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Mr Jason Wood MP
Chair, Joint Standing Committee on Migration

Dear Sir

Please find attached a submission to the **Inquiry into the efficacy of current regulation of Australian migration agents**.

I have been a registered migration agent for over 20 years and I am also a legal practitioner.

I am an Associate Professor of Law and I have taught people who are seeking to become migration agents at Murdoch University School of Law for over 10 years. I am the Program Manager of the Graduate Diploma in Australian Migration Law and Practice.

The views in the attached submission are my own and do not necessarily represent the views of Murdoch University.

I am more than happy to provide further information or advice to the Committee if required.

Yours sincerely

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Submission to the Joint Standing Committee on Migration into the efficacy of current regulation of Australian migration agents

Background

Murdoch University School of Law has been delivering education to potential migration agents since 2006.

Murdoch University was one of 4 tertiary institutions that entered into an arrangement with the Migration Agents Registration Authority (MARA) to deliver the Graduate Certificate in Australian Migration Law and Practice (GCAMLPL) in 2006 which was the then entry level knowledge requirement for individuals who wished to register with the MARA as migration agents. The university continued offering the GCAMLPL until 2017. Murdoch University has had approximately 600 students complete the award with Murdoch University.

Over that 10 year period the School of Law worked closely with the MARA and the other institutions on the delivery of the course and in particular in relation to delivering common assessment items which at that time constituted the “common assessment items”.

Murdoch University spoke to Dr Christopher Kendall when he conducted the Independent Review of the Office of the MARA in 2014 (the “Kendall Review”).

Focus of submission – entry qualifications and supervised practice

The focus of this submission is to provide some information to the Committee on the education of Australian migration agents and preparation for practice. I am uniquely placed in this respect as I have been involved in the development and delivery of this program since 2006.

There is a comprehensive guide to the reviews that have been conducted and changes made to entry level requirements contained in the Kendall Review.¹

1. Graduate Certificate in Australian Migration Law and Practice (GCAMLPL)

2006 was the first time that the MARA determined that the entry level qualifications be located with the higher education sector and within the Australian Qualifications Framework (AQF). Prior to 2006 entry to the profession had been by way of individuals sitting an examination administered by the MARA (MAPKEE exam). Requiring potential agents to acquire a post graduate qualification provided by a tertiary institution was important step for the migration advice industry in order to raise the standard of the profession.

When universities first started to deliver the course, the MARA exercised a great deal of control over both the content (curriculum) of the course and the assessment. While the curriculum remained more or less the same, the mechanisms for assessment changed over the course of 10 years.

The GCAMLPL was delivered full time over 6 months. The course consisted of 4 subjects: Australian Migration Law, Australia’s Visa System, Visa Compliance Cancellation and Review, Migration Law in Practice. Essentially the course was designed to introduce individuals, the majority of whom were from a non-law background, to understand how research, interpret and apply migration law.

¹ <https://www.homeaffairs.gov.au/ReportsandPublications/Documents/reviews-and-inquiries/omara-review.pdf> pp 110-116.

Migration law is a complex and constantly changing area of law and policy. While the GCAMLP provided content in terms of visa classes and subclasses our key aim was to train individuals in how to read and apply the law and how to maintain their knowledge. Ethical conduct was stressed throughout and students were provided with a number of practical scenarios designed to make them apply and understand the Code of Conduct. Conscious that we were preparing students for practice assessment tasks were designed to be practical and included such things as: mock client interviews, letter writing, submission writing, visa applications and the running of mock client files. Over the 6 months assessments moved from simple statutory interpretation tasks to more complex areas of practice that challenged students to apply the law within an ethical framework.

Common assessment items that were developed and moderated across the four institutions through the Migration Agent Education Advisory Committee (MAREAC). Assessment items were by way of invigilated assessments. These formed the basis of the “prescribed exam” for the purposes of registration.

