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**Australian Government**

**Department of Home Affairs**

**Creating a world class migration advice industry**

**SUMMARY**

Thank you for the opportunity to provide a submission to the Migration Advice Industry Reform Discussion Paper 'Creating a world class migration advice industry'.

**RECOMMENDATIONS**

1. A summary of my suggested recommendations for reform is set out below:
  1. Supervised Practice - at least two years required
  2. Strengthened professional development requirements - the introduction of different/additional CPD levels is need to address the differing levels of experience and needs of each registered migration agent (RMA)
  3. Tiering system: RMA should be permitted to provide services to client based upon the following approval tiers:
    1. Tier 1 - student, tourist and skilled visas, bridging visas
    2. Tier 2 - family and employer-sponsored migration
    3. Tier 3 - All of the above plus AAT and Ministerial Intervention
  4. Publishing prices of RMA fees is complicated and any such publication must come with appropriate explanation and qualification by the OMARA
  5. ABF and OMARA's powers relating to monitoring and investigating misconduct by RMAs ought to be reviewed, with the policy focus being upon consumer protection rather than the vested interests of industry associations.
  6. Education Agents should be regulated, preventing them from operating without any consequences for their actions.

## INTRODUCTION

2. My experience in the migration advice industry began in 2012 when I commenced working as an administrative assistant in an Immigration Law Firm. I became a RMA in 2014 and began advising clients as well as taking responsibility for migration matters while under the direct supervision of the firm's principal Migration Lawyer.
3. In 2016, I became a senior Migration Advisor and Manager of the law firm. In that role, I managed a large and varied caseload as well as recruited and trained RMAs and Junior Lawyers.
4. In 2018, I opened my own Migration Agency, Astute Immigration Advisory. The main focus of our agency is Family and Employer-Sponsored Migration. I also represent clients with their AAT matters.
5. My decision to become a RMA was based upon a keen desire to help genuine migrants who needed help navigating Australia's complex migration system. Being a migrant myself, I understand the weight of a decision to migrate to Australia and the vulnerability of my clients. On that basis, I take full responsibility for my clients' migration application when accepting a new matter.
6. Throughout the years, I have been exposed to complex immigration matters and assisted applicants in "fixing" the mistakes made by other RMAs. I am surprised at how often I see a pattern of trying to drag migrants through an appeals system with clear evidence that ultimately these applications will fail, costing the client and the Australian Government a fortune to facilitate it. At times I have felt embarrassed to be called a RMA due to the general perception caused by detrimental mistakes made by fellow representatives in the field.

## OBSERVATIONS

### **A qualified industry**

### ***Supervised practice***

7. From experience, I believe that it takes at least two years of supervised work in a busy practice to gain a better understanding of Migration Law and have exposure to a variety of complex scenarios that would equip recent graduates with tools required

to advise and assist migrants with their visa application.

8. Due to the intricacies of the appeals process, I believe that it should take a longer time to gain the required knowledge and experience to be able to represent clients at the AAT - an additional two years to the above suggestion would be sufficient.

## **A professional industry**

### ***Continuing Professional Development***

9. As a migration agent who is continuously seeking to excel, I find it very difficult to find CPD courses that are satisfactory for my level of expertise. To fill this void, I often attend Immigration Law conferences or CPD courses designed for lawyers fully aware that my investment will not grant CPD points required for my registration. This undersupply of quality, advanced-level OMARA-approved CPD courses is disappointing.
10. My view is that the CPD system should offer different levels of CPD for all practitioners, providing an opportunity to delve into current case law and contemporary and complex immigration issues regardless of whether it is for everyday practice or just for updating their knowledge-base.

### ***The occupational competency standards required for registered migration agents***

11. As discussed above, the competency standards at the moment are somewhat non-existent. The Occupational Competency Standards Framework is not a feature of every day practice and I have never attended a CPD program which clearly advertised what skills and knowledge would be addressed in accordance with that framework. While I do not suggest that CPD providers be required to specify that to attendees, I often wonder what about the degree to which we can expect CPD providers to build the ethical awareness, skills and knowledge of RMAs required in practice. For a majority of experienced industry professionals, CPD has been reduced to a matter of paying \$500 each year with no invested interest in the content of the actual course, as it is not challenging enough. Issues of visa validity and general eligibility criteria are not that important for someone with more than five years' experience.
12. I fear that the existing CPD requirements have the tendency to encourage a false sense of advancement and complacency towards needing to maintain knowledge in

between annual course attendances.

13. Different levels of CPD should be introduced, with higher levels reserved for more experienced RMAs.

***A migration agent tiering and/or demerit system***

14. I support and welcome the idea of the migration agent tiering system. I believe it would add more credibility to practitioners' profiles and help us attract the right clientele.
15. My suggestion for the tiering system would be as follows:
1. Tier 1- Visitor, Student and skilled visas, as the majority of them do not deal with complexities, such as health or character waivers.
  2. Tier 2 - Family and Employer-Sponsored visas. These visas require a better understanding and thorough assessment of potential applicants and their sponsors, inclusive of schedule 3, 4, 5 and 8 assessment and possible waiver requests. These visas also cost more in Government fees, hence the frequent and continuous evaluation of compliance, even after the application is made.
  3. Tier 3 - All of the above plus applications to the AAT and Ministerial Intervention.
16. All graduates would enter Tier 1, after completing the Capstone. Entrance to Tier 2 and 3 could be achieved through a peer review system.
17. I am unable to see how a demerit system would add any value to our industry.

