Migration Institute of Australia

SUBMISSION

Efficacy of the regulation of registered migration agents



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Submission to the *Efficacy of the Regulation of Registered Migration Agents* Inquiry

The Migration Institute of Australia Limited ABN 83 003 409 390 (the MIA), the peak professional association representing registered migration agents, is grateful for the opportunity to provide this submission to the Joint Standing Committee on Migration.

This submission is informed by MIA Members through their participation in surveys, focus groups and their regular contact with the MIA providing their views on legislation, policy and visa processing matters.

The MIA believes that its members represent the diversity of practitioners in the migration advice profession and that the opinion of its members reflects those of the wider profession.

It must be noted that legal practitioners are likely to be removed from this regulatory system in late 2018. The use of the term 'registered migration agent' throughout this submission may also be read to include legal practitioners who are currently also registered migration agents. Any recommendations made in this submission relevant to the provision of migration advice is also intended to encompass those legal practitioners who will be providing migration advice once lawyers are removed from this regulatory system.

This submission is made in the context of the MIA being committed to the highest standards of professional behaviour and the highest levels of consumer protection and the role this plays in maintaining the integrity of the Australian migration program.

If you require further information please feel free to contact me on 9249 9000 or at kevin.lane@mia.org.au



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Terms of Reference

The Joint Standing Committee on Migration shall inquire into the efficacy of current regulation of Australian migration agents. In conducting its inquiry, the Committee shall have particular regard to:

- examining the registration and regulation of migration agents in Australia including: education, English proficiency, payment, fee-scheduling as well as the suitability and stringency of the accreditation process and evidence of deficiencies.
- the nature and prevalence of fraud, professional misconduct and other breaches by registered migration agents, the current review mechanisms for migration agents and the adequacy of penalties.
- deficiencies and barriers to relevant authorities' investigation of fraudulent behaviour by registered migration agents in visa applications, including the adequacy of information and evidence sharing between such authorities.
- evidence of the volumes and patterns of unregistered migration agents and education agents providing unlawful immigration services in Australia.
- reviewing the appropriateness of migration agents providing other services to clients.

Executive Summary

The Migration Institute of Australia (MIA), as the peak professional body representing Australian registered migration agents, thanks the Joint Standing Committee on Migration for the opportunity to provide this submission to *Efficacy of the Regulation of Registered Migration Agents Inquiry.*

The registration of migration agent agents is required by the Migration Act 1958 (the Act), which also provides for the regulation of the migration advice profession by the Office of the Migration Agents Registration Authority (OMARA).

The MIA has represented the migration advice profession since its inception in 1992. MIA members represent the diversity of practitioners in the migration advice profession and the opinion of its members thus also reflect those of the wider profession.

This submission was informed by comparison with the regulatory systems for immigration advisors in Canada, New Zealand and the United Kingdom. Each of these countries have migration programs and regulatory systems that are very similar to that of Australia. The Australian system of regulation of migration agents was found to be closely aligned to these countries. Protecting consumers from unscrupulous and unregistered practice was also found to be problematic in each of these countries.

The MIA is committed to the highest standards of professional behaviour within the migration advice profession and the highest levels of consumer protection for those who seek migration advice. The profession is governed by the *Code of Conduct for Registered Migration Agents* enshrined in s314(1) of the Migration Act 1958. In addition, MIA members are also required to adhere to the *MIA Members' Code of Ethics and Practice*.

The MIA provides the following summary of this submission to this Inquiry.

Term of Reference 1 – Registration and regulation of migration agents

It is the view of the MIA that the recent changes to the 'entry to practice' qualifications and the introduction of the Capstone Assessment for Registered Migration Agents, provides a robust platform for those seeking registration as a migration agent in Australia.

However, the MIA is gravely concerned about the changes wrought by the recent deregulation of the continuing professional development system for registered migration agents. In opening this provision of continuing professional development to market forces, this deregulation has resulted in the dilution of the quality of this provision. It is the view of the MIA that this will negatively impact the quality of migration advice provided to consumers. The MIA recommends that an urgent review of this provision be undertaken by the regulator.

The MIA supports the current English language proficiency requirements for initial registration as an Australian registered migration agent are sufficient. These are equivalent to those required in the three comparable overseas systems. The MIA recommends that no changes be made to the English language proficiency for registration as a migration agent.

The Code of Conduct strictly controls the processes for payment and fee scheduling by registered migration agents and within these parameters the MIA found that the cost of migration advice to consumers is sufficiently controlled by market forces. The MIA recommends that no changes be made to regulate the fees of registered migration agents.

The MIA asserts that the current system of accreditation for registered migration agents is robust and closely comparable to those of Canada and New Zealand. The only deficiency identified in comparison to Canadian and New Zealand processes was the lack of supervised practice for new entrants to the profession. The British system takes a different, but equally effective, approach to supervised practice for new practitioners by the utilising a tiered system of accreditation that limits the types of applications and practice a newly accredited immigration adviser may undertake. The MIA recommends that the feasibility of introducing this constraint for newly registered Australian migration agents be examined as a method for increasing consumer protection.

Term of Reference 2 – Prevalence and nature of fraud, professional misconduct, and review mechanisms

The most serious threat to consumer protection for those seeking migration advice in this country are illegal operators, the so called ‘unregistered agents’. This activity is rampant in Australia and there is an apparent lack of pursuit or prosecution of these illegal operators. The MIA asserts that this structural deficiency in the protection of consumers should be the major focus of any investigation into the migration advice profession.

The MIA recommends that more robust measures be implemented to combat unregistered practice. Statistical evidence demonstrates that levels of professional misconduct are relatively low amongst registered migration agents and the review mechanisms sufficient. The MIA does recommend that a further sanction of 'disqualification for life', for the most serious of breaches of professional misconduct, be added to the range of sanctions that may be applied by the regulator.

The MIA provides recommendations in this submission to assist in combating fraudulent migration practice. Prime among these is the recommendation that the Department of Home Affairs stops providing the structural means for this fraud to occur and refuse to accept migration applications unless lodged by registered migration agents, exempt persons[1] and the individual applicant themselves. The Canadian and New Zealand systems apply this prohibition.

The MIA recommends that the penalties for unregistered practice to be increased to provide sufficient disincentive. The current fine of less than $10,000 is insufficient to combat rogue operators who may be gaining much larger sums from just one fraudulent transaction. While the MIA recognises that the current threat of ten-year imprisonment for charging for providing unregistered practice is severe, this appears never to have been imposed and as such are not an effective deterrent.

Term of Reference 3 – Deficiencies and barriers to authorities to investigation

The previous '*Independent Review of the Office of the Migration Agents Registration Authority*' in 2014 identified that structural deficiencies and the division of jurisdiction between the regulator and other divisions of the Department of Home Affairs was detrimental to consumer protection and made recommendations for change. It is for those authorities to answer whether this has improved as a result of those recommendations. It is the view of the MIA that it has not.

The current system of reporting fraudulent operators is often seen to punish the victims who may have visas revoked or even deported, while the perpetrator of the fraud is free to continue their activities. The MIA recommends that the system for reporting fraud and unregistered practice be changed to encourage victims to report these fraudulent activities.

[1] Exempt person is an Act defined term for those permitted to give immigration assistance as a family member or in the course of their employment.

Term of Reference 4 – Evidence of volume of unregistered practices and migration agents

The incidence of unregistered practice in Australia is extensive and there is little protection for consumers. Unregistered migration advice is common within the many sectors that intersect with consumers of migration advice including the international education and recruitment, travel, property investment and development and ethnic community sectors.

The MIA recommends that the Department of Home Affairs investigates utilising the existing capacity of its computer systems, programs and data to improve identification of individuals and companies providing unregistered immigration assistance and lodging migration applications.

Many registered migration agents are also education agents and legally able to provide migration advice to the international students. However, unregistered practice by education agents is prolific. The MIA does not support the registration of education agents; to do so would serve only to confuse consumers, who already have little understanding of the difference between registered and unregistered practice. It is the view of the MIA that the education agency industry should be investigated to determine the nature and extent of unregistered immigration practice occurring within that sector. The MIA recommends that random audits of applications lodged by education agents be conducted by the Department of Home Affairs to identify instances of unregistered practice. The MIA also recommends that a financial penalty be imposed on the education providers for breaches of the Migration Act 1958 by their approved agents.

Term of Reference 5 – Appropriateness of migration agents providing other services

Due to the post graduate entry requirement for registration as a migration agent, most registered practitioners come to the profession with other professional qualifications and experience. Many MIA members provide other services to their migration clients. It is the belief of the MIA that where registered migration agents are professionally qualified, accredited and maintain the correct professional indemnity insurance, that consumers are sufficiently protected.

Recommendations

Recommendation 1

The MIA recommends that the current professional entry level qualifications for registration of migration agents in Australia remain unchanged.

Recommendation 2

The MIA recommends that the Continuing Professional Development system for Australian registered migration agents continues unchanged.

Recommendation 3

The MIA recommends that the quality and integrity of the Continuing Professional Development system for Australian registered migration agents be protected by regular benchmarking with industry best practice across comparable international regulatory authorities.

Recommendation 4

The MIA recommends that the Office of the Migration Agents Registration Authority undertake an urgent and rigorous audit of current Continuing Professional Development providers for compliance with the legislative *CPD Provider Standards*.

Recommendation 5

The MIA recommends that the English language proficiency requirements for initial registration as a migration agent in Australia remain unchanged.

Recommendation 6

The MIA recommends that the regulation of the fiduciary duties of registered migration agents by the *Code of Conduct for Registered Migration Agents* remain unchanged.

Recommendation 7

The MIA recommends that the Registered Migration Agent fees not be regulated and continue to be determined by market forces.

Recommendation 8

The MIA recommends that the Office of the Migration Agents Registration Authority's current system of accreditation / registration of migration agents remain unchanged.

Recommendation 9

The MIA recommends that the Office of the Migration Agents Registration Authority investigate the feasibility of limiting the scope of practice of registered migration agents in their first year of practice to specific migration advice and assistance activities.

Recommendation 10

The MIA recommends that the current review mechanisms and processes for registered migration agents remain unchanged.

Recommendation 11

The MIA recommends that the Joint Standing Committee on Migration undertake further investigation of the Department of Home Affairs' internal processes and potential barriers to investigation of fraudulent behaviour, including the adequacy of information and evidence sharing between such authorities.

Recommendation 12

The MIA recommends that the Department investigates complaint systems and approaches that encourage victims of unregistered practice and fraud to make complaints.

