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Frequently Asked Questions – Nixon Review

What is the Review into the Exploitation of Australia’s Visa System?

In October and November 2022, a joint investigation by *60 Minutes*, *The Age*, and *The Sydney Morning Herald* reported allegations of visa rorts, sex trafficking and foreign worker exploitation. Specific allegations were made against a number of registered migration agents (RMAs).

In response, on 16 January 2023, the Minister for Home Affairs Clare O’Neil MP appointed Ms Christine Nixon, AO, APM to undertake a Rapid Review into the Exploitation of Australia’s Visa System (Nixon Review). In conducting the Review, Ms Nixon consulted widely with relevant Commonwealth, state and territory agencies, and other relevant organisations. Ms Nixon also gave consideration to the findings of previous and ongoing reviews and inquiries (including Parliamentary Inquiries) and regulatory approaches in relevant overseas jurisdictions, to identify recommendations or insights to address the issues identified.

What has the Government done since the allegations in the 60 Minutes story came to light?

In response to the allegations identified in media reporting, the Australian Government, led by the Australian Border Force (ABF), established Operation INGLENOOK, a multi-agency operation to identify and respond to the threat posed to Australia’s border by those who seek to exploit visa programs. Since its inception, Operation INGLENOOK has used whole-of-government expertise and resources to target key professional facilitators and their networks while simultaneously working to support visa holders who are victims of trafficking or modern slavery practices within the sex industry.

As at 18 September 2023, Operation INGLENOOK has assessed more than 165 persons of interest to determine complicity in exploiting the temporary visa program, resulting in more than 44 border alerts being raised. The alerts have resulted in action against known facilitators, including 214 interactions at the border, 74 persons refused immigration clearance, and 32 offshore visa cancellations preventing return travel to Australia.

In addition, on 14 December 2022 and 13 January 2023 respectively, the Office of Migration Agents Registration Authority (OMARA) cancelled the registration of two agents who were both identified as RMAs of interest in the media reporting. Several other RMAs have been identified as persons of interest, with all allegations of suspected misconduct currently being investigated by the OMARA.

The Government will implement additional measures in response to some of the recommendations made by the Nixon Review.

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What does the Nixon Review recommend?

The Nixon Review makes seven findings, with 34 specific recommendations. These range from broad systematic reform, such as the reprioritisation of an immigration compliance function, to more specific reforms, such as introducing a visa cancellation power for visa holders who knowingly facilitate exploitation of migrant workers.

What action is the Government taking in response to the Nixon Review?

The Government has issued a response to the recommendations made in the Nixon Review. The Government has no tolerance for abuse of the Australian visa system and exploitation of vulnerable migrants, and is committed to combatting this abhorrent behaviour.

The Government has agreed, agreed-in-part or agreed-in-principle to 24 of the 34 recommendations. Eight recommendations are noted, with only two recommendations disagreed.

The Government has also approved a package of measures, to be implemented by the Department of Home Affairs, which action numerous recommendations made in Nixon Review, and which complement existing work underway to reform our migration program, including to restore integrity to our protection visa and international student programs.

The Government continues to undertake work in relation to the Nixon Review, including developing policies to enact additional recommendations.

Why does the regulation of immigration assistance need to be strengthened?

Corrupt providers of immigration assistance pose a significant threat to Australia's migration program, exploiting visa programs to enable the entry and stay of non-genuine migrants, including to facilitate unlawful activities on behalf of criminal syndicates.

The Nixon Review recommends that regulation of RMAs be strengthened to stop the exploitation of Australia's migration system.

What is Home Affairs doing to address allegations of unscrupulous RMAs?

A package of measures has been developed to address gaps in the Government's policy settings and legislative ability to monitor and respond to threats to the migration system from RMAs and unlawful providers of immigration assistance. This is balanced with the need to avoid overregulation of the migration industry, and in acknowledgement that the vast majority of RMAs perform their work in an honest, professional and lawful manner, providing a valuable service to migrants.

What is the OMARA?

RMA's are regulated by the Office of the Migration Agents Registration Authority (OMARA). The OMARA is a body established within the Department of Home Affairs to administer Part 3 of the Act, (which deals with the regulation of migration agents) and performs the functions prescribed under section 316 of the Act.

