

27 July 2020

SUBMISSION

Creating a World Class Migration Advice Profession

The following submissions are intended to assist the Government in its consideration of the following initiatives as articulated in the call for submissions.

“The Australian Government is committed to making the Australian migration advice Profession world class. Already, Government has implemented a range of initiatives towards this vision, including:

- introducing stronger qualification requirements for new and existing registered migration agents
- cutting red tape by introducing legislation to remove lawyers from the immigration assistance regulatory scheme
- removing references to unregistered overseas agents on forms that appoint migration agents
- comprehensive consultation on a stronger and simpler Code of Conduct for registered migration agents.

Regulation of the Migration Assistance Profession has been comprehensively reviewed, most recently through the 2019 Joint Standing Committee on Migration’s inquiry into the efficacy of current regulation of Australian migration and education agents.

We are now examining how legislation can support a highly qualified and professional Profession and ensure Government can effectively combat misconduct and unlawful operators.”

In addition to reviewing the legislation itself, the review will consider possible reform measures, organised under three themes:

- **A qualified Profession:** ensuring individuals have strong qualifications to enter and remain in the migration advice profession. It is important that we do not define this as an ‘industry’ but as a ‘profession’.
- **A professional Profession:** ensuring that registered migration agents conduct their businesses ethically with care, skill, integrity and diligence, and maintain proper and current professional knowledge.
- **Combatting misconduct and unlawful activity:** reducing the instances of, and responding to, serious misconduct by registered migration agents and unlawful providers of immigration assistance.”

These submissions will address the above 3 bullet points.

A qualified profession: ensuring individuals have strong qualifications to enter and remain in the migration advice profession.

Migration Alliance is of the view that in order to protect vulnerable consumers “strong qualifications” are a necessary component with respect to both entry to the profession and remaining in the profession.

The current entry level course fairly reflects the relevant standard, however we have grave concerns regarding the current content, expectations and administration of the Capstone exam.

These submissions will address the following subparagraphs:

- **suitability of the existing entry requirements to become a registered migration agent.**

At the moment we have 2 layers to the entry level requirement; the first is the University based graduate diploma and after that candidates are expected to meet the Capstone requirement.

The Capstone is currently administered by the College of Law and it is fair to say that it is both expensive and extremely rigorous in its expectations as to what the relevant “standard” should be set at. The lack of transparency about the setting of the relevant standard (OCS) and the catastrophic failure rate is either a reflection of a general lack of competence arising out of the successful completion of the entry level course, or, in the alternative, an exhibition of the setting of an unrealistic standard for an **entry level applicant**.

Putting aside the “standard” for the time being, the failure of the Capstone provider to provide training and support to candidates exacerbates the problem of a lack of understanding as to the relevant standard which in turn heightens the apparent mismatch between the Graduate diploma and the Capstone “standard”.

It is recommended that the Capstone Provider be required to provide relevant training and clear disclosure as to what the expected standard will be at entry level as opposed to a general OCS. (See below)

https://www.mara.gov.au/media/481864/Competency_Standards_for_Agents_September_2016.pdf

The Capstone standard?

The current statistics reveal as follows:

Intake	Graduate Certificate	Graduate Diploma	Total
Intake 1, 2018	14%	N/A	14%
Intake 2, 2018	19%	N/A	19%
Intake 1, 2019	0%	13%	11%
Intake 2, 2019	18%	27%	26%
Intake 3, 2019	0%	25%	22%
Intake 4, 2019	19%	15%	16%
*Total	14%	19%	18%

The statistics speak for themselves and I think it is fair to say that they reveal either a failing on the part of the candidates or an unrealistic ‘standard’

That being the case there is a lack of transparency about how the **entry level standard** was arrived at.

Assuming the role of the OMARA is to implement a standard (OCS) and the exam is to exhibit and test the standard, it is the view of MA that the standard exhibited in the exam is very high and is unrealistic in its expectations for entry level RMAs.

It is the view of the author that the standard of the Capstone very closely approximate the standard expected of experienced solicitors in NSW who are applying for specialist accreditation. In NSW a practitioner must have been in practice for 5 years before sitting the specialist accreditation exams.

Further, the exam and its administration appears to be idiosyncratic to the extent it seeks to establish a standard for the entirety of a candidates knowledge but is restricted by its individual scope to an examination of bespoke problems which necessarily require a candidate to in effect exhibit the depth and breadth of their

knowledge consistent with the parameters of the OCS, within a limited framework of 3 hours followed by an oral exam of 1 hour.

It is recommend that the Capstone standard be reviewed and that the expectations of the OMARA and the examiners be more transparent. **The OCS for entry level registrants needs to be clearly articulated.**

Further, it is recommended that the examinations not be one 3 hour exam on a make or break basis but be spread out at various intervals over the course of the first year of initial registration.