Recommendation 13

The MIA recommends that the term 'unregistered migration agent' be replaced in the Department's lexicon with the term 'unregistered practice' or 'unregistered practitioner.'

Recommendation 14

The MIA recommends that applications that are not lodged by registered migration agents be regularly audited by the Department of Home Affairs for evidence of unregistered migration practice.

Recommendation 15

The MIA recommends that the Department of Home Affairs more actively pursue and prosecute those who engage in unregistered and fraudulent immigration practice.

Recommendation 16

The MIA recommends that the messaging surrounding the limit on the practice of education agents and education consultancies be reinstated to the Department of Home Affairs and added to the Austrade websites.

Recommendation 17

The MIA recommends that the education agency industry be investigated to determine the nature and extent of unregistered immigration practice occurring within that sector.

Recommendation 18

The MIA recommends that the Department of Home Affairs implement a communications program to instruct education providers of the specific legislative parameters surrounding the provision of immigration assistance in the Migration Act 1958 and the limit this places on the practices of their approved education agents.

Recommendation 19

The MIA recommends that and a significant financial penalty be imposed on education providers for breaches of the Migration Act 1958 by their approved education agents.

Recommendation 20

The MIA recommends that a registration regime for education agents not be implemented.

Recommendation 21

The MIA recommends that random audits of applications lodged by education agents be conducted by the Department of Home Affairs to identify instances of unregistered practice.

Recommendation 22

The MIA recommends that the Department of Home Affairs annually publish details of the number of complaints received about unregistered migration practice and the outcomes of investigations into these complaints.

Recommendation 23

The MIA recommends that the outcomes of investigations and prosecutions of unregistered migration practice be published on the OMARA website in conjunction with that of sanctioned registered migration agents.

Recommendation 24

The MIA recommends that a public multi lingual media awareness campaign be initiated to increase understanding of the regulatory system surrounding the provision of immigration advice.

Recommendation 25

The MIA recommends that funding be increased for not-for-profit migration advice providers to provide immigration advice and assistance to applicants from migrant communities

Recommendation 26

The MIA recommends that the Department of Home Affairs outreach or community liaison services be developed to assist in the provision of immigration advice to applicants in migrant communities.

Recommendation 27

The MIA recommends that the financial penalty for providing unregistered immigration assistance be increased to statutory penalty points equivalent to $100,000 to provide a more realistic disincentive.

Recommendation 28

The MIA recommends that the Department of Home Affairs only accepts migration applications from registered migration agents, legally exempt persons and individual applicants.

Recommendation 29

The MIA recommends that only registered migration agents and legally exempt persons/organisations be authorised to operate application 'ImmiAccounts' that allow lodgement of multiple applications.

Recommendation 30

The MIA recommends that individuals who have been provided advice related to their migration applications provide evidence of the legal right of that person to provide that assistance.

Recommendation 31

The MIA recommends that the Department of Home Affairs investigates utilising the existing capacity of its computer systems, programs and data to improve monitoring and identification of individuals and companies providing unregistered immigration assistance and lodgement of migration applications.

Recommendation 32

The MIA recommends that registered migration agents who retain appropriate formal professional accreditation not be prevented from providing those services to migration clients in accordance with the relevant Codes of Conduct or practice conditions as determined by the relevant governing professional bodies.

Approach

The Terms of Reference of the *Efficacy of the Regulation of Registered Migration Agents Inquiry* seek to assess both the performance of the current system regulating registered migration agents Australia and to gain insight into the factors that impact this performance. The MIA collected information from a variety of sources to inform its response to the Inquiry.

To assess the performance of the system of accreditation for registered migration agents in Australia, the current accreditation system was compared with immigration advisor accreditation systems in three countries with similar immigration programs, Canada, New Zealand and the United Kingdom. A table comparing the accreditation requirements in each of the four countries appears in *Appendix A.*

To gain further insight into the activities, experiences and opinions of registered migration agents, the MIA also conducted an online survey of its members and conducted member meetings to discuss the issues raised in the terms of reference. The MIA also invited its members to survey their clients on their experiences with their registered migration agent and results from that survey have also been included in this submission.

The MIA wishes to express its concern over the design of the Joint Standing Committee's online questionnaire that allow any person who has engaged the services of a migration agent or education agent, or indeed *any person who has not*, to share their experiences. As is conveyed later in this submission, consumers often do not understand the difference between the various types of practitioners. They often use the terms 'migration agents', 'migration lawyer' and 'education agents' interchangeably, often incorrectly and without clear understanding of the professional parameters that differentiate them. Similarly, consumers are also often not aware of the differences between 'registered' and 'unregistered' practice.

There are several structural features within the design of this survey that are extremely concerning and will negatively impact the validity of the data collected. These include:

- lack of instructions on how to complete the survey or provide explanation of differences between the two types of agents,

- lack of direction to only complete the section relevant to the type of agent used,
- the 'technical' nature of the terminology used in the questions, for example, the term 'Agreement for Services and Fees', which may have no meaning to the respondents or who may have limited proficiency in the English language,
- forcing participants to provide a yes/no answer to the question 'were you able to obtain the visa' is incredibly simplistic, especially when the 'no' answer generates further questions that only relate to migration agent fees, refund policies and complaining to the OMARA. There are many reasons outside the control of the migration agents that may have prevented the participant from obtaining the visa. There are many other reasons why a person may consult a registered migration agent that does not result in lodgement of a visa,
- question 28 of survey asks if the education agent provided information to the applicant on a list of seven items, which are a mix of both unlawful and lawful information that education agents might provide. The yes/no answer is again inadequate to achieve a valid answer. As a minimum the unlawful and lawful components of the question should have been separated, particularly if the purpose of the question was to uncover the extent of unlawful advice being provided by education agents.

Given the grave faults inherent in the design of this survey, the MIA asks the Joint Standing Committee on Migration to exercise caution in drawing any inferences or making any decisions based on the results of this survey.

Why do people use migration agents?

The Australian migration system is extremely complex and often difficult to navigate for users. The Australian migration program must cater for the plethora of needs of those who seek to visit, do business or settle in Australia. These range from the most vulnerable of individuals fleeing war ravaged countries and persecution, young backpackers seeking the adventure of a lifetime, international students seeking a superior education experience, overseas partners and parents coming to join their families, grandparents visiting their grandchildren, skilled migrants seeking a better life, businesses needing skills and experience they cannot obtain in the Australian labour market, businesses seeking to expand their markets, investors seeking stable monetary environments, multi-billion dollar corporations and transnational companies seeking to send high ranking executives to open domestic divisions, touring stars of the international arts and entertainment worlds … and tourists coming for a two week holiday to view Australia's natural wonders.

The Australian migration system is also impacted by many internal and external forces and is constantly changing in response to the imposition of different government policy perspectives and agendas. Internally these relate to a broad spectrum of government policies and initiatives, such as, reducing red tape, visa change and update programs, increasing border security, preventing money laundering and protecting public health. Australian migration is also governed by agreements made with foreign governments and organisations, such as international trade obligations and treaties, humanitarian and UNHCR Conventions and CHOGAM objectives.

People use migration agents to navigate this labyrinthine system in an effort to obtain optimal outcomes. Migration agents advise individuals and businesses of the best migration options for their circumstances and represent them in their interactions with the Department of Home Affairs (the Department), Administrative Appeals Tribunal (AAT) and the judicial system. While Departmental statistics demonstrate that overall only 12% of visa applications[2] are lodged by registered migration agents, this belies the true nature of registered migration agents' scope of practice which is detailed at page 17 of this submission. Closer examination of this basic statistical measure reveals that in 2017 registered migration agents lodged the major proportion of applications in the more complex visa classes, including lodging 63% of skilled and business visa applications and 63% of temporary protection visas (*Appendix B).*

[2] Registered Migration Agents lodge a variety of applications and represent clients in matters with Migration Agent Activity Report January to July 2017; https://www.mara.gov.au/news-and-publications/publications/migration-agent-activity-report/

Individuals and organisations use migration agents for a variety of reasons; they may have well-founded fears of government authorities and officials, they are unable to understand the complex processes of the system, they have lower levels of English language proficiency, they feel more comfortable retaining a professional to undertake the matter, they may feel it is too time consuming or they may prefer to pay to have work done.

MIA member client survey: Comments on why they would recommend using a registered migration agent:

Consumer comments on why they would recommend using a registered migration agent:

The amount of work required before entering Australia as a migrant is astounding.

The agent helps to coordinate and check applications to give the application the highest chance of success.

The legislation is always changing, and they are up to date, this means my business is at low risk given we understand our sponsorship obligations fully.

Because they are really in touch with the diversity of needs clients could have, always offering more than one alternative and showing the pros and cons of them.

It's only way to be sure you are lodging properly, with up to date information.

They really help in the complexities when dealing with the immigration department.

Source: MIA survey 16 April 2018

Most users of the Australian migration system are vulnerable in one form or another and open to abuse by unregistered and unscrupulous operators. This may be as simple as the cost of a lost airfare resulting from an unlodged visitor visa application, to missing crucial deadlines or criteria that irreversibly damage an individual's migration opportunities. Even large corporations seeking skilled workers may be vulnerable to poor advice that could result in sanctions under industrial legislation or harm public perception of the organisations' integrity or viability. More broadly, unscrupulous or poor migration advice to consumers also has the potential to damage Australia's international reputation as a migration and business destination.

The Office of the Migration Agents Registration Authority (OMARA) regulates the migration advice profession in Australia. The OMARA administer the professional registration system, enforce compliance with professional standards, monitors continuing professional development and imposes professional disciplinary procedures on *registered* migration agents. Protection of consumers is the prime driver of this system of regulation. This consumer protection can only be achieved through the registration of suitably credentialed migration agents and the active pursuit and prosecution of the unregistered and unscrupulous operators in this marketplace.

How are Registered Migration Agents regulated?

Prior to regulation of the migration advice profession, there was little to distinguish the trustworthy provider of advice from the unscrupulous operator and little consumer protection for those who fell prey to the latter. In common with many countries Australia introduced a system of regulation for the migration advice profession and to protect consumers.

The migration advice profession in Australia is regulated in accordance with the *Migration Act 1958* (the Act) and *Migration Agents Regulations 1998* (the Regulations). The formal registration process for migration agents was introduced into the Act by Migration Amendment (No 3) 1992. Under Part 3 of the Act, only registered migration agents, 'exempt persons' and family members are able to provide immigration assistance in Australia.

The original Migration Agents Registration Scheme (MARS) established in 1992 was the result of this amendment to the Act. The purpose of the MARS was to (1) ensure people who sought assistance on immigration matters received professional advice and assistance and (2) established a complaints handling mechanism.