Legislation prescribes the OMARA power to do all things necessary or conveniently done for, or in connection with, the performance of its functions. The OMARA's functions, as prescribed by section 316 of the Act, include dealing with registration applications and monitoring the conduct of RMA's in their provision of immigration assistance; and investigating complaints in relation to the provision of immigration assistance by RMA's and taking appropriate disciplinary action against RMA's or former RMA's.

Where an investigation establishes that an RMA or former RMA has breached the RMA Code of Conduct or otherwise establishes that an RMA is not fit and proper or a person of integrity, the OMARA is empowered to take appropriate disciplinary action against an RMA or former RMA. The OMARA may also refer matters to the ABF for further investigation.

Does the OMARA assess a registration applicant's character?

Yes, the OMARA is prevented by section 290 of Act from registering an RMA who is assessed as not being either a fit and proper person or a person of integrity, or associated by employment with a person who is not themselves a person of integrity.

During registration, applicants must answer questions in relation to their character. A police clearance must also be provided by first time applicants, as well as by RMA's every five years upon renewal of their registration.

Can the OMARA refuse an application based on an applicant's character?

Yes, the OMARA must refuse an application for registration where the OMARA is satisfied that the applicant is not a person of integrity or not fit and proper and is prohibited by section 290 from being registered.

Where the OMARA refuses an application for registration, the applicant cannot be registered within 12 months of the refusal decision. The proposed measures would increase this period to 5 years, consistent with the OMARA's existing power to prevent a former agent from reapplying for registration within 5 years following the cancellation of their registration.

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This would also reduce the administrative burden on the OMARA in circumstances where there is unlikely to be material change to the applicant's circumstances in the 12 months period. For example, where an applicant is refused registration on the basis that they are not fit and proper, as a result of a serious prior conviction, it is highly unlikely that they would be able to satisfy this criteria just 12 months later.

How will the character requirements be strengthened?

While applicants are already required to be assessed by the OMARA as persons who are fit and proper to provide immigration assistance and are persons of integrity, a new scheme will be implemented to strengthen the assessment of this criteria.

Under the scheme, AusCheck will undertake a background check for all registration applicants, including initial applicants and those applying for re-registration. This will replace the existing requirement to provide a National Police Check.

The OMARA will be able to refer existing RMAs to undertake a new AusCheck assessment on an ad hoc basis, where the OMARA determines an updated assessment is required. For example, this can include where a complaint is made against an RMA.

The OMARA will still be responsible for assessing certain eligibility criteria where it would not be appropriate for AusCheck to make an assessment. This includes assessing the applicant's knowledge of migration procedure and English language ability.

What happens with the outcome of an AusCheck assessment?

After the completion of the applicant's background check by AusCheck, the assessment will be shared with the OMARA. If there are no adverse findings, the OMARA will finalise the applicant's registration application after consideration of other eligibility requirements.

Where an applicant receives an adverse AusCheck assessment, the application for registration as an RMA must be refused as the requirement to be a fit and proper person will not be met. The OMARA will notify the applicant that their application has been unsuccessful, and inform the applicant of their review rights.

Will an RMA be able to apply for registration in the future?

An individual will not be able to apply to be an RMA for the legislated period if a previous application to register was refused, or if a previously approved application for registration was cancelled in the past 5 years.

An affected applicant will be able to reapply in the future, subject to meeting the required waiting period. To be approved for registration as an RMA, the applicant would need to receive a positive assessment of their fitness and character from AusCheck.

What investigative powers does the OMARA currently have in relation to non-RMAs?

There is some doubt about the scope of the OMARA's present powers in relation to investigating persons who are not RMAs. The measure which seeks to remove ambiguity about the scope of the OMARA's legislative functions will ensure the OMARA can investigate persons providing immigration assistance unlawfully and provide information obtained in the course of its investigation to the appropriate authorities.

Why does the OMARA require more compliance and investigative powers?

The primary focus of the reforms package is to enhance trust in Australia's migration system by identifying and targeting criminality that exists within the migration advice industry. This will positively impact consumers of immigration assistance, including vulnerable migrants, overseas visitors and visa holders from culturally and linguistically diverse (CALD) communities. This has been validated through extensive and long term engagement with stakeholders, including peak bodies, representatives of CALD communities and small businesses.

