Appendix A of this submission.

(ii) There is only one single centralised regulatory body for solicitors in the UK (Solicitors Regulation Authority - SRA), while in Australia there are 8 different regulatory bodies. There is a close coordination between OISC and SRA on immigration matters, vide the Memorandum of Understanding (MoU) between these two bodies. A copy of this MoU is

reproduced in Appendix B of this submission. This makes it comparatively smoother and easier to uniformly enforce compliance of immigration matters, and thereby, offer a great degree of protection to consumers. This is not the case in Australia. Consumers are exposed to non-uniform ways of compliance enforcement for legal practitioners providing migration advice from 8 different states/territories.

(iii) As stated in section 7.4 of this submission, a Registered Immigration Adviser in the UK can start their career by working in a migration advice firm under supervision. The UK model does not require any formal qualification for registration. Candidates are expected to demonstrate their knowledge at a particular level based on a stipulated syllabus for that level. There is a 3-level assessment system. Thus, it can be seen that the UK model places a high degree of emphasis on knowledge and skills gained through work experience and workplace-based training. On the other hand, the Australian model starts with a post graduate Diploma followed by a Capstone examination. This model emphasizes classroom-based study that combines all areas of migration within the Diploma. The Capstone assessment cumulatively and comprehensively attempts to assess a candidate across the entire migration advice arena.

(iv) Given these stark dissimilarities between the UK and Australian models, it does not make logical sense to copy only the tiering pattern from the UK model. While the UK has, on an overall basis, a mechanism to ensure uniformity of the efficacy of migration advice across the entire migration advice sector including solicitors and immigration advisers, your Report endeavours to simulate only the tiering structure taken in isolation from the UK model for imposing on the small RMA subsector, while no noticeable coordination exists between the RMA regulators and the ULP regulators, in addition to any disparities that may exist between different regulatory bodies for the ULPs.

Why the NZ Supervised Practice is a better alternative for Australia.

9.3 NZ is located geographically very close to Australia and both nations have a strong political and economic affinity and cross migration pattern. Visa application waivers are available for citizens of these two countries for cross travel and indefinite stay.

9.4 The visa patterns of NZ are substantially similar although finer differences do exist. The skilled visas (including points-based GSM), work visas, and various other visas of NZ and Australia have a close resemblance.

9.5 The two countries also have a mutual agreement in place for cross licensing/registration of migration agents aka immigration advisers. This agreement is called as the Trans-Tasman Mutual Recognition Act 1977 (TTMRA).

9.6 In my own experience I have found the Supervisory Practice (SP) model of NZ to be very meaningful and beneficial to both the supervisor and the supervisee. The SP model effectively places the responsibility of the migration advice on the supervisor, while the supervisee gets a good deal of training, mentoring and practical experience that cannot be substituted by classroom learning.

9.7 I have noticed that it takes a minimum of 2 years for a new entrant to get familiarized with the immigration department's work patterns, and those of related bodies like assessment authorities, state nomination bodies and Regional Certification bodies. The actual dealings with such bodies can seldom be replaced by classroom learning.

9.8 An exhaustive agreement between the supervisor and the supervisee (that is approved by the licensing authority) lays down the obligations and responsibilities of both parties to the agreement.

9.9 The SP model of NZ is not restrictive or punitive in nature, as would be the proposed 3-tier structured model. I consider it inappropriate to call the SP model of NZ as a form of tiering. In reality, it is purely a career pathway for fresh entrants to the profession. A pathway that supports genuine practical learning to become an independent professional; a pathway that I consider as truly beneficial to the end consumer.

9.10 It is my reasonable opinion that a 2-year SP can safely eliminate the need for a Capstone assessment.

9.11 Therefore, I recommend a 2-year supervised practice model for Australia without any Capstone examination. In other words, I recommend that a post-graduate Diploma holder in migration law and practice who meets the stipulated English language requirement be issued with a provisional license for 2 years.

9.12 Furthermore, I find it unnecessary as well as unethical to restrict a candidate having studied one full year of Diploma covering the entire migration spectrum to be restricted in the scope of work. I recommend that the provisional license holder handle all areas of migration under supervision, because the responsibility of correct migration advice rests with the supervisor and not the supervisee.

9.13 However, it may happen that the supervisee may not get an opportunity to handle some vital areas of migration such as AAT or Ministerial Intervention (or both) due to want of suitable clients. In such cases, I recommend that the supervisee, prior to gaining a full licence, be required to undertake a specialised CPD (similar to the PRP model) focused exclusively on AAT and MI areas and having a total duration of at least 10-12 hours. Provisional license holders who have handled at least one case of AAT and one MI matter during the 2-year supervision period may be considered eligible for a full licence. Alternatively, a provisional license holder who has completed the specialised CPD of AAT

and MI may also qualify for a full licence upon completion of 2 years of supervision.

