

### **Submission for Migration Agents Instruments Review Report**

Thank you for the opportunity to provide a submission to this Report. To make my point clear, I have refrained from submitting an extensive response on each item detailed in the 168-page report. I understand that our industry associations will provide extensive submissions on each item of the report. However, I wish to outline my main concerns on the plan of tiering as follows:

- Sunsetting of Migration Agents Instruments can be remade without significant change and a Regulation Impact Statement (RIS) may not be required<sup>1</sup>. If a piece of legislation is not broken, do not attempt to fix it. A discussion on tiering has been a key factor causing an increasing number of RMAs to exit the industry.
- A tiering system will impose regulatory burden on existing RMAs' business, punish capable RMAs and their clients. RMAs who are seniors, who are women or financially worse-off will be disadvantaged.
- Home Affairs plan on tiering RMAs will deny prospective migrants' access to affordable specialised immigration assistance through Registered Migration Agents (RMAs).

Reasons of concerns are stated below.

Home Affairs' report on a *Migration Agents Instruments Review* detailed their plan to achieve 'strong consumer protection' in the migration industry. Many of the reform options in the report are to be commended. However, the plan to impose more legislation and red tape on existing RMAs, including a tiering system, will result in the RMA profession being stifled and destroyed, thus denying prospective migrants' access to affordable specialised immigration assistance.

Some reform options highlighted in the Executive Summary may be very helpful tools to strengthen consumer protection. For example, strengthening Fit and Proper Person requirements for registration as an RMA is a good recommendation. In addition, addressing the misuse of business structures to avoid accountability and to enshroud misconduct are important. However, of particular concern is the tiering system proposed for existing RMAs as a means to achieve 'strong consumer protection'.

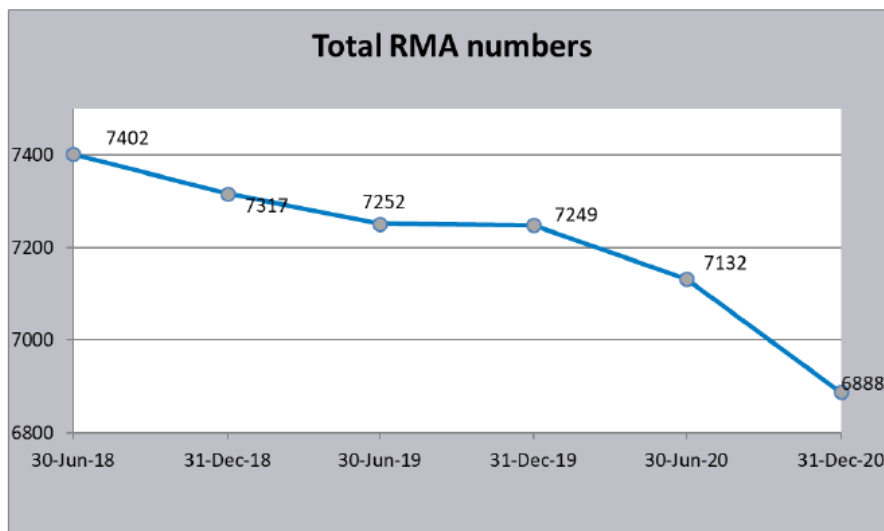
**Sunsetting of legislation does not mean that it must be amended. If a piece of legislation is not broken, do not attempt to fix it. A discussion on tiering has been a key factor causing an increasing number of RMAs to exit the industry**

The report pointed out that 'the majority of RMAs are professional and competent in what they do, and pride themselves in ethically helping people resettle in Australia (page 10 of the Report).' Carving up existing RMAs into tiers may catch a handful of bad apples but will create extra administration burdens and disadvantage RMAs who are mostly professional and competent.

