



Australian Government
Department of Home Affairs



Department of Home Affairs submission to the Inquiry into the administration of Commonwealth regulations

Joint Committee on Public Accounts and Audit

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Background

The Office of the Migration Agents Registration Authority (OMARA), within the Department of Home Affairs (the Department), is responsible for regulating Registered Migration Agents (RMAs) in Australia, in accordance with the *Migration Act 1958* (the Act) and the *Migration Agents Regulations 1998* (the Regulations).

The key functions of the OMARA, as set out in section 316 of the Act, are to:

- deal with registration applications
- monitor the conduct of RMAs in their provision of immigration assistance
- investigate complaints in relation to the provision of immigration assistance by RMAs
- take appropriate disciplinary action against RMAs or former RMAs
- inform the appropriate prosecuting authorities about apparent offences committed by RMAs
- monitor the adequacy of the Code of Conduct for RMAs.

In June 2023, the Australian National Audit Office (ANAO) began its performance audit of the Department of Home Affairs' Regulation of Migration Agents, through the OMARA. The Department welcomed the Auditor-General Report (the Report) tabled on 8 May 2024, and agreed with the Report's 11 recommendations. The recommendations align with a prioritised and ongoing program of work, initiated by the Department in mid-2022, to significantly enhance and uplift the capabilities of the OMARA across its regulatory functions and position the OMARA as a best practice regulator.

In 2022 the Department recognised the need to dedicate additional resources to the OMARA to strengthen its regulatory performance and made the decision to expand the OMARA with staffing levels to increase to 63 full-time employees (FTE), from 23 FTE in 2022. The main focus of the expansion thus far has been to enhance the OMARA's investigations framework to support the faster resolution of complaints. Since mid-2022, recruitment and training of new investigations staff has been a priority for the OMARA with the current FTE at 41 (at 30 June 2024).

As detailed in the October 2023 Government response to the *Rapid Review into the Exploitation of Australia's Visa System* (Nixon Review), the Government is committed to strengthening the regulation of RMAs and uplifting OMARA's compliance and investigative capabilities. The ANAO's recommendations complement the Nixon Review recommendations.

Improvements already implemented

In addition to ongoing recruitment and training, a number of activities contributing to the expansion and uplift of the OMARA's regulatory capabilities have already been implemented, including:

- development and application of an improved risk-based framework for triaging, assessing and investigating complaints received about RMAs to distinguish the severity and impact of specific conduct. This includes an early resolution model for minor matters to ensure inappropriate conduct is dealt with at the earliest opportunity with the aim to disrupt and correct the conduct and to re-educate RMAs as to their obligations
- implementation of a change in managing complaints where there is no permission from the complainant to publish the complaint to the agent, by raising own-motion complaints where appropriate
- improved record keeping guidelines and practices, particularly around critical decisions
- development of a Compliance and Monitoring Framework, Strategy and Plan for 2024-2025 with monitoring activities to commence in August 2024.

- establishing an OMARA Risk Register and QA Framework and enhanced peer review and case management practices
- preparing governance to support primary regulatory functions – Capstone, continuing professional development, registrations and investigations
- establishing a small intelligence support team for complex investigations
- implementing a strategic communications plan to actively promote the OMARA and its regulatory activities including the development of OMARA branding
- strengthened engagement with key internal and external stakeholders to share intelligence holdings.

These reforms are producing results. In 2023-2024, the OMARA:

- sanctioned 10 RMAs for misconduct (three cancellations, three suspensions, three barrings and one caution) – an increase of 150% from 2022-2023.
- Refused the registration of 11 agents – an increase of 120% from 2022-2023). 27 prospective agents withdrew their registration applications in anticipation of OMARA making a decision to refuse compared to 18 in 2022-2023.

Improvements underway

The OMARA has a large forward work program to uplift capabilities across all of its regulatory functions and to implement the ANAO recommendations and the Nixon Rapid Review recommendations by 30 June 2025.

Improvements that are currently progressing include:

- maturing the OMARA Compliance and Monitoring Strategy and Plan to ensure a data-driven approach, and conducting monitoring activities in accordance with the plan
- implementing regular peer reviews of complex cases
- applying enhanced quality assurance processes for registration and sanction decisions
- development of a suite of training materials to support improved processes
- updating governance and procedural support materials
- developing improved reporting functions within business systems.

This work continues as the Department consolidates its plan and corresponding timeframe to implement the Report recommendations.

Future planned improvements

The Report recommendations complement the Government's ongoing plans to stop RMA misconduct and further strengthen the OMARA, which include (subject to the passage of legislation through Parliament):

- implementing AusCheck background checks for all RMAs at registration and renewal
- providing additional powers to the OMARA to address unscrupulous conduct
- increasing financial penalties for failure to notify the Department of Home Affairs or the Review Authority of client complaints

As detailed in the October 2023 Government response to the Nixon Review, the Government also plans to amend the Code of Conduct for RMAs to impose a positive obligation on RMAs to ensure their clients understand Australian workplace rights and how to report worker exploitation.

Assessing compliance risk

To assist the Department with meeting its obligations to assess and manage risk in accordance with the *Public Governance, Performance and Accountability Act 2013*, the OMARA has assessed the risk of non-compliance with the legislation for which it is responsible for administering through the development of the 2024-25 OMARA Risk Register.

The findings and recommendations arising from the Nixon Review and the recent ANAO audit of the OMARA have been incorporated into the consideration of risk management and the development of the Risk Register.

The OMARA has commenced efforts to shape and implement related risk treatments on all identified risks in the 2024-25 Risk Register with work focused on the use of data and information; measuring and managing performance; and stakeholder engagement both within and external to the Department.

One of the highest priority treatments to assist with mitigating the OMARA's risks is embedding the OMARA Compliance and Monitoring Framework.