Issues with the GCAMLP

(1) Requirement to register within 12 months

Once an individual completed the GCAMLP and the embedded common assessment items they had to apply for registration within 12 months. Serious issues arose with the GCAMLP and the prescribed exam being the only entry level qualification for:

- Individuals who failed to register within the 12 months of completing the course
- Individuals who had let their registration lapse for more than 12 months.

There could be very good and understandable reasons why an individual may find themselves in those situations – for example they may have had a serious illness or have child care commitments. However the only way they could apply for registration again was to complete the entire GCAMLP again. This caused problems for many institutions as their regulations prohibited them allowing students to enrol the same award where one had already been granted. At Murdoch University we developed not-for-award course to try to overcome this problem. However this was not an ideal approach.

The Kendall review has recommended that in addition to students doing a 12 month Diploma course individuals need to sit and pass a standalone capstone examination which would allow for a nationally consistent competency based assessment (Recommendation 16). This capstone exam allows for flexibility now for individuals to be registered again even if some time has passed since they completed the required course.

(2) Overly prescriptive curriculum and assessment

During the period of the GCAMLP the MARA was quite prescriptive in setting content for the curriculum, assessment and conditions of assessment. Over time some of the strict oversight was loosened but all providers were essentially having to run identical courses in terms of content. This was unusual in terms of the level of oversight.

This was recognised in the Kendall review who recommended that the MARA be more “hands off” once a university was accredited to run the course in terms of the content and assessment. That is limit their role to ensure that institutions deliver some threshold standards in terms of curriculum but not prescribe assessment or the total content.

(3) Preparation for practice

Concerns over the ability of the GCAMLP to prepare individuals with sufficient knowledge of both law and practice prior to entering practice and be “work ready” were raised, however in our view much of this was anecdotal and there was no serious review of the content of the programs or the graduates seriously conducted.

As a way of addressing these concerns it became a requirement for all graduates to complete the “Practice Ready Programme” (PRP) within their first 12 months of practice.

The concerns were again raised in the Kendall Review by various stakeholders and recommendations were made that:

- the entry level requirement be changed from a Graduate Certificate to a Graduate Diploma (recommendation 11)
- MARA should continue to determine who should be permitted to offer the Prescribed course and identify the core subjects but should not play a role in how the courses are delivered, assessed and structured (recommendation 13)

2. Graduate Diploma in Australian Migration Law and Practice (GDAMLP) at Murdoch University

The government has implemented the recommendation that the entry level requirement change from a Certificate to a 12 month Diploma.

Murdoch University is one of 6 universities that has had the GDAMLP accredited by the OMARA. Full details of our course structure can be found here:

[https://www.murdoch.edu.au/study/courses/course-structure/Graduate-Diploma-in-Australian-Migration-Law-and-Practice-\(GradDipAusMigLaw\)](https://www.murdoch.edu.au/study/courses/course-structure/Graduate-Diploma-in-Australian-Migration-Law-and-Practice-(GradDipAusMigLaw))

In structuring the degree the MARA requested that we map the course learning outcomes to meet the MARA Occupational Competency Standards.

The purpose of the offering is to provide a course to enable individuals to acquire the skills, knowledge and competencies to satisfy the Office of MARA that they are able to provide “immigration assistance” to individuals who seek advice. This would include advising clients on visa options, preparation of visa applications, assisting clients with visa compliance issues and reviews of decisions to refuse or cancel visas. It is unlawful for a person to provide immigration assistance without being a registered migration agent. The course also includes learning outcomes that are linked to ethical practice and standards. In providing advice and assistance all migration agents must abide by ethical standards and are legally obliged to adhere to the MARA Code of Conduct.

Replacing the Graduate Certificate with the GDAMLP allows for more flexibility in offering of the curriculum and will enable us to tie in a capstone practice component that can involve **clinical practice component using the migration speciality already embedded in the clinical program in the School of Law**. As an alternative to the clinical unit we will also offer the opportunity **for a work integrated learning unit and place students in existing migration practice**.

