

**HOME AFFAIRS PORTFOLIO  
DEPARTMENT OF HOME AFFAIRS**

**PARLIAMENTARY INQUIRY WRITTEN QUESTION ON NOTICE**

Joint Committee of Public Accounts and Audit

Administration of Commonwealth Regulations

**25 November 2024**

**QoN Number: 3**

**Subject: Update on progress towards developing a document risk assessment**

**Asked by:** Linda Burney

**Question:**

The audit found Home Affairs' approach to regulating migration agents was not informed by an appropriate assessment of compliance risk, and made a recommendation to rectify this situation.

- a) Can you provide the Committee an update on progress towards developing a documented risk assessment, and explain how data, evidence and intelligence are being incorporated so as to effectively regulate migration agents, including their professional development?

**Answer:**

The Department agreed to develop and maintain a documented risk assessment for its regulation of migration agents across all of its regulatory functions, including the continuing professional development of those agents.

In order to ensure a best practice approach, the Department is in the process of procuring a regulatory compliance specialist to assist with maturing OMARA's regulatory framework. As part of this work, a documented risk assessment will be developed.

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**25 November 2024**

**QoN Number: 4**

**Subject: Compliance Strategy and Plan**

**Asked by:** Linda Burney

**Question:**

Home Affairs did not have an appropriate compliance plan for the regulation of migration agents; the most recent plan was from 2018–19 (after which time there significant changes to regulation), and this plan had not been implemented by the department. The audit recommended Home Affairs develop and maintain a current compliance strategy and plan that reflected the scope of its responsibilities under the Migration Act, an assessment of risks, and the regulatory powers and resources available to the department to manage those risks.

- a) Home Affairs agreed to the recommendation to develop a compliance strategy and plan, and stated a 'Compliance and Monitoring Framework, Strategy and Plan' was in draft form. Can you update the Committee on the content of this document, in particular its coverage of the scope of OMARA's responsibilities and the regulatory powers and resources available to it?
- b) Is this document still in draft form, and if so, when is it expected to be finalised? In the interim, what is OMARA using as a compliance plan?

**Answer:**

- a) OMARA has implemented a Compliance and Monitoring Framework, Strategy and Plan for 2024-2025.

The Framework sets out the OMARA's approach to monitoring:

- Risk based – 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.
- Evidence based – OMARA makes informed and considered decisions based on the best available evidence that is able to withstand scrutiny.
- Compliance and monitoring is necessary and proportionate to the risk.

- Collaborative approach – OMARA values partnerships and collaboration with those who are invested in the migration advice industry's outcomes.
- Focused on outcomes – The main driver of OMARA's compliance and monitoring activities is the desire to achieve good regulatory outcomes.
- Lawful and fair – All compliance and monitoring activities are within OMARA's delegation of powers and within the context of the regulatory principles.

The Strategy identifies the harms that the OMARA is seeking to protect and the priority areas of focus for the identified harms, such as those that pose high, medium and low level threats.

The Plan identifies monitoring activities to be conducted utilising the powers available to the OMARA under Part 3 of the *Migration Act 1958* (including OMARA's information gathering power under section 308) to address the identified harms and priorities in the Compliance and Monitoring Strategy.

Proactive monitoring activities identified under this Plan commenced in September 2024.

b) Refer to the above.

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**25 November 2024**

**QoN Number: 5**

**Subject: Regulation of Migration Agents**

**Asked by:** Linda Burney

**Question:**

The audit found migration agents are not effectively regulated. Agents are registered without an assurance they are fit and proper to give immigration assistance and are persons of integrity. The audit recommended home Affairs strengthen its regulation of migration agent registration requirements by making greater use of the powers provided to it under the Migration Act to inform an assessment of whether applications for registration should be granted.

- a) How has Home Affairs implemented this recommendation?
- b) To what extent has the department used its regulatory powers under the Act in 2023-24 to inform an assessment of whether applications for registration should be granted?
- c) Has Home Affairs confirmed the lawfulness of the automated approval of applications?