This could be achieved by giving candidates initial registration post the approved entry level course, followed by testing of candidates knowledge during the first 12 months of registration.

The ability of an RMA to proceed beyond initial registration to full registration would be dependent upon the satisfactory completion of the Capstone.

Concerns about competence and vulnerable consumers can be addressed by limiting the scope of work undertaken by initial registrants.

Relevantly, the recommendations of the Kendall report in principle, contemplated a Capstone AFTER 12 months of initial registration. The front end loading of a requirement that entry level RMAs meet the OCS distorts the recommendations and sets candidates up for failure.

Current registration requirements

The scope of the matters which may inform the OMARA in deciding that a potential registrant can proceed to registration necessarily requires a consideration of whether the candidate is “fit and proper” and is a “person of integrity”

The current statutory scheme provides as follows:

MIGRATION ACT 1958 - SECT 290

Applicant must not be registered if not a person of integrity or not fit and proper

(1) An applicant must not be [registered](#) if the [Migration Agents Registration Authority](#) is satisfied that:

(a) the applicant is not a fit and proper person to give immigration assistance; or

(b) the applicant is not a person of integrity; or

(c) the applicant is related by employment to an individual who is not a person of integrity and the applicant should not be [registered](#) because of that relationship.

(2) In considering whether it is satisfied that the applicant is not fit and proper or not a person of integrity, the [Migration Agents Registration Authority](#) must take into account:

(a) the extent of the applicant's knowledge of [migration procedure](#); and

(c) any conviction of the applicant of a criminal offence relevant to the question whether the applicant is not:

(i) a fit and proper person to give immigration assistance; or

(ii) a person of integrity;

(except a conviction that is spent under Part VIIC of the [Crimes Act 1914](#)); and

(d) any criminal proceedings that the applicant is the subject of and that the Authority considers relevant to the application; and

(e) any inquiry or investigation that the applicant is or has been the subject of and that the Authority considers relevant to the application; and

(f) any disciplinary action that is being taken, or has been taken, against the applicant that the Authority considers relevant to the application; and

(g) any bankruptcy (present or past) of the applicant; and

(h) any other matter relevant to the applicant's fitness to give immigration assistance.

(3) In considering whether it is satisfied that an individual to whom the applicant is related by employment is not a person of integrity, the [Migration Agents Registration Authority](#) must take into account each of the following matters, so far as the Authority considers it relevant to the question whether the individual is not a person of integrity:

(a) any conviction of the individual of a criminal offence (except a conviction that is spent under Part VIIC of the [Crimes Act 1914](#));

(b) any criminal proceedings that the individual is the subject of;

(c) any inquiry or investigation that the individual is or has been the subject of;

(d) any disciplinary action that is being taken, or has been taken, against the individual;

(e) any bankruptcy (present or past) of the individual.

(4) To avoid doubt, this section applies to all applicants (not just first time applicants).

Having regard to the foregoing, the opinion of MA is that the current statutory scheme is so wide in its scope in consideration of the “factors” which may inform the OMARA in its determination of whether a candidate is a fit and proper person or a person of integrity. Any attempt to broaden the scope of the factors relevant to that process are not only unnecessary but are so potentially oppressive that consideration may be given to the elimination of subsection 290(2) (h).

- **Whether the OMARA should have the power to impose conditions on an individual’s registration if it has concerns with an applicant’s competency levels**

The OMARA, routinely, in its sanction notices under the existing statutory scheme, may impose conditions upon an RMA who has been cautioned, suspended or had their registration cancelled. These conditions may include additional CPD, personal face to face CPD by an Accredited Specialist and most recently a requirement that the sanctioned RMA do the Capstone.

MA is of the opinion that the imposition of “conditions” of practice should be limited to RMAs who are the subject of a formal sanction.

- **other suggestions for reform, such as the introduction of supervised practice, and associated standards and requirements.**

It is the view of MA that as an alternative to “supervised practice” that there be introduced, in line with other professions, a restricted practicing certificate for an appropriate period with the capacity to proceed to full registration (an unrestricted practicing certificate) subject to meeting the current OCS through education appropriate to the level of registration. MA is concerned that the requirement for supervised practice may lead to the exploitation of entry level RMAs. It is recommended that entry level RMAs be mentored by senior members of the profession (10 years registration) and that there be some inducement to the mentor to participate in this very important activity.