9.14 Full licence may be issued only after an audited scrutiny of at least one client matter handled by the supervisee (for example, a visa application from the start to finish).

9.15 Figure-2 below summarizes the proposed Supervised Practice model:

Figure-2

Supervised Practice model recommended:

- Post-Graduate Diploma in Migration Law and Practice – 1 year
- Candidate meeting English requirement applies for Provisional License.
- Provisional License for 2 years (no restriction of areas of practice)
- At the end of 2 years: if no AAT handled – specialised AAT CPD for 6 hours (PRP model).
- At the end of 2 years: if no MI handled – specialised MI CPD for 6 hours (PRP model)
- At the end of 2 years if no AAT and no MI handled – specialised CPD for 12 hours focused exclusively on AAT and MI (PRP model)
- No specialised CPD for provisional license holders who have handled at least 1 AAT matter and 1 MI matter.
- Candidate applies for full license for providing unrestricted migration advice.
- CPD points to be applicable to both (supervisor and supervisee) for each hour of supervised practice (as per NZ SP model).
- NO FURTHER TIERING OR RESTRICTIONS

10. Concluding Remarks

10.1 With due respects, I note that the proposed reforms are **punitive** in nature for legacy RMAs. Being restrictive in the matter of scope of work, and being imposed on fully compliant, unblemished RMAs many of whom have been practising for years or even decades, these reforms are grossly **unfair**.

10.2 Respectfully, I note that the reforms proposed in your Report happen to be ill-founded and flawed. They are harsh and punitive in nature and targeted on a small minority of the migration advice service sector. The proposed reforms are detrimental to the national economy. Most importantly, this Review is founded on, and supportive of, misuse of market power by a major competing body corporate. I perceive such support as a **violation of section 46 of the Competition and Consumer Act 2010.**

10.3 I also courteously note that an embellished purpose of creating a world class migration advice sector has been presented in your Report. The reality is that around 94% of the migration advice service providers are

not covered by the proposals made in your Report. In other words, most of the migration advice providers (94%) are not aligned with the goals of having a world class migration advice service. Therefore, consumers of migration advice service are not genuinely and truly benefitted by the proposals made in your Report.

10.4 Your Report has made an attempt to incorrectly portray the RMA profession as not being a profession, and as an occupational group that needs "professionalisation". Your Report has used a combination of assumptive, subjective and predetermined approach to misrepresent RMA profession as an industry needing "professionalisation". However, this submission has shown through a well-reasoned approach that the RMA occupational group is already a profession. Furthermore, the word "profession" has been used for several decades, to refer to RMAs, including the 2007-08 Hodges Report and the 2014 Kendall Report. Therefore, I respectfully submit that this Review seeks to absurdly "professionalise" an existing profession through distortion of facts.

10.5 Such harsh reforms are not reasonably warranted. During the most recently completed financial year, the proven non-compliance rate of RMAs was **as low as 0.24%.**

10.6 With due respects, I disagree with the non-transparent method of the AG functioning; I object to AG members being empowered to make reform proposals about fully compliant, unblemished legacy RMAs that are punitive in nature, and would be harmful for their income and livelihood. Likewise, I also object to the regulators acting upon such proposals from the AG members.

10.7 It is being regrettably noted that, in addition to being objectionably supportive of the blatant misuse of market power by the LCA, this Review has supported and encouraged individual ULPs as well. Such support is also contrary to the provisions of section 46 of the Competition and Consumer Act 2010.

10.8 I respectfully note that, from the perspective of fairness to legacy RMAs, the only reasonable way would be to either fully expunge this Review, or to restart afresh in a transparent and impartial manner that is consistent with the Competition and Consumer laws as well as with the Australian core values of fairness and justice. Market competitors need to be kept out of the Review in order to ensure these aspects.

10.9 In any case, I voice my **strong objection** to any restrictive or other punitive reforms being imposed on fully compliant, unblemished RMAs, particularly those reforms that are detrimental to their livelihood.

10.10 In my reasonable view, a far better alternative to the 3-tiered structure is available in the form of supervised practice that I have summarised in Figure-2 of this submission. This SP model is non-punitive in nature and has proven to be an efficacious model in our neighbouring country, New Zealand.

10.11 Being reasonably apprehensive of the unfairly proposed punitive reforms being implemented and imposed on unblemished, fully compliant RMAs (including me), and in order to protect my own rights and means of

livelihood as a citizen of Australia, I consider it appropriate to share a copy of this submission with these parties: the Commonwealth Ombudsman, Australian Human Rights Commission, all Members of Parliament and Senators.

Sincerely,

Sd/-

Saikumar Iyer

MARN 1388041

APPENDIX A

OISC regulation and solicitors