**Answer:**

- a) The Department agrees it is important to make use of the powers available to the Authority under the *Migration Act 1958* (the Act) (such as through issuing a Notice under sections 288B, 305C, 308 or 309) where it is relevant, appropriate and lawful to do so.

The OMARA continues to enhance its ability to appropriately assess whether an application for registration should be granted having regard to available evidence before the Authority including through the exercise of relevant powers under the Act.

In response to the Rapid Review into the exploitation of Australia's visa system, the Government has agreed to implement a strengthened background check for all registered migration agents, to be coordinated by AusCheck. The check will

consist of stronger identity verification, a Nationally Coordinated Criminal History Check by the Australian Criminal Intelligence Commission and an Australian Security Intelligence Organisation security assessment. This will strengthen the assessment of character requirements for registration and ensure individuals applying to become RMAs are more thoroughly vetted before they can register and at subsequent renewals of their registration. The OMARA will implement these changes subject to the passage of legislation through Parliament.

- b) In relation to registration applications that resulted in a refusal or a withdrawal of a registration application, OMARA issued the following number of notices using its statutory powers:
- Notices issued under section 288B or section 308 of the Act: 10
  - Notices under section 309 of the Act: 17
- c) The registration auto-grant process has ceased. All registration applications are manually processed.

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**25 November 2024**

**QoN Number: 6**

**Subject: Regulatory monitoring activities**

**Asked by:** Linda Burney

**Question:**

OMARA had recorded no agent monitoring activities since the first quarter of 2020 –21 and the audit recommended, in conjunction with a risk-based compliance strategy and plan, that OMARA plan and undertake regulatory monitoring of the activities of agents and report on those activities.

- a) What regulatory monitoring activities has Home Affairs undertaken since the conclusion of the audit?
- b) Where is OMARA reporting on these activities?

**Answer:**

- a) Proactive monitoring activities identified under the Compliance and Monitoring Plan commenced in September 2024.

These activities focused on advertising and publication requirements for the use of migration agent registration numbers (MARNs) and obligations in relation to handling client monies under the Migration Agent Code of Conduct.

- b) OMARA maintains records of all monitoring activities.

OMARA has agreed to report on these activities and is currently considering the best medium for doing so.

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**25 November 2024**

**QoN Number: 7**

**Subject: Uplift of OMARA's capabilities**

**Asked by:** Linda Burney

**Question:**

The audit found Home Affairs declined to use its statutory regulatory powers to investigate complaints even when there appeared to be a strong case for their use, including where complaints were dismissed due to 'insufficient evidence'. Home Affairs accepted, in February 2024, that it needed to 'uplift its capabilities' to use the regulatory powers under the Migration Act.

- a) What steps has Home Affairs taken to 'uplift its capabilities' to use its regulatory powers under the Migration Act?
- b) In comparison to February 2024, when Home Affairs recognised the need to uplift its capabilities, how has Home Affairs increased the frequency of the use of its statutory regulatory powers to investigate complaints?
- c) How many agents have been sanctioned by the department in 2023–24? How many agents have been found to have breached the Code of Conduct but not been sanctioned in 2023–24?

**Answer:**

- a) A number of improvements have been made to OMARA's regulatory capabilities to date:
  - Recruiting and training additional staff, in particular investigations staff:
    - 24 full-time employees (FTE) have been on-boarded since June 2022.
    - As at 31 October 2024, the OMARA had 46.69 FTE and is increasing resources to bring staffing levels to an approximate full year budgeted average staffing level of 60 by 30 June 2025.
  - Implemented an enhanced risk-based framework for triaging, assessing and investigating complaints, including an early resolution model.

- Implemented 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.
- Established a complex case support team for complex investigations.
- Implemented regular peer reviews for registration and investigation caseloads.

As detailed in the Department's submission to the Joint Committee of Public Accounts and Audit Inquiry into the Administration of Commonwealth Regulations, there are a number of other improvements underway and planned for the future, which will also uplift OMARA's regulatory capabilities.