The MARS had three objectives:

- to deter professional misconduct by people working as migration agents
- to improve the standards of professional conduct and quality of service in the industry
- to provide a way of dealing with complaints against a particular agent.

The MARS main elements were to:

- establish a register of agents
- to impose a legally-binding code of conduct to guide agents in their business activities
- to establish a registration board to assess the proficiency of agents and to enforce the code.

Although there have been various amendments to Part 3 of the Act over time, the objectives of the MARS remain in strong evidence in the current regulatory system.

It is an offence under the Act to provide immigration assistance or immigration legal assistance in Australia, unless registered as a migration agent or that person is an 'exempt person'[3]. It is also an offence under the Act for a person who is not a registered migration agent to advertise that they, or another person who is not a registered migration agent, provides immigration assistance. This is a strict liability offence attracting a maximum penalty of 60 penalty points ($9540) for providing immigration advice or immigration legal advice in breach of the Act. Unregistered practitioners who also charge a fee for providing that advice may be imprisoned for up to ten years. Sentences of two years may be imposed for recommending a person who is not a registered migration agent or engaging in false advertising (sections 280-285 of the Migration Act 1958).

What do Registered Migration Agents do?

Registered migration agents are permitted under the Act to provide *immigration assistance* to clients and to charge a fee for that service. Lawyers may provide *immigration **legal** assistance* to clients, but this *must not* involve any element of immigration assistance, unless the lawyer is also registered as a migration agent with the OMARA. It is not uncommon for lawyers to be registered as migration agents and it is estimated that around one third of all currently registered migration agents hold an Australian legal practising certificate[4].

Immigration assistance is defined in section 276 of the Act as:

> *A person using or claiming to use, their knowledge of migration law and procedures to assist a visa applicant, sponsor, nominator or cancellation review applicant, in a variety of situations. This includes preparing visa applications, nominations and sponsorships; providing advice on visa applications, nominations and sponsorships; preparing for court or review proceedings; representing the client before a court or review authority; and preparing other immigration related documentation.*

[3] An exempt person is defined in the Act as: a close family member, that is an applicant's spouse, child, adopted child, parent, brother or sister (it does not include any other relative); a sponsor; a nominator; a parliamentarian and their staff; an official in the course of their duties – for example, lawyers working for Legal Aid or departmental staff performing their duties; or a member of a diplomatic mission, a consular post or an international organisation. Exempt persons are not permitted to charge a fee for their assistance.

[4] Migration Agent Activity Report 1 July to 31 December 2017, https://www.mara.gov.au/media/605906/MAAR_Jul_Dec_2017_Web.pdf

Immigration *legal* assistance is defined under section 277 of the Act as:

A lawyer representing or acting for an applicant in preparing for proceedings before a court in relation to the visa application or cancellation review application, review proceedings; representing the client before a court or review authority; and preparing other immigration related documentation[5.]

In the course of their work registered migration agents undertake a diverse range of tasks and duties. These are not only procedural, but extend to business, fiduciary and peripheral interpersonal activities. It should also be noted that many registered migration agents also hold other professional qualifications and have practiced in other disciplines that make them additionally qualified and experienced to undertake these activities. A list of some of these tasks and duties appear below as examples of the broad range of activities registered migration agents undertake, including:

Providing migration advice to:

- individual clients on suitable visa options for their circumstances within the skilled, family and humanitarian migration streams and assisting them to make the optimal choice of visa
- employers on options for sponsoring overseas workers
- community groups wishing to sponsor refugees or asylum seekers
- visa compliance requirements
- administrative and legal appeal options

Preparing applications and other related documentation including:

- visa applications, sponsorship and/or nomination application forms
- skills assessment applications
- character and police certificates for client applicants
- expressions of interest and responding to Departmental invitations to apply for migration

Preparing detailed submissions in relation to:

- health issues which have significant costs and may have a prejudice to access implications to Australians
- significant character concerns
- failure to comply with visa conditions or to depart Australia as required

[5]Under the Act immigration assistance is not provided by a person who undertakes clerical work, translating or interpreting services, suggests to another person that they may need to apply for a visa; passes onto another person Information produced by a third person, without giving substantial comment on, or explanation of, the information, or helping with an application for citizenship

- failure to provide accurate information or true documents
- employers not maintaining sponsorship obligations or employing persons in breach of working conditions
- family violence
- custody arrangements
- asylum claims

Assessing employer client business records and assisting in preparation of relevant supporting documentation, including:

- accounting and financial reports and tax records
- human resource and employment contract compliance
- business plans and organisational charts
- genuine position and genuine need statements
- job advertising and Annual Market Salary Rate research

Liaising and communicating with the Department on behalf of clients, in relation to:

- lodged applications
- responding to requests for further information or clarification from the Department for lodged applications
- unmet service standards
- jurisdictional and administrative error
- requests for priority processing

Representing clients at Departmental interviews, tribunals and courts of law, including:

- preparing submissions and cases for presentation to the Administrative Appeals Tribunal (AAT)
- representing clients at AAT hearings
- translating and interpreting
- preparing submissions and making applications for Ministerial intervention
- preparing cases and representing clients at the Federal Circuit Court or the High Court (if also qualified as a legal practitioner)
- visiting clients in immigration detention and at offshore processing centres

Complying with the Code of Conduct fiduciary duties:

- issuing fee estimates, service agreements, tax invoices and receipts and statements of service
- maintaining clients' and operating bank accounts correctly
- paying and recording disbursements transactions

Working on their business, not in their business:

- managing employees
- advertising and marketing
- developing business strategies

Due to the close interpersonal nature of migration work, clients often depend on their agent for all manner of peripheral advice or support, such as: job hunting, sourcing accommodation, relocating, education and enrolment advice, translating and interpreting, connecting them to community services and ethnic groups, counselling and support in cases of family violence or other trauma, referrals to professional counsellors, social services, charities and emergency accommodation. many MIA members report that it is not unusual for migration clients to feel that their agent is part of their social network and even an extended family member.

Term of reference 1

Examine the registration and regulation of migration agents in Australia including:

1. ***education***
2. ***English proficiency***
3. ***payment***
4. ***fee-scheduling***
5. ***suitability and stringency of the accreditation process and evidence of deficiencies***

1. Education

Entry level qualification

The entry level tertiary qualification to become registered as a migration agent in Australia has been progressively upgraded since the inception of the registration system in 1992. The entry level professional qualification now required to gain registration are determined and approved by the OMARA. There are currently three educational pathways that allow entry to the profession:

- Graduate Diploma in Migration Law and Practice*
- Master of Australian Migration Law and Practice*

*graduates of both courses must also sit a Migration Agents Capstone Assessment

- be the holder of a current Australian Legal Practicing Certificate

This level of professional qualification is commensurate with professional qualifications required by the Canadian[6], British[7] and New Zealand[8] immigration adviser regulatory authorities.

The post graduate nature of the Diploma and Masters qualifications ensures that Australian Registered Migration Agents most often hold undergraduate degrees and have work experience in other professions, before turning to a career in the migration profession. Common professional backgrounds are in accountancy, general and corporate law, finance, human resource management, training and education, and engineering. Given that the largest proportion of the Australian migration program is devoted to skilled and business migration streams, this previous experience provides a solid foundation from which to provide broad ranging and integrated migration advice.

[6] Immigration Consultants of Canada Regulatory Council http://iccrc-crcic.info/become-a/
[7] Office of the Immigration Services Commissioner https://www.gov.uk/government/publications/how-to-become-a-regulated-immigration-adviser
[8] Immigration Advisers Authority http://iaa.govt.nz/become-adviser/

MIA member survey result

Over 60% of MIA member respondents held a minimum undergraduate degree prior to undertaking further education to become a registered migration agent. 15% undertook specifically designed migration law courses prior to the introduction of the degree prerequisite, 10% gained entry to the profession as holders of legal practising certificates and 8% were practising as government endorsed migration advisers prior to the introduction of registration.

Source: MIA member survey 16 April 2018

The 'entry to practice' threshold has also been increased with the introduction of the two part Migration Agents Capstone Assessment (Capstone Assessment), which comprises a 3.5 hour written component, consisting of multiple choice, short answer and long answer format questions and a 1.5 hour oral component conducted face to face through web conferencing and incorporates a client interview and file note. The Capstone Assessment will be delivered by the College of Law Limited and is designed to assess the candidates' ability to meet the Occupational Competency Standards[9] for registered migration agents. The first assessment will be conducted in July 2018.

The MIA is confident that the new tertiary level entry qualifications and the capstone assessment required to gain registration as a migration in Australia are appropriate and robust.

Recommendation 1

The MIA recommends that the current professional entry level qualifications and assessment for registration as a migration agent in Australia remain unchanged.

Continuing Professional Development

Each of the selected benchmark countries require migration agents/immigration advisers to undertake continuing professional development (CPD) annually (Table 1). The CPD requirements imposed on Australian registered migration agents are closely aligned to the CPD requirements in both Canada and New Zealand. The CPD content across these two countries and Australia is focussed on maintaining the currency of professional knowledge and specific occupational competencies. The MIA supports the continuance of the current framework that underpins the CPD requirements for Australian registered migration agents.

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

In contrast the British system displays considerable difference. This CPD system does not prescribe the amount of CPD required, does not focus on specific topics and allows immigration advisers to assess their own developmental needs and learning program. There appears no specific requirement for immigration advisors to maintain currency of legislative knowledge. Similarly, there is a low monitoring level of the individual's CPD compliance. The MIA does not believe that such a system is in the best interests of either the profession or consumers of migration advice.

	Australia	Canada	New Zealand	United Kingdom
Duration	10 points – minimum 10 hours	16 hours	20 hours	Not prescribed
Mandatory topic	One point	No	One hour	None prescribed
Delivery mode	Defined Category A – interactive intensive or formal education modes Category B – flexible modes	Broad range and variety, but caps on percentage of specific formats eg publishing articles only 50% of total required	Very flexible and self determined – development of CPD plan. Can include mentoring, facilitation and industry contribution	Broad range and variety – development of personal learning objectives and CPD plan
Content	Focussed on identified occupation competencies	Canadian immigration/citizen ship related legislation **only**. Specifically **excludes** business development and specialisation courses	Focused on identified occupational competencies	Self determined focussing on quality of service, future business aims, professional weaknesses and regulatory obligations
Compliance	OMARA maintains formal record of individual's activities. Checked before registration is renewed	Randomly audited – non- compliance may result in fine or suspension	Reported online or evidence of attendance provided as part of renewal process.	Audited randomly or as a result of a complaint.