***Publishing information on the pricing arrangements for registered migration agents***

18. My current observations are that the price range depends on the case volumes processed by the RMA business. For example, an agency with a sole focus on employer-sponsored migration and a high number of corporate clients will be more price-competitive with the boutique firm that offers more personalised service to a fewer number of clients.
19. It would be difficult to accurately price and publish each matter, as every case is different and requires careful assessment. A standard partner visa is priced very

differently to one with health or character waivers.

20. Published prices would complicate the RMA quoting process and does not take into account possible variants such as the hours required for research, sourcing information from clients, as well as other unpredictable minor and major complexities. This can potentially lead to the underpaying of staff within organisations, and an influx of complaints from clients due to a mismatch between what is advertised and the work that is delivered.

### **Combatting misconduct and unlawful activity**

#### ***ABF and OMARA's powers relating to monitoring and investigating misconduct by registered migration agents***

21. Rather than make prescriptive recommendations about the extent to which OMARA and ABF's powers might be extended, I take this opportunity to share the experience of a person who recently approached me for advice:
1. X was a holder of a provisional partner visa. X's relationship with his sponsor had broken down, and he approached an RMA with an enquiry related to a Natural Justice Letter from the Department and the possibility of applying for a student visa;
  2. X presented the RMA with his qualifications and requested an assessment for a student visa so that he could progress to a higher level of education;
  3. The RMA's advice was that X would have better chances if he pursued his permanent residence by claiming family violence and the RMA offered to respond to the Natural Justice letter to the Department;
  4. X found the RMA to be "very convincing" and put his trust in her hands. It is worth noting that the RMA had a strong online presence suggesting leadership in the migration industry;
  5. X signed a contract with the RMA, engaging her to respond to the Department's Natural Justice letter, and cash was given to the Agent to proceed.
  6. After multiple failed attempts to contact the RMA, X received a Permanent Partner visa refusal notification. The decision record clearly states that the Department did not receive a response to the Natural Justice letter.
  7. X visited the RMA's office and once again was reassured that "this is exactly what we wanted" suggesting that the appeal process had better chances of success.

8. An appeal to AAT was lodged, and the RMA again proceeded to ignore X. Despite repeated attempts to call his RMA and visit her office, she did not communicate with him about the progress of his case.
9. The AAT affirmed the Department's decision. The RMA had failed to relay the hearing invitation to X and did not even give him a copy of the AAT's decision. Instead, she recommended he appeal the Tribunal refusal to the Federal Circuit Court (FCC). The RMA also recommended X lodge another onshore partner visa application, encouraging him to get his new partner to sponsor him.
10. Precisely 35 days after the decision was received (not made), the RMA prepared the FCC application and an affidavit for X, and that was the first time that X had a chance to read the AAT decision record. X later learned that the FCC application was out of time.
11. It became apparent that the RMA received communications from the AAT requesting to provide further material and highlighting the fact that failure to provide the material within the deadline will result in the loss to appear at the hearing. This letter was never forwarded to the X.
12. X recently lodged a complaint with the OMARA. However, the cry for the help received a standard response:

*“Unfortunately our investigations can take 6 – 12 months and sometimes longer depending on the complexity of the matter. I do recommend you take your case to the tribunal if you are seeking a refund. OMARA will investigate to see if there are any breaches to the agents conduct. If there are breaches found then the agent **may be** issued with a breach notice/warning notice or a sanction. OMARA cannot change the decision of the department.”*

22. X is now extremely anxious and believes that his credibility as a user of Australia's immigration system has suffered and it will reflect poorly upon his future visa applications, as it would appear that he was trying to circumvent the system, so he could stay onshore.
23. In circumstances such as these, consumer protection dictates that the OMARA should review the complaint promptly and take action. If the RMA's negligence is confirmed, X should have an opportunity to bring this case to the Minister's attention and make an application onshore easing the heavy load of the Federal Circuit Court.

***Adequacy of consumer protections, including in relation to unregulated offshore migration assistance.***

24. On the other hand, we have the whole industry of Education Agents who are providing unregistered immigration assistance with no consequences to their license.
25. Vulnerable students are often required to create their own Immi accounts and provide access to education agents, so they can prepare visa applications that often result in PIC4020 issues. Currently, consumers have no mechanism of complaint, leaving them to deal with harsh outcomes on their own.
26. The current system is not working and I welcome changes that will benefit consumers, improve the industry and Australia's reputation as a migrant-receiving nation.

**CONCLUSION**

27. While migration agents and lawyers alike have successfully navigated the ever-changing immigration landscape for many years, there is still room for regulatory bodies and practitioners to come together to facilitate change in the spirit of creating a world-class migration advice industry for the people who should matter the most - current and future migrants.
28. I hope that the above recommendations are favourable to you. I have formed these opinions based on conversations with my peers and clients, difficulties that I have encountered, and also triumphs throughout my career. Please do not hesitate to contact me if you would like to discuss these matters further.

Yours sincerely



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**IEVA VAITYTE**

Founder | Director | RMA

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