- b) Noting the response to (a) above, both the increase in staff and improved processes have led to an increase in regulatory outcomes including disciplinary decisions. By way of example, if the OMARA is considering making a decision to cancel, suspend or caution a registered migration agent (RMA), or bar a former RMA, the OMARA must under section 309 of the *Migration Act 1958* inform the registration applicant/agent of that fact, provide reasons and invite the agent to make a submission on the matter. This is a legislated procedural fairness requirement. Since 1 February 2024, the OMARA has sanctioned 12 RMAs/former agents.

The Department is investigating system enhancements to enable more effective reporting on complaints caseload management including to report on when statutory powers are utilised.

- c) In 2023-2024, the OMARA sanctioned 10 RMAs, an increase of 150% from 2022-2023.

Between 1 July 2024 and 26 November 2024, the OMARA has sanctioned seven RMAs.

As advised to the ANAO during the course of the performance audit, the OMARA no longer makes breach findings without consideration of disciplinary action. Therefore, during 2023-24, no agents were found to have breached the Code of Conduct without being sanctioned.



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**25 November 2024**

**QoN Number: 8**

**Subject: Rate of increase in investigations**

***Asked by:*** Linda Burney

***Question:***

What has been the rate of increase in investigations using OMARA's statutory regulatory powers in 2023–24 in comparison to previous years?

***Answer:***

Comparative data on the exercise of statutory powers during the course of an investigation is unavailable.

There has been an increase in regulatory outcomes in 2023-2024 where the use of statutory powers was required during the course of an investigation:

- In 2023-2024, OMARA sanctioned 10 registered migration agents (RMAs) or former RMAs, an increase of 150% from 2022-2023.
- Between 1 July 2024 and 26 November 2024, the OMARA has sanctioned seven RMAs or former RMAs.

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**25 November 2024**

**QoN Number: 9**

**Subject: Performance outcomes**

**Asked by:** Linda Burney

**Question:**

The performance outcome for OMARA in 2023–24 was '75 per cent of less serious complaints received are resolved within 90 days and 50 percent of serious complaints received are resolved within 180 days'.

- a) How has OMARA updated its performance measures to incorporate its responsibilities for the administration of the registration process for registered migration agents and regulation of continuing professional development?
- b) How has the department progressed on establishing meaningful performance measures to address its performance in actioning complaints, including in relation to the timeliness of its performance and the extent to which it has used the investigation powers provided by the Migration Act?

**Answer:**

- a) Yes. OMARA's 2024-2025 key performance measures have been revised to the following:
  - 50% of all investigations (commenced after 1 July 2024) will be finalised within 180 days.
  - Reduce the legacy caseload of investigations into Registered Migration Agents by 50%.
  - 75% of all early resolution matters will be finalised in 90 days.
  - 95% of all initial and repeat applications to become a Registered Migration Agent are assessed within eight weeks of lodgment.

These measures have been published in the Department's Corporate Plan.

- b) Noting the response to (a) above, measures have been developed to assess the timeliness of resolving complaints, including the legacy caseload and early

resolution matters. Further consideration will be given to reporting on the use of powers when systems enhancements are in place to accurately capture this data.

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**25 November 2024**

**QoN Number: 10**

**Subject: OMARA's risk matrix**

**Asked by:** Linda Burney

**Question:**

The audit found the risk matrix used by OMARA to assess the severity and impact of allegations of agent misconduct considers political and or media interest to almost the same extent it did the nature of the alleged misconduct. Home Affairs advised it had developed an 'enhanced framework' for triaging, assessing and investigating complaints.

How does the enhanced framework differ from the risk matrix examined by the ANAO during the audit?

**Answer:**

OMARA developed and implemented the enhanced framework for triaging, assessing and investigating complaints at the end of 2022 to distinguish the severity and impact of suspected RMA misconduct.

The framework 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.

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.

Work is ongoing in this space and will benefit from the engagement of a regulatory compliance specialist to assist in developing further data driven and evidence led, risk mitigation strategies to improve and mature these processes. The Department is looking to procure this service during the 2024-2025 program year.