Table 1 Continuing Professional Development Requirements – Country comparison

Recommendation 2

The MIA recommends that the Continuing Professional Development system for Australian registered migration Agents continues unchanged.

Recommendation 3

The MIA recommends that the quality and integrity of the Continuing Professional Development system for Australian registered migration agents be protected by regular benchmarking with industry best practice across comparable international regulatory authorities.

Australian registered migration agents are becoming accustomed to a new CPD environment, which commenced in January 2018. This legislative deregulation of CPD provision resulted from a recommendation of the *2014 Independent Review of the Office of the Migration Agents Registration Authority* by Dr Christopher Kendall (Kendall Review) that "*the type and number of service providers that can operate should be determined by the market".*[10]

Rather than approving all individual CPD activities as previously, the OMARA now approves CPD providers, who are then expected to comply with a set of CPD Provider Standards. This change has led to a significant alteration in the mode of delivery of CPD to registered migration agents. CPD activities are now categorised as 'A' or 'B' type activities, based on the following criteria:

Category A

- Workshops – either face to face or online, conducted in real time, by a facilitator or designed for intensive learning of specific subject matter in an interactive manner. CPD value equals one point per hour
- Programmes of Education – units in Australian Migration Law at the AQF level 8 or above, ie Honours, Graduate Certificate or Diploma or Master level (post entry level). CPD value equals five points per unit.

Category B

- Conferences, seminars and lectures – conducted in real time by a facilitator, either face to face or online. CPD value equals one point per 1.5 hours.
- Private study assessment – may include written material or structured e-learning without a facilitator. CPD value equals one point per activity, with a minimum duration 1.5 hours.

[10] 2014 Independent Review of the Office of the Migration Agents Registration Authority, https://www.homeaffairs.gov.au/ReportsandPublications/Documents/reviews-and-inquiries/omara-review.pdf

Australian registered migration agents are required to undertake a minimum of ten CPD points, including one mandatory point, to be eligible to renew their registration each year. They must now accumulate at least five Category 'A' points per year. The mandatory CPD point must be undertaken in either an Ethics or Code of Conduct topic as either a Category A or B activity. Previously there had been little regulation placed on the modes of delivery or agents' individual choice of topic, apart from the mandatory activity. The compulsory Continuing Legal Education (CLE) undertaken by holders of Australian legal practicing certificates and Accredited Specialists in Immigration Law, as part of their legal professional requirements, is recognised by the OMARA for ongoing registration purposes and these legal practitioners are not required to undertake further CPD.

MIA member survey result
MIA members indicated that 80% undertake more than the required 10 CPD points per year, with 14% of these undertaking 16 to 20 CPD points and 9 % more than 20 CPD points.

Source: MIA member survey 16 April 2018

The MIA has a long history of providing quality CPD programs for registered migration agents. The MIA provides a broad range of activities in a variety of format including face to face, online and live streamed interactive seminars and workshops, video casts, podcast and private study modules, regional and national conferences and lectures.

However, the MIA is gravely concerned about the direction of the CPD provision since its deregulation. The MIA believes that the quality of CPD education has been severely diluted by this recent deregulation of the CPD sector, which has led to the market being flooded with a low-cost, high-volume approach CPD provision. Some currently approved CPD providers are pursuing pricing strategies that offer CPD products at seemingly unrealistic pricing levels. Such strategies can only negatively impact the quality and integrity of CPD provision.

Several CPD providers are labelling every activity provided as Category A activities, to make them more attractive, but with little apparent observance of the delivery required by the CPD Provider Standards[11]. For example, activities that were previously presented as 90 minute CPD activities with little interactive content, are now being marketed as 60 minute Category A online workshops. Some providers also appear to be using loss leader CPD pricing as promotion for other more profitable products and services that they provide.

[11] https://www.mara.gov.au/media/578374/OMARA_Instrument_CPD_17_047.pdf

MIA member comment:
Certain CPD providers in Australia promote single session 10 point programs. The sessions are poorly presented and the information while accurate is somewhat dated and doesn't really increase professional knowledge. These [10-point days] are simply the means to an end of achieving 10 points to re-register.

Source: MIA member survey 16 April 2018

These types of practices may ultimately drive quality providers out of the CPD market. If the CPD provider sector permitted to continue on its current trajectory, it can be reasonably anticipated that the quality of migration advice provided by migration agents will be undermined. This will eventually damage the integrity of the advice provided by profession and the prospects of vulnerable consumers for whom the protection of registration of migration agents was originally introduced.

Previously, the OMARA audited CPD provision by attending specific CPD activities and visiting provider premises to inspect management of course materials and records. It has been previous practice for the OMARA to provide warning of these visits. It is common knowledge within the profession that certain CPD providers will provide a very different learning experience when the OMARA is present, to that which they usually provide.

Recommendation 4

The MIA recommends that the Office of the Migration Agents Registration Authority undertake an urgent and rigorous audit of current Continuing Professional Development providers for compliance with the legislative CPD Provider Standards.

2. *English proficiency*

English language proficiency requirements for registration and renewal of registration as a registered migration agent have been the subject of significant scrutiny and debate amongst the migration advice profession. Prior to May 2001 there was no English language proficiency requirement when registering as a migration agent. Between that date and August 2006 various methods of demonstrating English language proficiency were introduced, which included having been educated

with English as the mode of instruction, achievement of specified scores in IELTS or TOEFL English language tests, the Special Tertiary Admission Test (STAT) in combination with an offer from a tertiary education institution, and the National Accreditation Authority for Translators and Interpreters (NAATI) Level 3 competence.

Subsequently, the Board of the Migration Agents Registration Authority determined that from July 2009 that the English Language Proficiency requirement for initial registration would be a minimum IELTS academic band overall score of 7.0, with minimum scores of not less than 6.5 in any of the four modules, or a benchmarked equivalent.

All first time applicants for registration as a migration agent must demonstrate that they meet the English language requirement by one of four options.

Education Option 1

Successful completion of:

- secondary school studies to the equivalent of Australian Year 12, with a minimum of four years' study at secondary school or equivalent; and
- a Bachelor's degree or higher degree, with a minimum of three years' equivalent full-time study; where these secondary school and degree studies were completed at educational institutions in Australia, Canada, Ireland, New Zealand, South Africa, the United Kingdom and/or the United States; and
- English was the language of instruction at these educational institutions; and
- the study was undertaken while living in the country where the degree was awarded, and the schooling completed.

Education Option 2

Successful completion of:

- secondary school studies either to the equivalent of Australian Year 10 or Year 12; and
- at least 10 years of primary and/or secondary schooling where English was the language of instruction and the schooling was undertaken and completed in Australia, Canada, Ireland, New Zealand, South Africa, the United Kingdom and/or the United States; and
- while residing in either Australia, Canada, Ireland, New Zealand, South Africa, the United Kingdom and/or the United States throughout the period of the schooling.

IELTS (Academic) or TOEFL IBT

Have achieved, no more than two years before making the application for registration:

- A minimum overall test score of 7 in the International English Language Testing System (IELTS) in the Academic module, with a minimum score of 6.5 in each subtest (speaking, listening, reading, writing); or
- A minimum overall test score of 94 in the Internet Based Test of English as a Foreign Language (TOEFL) (IBT), with a minimum score of:
  - 20 in speaking
  - 20 in listening
  - 19 in reading
  - 24 in writing

  Note: *IELTS and TOEFL are currently the only specified tests of English proficiency*.

Legal Practising Certificate

Hold a current Australian legal practising certificate[12]

Australia's English language requirements for registration as a migration agent require a high level of proficiency, provide a range of methods to meet the requirements that take into account applicants' educational backgrounds and countries of origin and are consistent with those of the benchmark countries (*see Appendix A*).

Recommendation 5

The MIA recommends that the English language proficiency requirements for initial registration as a migration agent in Australia remain unchanged.

3. Payment

The fiduciary duties and obligations of registered migration agents to their clients are comprehensively defined and strongly regulated by the Code of Conduct. Multiple sections, most particularly Part 5, of the Code of Conduct establish the duties and the actions required of registered migration agents (*see Appendix C*).

[12] OMARA website https://www.mara.gov.au/becoming-an-agent/registration-requirements/english-language/

Prior to entering into an agreement to formally represent a client, the registered migration agent must provide a written ***fee estimate***, which is generally formalised in an Agreement for Services (Clause 5.2(c) of the Code). The fee estimate is essentially a quotation for providing the services to the client and is designed to provide clients with an understanding of the likely costs they will incur in retaining the migration agent.

The fee estimate *must* include a list the professional fees the registered migration agent will charge, describe these services in sufficient detail for the client to understand the services they will receive, state the estimated time that it will take to perform these services, the disbursements such as application fees that the client will incur, whether GST will be incurred, payment terms and any other relevant fees or charges.

All monies paid *in advance* to a registered migration agent must be deposited into a discrete 'Clients' Account', or trust account if they are a legal practitioner. Receipts must to be provided on every occasion that a client makes a payment the agent. A tax invoice for services performed by the migration agent must be issued before withdrawing monies from the Clients' Account. On final completion of a matter the Registered Migration Agent must issue the client with an itemised *Statement of Service* as a final account of all the fees and charges incurred throughout the matter (Clause 5.5(b) of the Code). The Code also specifies the process for notifying clients of variations to the fee estimate that may occur during the course of a matter (Clause 5.2(d)), or in the circumstances where either the client or the registered migration agent wish to terminate the agreement (Clause10.1(b)). The Code of Conduct also requires Registered Migration Agents to ensure their employees comply with these requirements (Part 8 of the Code).

The OMARA maintains an excellent resource, the Client Monies Toolkit[13], to assist Registered Migration Agents to understand and comply with their fiduciary obligations under the Code of Conduct.

In practice, registered migration agents charge clients either by providing a 'lump sum' quote for the full application or service, or by an hourly rate. The latter method is usually more favoured by those registered migration agents who are also lawyers or when undertaking tribunal matters where it may be difficult to estimate the time that might be involved. The estimation of these fees will be discussed in more detail the following section on fee scheduling.

