

Submission on
Migration Agents Instruments Review Consultation Report
Department of Home Affairs
June 2021

Background

Settlement Services International (SSI) is a community organisation and social business that supports newcomers and other Australians to achieve their full potential. We work with people who have experienced vulnerability, including refugees, people seeking asylum and culturally and linguistically diverse (CALD) communities, to build capacity and enable them to overcome inequality.

Formed in 2000, SSI is a member-based organisation with 11 Migrant Resource Centres and multicultural organisations across NSW, including two in regional NSW, as members. In 2018, SSI merged with Access Community Services, and SSI now provides services to communities in NSW, Queensland and Victoria.

SSI is the largest provider in Australia of the Humanitarian Settlement Program, funded by the Australian Government, to newly arrived refugees and other humanitarian entrants. It also leads a consortium, the NSW Settlement Partnership, of 20 partner agencies which deliver the Settlement Engagement and Transition Supports program, also funded by the Australian Government, to refugees and eligible family stream migrants in the first five years of settlement across NSW. SSI is the national provider of the Immigration Advice and Application Assistance Scheme which provides government funded access to professional immigration advice and application assistance for protection visa applicants who have entered Australia lawfully and meet eligibility criteria or are minors for whom the Minister is guardian.

SSI welcomes the opportunity to respond to the *Migration Agents Instruments Review Consultation Report*.

General Comments

The Consultation Report canvasses a range of proposals to strengthen the quality of migration advice to applicants for visas and residency in Australia. The proposals also seek to reduce misconduct and to eliminate unlawful conduct. We note the extensive review of the regulations and legislation infrastructure in other countries like Australia to assist in developing a “world-class industry” of migration advice in Australia.

This is a worthy aspiration and these are worthy goals, especially as the report frequently notes the potential vulnerabilities of visa applicants in the Australian migration system. SSI supports the intent of the proposals to bolster consumer protection for people seeking migration advice.

SSI contends that the principles of consumer protection are a useful frame by which to gauge the proposals outlined in the Consultation Report. The United Nations Conference on Trade and Development (UNCTAD) offers valuable guidance and benchmarks for good business practices in conducting commercial activities with consumers (UNCTAD, 2016). These principles are:

- **Fair and equitable treatment** of consumers at all stages of their relationship, so that it is an integral part of the business culture;
- **Commercial behaviour** should not subject consumers to illegal, unethical, discriminatory or deceptive practices, such as abusive marketing tactics or other improper behaviour that may pose unnecessary risks or harm consumers;
- **Disclosure and transparency** should require businesses to provide complete and accurate information regarding the goods and services, terms and conditions, applicable fees and final costs to enable consumers to make informed decisions and ensure easy access by consumers to this information;
- **Education and awareness-raising** where businesses develop as appropriate programmes and mechanisms to assist consumers to develop the knowledge and skills necessary to understand risks, including financial risks, to make informed decisions in relation to professional advice;
- **Protection of privacy** should be upheld through businesses protecting consumers’ privacy through a combination of appropriate controls, security, transparency and consent mechanisms relating to the collection and use of their personal data; and,
- **Consumer complaints and disputes** should be integral in that businesses should make available complaints-handling mechanisms that provide consumers with expeditious, fair, transparent, inexpensive, accessible, speedy and effective dispute resolution without unnecessary cost or burden and assistance, preferably from an independent third party, when needed.

Overall, SSI regards the suite of proposals under consideration in the Consultation Report as broadly meeting many of these principles. However, we see some critical gaps: one in the area of education and awareness-raising to ensure that visa applicants seeking migration advice have every opportunity to make informed decisions in relation to the processes of seeking that advice, the competence of the Registered Migration Agent and other issues; and a related concern in access to information in the area of being able to know how to raise complaints and dispute resolution. As the migration advice industry is made up largely of sole traders (about 4 in 10 according to the report), SSI sees the Department of Home Affairs as being well-placed given its regulatory and independent role to bolster these aspects of consumer protection. SSI recommends that the Department of Home Affairs and the Office of the Migration Agents Registration Authority (OMARA), explore and adopt mechanisms to enhance access to information, in plain English and community languages, for consumers of migration advice to ensure that they are in a stronger position to make informed decisions across a range of matters relating to that advice and also be more aware through readily-accessible information of ways to raise complaints, address misconduct and report unlawful behaviour.