A Profession

. CPD requirements

MA is of the view that the current arrangements with respect to CPD continue but that consideration at least be given to the development of specific “tiers” of CPD that reflect the level of expertise of the RMA. This must be addressed as this is on the agenda. A survey of the profession in relation to tiering accompanies this draft submission. The concept of tiering is commonplace in other professions but in this case is restricted to the idea that professionals as they progress through the profession will inevitably have different CPD needs at different times. To encourage practitioners to engage with their CPD “needs”, consideration may be given to Practitioners being “tiered” according to the number of years of registration so that they undertake CPD consistent with their experience rather than entry level subjects. Consideration may be given to the weighting of CPD in order to achieve that outcome.

RMAs take pride in our education, training, experience and professionalism. We take pride in your ability to help make lives better every day, which is exactly what we do. We need to be called, and call one another ‘professionals’.

. The Occupational Competency standards (OCS)

The current OCS reflects the expectations of the OMARA with respect to current registrants. It is self-evident that an entry level registrant will have a set of skills which is very likely to be different to the skill set of an experience practitioner. If “experience is the greatest teacher” the first years of registration as an RMA are critical to the development of the profession. It is on that basis that MA recommends the tailoring of education to meet the OCS at a level appropriate to the number of years of experience exhibited by the RMA.

.Demerit system

MA is of the view that a system of registration be implemented at entry level to ensure that RMAs can transition to the Occupational Competency Standard through a process of education (CPD) that is appropriate to the expertise of the practitioner.

MA does not support a “demerit” system as the current rigorous sanction system is already in place and there is clear evidence to the effect that the profession is very compliant.

. A Professional Fidelity Fund

MA is of the view that there is no evidence in support of a need for a fidelity fund which might compensate applicants for visas who have been represented by RMAs. The current requirements for Professional indemnity insurance and the capacity to bring money claims to NCAT, VCAT etc. all operate to provide restitution to aggrieved persons.

. Disclosure of pricing

The OMARA should be encouraged to re-implement the registration requirement that registrants set out what fees they charge for certain types of visas. That information can be embedded into the agent profile maintained by the OMARA and available to potential consumers.

Combatting misconduct and unlawful activity

. Adequacy of current penalties for providing “immigration assistance” if not registered.

MA is of the opinion that the current penalties are adequate.

Exemptions fuel malpractice and incompetence

Human Resource Managers should be prevented from providing immigration advice and assistance to any person or business, whether onshore or from offshore locations beyond the Australian jurisdiction by reason of the inherent conflict of interest and in some cases frank incompetence.

People accessing or using ImmiAccount under a visa applicant's name should only be either:

- a) The applicant themselves (single-use email tracking), or
- b) The applicant's Registered Migration Agent (MARN tracking)

Visa applications with a MARN can use an email address multiple times. Verification of the MARN via two-step ID (email or text message validation to the email address or mobile listed on the OMARA website) will prevent ID theft by unlawful operators wishing to hijack MARNs to fraudulently lodge multiple applications.

ImmiAccount should link a single (one-use-only) email address to a single client account rather than allowing the email address to be used over multiple client accounts, which is a strong indication that the email address is being operated by an unlawful operator.

We suggest that the OMARA regulate the education agent industry. Education agents should be prevented from lodging visa applications for their clients.

. ABF and OMARA's powers relating to monitoring and investigating misconduct by RMAs

MA is of the opinion that the current powers vested in the OMARA to investigate and monitor alleged misconduct are more than adequate. RMAs are Australian citizens and permanent residents who are already subject to extensive oversight and monitoring by the OMARA. The OMARA has all of the powers of a royal commission and those powers need to be balanced with the civil and political rights of RMAs. Given the very high level of compliance and the very low level of misconduct by RMAs there is no need for additional powers for OMARA and ABF.

The greatest challenge to the profession is not the conduct of RMAs but the unregulated conduct of Education Agents and the ability of unregistered persons both onshore and offshore to continue to give "immigration assistance" with impunity. The evolution of an "online system" has created additional opportunities for criminal entrepreneurs to operate in this space. Access to the Immi account should, in the view of MA be restricted to RMAs and Solicitors as appropriate. The convenient fiction that Education Agents do not provide "immigration assistance" needs to be addressed as well as the wholly self-evident conflict of interest eliminated.

Adequacy of Consumer protection.

Current arrangements and access to consumer protection are available to all applicants.

The evolution of an “online system” has created additional opportunities for criminal entrepreneurs to operate in this space. Access to the Immi account should, in the view of MA be restricted to RMAs and Solicitors as appropriate. The convenient fiction that Education Agents do not provide “immigration assistance” needs to be addressed and the wholly self-evident conflict of interest eliminated.

Overseas “agents” should not have access to the Immi account and only authorised persons in line with the NZ and Canadian models need to be urgently implemented in order to protect vulnerable consumers.

Conclusion

I trust these submissions will be of assistance.

Migration Alliance