[13] Client Monies Toolkit,
https://www.mara.gov.au/media/77948/client_monies_toolkit_navigable_mar2013.pdf

Many migration matters take extended periods to be resolved. Parent visa applicants may have waited in the migration queue for many years, even decades and appeals to tribunals may take in excess of two years before they are heard and decided. For this reason, migration agents will often divide the clients matter into task based blocks of work and apportion payment for those sections of work across the life of the matter. For example, the registered migration agent might request 50% of their professional fee to be paid on signed acceptance of fee estimate and the remaining 50% when the application is lodged. Similarly, the practitioner might apportion an amount of their professional fees to specific tasks such as preparing and lodging a skills assessment application, lodging a partner sponsorship application and the associated visa application separately. Payments made by clients in advance of the specified service being completed are required to be deposited to the agent's Clients' Account and can only be accessed once that block of work has been completed and a tax invoice issued to the client.

MIA members survey result

MIA members indicated that almost 44% charge a lump sum fee for matters and 40% a fee per service, where multiple services are provided with in an application. 7% of respondents indicated that they used a mix of lump sum and hourly rates, particularly where undertaking appeal work. Less than 6% indicated that they charge on an hourly basis, 2% worked on a voluntary or pro bono basis. None indicated that they charge on a 'no win, no fee' basis.

Source: MIA member survey 16 April 2018

The MIA is of the view that the current Code of Conduct comprehensively regulates the fiduciary obligations of registered migration agents to their clients.

Recommendation 6

The MIA recommends that the regulation of the fiduciary duties of registered migration agents by the Code of Conduct for Registered Migration Agents remain unchanged.

4. Fee-scheduling

There is no statutory scale of fees for registered migration agents, although the Code of Conduct requires agents to set and charge fees that are reasonable in the circumstances of the case (Clause 5.1 of the Code). The OMARA publishes fee information on its website, collected when agents are renewing their registration. This is a somewhat 'blunt instrument' as information collected refers to only a small proportion of the types of matters registered migration agents undertake and does not

collect information on the level or complexity of matters. The OMARA has decided to discontinue collecting this information in the future for this reason. Nevertheless, 50% of MIA member respondents indicated that they set their fee schedules with reference to this OMARA data.

The OMARA website provides the following insight into how Registered Migration Agents might determine to schedule their fees for consumers:

- the type of application or service
- the amount of time it will take to prepare a visa application
- the level of service required
- complexity of the circumstances
- the number of applicants included in the application
- the experience and qualifications of your agent. Lawyer agents or agents with many years of experience, may charge higher fees

MIA member survey result

MIA members indicated that they also took into account when setting their fees:

- *market rates, competitors' prices and industry trends*
- *how much the client can afford*
- *overhead costs, including employing staff and maintaining professional offices*
- *reasonable reward for their expertise/value of their service/skills/ reputation*
- *estimated time to complete service x hourly fee, converted to a lump sum*

Source: MIA member survey 16 April 2018

A snapshot of average fee data collected by OMARA for the periods 1 March to 30 June 2013, calendar year 2015 and the 2016/17 financial year, demonstrate little movement in the average fees charged by Registered Migration Agents over that time, even in the face of significant increases in the complexity of some visa classes and associated applications (*Appendix D*). This may potentially be attributed to factors such as, the large number of new agents constantly entering the market and those leaving the profession due to low financial rewards, increased opportunity for applicants to lodge their own applications, and changes to visa programs that reduce the number of applicants for

migration and businesses to sponsor overseas workers. Given the apparent stagnation and control of registered migration agent fees as a result of these market forces, the MIA believes little collective risk of unfair pricing or price gouging is posed to consumers of migration advice in the current market.

Recommendation 7

The MIA recommends that the Registered Migration Agent fees not be regulated and continue to be determined by market forces.

5. Suitability and stringency of the accreditation process and evidence of deficiencies.

Suitability for the current accreditation processes

The Office of the Migration Agents Registration Authority (OMARA), is the current regulator of Registered Migration Agents and migration services in Australia, administering a comprehensive regulatory framework, including the relevant provisions of the Act.

The OMARA's current objectives are to ensure that[14]:

- clients needing migration services understand their rights
- registered migration agents understand their obligations
- only suitable people are registered as agents and that unsuitable people are refused registration or re-registration
- agents maintain the knowledge and skills needed to provide accurate and timely advice to their clients
- agents are monitored for integrity of conduct and quality of immigration assistance
- clients of registered or formerly registered agents have an effective way to complain
- handle complaints efficiently and maintain an extensive probity framework to address concerns about potential or real conflicts of interest.

Since its introduction in 1992 the Australia migration agent registration process has been strengthened with specific entry level tertiary qualification requirement, a regime of annual mandatory continuing professional development and formally tested English language skills, where required.

[14] https://www.mara.gov.au/about-us/who-we-are-and-what-we-do/

To be eligible for initial registration an applicant must be able to demonstrate that they:

- are an Australian citizen or permanent resident[15]
- satisfy the prerequisite knowledge requirements[16]
- meet an English language proficiency level equivalent to the level of IELTS 7[117]
- are a fit and proper person by supplying an Australian Federal Police National Police Certificate
- have obtained a minimum of $250,000 professional indemnity insurance cover
- maintain a professional library containing a significant amount of mandated legislation related to migration procedure to ensure currency of knowledge
- declare in a statutory declaration that they are a fit and proper person, a person of integrity and are not related by employment to an individual who is not a person of integrity.

The OMARA is authorised to confirm and share the personal details of a registration applicant with various authorities including the Australian Securities and Investment Commission and for verification purposes overseas, if required. Applicants applying for registration must also provide Australian Federal Police checks as part of the process.

To be eligible for annual registration renewal, a registered migration agent must continue to:

- have met their annual specified continuing professional development requirements
- maintained their professional library
- maintained their professional indemnity insurance at the requisite minimum level of coverage
- continue to be a fit and proper person, and a person of integrity
- have not had their registration suspended or cancelled by the OMARA

[15] Holders of a NZ Immigration Advisors Authority license are also eligible under the Trans Tasman mutual recognition principle

[16] The knowledge requirements have been recently reviewed and upgraded. From 2018 applicants are required to have completed a post graduate Diploma in Australian Migration Law and Practice and sit a separate Capstone examination. Until lawyers are removed from the OMARA regulatory system, an Australian Legal Practicing Certificate is also acceptable

[17] Applicants who have completed mandated periods of schooling and tertiary education in Australia, Canada, Ireland, New Zealand, South Africa, the United Kingdom or the United States are exempt from English language testing. Holders of an Australian legal practicing certificate are likewise exempt.

The Department's Procedural Instructions state that the terms '*fit and proper*' and '*person of integrity*' indicate an intention to confer a wide discretion for refusal of an application for registration as a migration agent. The terms encompass:

- knowledge of the migration scheme and the ability of the person to fulfil the position of migration agent
- honesty to execute the role truly without malice or partiality
- ability to execute the role diligently
- character (because it provides indication of future conduct) and reputation (because it provides indication of public perception as to likely future conduct)
- competence and integrity: such that others may entrust their affairs to the agent's care and that the agent is able to prepare visa applications competently and deal competently with queries that may be raised by officers of the Department,
- reputation and ability, such that officers of the Department may proceed upon that footing that the visa applications lodged by the agent have been prepared honestly and competently.
- the following issues as evidence of character that may present a risk to the client such as criminal offences in any country, bankruptcy, investigation of academic misconduct refusal of previous security clearance, previous unlawful migration practice[18].

Registered migration agents are required to comply with the Code of Conduct for Registered Migration Agents[19]. The provision for a Code of Conduct is set out in Section 314 of the Migration Act 1958 and is prescribed in Schedule 2, Regulation 8 of the Migration Agents Regulations 1998.

When benchmarked against the comparable countries, the Australian system for registration of migration agents is very similar. Each country requires specific, relevant, tertiary educational qualifications.[20] In Australia, Canada and New Zealand entry level qualifications to the profession are obtained as post graduate Diplomas. In addition, applicants in Australia and Canada are also required to sit a capstone/full skills exam before being eligible for registration. In New Zealand and the United Kingdom systems, entrants to the profession must undergo periods of supervised practice before unrestricted practicing licenses are granted. The United Kingdom also has a system

[18] Migration Procedural Instructions https://legend.online.immi.gov.au/migration/2017-2020/2018/13-04-2018/policy/Pages/_document00001/_level%20100011/level%20200106.aspx#7

[19] https://www.mara.gov.au/media/553229/Code_of_Conduct_April_2017.pdf The Code of Conduct is also currently undergoing review and update

[20] In the British system, tertiary qualifications are required only to be accredited at Level 2 and 3

for registering organisations that provide migration advice and unlicensed or Level 1 advisers may work in these businesses under supervision.

Accreditation processes for registration or licensing as an immigration adviser in all of countries impose an equivalent requirement to the Australian 'fit and proper person' and 'person of integrity' tests. Migration agents/immigration advisers in the four countries are regulated under Codes of Conduct/Standard, with associated formal complaint and disciplinary systems and specific sanctions. Cancellation of registration or licenses to practice are the ultimate sanction in all countries. In addition, the Canadian regulatory authority can impose financial penalties for breaches of that Code, including interestingly, for not completing sufficient CPD activities. Benchmarked against these other countries, Australia's accreditation system for registered migration agents is stringent, credible and appropriate.

MIA member comments
The initial registration process including the course/qualification now seems to be very thorough.
It is a good system, but it is useless if the Department does not worry about unregistered agents and even gives them assistance.
The system is stringent when combined with the ongoing CPD requirement

Source: MIA member survey 16 April 2018

Recommendation 8

The MIA recommends that the current system of OMARA accreditation / registration of migration agents remain unchanged.

Evidence of deficiencies in the current accreditation system

The Australian entry level qualification for a non-lawyer applicant for registration was increased in 2018 from a Graduate Certificate to Graduate Diploma level qualifications and the Capstone Assessment were introduced to address the Kendall Review's perceived deficiencies in the accreditation of Australian registered migration agents[21].

[21] Kendall Review Final Report, p 22, https://www.homeaffairs.gov.au/ReportsandPublications/Documents/reviews-and-inquiries/omara-review.pdf

Dr Kendall also recommended that new entrants to the profession complete a twelve month period of supervised practice. While 66% of surveyed MIA members reported little evidence of deficiencies in the accreditation process, the remaining respondents were vocal on the need for some form of internship or supervised practice to be introduced.

MIA member comments:

There are numerous websites/forums where the question that are posted indicate that some registered migration agents, both lawyer and non-lawyers, indicate a lack of knowledge that can only be gained with experience.

New agents should not be able to go straight into sole practice, the courses have improved greatly but still many graduates are not practice ready.

It has always been my view that it is irresponsible to allow newly qualified agents to hold an unrestricted [registration] with so little knowledge and experience.

A period of supervised training would be appropriate for registered migration agents who do not have suitable and appropriate professional experience.