Feedback on Reform Options and Themes

The reform options are set out under three themes and we address each of these in turn below.

1. SSI supports the thrust of work already undertaken in the reform of the migration advice industry and the proposals set out in the Consultation Report that seek to improve standards across Registered Migration Agents under the theme of a qualified industry. While SSI supports, in-principle, lifting the English language requirements of RMAs to IELTS 7 we urge the Department and OMARA to ensure that these English language requirements are not an additional burden or duplication of aspects of the Capstone assessment process, and that the IELTS 7 requirements are not a barrier to skilled and community connected bi-lingual RMAs providing migration advice. SSI welcomes the proposed supervised practice for 12 months of newly registered RMAs.
2. SSI also welcomes the proposals set out in the Consultation Report including character checks and a review of continuing professional development under the theme of a professional industry. We particularly welcome the proposal to publish aggregate information on pricing online as an additional, much-needed mechanism to increase transparency for consumers on fees and charges in migration advice.

3. SSI welcomes the Department's intent to combat misconduct and unlawful activity in the third thematic area of reform and welcomes the proposals to address business structures that avoid responsibility for misconduct. SSI also welcomes the series of proposals to address offshore unregistered migration agents and accepts that this is a particularly challenging area of reform. One of these proposals is to increase consumer awareness of the risks of using unregulated offshore and unlawful onshore providers of immigration with an encouragement to use the OMARA register of RMAs. However, the OMARA website seems to be tailored to an audience of migration advisors and others rather than visa applicants and, as far as we can ascertain, there is little or no information available to guide visa applicants to RMAs should they need advice. SSI recommends that the OMARA consider redesigning its website to have a clear and separate navigation pathway for visa applicants. SSI further recommends that OMARA develop a suite of information resources in plain English and community languages using diverse communication modes (animations, Q&As) for this dedicated section of the OMARA website to guide those applying for an Australian visa (offshore or onshore) to fact sheets on migration advice in the Australian context and reputable migration advice, in the form of registered RMAs, if needed.

SSI has significant concerns and does not support a proposed measure to refuse a visa application where the applicant is deemed to have accessed unregistered or unlawful immigration assistance. Our concern is that many visa applicants may be unaware of who is and who is not registered to give migration advice in the Australian migration system context. Similarly, SSI does not support requiring visa applicants to sign declarations attesting as to whether they have or have not received immigration assistance in light of the dearth of clear, consumer-oriented information that would allow visa applicants to be fully informed to make such a declaration. SSI supports in principle the Department of Home Affairs developing risk profiles for occupations and industries where there is known risk of misconduct in immigration assistance. In SSI's view this could help to address rogue operators who are concentrated in certain industries and act unlawfully.

Lastly, SSI supports the proposed changes in penalties in relation to unlawful immigration assistance providers and the clarification of the powers of the OMARA to address RMA misconduct. SSI agrees that due to the current context of international border closures and other reforms mooted in the Consultation Report that the establishment of an independent regulator and complaints commissioner be deferred at this time.

However, SSI sees no reason for the Department of Home Affairs and the OMARA to delay progressing the proposals outlined in the Report that receive broad stakeholder support through

this submission process. In addition, SSI recommends that the Department of Home Affairs and the OMARA address what we see as an insufficient attention on education and awareness-raising aspects of consumer protection to ensure that visa applicants have every opportunity to make informed decisions in relation to the immigration advice that they seek and information on complaints and dispute resolution processes. This should include an in-language campaign engaging with community influencers. Accordingly, SSI recommends that the Department of Home Affairs and the Office of the Migration Agents Registration Authority (OMARA), explore and adopt mechanisms to enhance access to information, in plain English and community languages, for consumers of migration advice to ensure that they are in a stronger position to make informed decisions.

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References:

United Nations Conference on Trade and Development (UNCTAD). (2016). *United Nations Guidelines for Consumer Protection*. Treasury: Australian Government.