The course is structured to allow students to scaffold their skills. Many students who are entering the GDAMLP will have not studied any law units before. To operate effectively as a migration agent they are expected to have an understanding of a complex area of law and policy.

The course begins with an introductory unit *Introduction to Legal Skills for Migration Practitioners* that provides an introduction to the Australian legal system and provide students with the basic skills in statutory interpretation, legal research and writing. This unit is taught intensively and form a pre-requisite to entry to other units in the first semester.

Other units in first semester will include *Australian Migration Law* and *Australia's Visa System I (Family and other visas)*. The fourth unit *Fundamental Migration Practice Skills* assists students to understand and apply the ethical standards required for practice and to develop skills in interviewing, drafting and letter writing. This unit is a pre-requisite for students to enrol in one of three practice units in second semester – either Migration Clinic or WIL (Internship) or Professional Migration Practice in semester two.

Semester two includes a second visa unit *Australia's Visa System II (Economic, Skilled, and Student visas)*, and *Visa Compliance Cancellation and Review*. A further unit in semester two *Contemporary Migration Law Issues and Business Skills* allows room in the course to examine a particular immigration law or policy issue in detail, and reflects the fact that this is a fluid and often changing area of policy and law. The introduction of a component of business skills reflects the fact that the students will be engaged in a running a migration practice and need to be aware of the legal and ethical requirements of the Migration Act and Migration Agents Regulations and the broader regulatory environment.

The course is structured with a series of pre-requisites and co-requisites to ensure that students scaffold skills across the course. It also allows students to study part time and sets a clear direction for which unit should follow each other.

The **practice units** are designed to allow students to work in an actual practice (either at the School's clinic or in a migration practice) under supervision of a registered migration agent or to engage in a unit that will provide a number of simulated client experiences.

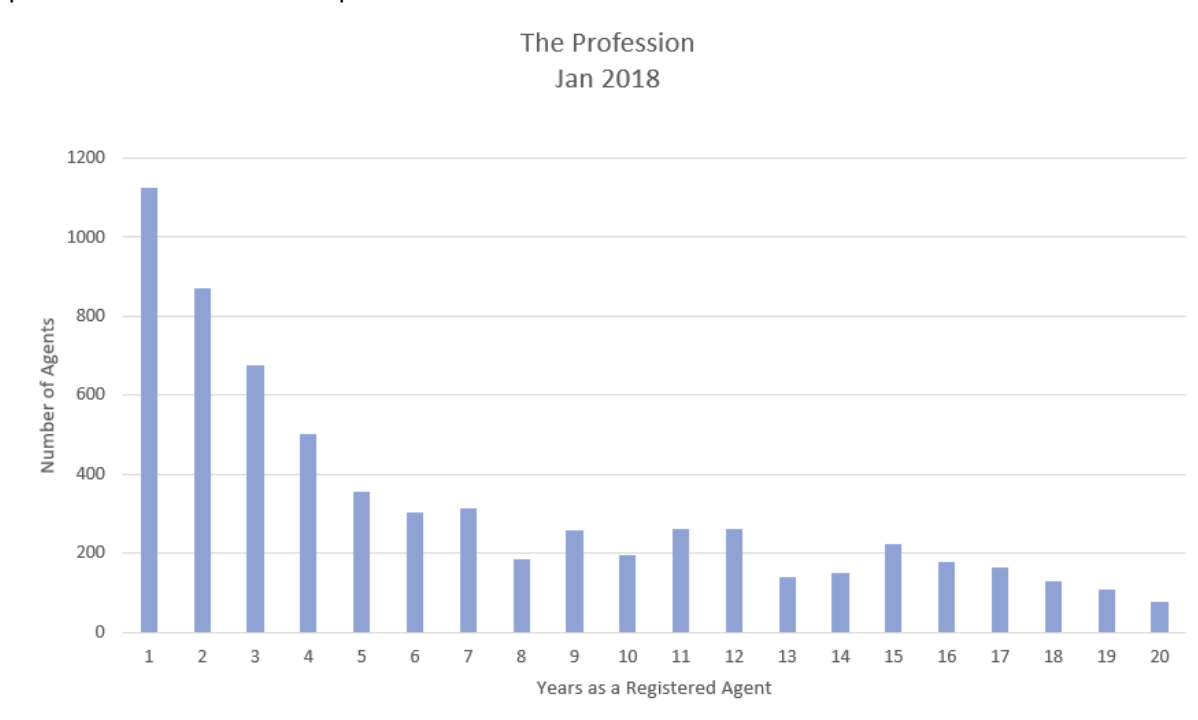
The introduction of industry experience is a new part of our program that could not be accommodated as part of the Certificate. As there is no guarantee we will be able to find work placements for all students there is a third practice offering *Professional Migration Practice*. The unit designed to allow for experiential learning using a series of simulated case studies designed to replicate client work in a migration practice, students will conduct mock interviews, prepare applications and manage files as part of a structured unit that will be designed to provide solid practical experience.