A provisional or restricted registration system should be introduced as in NZ and the UK, so no inexperienced person could run a practice straight away. That will be good for protecting consumers and the standards of the industry.

Source: MIA survey 16 April 2018

The MIA has also observed the significant difficulty some newly registered migration agents experience when starting out in the profession and is at times extremely concerned about the complex cases some will take on with little experience.

Supervised practice has been previously rejected by OMARA as too difficult to implement in the Australian context. It is considered that there would be too few supervised employment opportunities available, due to the high number of migration practices operated by sole traders. A more practicable alternative in the Australian context might be that used in the United Kingdom. Under that country's system newly registered Level 1 immigration advisors are only permitted to undertake a restricted range of activities for a period of time. British Level 1 immigration advisers are permitted to only lodge specific types of visa and citizenship applications, make applications for Administrative Review for specific types of applications, and apply for variations of visas conditions (*see Appendix E*).

The MIA suggests that the feasibility of such a system should be examined for inclusion as a part of the Australian registration system. Restricting the practice of newly registered migration agents, would allow them to gain a solid grounding and becoming proficient with the processes and procedures of the Australian migration system, while still earning an income and protect consumers from potentially deficient advice.

Recommendation 9

The MIA recommends that the OMARA investigate the feasibility of limiting the scope of practice of registered migration agents in their first year of practice to specific migration advice and assistance activities.

Term of reference 2

The nature and prevalence of fraud, professional misconduct and other breaches by registered migration agents, the current review mechanisms for migration agents and the adequacy of penalties.

MIA member comment:
The public perception of registered migration agents is poor generally because the only stories that they hear about are problems. The many thousands of cases represented by good agents who have all gone above and beyond expectations, are never known.

Source: MIA survey 16 April 2018

The Code of Conduct imposes a range of obligations on Registered Migration Agents covering:

- interactions with clients
- fees and charges, record keeping and financial management
- responsibilities toward other agents
- control of employees
- the requirement to respond if a complaint is made against them

If a complaint is received about a registered migration agent the OMARA will investigate the matter to establish whether a breach of the Code has occurred, determine the appropriate method for dealing with the complaint and consider whether a sanction should be imposed on the agent. It should be noted that the majority of complaints OMARA receives against registered migration agents are found to be without merit.

The OMARA classifies complaints with reference to the complaint classification matrix (*see Appendix F*). This matrix classifies misconduct by the severity of the allegations, indications of the future risk of misconduct and impact on the complainant, in deciding the level of sanction that is applied to the offending agent. The OMARA has one non-disciplinary and three disciplinary levels of action it may take for breaches of the Code. In the cases of a minor breach the OMARA may remind the registered migration agent of their obligations under the Code and give them an opportunity to improve their

practice. More serious breaches may result in escalating levels of disciplinary action. An agent may receive a public reprimand or caution and be required to satisfy conditions set by the OMARA before the caution is lifted. Agents may be suspended for specific periods of time, with or without imposed conditions and cannot practice during this period. The most severe breaches may result in the cancellation of an agent's registration and being barred from being a registered migration agent for up to five years. Disciplinary decisions are published on the OMARA website and a list of sanctioned agents is maintained on that site for consumer protection. If criminal activity is revealed in the course of the investigation, the OMARA refers the matter to Border Watch, another section of the Department of Home Affairs, for further action and possible prosecution.

OMARA statistics consistently demonstrate that between 70% and 80% of complaints made against registered migration agents were dismissed and no breach found. These statistics also reveal that over 75% of registered migration agents have never had a complaint made against them and that sanctions have been imposed on less than 0.3% of registered migration agents in the three years to June 2017[22].

The OMARA has asserted that the number of complaints against registered migration agents are increasing[23]. However, OMARA statistics do not support this assertion (see Table 2). Complaints when measured as a percentage of the number of registered migration agents, are in fact decreasing. Less than half the number of complaints, as a percentage of registered agents, were lodged in 2017 (4.15%) compared to 2014 (9.12%), and less than a third when compared to complaints lodged in 2015 (13.4%). What has increased from 2014 to 2017 is the percentage of sanction as a percentage of complaints. While these results might indicate that proven complaints may be becoming more serious in nature, warranting stronger sanctions, this may also be a function of any number of other factors, not least being a change to a more punitive response to complaints by the OMARA. It must also be recognised only 80 registered migration agents have been suspended, barred or had their registration cancelled since 2008[24].

[22] Statistics compiled from OMARA Migration Agent Activity Reports 2014-2017
[23] OMARA Migration Agent Activity Report January to June 2017
[24] Disciplinary decisions, OMARA website, https://www.mara.gov.au/news-and-publications/public-notices/disciplinary-decisions/

Year	Total number of RMAs	Total number of complaints	Complaints as a % of RMAs	Sanction as % of RMAs	Sanctions as % of complaints
2014	5452	497	9.12%	0.24%	2.62%
2015	6021	807	13.4%	0.18%	1.36%
2016*	6684	515	7.7%	0.61%	7.96%
2017	7006	291	4.15%	0.26%	6.19%

Table 2: Complaints and sanctions as a percentage of Registered Migration Agents FY 2014-2017
2016 figures are unreliable due to change in OMARA collection process.

It is difficult to definitively assess the complaint/sanction rate in the benchmark countries, due to the different manner in which these statistics are collected and reported. Nevertheless, it would appear from publicly available information that in 2016/17, the UK regulator of immigration advisors sanctioned 4.8%[25] of that country's immigration advisors and the New Zealand regulator sanctioned around 1.6%[26] of that country's cohort. No figures were readily available from the Canadian system.

MIA survey respondents indicated that 50% of them had identified conduct that might have been viewed as professional misconduct by an Australian registered migration agent. However, as no definition of professional misconduct, as opposed to incompetence, negligence or inexperience, was supplied in the survey, the response rate is dependent on the respondent's perceptions of what constitutes such conduct. Around 10% of the survey respondents provided sufficient information to clearly demonstrate that they had witnessed professional misconduct by another registered migration agent at *some time* in their career. In a number of these cases it was possible to discern that the identified agent had been barred or cancelled from practicing as a migration agent.

MIA Member comment:
The concept of professional misconduct is not unique to the RMA profession. There are good and bad professionals in any industry.

Source: MIA survey 16 April 2018

[25] Statistics calculated with reference to the OISC Annual Report 2016/17: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/677182/OISCAnnualReportAcounts2016.pdf
[26] Statistics calculated with reference to the NZ Immigration Advisers Authority Judicial and Tribunal decisions: http://www.iaa.govt.nz/adviser/news/decisions/index.asp

Of the surveyed MIA members, 66% believed the current review options were adequate. Some ideas for improvement were suggested by MIA members, including a further sanction be added for serious breaches of the Code of Conduct. Disqualification for life, not just five years, was suggested for the most serious breaches, for example, actions that irreversibly damaged the client's migration prospects.

Recommendation 10

The MIA recommends that the current review mechanisms and processes for registered migration agents remain unchanged.

Term of reference 3

Deficiencies and barriers to relevant authorities' investigation of fraudulent behaviour by registered migration agents in visa applications, including the adequacy of information and evidence sharing between such authorities.

The MIA will confine its input on this term of reference to identified external and structural deficiencies or barriers that may hamper the investigation of fraudulent behaviour, as it is unlikely to be able to provide any significant input into the internal processes of the Department.

MIA member comment

If fraudulent behaviour is occurring to any significant degree, then it probably follows ipso facto, that the authorities are facing inefficiencies and barriers in their efforts to combat it. However, it is really for the authorities themselves to work out what those barriers are, and to obtain from relevant state and federal ministers the delegations they need to conduct investigations and share information. If bureaucratic inertia is the main barrier, then this also needs to be identified.

Source: MIA survey 16 April 2018

The Kendall Review previously investigated the adequacy of information and evidence sharing between such authorities in 2014 and identified deficiencies at that time. The Final Report from that Inquiry observed:

> *It is essential for consumer protection outcomes that there be timely and effective cooperation between the OMARA and the different areas of the Department responsible for the investigation of alleged unregistered practice or criminal conduct by registered agents... [they are] operating under various information sharing restrictions, hat] inhibits or makes it more difficult to develop a strategically integrated approach to regulating the intertwined risks present within the migration advice sector*[27].

[27] Kendall Review, p25 https://www.homeaffairs.gov.au/ReportsandPublications/Documents/reviews-and-inquiries/omara-review.pdf

The Department would be best placed to advise the Inquiry on whether recommendations made in the Kendall Review to improve information sharing were implemented and improvement in information adequacy and evidence sharing resulted as a consequence of those changes.

The MIA understands that complaint and illegal activity procedures are divided between the OMARA and the Department. Complaints about registered migration agents are managed and investigated by the OMARA for adherence to the Code of Conduct. The Department is responsible for addressing cases of criminal conduct by registered migration agents and the investigation of allegations of unregistered practice. The Kendall Review noted that 'in broad terms, follow-up action will depend on the character and quality of the evidence and the seriousness of the alleged activity'[28].

When MIA Members provided comment on the structural barriers to the investigation of fraudulent behaviour, one of the most frequently mentioned obstacle was convincing visa applicants to report the behaviour.

MIA member responses

The main barriers are where there are very serious allegations of fraud the clients are often far too scared to lodge a complaint. I have seen a situation where the agent not only charged exorbitant fees but then threatened the client that they could influence the Department's decision. Thus, the client was too scared to lodge a complaint.

Anonymous reports of fraudulent behaviour don't seem to be taken seriously. However, most clients are reluctant to report fraudulent behaviour if that doesn't help with their negative visa outcome.

When as a brand new agent and not best suited to assist a client who had been defrauded by an RMA I approached the OMARA I was told only the client could report the behaviour, this wasn't appropriate when English was not their first language.

The visa applicant is stuck in a position where they feel they cannot report the conduct to authorities because it will put their visa status at risk due to the Department's approach to breaches of visa rules against visa holders.

[28] Kendall Review, p 33

Recommendation 11

The MIA recommends that the Joint Standing Committee on Migration undertake further investigation of the Department of Home Affairs' internal processes and potential barriers to the investigation of fraudulent behaviour, including the adequacy of information and evidence sharing between such authorities.

Recommendation 12

The MIA recommends that the Department investigates a system that encourages victims of unregistered practice and fraud to make complaints.

Term of reference 4

Evidence of the volumes and patterns of unregistered migration agents and education agents

Volume and patterns of unregistered practice in the migration advice sector.

The MIA and its members are of the view that the terminology used to describe 'unregistered practice' and those who give 'migration advice' is both confusing and misleading.