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<sup>1</sup> Office of Best Practice Regulation, Department of Prime Minister and Cabinet, Australian Government, *Sunsetting legislative instruments guidance note* (30 March 2020) <<https://www.pmc.gov.au/resource-centre/regulation/sunsetting-legislative-instruments-guidance-note>>

The discussions around tiering in the profession in addition to the impact of deregulation and COVID-19 on small businesses have resulted in an increasing number of RMAs fearful of their future. Some have commenced and completed law degree studies. Alternatively, some are planning retirement and exit plans. The following graph from Office of Migration Agent Registration Authority's (OMARA's) latest report shows *'the number of RMAs in the migration advice profession has declined in the last three years, the last six months in particular. This trend is likely due to higher technical proficiency requirements to register as a new RMA introduced at the beginning of 2018; the impact of COVID-19 on small businesses, particularly those operating in the international travel sector; and some lawyers who hold an unrestricted legal practising certificate (unrestricted lawyers), particularly those with registration expiry dates in late 2020/early 2021, are not renewing their registration.'*



When a majority of RMAs are professional and competent, is it worth the resources to develop and impose a new regulatory and administrative framework on a mere 5,000 RMAs in an immigration advisory industry in order to catch a few unethical fraudsters? Even after being caught, if Home Affairs continue to accept applications from overseas, such persons can easily continue to operate from overseas with impunity. The industry is massive, it comprises 75,000 practitioners (including 5,000 RMAs and 70,000 lawyers who are not subject to tiering), a large number of unlawful operators in Australia and an enormous number of offshore agents outside the Australian Border Force's jurisdiction. The plan to introduce more regulation and red tape to catch a few is ineffective, unproductive and counterintuitive when Home Affairs' intention is to strengthen consumer protection. If a current piece of legislation is not broken, do not attempt to fix it. Sunsetting of Migration Agents Instruments can be remade without significant change and a Regulation Impact Statement (RIS) may not be required.

**A tiering system will punish capable RMAs and their clients. RMAs who are seniors, who are women or financially worse-off will be disadvantaged.**

An increasing number of RMAs are exiting the sector. RMAs who are seniors, who are women or financially worse-off, who may not have the time and resources to complete law degree courses. Others may not be able to secure an internship in a law firm due to their age or being assessed as 'over-qualified' in such intern positions. Capable RMAs who rarely take up representation work in the areas of Ministerial Intervention (MI) and the Administrative Appeals Tribunal (AAT) will be labelled as Tier Two in the new tiering system, unjustly punishing them and their clients.



RMA's who rarely handle or represent their clients in MIs or AATs are likely to be those with a high success rate in visa or citizenship applications and/or able to resolve their clients' immigration matters through other visa options. Labelling them at a lower level and removing the option to take clients to the AAT and/or MI if required is unjust and grossly unfair. Labelling these RMA's as Tier Two limits their market competitiveness. Consumers will be left with fewer options available to them on migration services.

RMA's who are professional and competent will protect their clients' interests and their own reputation in ensuring they handle all immigration matters appropriately, including MI and AAT. In addition, all RMA's must follow a Code of Conduct (CoC) for this profession. The CoC makes it clear that an RMA must seek appropriate advice or assistance, or refer the immigration matter to another RMA if he or she is not qualified to accept certain immigration work. The Provision is set out in Section 314 of the Migration Act 1958 and is prescribed in Schedule 2, Regulation 8 of the Migration Agents Regulations 1998 under Item 4.1 of Part 4. There is hardly any RMA or immigration lawyer who claims that they are an expert in all immigration issues no matter how experienced they are. Legislation, policies and processes change overtime. Tiering of practising RMA's is unlikely to contribute to strong consumer protection. Instead, it will punish capable RMA's and their clients.

**Home Affairs plan on tiering RMA's will deny prospective migrants' access to affordable specialised immigration assistance through Registered Migration Agents (RMA's).**

The number of RMA's are already dwindling. Tiering will further push practising RMA's out of work. If it is the intention of Home Affairs to stifle and collapse the RMA profession, this plan of tiering is highly effective. For the 2019-20 financial year, the OMARA's operating budget was \$2.5 million with an average staffing level of 23 (page 138 of the Report). As there are only about 20 staff in OMARA, disbanding the section and absorbing staff members into Home Affairs is not a challenging task. However, RMA's who are older, who are women or those financially worse-off, will be punished and once again be left behind in Australian society.

Many RMA's are migrants themselves and some with many years of experience in a broad range of industries. Their knowledge and experience have proved to be very advantageous in understanding and assisting business and skilled migrants as well as facilitating family reunions. Losing these RMA's is a loss to prospective migrants, businesses and the Australian workforce. Tiering will deny prospective migrants' and sponsors access to affordable specialised immigration assistance through Registered Migration Agents (RMA's).

<End of Submission>

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Jan 2010 – Mar 2014 (4 years 3 months)

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