The Nixon Review recommendations propose enhancements to the OMARA's powers and investigative capabilities to address unscrupulous conduct by both RMAs and unlawful providers of immigration assistance (UPIAs), as well as financial penalties for misconduct related to the provision of immigration assistance. The OMARA has recently also undertaken a restructure that includes a strengthening of its efficiency and investigative capacity.

It is not intended that the OMARA's increased investigative capabilities will alter its overall purpose. For example, it is not suggested that the OMARA will become an enforcement agency; where potential fraud or other Act offences are identified, these will continue to be referred to the ABF or other law enforcement agencies for further investigation. If appropriate, a brief will then be provided to the Commonwealth Department of Public Prosecutions.

What is an unlawful provider of immigration assistance?

An unlawful provider of immigration assistance (UPIA) is an individual who gives immigration assistance, including advice on a migrant's visa eligibility, despite not being an

RMA, a legal practitioner or a person otherwise exempt from requiring registration under Part 3 of the Act. UPIAs operate in contravention of section 280 of the Act.

A UPIA may or may not charge fees for their services; a UPIA who does charge a fee will also be in breach of section 281 of the Act.

Why are greater financial penalties required for UPIAs?

An increase to financial penalties for UPIAs is proposed because current penalty amounts under the Act are disproportionate to the significant harm caused by unlawful immigration assistance. They are also significantly lower than those in like-minded Commonwealth countries. Current penalty amounts are also likely ineffective in dissuading UPIAs.

UPIAs operate without any verification of their migration knowledge or competency, and pose significant harm to consumers, including migrants, who may rely on the inaccurate or misleading advice. In addition, individuals with known character concerns may operate as UPIAs in order to avoid detection. Such individuals may also engage in corrupt or criminal activity, posing further threat to migrants and to the broader Australian community.

A current maximum total penalty of AUD 18,780 (60 penalty units) is available to those found to be providing unlawful immigration assistance. This amount is substantially lower than amounts incurred by similar jurisdictions; in Canada, a maximum penalty of \$200,000 (CAD) is available, while in New Zealand a maximum penalty of \$100,000 (NZD) applies.

In addition, the existing penalties unnecessarily differentiate between UPIAs who charge a fee for providing immigration assistance. This distinction does not adequately reflect the harm which UPIAs can cause, regardless of whether the consumer has paid a fee to the UPIA.

What is the publication requirement and why is it being removed?

Currently anyone applying for initial registration as an RMA must have their information published on the OMARA website for 30 days prior to their registration taking effect. During this time, any person with an objection to that person becoming registered could make a submission to the OMARA.

The 30-day notice requirement was established as an integrity measure before current internet search facilities were available to the OMARA staff, and is no longer an efficient or effective way of assessing whether an applicant is of good character. This requirement has only resulted in four valid objections between 2015 and 2020 and has not resulted in any refusals, due to insufficient evidence.

Removing this requirement will result in considerable efficiency and improvement without impacting the integrity of the registration process. The publication requirement will become further obsolete in light of the proposed new scheme for assessing whether the applicant

is a “fit and proper person or is not a person of integrity”, whereby AusCheck (a background checking service within Home Affairs) will undertake a background check for all registration applicants.

What will change for RMAs?

RMAs offer a valuable service to those seeking professional assistance in navigating Australia’s migration framework. The vast majority of RMAs abide by migration laws and regulations and comply with the RMA Code of Conduct.

For those RMAs who do the right thing, the strengthened regulation will have minimal impact. First time applicants seeking to be registered and RMAs applying to renew their registration need to meet character-related criteria. Currently this involves providing evidence of a National Police Check, which will soon be replaced by a background check conducted through AusCheck. An AusCheck assessment will be required every two years, or earlier if the OMARA specifically makes a request.

Professional and law abiding RMAs will benefit from greater scrutiny of unscrupulous RMAs and other UPIAs from the migration advice industry. Unscrupulous RMAs and UPIAs will face higher penalties and increased scrutiny from the OMARA and the Department of Home Affairs.

How will RMAs ensure their clients understand Australian workplace rights?