MIA Member Comments

Can everyone stop referring to these people as 'unregistered migration agents' we do not refer to unregistered doctors or unregistered accountants.

It would be good if the Government spread the word that "agent" does not necessarily mean registered migration agent.

The terminology of registered /non-registered needs to be changed. It is confusing for NESB people. We should just refer to lawyers or migration agents. For example - is the person a migration agent/ lawyer? No … then they can't give migration advice.

Source: MIA survey 16 April 2018

Even the Department's own website uses such terminology in its attempt to warn against unregistered practice:

> *Jill handed over AUD28 500 to a **migration agent** to lodge her visa application and to enrol her at an Australian university. Jill's **migration agent was not registered** and has since disappeared with her money. No visa application was lodged, nor was Jill enrolled at university. The Australian Federal Police and the department are currently investigating Jill's migration agent*[29]

Recommendation 13

The MIA recommends that the term 'unregistered migration agent' be replaced in the Department's lexicon with the term 'unregistered practice' or 'unregistered practitioner'.

[29] https://www.homeaffairs.gov.au/trav/visa/migration-fraud-and-scams/victims-stories#sub-heading-3

Unregistered practice within the migration sphere is rampant. The provision of immigration advice is ***illegal***, if not registered as a migration agent or an exempt person***.*** The MIA receives many reports from members and stakeholders about those providing immigration advice in breach of the Act. While this illegal activity is reported to Home Affairs, there is little apparent action taken by the Department to combat these illegal activities. This is in contrast to the New Zealand system where immigration fraud and unlicensed practice is actively prosecuted, and the details of all convictions published on the Immigration Advisers Authority's website. More overt pursuit and prosecution of unregistered operators in Australia, in conjunction with the previously discussed increased penalties, is required to make unregistered practice less attractive and discourage these illegal operators.

The assistance provided by unregistered individuals is very often flawed and there is little protection for consumers. Victims of unregistered 'advisors' are extremely vulnerable and are disinclined to report their activities for fear it will damage any further migration options. Cases of victims and their families being threatened if they do so have even been reported. Similarly, it can be difficult for those who have been given fraudulent advice from within their own communities to make complaints, as they are often very dependent on the social and other networks within these communities. Even if these victims wanted to make complaints, there are few 'consumer friendly' avenues for doing so (see recommendation 12 above). As a result, there is little official evidence or data on the extent of the problem of unregistered practice.

To determine the dimensions of illegal unregistered practice in Australia is beyond the resources of the MIA. However, MIA members provide sufficient anecdotal evidence to determine that the volume is significant and extremely prevalent.

MIA members specifically identified various industries and occupations where unregistered practice was common, including by education agents, recruitment companies, travel agents, investment advisers, property developers, interpreters and translators, charity and community volunteers. While it is accepted that the provision of such advice in some cases may be well meaning and not intended to circumvent the legislative provisions of the Act, much of this unregistered practice is in blatant breach of the Act. While MIA members often also identify specific countries and ethnic communities where these practices are rife, the MIA is satisfied that these practises are so widespread that it would be unfair and discriminatory to publish that information.

MIA member comments

Advertising offering job visa sponsorships are 100% fraud. I have personally worked with one where his main focus was to take money from the clients offering them fake jobs.

I am aware of recruiters providing migration advice, lodging visa applications, and advertising on their websites that migration assistance is provided and specifying in their contracts of service with employers that migration assistance is part of the service that payment of recruitment fees provides.

It is common among the [deleted] community to provide migration assistance and charge. [Deleted] interpreters are widely assisting people and charge them. I have previously witnessed this situation when I worked with [a migrant resource centre]

Education agents, ethnic newspaper advertisements, there are websites in Australia with unregistered agents advertising migration assistance.

A cancelled migration agent appeared on Indian television making claims of their registration, when their registration had already been cancelled.

Source: MIA survey 16 April 2018

Many members have used the opportunity of this Inquiry to vent their frustration to the MIA on the perceived lack of action by the OMARA and the Department on those providing migration advice illegally. Several MIA members reported having provided solid evidence of unregistered practice to the Department, even meeting with Departmental officers for interviews, yet these people continue to practice with apparent immunity.

The case of Eddie Kang (aka Ted E Kang) provides a prime example[30]. Mr Kang's business activities were widely reported in the media and to the Department as early as in 2013. He was eventually prosecuted and sentenced to 12 months imprisonment in 2016 but was on conditional bail and appealing this conviction until recently when he lost his final appeal. Despite this conviction and while on bail, Mr Kang was found also to be a director of Goldman Pintex Management Pty Ltd in December 2017. At that time Matt Kean, Minister for Innovation and Better Regulation, took the extraordinary step of issuing a media release to warn the public not to deal with this company, which was also involved in fraudulent immigration practises[31]. Disappointing to many registered

[30] http://www.abc.net.au/news/2016-02-08/sydney-businessman-eddie-kang-operating-despite-fraud-charges/7149418

[31] https://www.finance.nsw.gov.au/about-us/media-releases/do-not-deal-goldman-pintex-management-pty-ltd; http://mattkean.com.au/news/media/visa-hopefuls-have-been-warned-stay-away-north-sydney-migration-agency; http://www.abc.net.au/news/2016-02-08/sydney-businessman-eddie-kang-operating-despite-fraud-charges/7149418; http://www.abc.net.au/news/2013-10-15/sydney-businessman-accused-in-alleged-visa-rort/5022152; http://rsmsaustralia.com.au/

migration agents was that it was the Department of Fair Trading that successfully prosecuted Mr Kang for consumer offences, not the Department of Home Affairs for migration fraud and unregistered practise.

MIA member comment

I dealt with one of Eddie Kang's clients. That whole situation was a shocking example of inaction by the Department as he was not a registered agent. It left us all wondering why we bothered to be registered as it seemed like you could get away with everything if you were not registered! We had to use the Fair Work Ombudsman and other pathways and then the police were involved, because of the large numbers of clients involved. Yet he kept practising for several years after the first complaints were made. This review should ensure swift procedures are established to stop such practice as soon as it is brought to the Departments notice.

Source: MIA survey 16 April 2018

The MIA and its members have many suggestions of the methods by which unregistered practice generally, and by education agents may be reduced. It is generally suggested that the Department develop 'risk profiles' for individuals, occupation and industries where the risk of unregistered practice is high, in a similar way to the risk profiling maintained for visa applications and sponsoring businesses, and regularly audit applications received from these sources.

Recommendation 14

*The MIA recommends that applications that are **not** lodged by registered migration agents be regularly audited by the Department for evidence of unregistered migration practice.*

Recommendation 15

The MIA recommends that the Department of Home Affairs more actively pursue and prosecute those who engage in unregistered and fraudulent immigration practice.

Volume and patterns of education agents providing unlawful migration advice



Business signage in Sydney CBD April 2018

The primary functions of education agents are to advise on education courses, education providers and to assist in the enrolment of students at educational institutions. Anecdotal evidence suggests that around one third of education agents are also registered migration agents and legally permitted to provide immigration advice to international students in Australia. Education providers approve or 'license' education agents to recruit overseas students to their courses and pay them commissions of between 10-25% of these students' first year tuition fees. Education agents are not permitted to provide immigration assistance to their international student clients, but in reality, MIA members report wide spread unregistered practice associated with the education agency industry. There is a lucrative financial lure for education agents to cross the line between providing clerical assistance to the students and immigration assistance, as further fees can be charged to the student client for these additional 'services'.

MIA member comment

Onshore student visa assistance at any level is a breach of the law if they are not an RMA. This is the real underbelly of the student market where fraud, fake partner visas, fake 457 and fake RSMS all percolate.

Source: MIA member interview 13 April 2018

The Overseas Students Ombudsman, a specialist role of the Commonwealth Ombudsman, noted in *the 2017 'Safeguarding the student experience: external complaints avenue'* report, *that:*

> *International students are a highly vulnerable group with multiple barriers to accessing complaint services, including lack of social support systems, limited*

understanding of their rights under the ESOS framework and limited English language ability. It was noted that international students have different needs and experiences to domestic students … international students are subject to visa compliance requirements which do not apply to domestic students. Fear of being reported is considered an important factor for international students who may well be scared to complain and vulnerable to exploitation[32].

The Overseas Students Ombudsman provides a guide on education agents on its website. However, the guide is aimed at education providers who are reminded that they '*must ensure their agents adhere to the same standards as providers themselves'*. The matter of migration advice or visas **does not** appear anywhere in this guide (*see Appendix G*).

Rogue education agents operate in a segment of the market where the legislative interpretation of what constitutes the difference between immigration and clerical assistance is either largely misunderstood or blatantly ignored. MIA members report that education agents prepare and lodge student visa applications, and then later employment and permanent residence visas once these students have completed their studies. These education agencies appear to do this with impunity.

MIA member comments

Education consultancies … have one RMA in Sydney to show that their firm has been complying the law. However, there are many administration or education consultants doing advice and visa applications in other visas such as SC485, ENS, RSMS etc. In most of those situation, they do not provide their names as contact persons and do not provide their email addresses either.

Source: MIA member survey 16 April 2018

Where the previous Department of Immigration and Border Protection website provided a section on *Information **for** Education Agents* that advised that they must not provide immigration assistance, no such information exists on the current website. The only information on education agents now is via a well buried link to the Austrade Study in Australia website[33].

[32] http://www.ombudsman.gov.au/__data/assets/pdf_file/0022/42826/Overseas-Students-Ombudsman-Consultation-Report-External-complaint-avenues-for-international-students-A453043.pdf
[33] https://www.studyinaustralia.gov.au

Even on the Austrade website it takes some effort to find reference to the scope of practice education agents can engage in:

> *Remember, education agents cannot guarantee a permanent visa or work placement in Australia after you graduate. Their job is to help with applications, so if it sounds too good to be true, keep looking. A reputable agent will be honest about the application process.*
>
> *If you need migration advice use a migration agent who is registered in Australia. Some Registered Migration Agents are located overseas or have representatives in international markets. If an education agent is based in Australia, it is against the law for them to provide you with migration advice, unless they are also a Registered Migration Agent*[34]

An Education Agent Fact Sheet or information webpage should be reinstated on the Department's site, so that education agents clearly understand the limitations on their activities under the Migration Act. The Austrade Studying in Australia site should also improve its explanation of the limitation placed on its activities. All education providers should be contacted by the Department to remind them of these limits. Consideration should be given to holding education providers responsible for unlawful practice perpetrated by their approved agents. Given that education agency is a lucrative part of the education industry for both the provider and the education agent, it would be in both their interests to comply with such requirements.