3. Supervised practice

The Kendall review recommended a period of 12 months mandatory supervision with an already registered migration agent following completion of the course (recommendation 14 and 15).

The Government has not adopted this particular recommendation to date. This seems sensible in my view as I can identify a number of practical problems with requiring supervised practice.

Currently there are around 7000 registered migration agents; the majority have less than 5 years' experience as a registered migration agent. Meaning there is a dearth of experienced practitioners available to supervise RMAs.



According to the latest Migration Agent Activity Report around 42% operate as sole traders.² Around 33% of the profession are currently legal practitioners. Once legal practitioners are no longer allowed to register, it is likely that the percentage of sole traders will increase.

These statistics raise a number of challenges for requiring RMAs to have 12 months supervised practice.

One significant issue would need to be addressed as to who would be deemed suitable to supervise practice? As an example for legal practitioners this person has at least a Bachelor's degree and holds an unrestricted practice certificate.

For RMAs they have a GCAMLPL qualification and have had no supervised practice. One would assume a supervising RMA would need to have **more than** one year of unrestricted practice, the Kendall report was silent on this issue.

In implementing the GDAMLPL Murdoch University is offering students the opportunity of supervised practice via our Migration Clinic or Work Integrated Learning (WIL).

- The Migration Clinic places students in a community legal centre (SCALES) where they will work with real clients under the supervision of the clinic's registered migration agents who

² https://www.mara.gov.au/media/605906/MAAR_Jul_Dec_2017_Web.pdf . p. 5

are also legal practitioners. As part of the clinic experience students will interview clients, prepare advice, write letters, prepare applications, work with interpreters and run files. The in house clinic staff will carefully supervise all students. Low staff student ratios (1:6) will ensure that students are properly supervised. Work in a community legal centre will also expose students to a range of cases that they may not experience in private practice and can mean that they are inclined to do pro bono migration work in the future.

- The WIL placement will be established with migration law practices in Perth. A clear agreement is entered into as to the nature and range of matters students will work on under the supervision of migration agent who should have several years of experience.

Work and industry experience conducted as part of a structured education course allows for the university to ensure that the placements provide genuinely valuable practical experiences that allow students to use their knowledge and gain skills in a supervised environment.

4. Conclusion and recommendations

This submission is to provide the Committee with information and detail about the current educational requirements for registration.

Recommendation one: maintain the current entry level knowledge requirements

There has been a great deal of work, planning and preparation in the development and implementation of the new GDAML. In our view, the GDAML addresses many of the concerns raised by the Kendall Review and earlier reviews. To make any changes at this stage would be premature and create too much uncertainty for students and potential migration agents.

Recommendation two: do not introduce a requirement that migration agents undertake supervised practice

As pointed out above, the profession is not likely to be in a position to provide proper supervision to newly graduated students. The new GDAML should go some way to provide supervised work experience that the GCAML was not able to do previously.