Compliance and Monitoring Framework

The Department is conscious of the need to undertake compliance and monitoring as a core function of the OMARA and has welcomed the ANAO recommendation to develop a compliance strategy and plan for RMAs. The achievement of successful regulatory outcomes is highly reliant on compliance.

In the interest of time, the OMARA has reinvigorated its former compliance framework for the 2024-2025 program year, which is based on historical approaches to guide the detection and disruption of alleged inappropriate conduct by RMAs and to identify trends in non-compliance to target and prioritise regulatory functions.

The Department will look to significantly mature and refine the framework through the use of information and data analytics and the assistance of a regulatory compliance specialist, to ensure a best practice approach. The Department is looking to procure this service during the 2024/25 program year.

The intended outcomes of the Compliance and Monitoring Framework are to reduce incompetent, unprofessional or criminal conduct within the RMA cohort, as those acting contrary to the Code of Conduct are identified and sanctioned if appropriate. Exploitation of Australia's visa system by RMAs is better understood and thus priorities and issues are able to be investigated proactively.

OMARA's approach - risk based – assessment of compliance risk

Risk based regulation is important in ensuring the burden of regulation is appropriate. The assessment of compliance risk enables the OMARA to target regulatory activities towards areas of greatest impact providing efficiency and the achievement of regulatory outcomes.

A risk based approach also enables the OMARA to monitor and assess improvements or decline in the activities and conduct of RMAs as well as the possible causes. This flows on to inform associated activities such as education and awareness raising.

Evidence based – intelligence led

The OMARA makes informed and considered decisions based on the best available evidence that is able to withstand scrutiny. Decisions include approvals (such as registration) as well as adverse findings (such as disciplinary action).

OMARA is working to improve how it uses information and data to predict risk, inform the management of key compliance risks and to develop targeted compliance, monitoring and enforcement strategies.

The evidence must be accurate, integrated and reliable. Collection of intelligence information will leverage capabilities across whole-of-government and the Department to identify threats and vulnerabilities.

Necessary and proportionate

The OMARA does not seek to burden RMAs more than is reasonably necessary which means opportunities to reduce administrative burden and avoid duplication are sought. The OMARA also ensures that responses are proportionate to the problems needing to be addressed.

Collaborative

The OMARA values partnerships and collaboration with those who are invested in the migration advice industry's outcomes and acknowledges the importance of a collaborative approach. This extends to the migration advice industry, including the Migration Institute of Australia and the Migration Alliance as well as continuing professional development providers.

Focused on outcomes

The desire to achieve good regulatory outcomes is the main driver of OMARA's compliance and monitoring activities. This requires knowledge and awareness of the industry, government priorities and the ability to take actions early in response to changes in the risk environment. The OMARA measures and reports on performance, promoting transparency and accountability for the improvement of outcomes. The OMARA is committed to identifying unscrupulous migration agents who seek to exploit individuals and Australia's migration system.

Lawful and fair

All compliance and monitoring activities undertaken by the OMARA are within its delegation of powers and within the context of the regulatory principles. Activities are also in accordance with the OMARA and the Department's policies and processes including those relating to privacy, security and record keeping. The manner used is procedurally fair, impartial and ethical with timeliness of engagement a priority.

Identifying and addressing non-compliance

Complaints management

The OMARA has a number of actions available to identify and address non-compliance with the legislation it administers, including the use of delegated powers available under the Act. It is important to note that an allegation of non-compliance is not evidence of non-compliance that the OMARA can immediately use to prove that an agent has in fact engaged in misconduct.

All complaints and referrals received by the OMARA are triaged to determine if jurisdiction applies, to distinguish the severity and impact of the suspected RMA misconduct, and to identify appropriate risk treatments. Suspected misconduct will either be addressed at the earliest opportunity through a range of activities via the 'Early Resolution Model', or will progress to investigation and potential disciplinary action.

The intent of the Early Resolution Model is to improve the overall professionalism of the industry by raising, disrupting and correcting inappropriate conduct as early as possible to help avoid an accumulation of complaints where formal investigation is required, and to re-educate RMAs as to their ongoing obligations. Early resolution treatments range from directly addressing minor matters with the agent to the issuing of a Suspected Breach Notice.

Resolving less serious allegations of suspected misconduct at the earliest opportunity allows the OMARA to dedicate resources to progress matters that raise serious allegations through to investigation.

During the triage and investigations processes the OMARA uses a number of networks, reporting functions and business systems within the Department to identify and assist with addressing non-compliance.

Communications plan

The OMARA has an established Communications Plan, the activities of which contribute to educating RMAs and addressing unconscious non-compliance with the legislation the OMARA administers. Communication activities carried out by the OMARA across each program year, such as all-agent emails and social media posts, bring increased attention to OMARA disciplinary activities, investigation outcomes and misconduct trends. The messaging in these communications reinforces the ongoing professional obligations of RMAs.

Continuing Professional Development (CPD)

CPD can be used as a tool to address unconscious non-compliance by way of improving RMA knowledge deficiencies. In accordance with the Report's recommendations, planned quality assurance of CPD activities will assist in assessing the effectiveness of CPD in addressing unconscious non-compliance.

Performance and evaluation frameworks with Commonwealth regulations

The OMARA's performance is reported and published in the Department's Annual Report and Corporate Plan.

As part of the Department, the OMARA is engaging with the ANAO through the Department's Evaluation, Planning and Reporting team to ensure a best practice approach to its performance and evaluation framework. The OMARA is currently reviewing its performance reporting framework based on feedback from the audit process, which is informing the development of more meaningful targets and reporting.

The Department would welcome the opportunity to discuss the measures it has taken to date and the upcoming work planned for best practice regulation.