Temporary migrant workers are at greater risk of employer abuse and exploitation due to their migration status. This is further compounded by a lack of awareness about Australian workplace rights, or a presumption that such rights are only afforded to Australian permanent residents or citizens.

A positive obligation in the Code of Conduct will ensure that clients of RMAs are properly educated on Australian workplace rights and protections and how to report worker exploitation. The Department of Home Affairs is considering options including the possibility of assisting RMAs and their clients’ understanding of Australian workplace rights by developing a one-page guide which can be accessed from the OMARA’s website.

Currency of this knowledge may be encouraged through existing Continuing Professional Development (CPD) requirements, which RMAs are required to meet to renew their registration.

How does the OMARA engage with industry?

The OMARA undertakes industry consultation through meetings and events with industry bodies representing RMAs, including the Migration Institute of Australia and the Migration Alliance. It also conducts stakeholder outreach and communicates important updates directly to RMAs via email and website updates.

Will there be public consultation on the measures proposed?

While the migration advice industry has been consulted extensively on potential reform options, it will be important to continue to work closely with industry to ensure legislative changes have the intended effect and are not onerous on practitioners, including sole practitioners. Post-implementation consultation with industry will be helpful in ascertaining that the measures are having the desired impact.

This will build on substantial consultation undertaken recently, including through the *“Creating a World Class Migration Advice Industry”* discussion paper and the comprehensive *Migration Agents Instruments Review 2021*.

How will these measures benefit Australians?

Strengthening Australia’s migration advice industry will benefit all Australians, by ensuring the integrity of our visa system and providing added protection to consumers of immigration assistance.

Increased protections will deter and penalise unscrupulous individuals who use their understanding of Australia’s migration laws to facilitate corrupt and even criminal activity. This will make Australia a safer place for all those who want to visit, work and live.

What is immigration assistance?

Section 276 of the *Migration Act 1958* (the Act) sets out the circumstances in which a person gives or does not give immigration assistance. A person gives immigration assistance if the person uses or purports to use, knowledge of, or experience in, migration procedure to assist a visa applicant in specified ways including by preparing or helping to prepare a visa application. RMAs who provide immigration assistance, must be registered through the Office of the Migration Agents Registration Authority (OMARA).

The package of measures being implemented as a result of the Nixon Review proposes to amend legislation to clarify what “clerical work” means and to specify that a person providing clerical work (or administrative support) must do so only under supervision of an RMA.

What does a registered migration agent do?

RMA's provide professional assistance to clients to help them navigate the complexities of Australia's migration system. RMA's have specialist knowledge that can help their clients understand relevant Australian legislation and the Department of Home Affairs' visa-related policies and processes. For example, they can help overseas visitors apply for the right visa, assist international students to apply for visas to undertake study opportunities in Australia, and work with Australian employers to assist them in hiring skilled overseas staff for specialist roles by advising on appropriate visa options and assisting with the visa application process.

Can anyone else provide immigration assistance?

Under Part 3 of the Act, immigration assistance must only be provided by RMA's, or by "exempt persons" who under section 280 of the Act are exempt from the restriction on giving immigration assistance; this includes a close family member of the visa applicant, as well as officials and parliamentarians.

In addition, legal practitioners are also considered exempt persons and are not required to be registered with the OMARA to provide lawful immigration assistance. They are regulated by their respective state and territory legal professional associations. Legal practitioners who hold a restricted practising certificate in their state or territory may still choose to be registered with OMARA if eligible, for a defined period of time.

Only RMA's and legal practitioners may charge a fee for providing immigration assistance. Other exempt persons, such as a close family member of a visa applicant, must not charge for immigration assistance.

How does an RMA register with the OMARA?

A person seeking to become a RMA may apply for registration with the OMARA and must ensure they meet the prescribed criteria set out in Part 3 of the Act. For example, the OMARA must be satisfied that the applicant meets the academic and vocational requirements - which includes successfully completing a Graduate Diploma in Australian Migration Law and Practice - and has passed the Migration Agents Capstone Assessment to demonstrate their knowledge of migration procedure.

The applicant must also demonstrate (amongst other things) that they meet the required English language level, have obtained professional indemnity insurance and have paid the application fee.

First time applicants are also subject to a 30-day publication requirement before being registered.