Messaging on the differences between immigration assistance and clerical assistance in preparing applications should be improved. The wording of section 276 of the Migration Act is not particularly helpful in informing consumers. A person gives immigration assistance if they *prepare or help to prepare a visa application,* but they do not give immigration assistance if they merely do clerical work to *prepare or help prepare an application*[35].

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[34] http://www.ombudsman.gov.au/__data/assets/pdf_file/0022/42826/Overseas-Students-Ombudsman-Consultation-Report-External-complaint-avenues-for-international-students-A453043.pdf

[35] **Section 276 Immigration assistance**

(1) For the purposes of this Part, a person gives ***immigration assistance*** if the person uses, or purports to use, knowledge of, or experience in, migration procedure to assist a visa applicant or cancellation review applicant by:

(a) ***preparing, or helping to prepare***, the visa application or cancellation review application; or

(b) ***advising the visa applicant*** or cancellation review applicant about the visa application or cancellation review application;

(3) Despite subsections (1), (2) and (2A), a person does not give ***immigration assistance*** if he or she merely:

(a) does **clerical work** to prepare (or help prepare) an application or other document;

The Department's website perpetuates this confusion even further, stating that immigration assistance is given when a person (including a registered migration agent) … *helps you fill in the application form and submit it*. This could equally describe clerical assistance.

The New Zealand Immigration Advisors Licensing Act 2007 incorporates very similar terminology to that of Australia's, but the definitions provided by the Immigration Advisors Authority are much clearer:

- **Immigration assistance** - providing information becomes giving immigration advice when you tailor it to the particular circumstances of an individual or give guidance or assistance to the individual.
- **Clerical work** - is limited to matters where the main task involves recording, organising, storing or retrieving information, computing or data entry, or recording information on any form on behalf and under the direction of another person.
    - You can fill out an immigration application if you are only recording information given to you by a student.
    - If you use your knowledge of, or personal experience in immigration matters to advise, assist, direct or represent the student, you will be providing 'immigration advice'. This could include, for example:
        - advising a student what visa they qualify for
        - advising a student how best to answer a question in the application form, or what additional information might best be included with the application
        - writing a covering letter to accompany the application
        - acting as their representative[36].

Recommendation 16

The MIA recommends that the messaging surrounding the limit of practice of education agents and consultancies be reinstated to the Department of Home Affairs and the Austrade websites.

Recommendation 17

The MIA recommends that the education agency industry be investigated to determine the nature and extent of unregistered immigration practice occurring within that sector.

[36] http://iaa.govt.nz/licensing-toolkit/01.asp

Recommendation 18

The MIA recommends that the Department of Home Affairs implement a communications program to instruct education providers of the specific legislative parameters surrounding the provision of immigration assistance in the Migration Act 1958 and the limit this places on the practices of their approved education agents.

Recommendation 19

The MIA recommends that significant financial penalties be imposed on education providers for breaches of the Migration Act 1958 by their approved education agents.

As the purpose of education agents is to provide information to consumers on education course and education providers, the MIA is opposed to the registration of education agents as this will only serve to further confuse consumers and further stretch government resources. Random audits of applications lodged by education agents would be a more practical way of addressing the issue of education agent compliance.

Recommendation 20

The MIA recommends that a registration regime for education agents not be implemented.

Recommendation 21

The MIA recommends that random audits of applications lodged by education agents be conducted by the Department of Home Affairs to identify instances of unregistered practice.

Barriers to effective prosecution of unlawful practice

> ***MIA member comment***
> *OMARA's lack of jurisdiction to investigate unregistered practice makes a mockery of the registration process.*
>
> Source MIA member survey 16 April 2018

The MIA asserts that there are two major barriers to combating unregistered practice generally, and by education agents, namely:

1. the lack of legal jurisdiction and regulatory power of the OMARA
2. lack of resources, and possibly motivation, on behalf of the Department to pursue these rogue operators.

The OMARA only has the legislative power to regulate registered migration agents. Earlier in this submission the very low level of proven complaints against registered migration agents were detailed (see p 41). Given the regulation and safeguards imposed by the OMARA registration of migration agents, consumers using registered migration agents would appear well protected. In addition to investigating complaints against registered migration agents, the OMARA also undertakes random audits of registered migration agents on an annual basis.

While MIA members who have been chosen for audit often contact the MIA because they are nervous about the process, after the audit they tend to report that it was a valuable professional improvement process. OMARA does not have the jurisdiction to investigate or prosecute unregistered practice, these complaints must be referred to the Department. While the processes for reporting and sanctioning registered migration agents is relatively transparent, what happens to complaints regarding unregistered practice made to the Department is akin to assigning these into a 'black hole'. While the MIA appreciates that there are investigative protocols that must be observed to ensure investigations are not compromised, little is ever heard of any prosecutions apart from the few high profile cases that make it into the media. As such, ***there is no obvious evidence that these complaints are ever followed up.*** In the interests of transparency, the Department of Home Affairs should publish the number of complaints received per year about unregistered migration advice and the outcomes of investigation of these complaints. Similarly, there is no simple method for consumers to identify those who have been prosecuted for providing unregistered migration advice.

In New Zealand the Immigration Advisers Authority[37] publishes outcomes and decisions related to sanction or prosecution of both licensed and unlicensed advice. To further protect Australian consumers, the MIA recommends that a similar policy be implemented and the outcomes of investigations and prosecutions be published on the OMARA website in the same location that sanctioned registered migration agents have their details published.

MIA members provided many examples of poor quality, incorrect advice and fraudulent practices offshore unregistered practitioners:

We have been called upon to unravel many cases where negligence was very clear. Sometimes it is too late by time we are involved, so the process has to start again

There was a serious situation in one country where an Australian citizen (unregistered) set up a migration service and we were extremely fortunate to avoid serious problems as he used my agent registration number. Several hundred clients were seriously affected.

Have had enquiries from prospective clients in India, where the clients have been made to have their skills assessed in two different occupations through VETASSESS, where they actually did not qualify for either of the occupations in the first place. This is just wrong and makes prospective migrants wary of the experience and gives them a negative migration experience.

A client approaching me, with a 4020 bar 188A Investor visa application refusal letter... The client was aiming to settle her business in QLD, but that [offshore] agent sold the client a business in VIC and advised the client that she will be free to live and do business anywhere she likes. The most fatal issue was, the agent ... submitted to faulty and misleading information was, the client subsequently got PIC 4020 barred. [A PIC 4020 ban may result from the provision of bogus or false and misleading documents. The subsequent ban may be for 3 or 10 years depending on the circumstances of the case]

MIA member survey 16 April 2018

Similarly, for those providing Australian immigration advice while domiciled overseas, there is no requirement to be registered with OMARA. The Department provides as the reason for this that Australian law has no jurisdiction outside its borders. Some overseas migration agents are registered with OMARA because they believe this distinguishes them as a professional advisor, but generally providers of Australian immigration advice and assistance overseas are unregulated. Large numbers of unregulated individuals and companies therefore offer immigration advice without the constraints, responsibilities or costs borne by registered migration agents and without the consumer protection. MIA members have always been vociferously opposed to the Department's facilitation of this uneven playing field. Home Affairs' practice of accepting migration applications from this unregulated offshore marketplace serves to perpetuate this questionable offshore advice industry.

[37] http://www.iaa.govt.nz/adviser/news/decisions/index.asp

Recommendation 22

The MIA recommends that the Department of Home Affairs annually publish details of the number of complaints received about unregistered migration practice and the outcomes of investigations into these complaints

Recommendation 23

The MIA recommends that the outcomes of investigations and prosecutions of unregistered migration practice be published on the OMARA website in conjunction with that of sanctioned registered migration agents.

What can be done to address unregistered and unlawful practice?

The issue of unregistered and unlawful practice must be addressed as a matter urgency. The current government agenda of reducing the size of Australia's migration program is likely to create a cohort of potential migrants, many of whom will be graduating international students or temporary work visa holders, with little possibility of remaining in Australia or gaining their desire of permanent residency. Many will be advised by registered migration agents that there is no option for them, forcing them to desperately seek any means of achieving their dream. They will provide rich fodder for the unregistered practitioner market and education agents.

The MIA recommends that a multi-pronged approach be developed to combat unlawful practice. The elements of this program should include:

1. a public awareness campaign to increase recognition of the OMARA registration system and the dangers of using unregistered practitioners.
2. increasing support and funding for advice to migrant communities
3. increasing penalties for unlawful practice.
4. Changing the Department's policies, so that applications are only accepted from registered migration agents (and lawyers when these are eventually removed from the regulatory system) or from the individual applicant.

Public awareness campaign

The awareness of unlawful practice within the community requires improvement, given the language barriers that generally exist for non-English speaking prospective migrants. Migrant community organisations working closely with migrants should be targeted with an overt and active campaign. While the OMARA commendably provides information on its website in a large number of languages, this is not of much use unless the person is aware that the OMARA exists and that there is a system of registration and regulation.

This awareness raising campaign should utilise the foreign language and community media, such as the many foreign language newspapers and magazines available in Australia, community radio stations broadcasting in foreign languages and SBS. Social media, such as WeChat and WhatsApp have the ability to reach large numbers of potential migration consumers at very low cost. Organisations such as charities, churches and local government service providers who deal closely with migrant communities and humanitarian entrants also provide a discrete segment that can be directly targeted with information and promotional material.

Recommendation 24

The MIA recommends that a public multi lingual media awareness campaign be initiated to increase understanding of the regulatory system surrounding the provision of immigration advice.

Increasing support and funding for emerging communities' advice

Individuals within emerging communities (particularly humanitarian migrant communities) often provide support and assistance for visa applicants with language and literacy barriers. Sometimes the assistance while well intentioned, may be inappropriate or incorrect. However, these applicants often do not have the finances to engage a registered agent and funding for non-commercial programs is limited. Increased funding to not-for-profit migration advice providers or provision of Departmental outreach or community liaison officers who could provide advice and assistance would reduce casual and inappropriate support from within those communities.

Recommendation 25

The MIA recommends that funding be increased for not-for-profit migration advice providers to provide immigration advice and assistance to applicants from migrant communities.

Recommendation 26

The MIA recommends that the Department of Home Affairs outreach or community liaison services be developed to assist in the provision of immigration advice to applicant in migrant communities.

Increased penalties

The penalties for unregistered practice must be increased. Given the anecdotal evidence of the large volume of unregistered practice that is occurring, the current fine of 60 penalty units (less than $10,000) does not appear to be providing sufficient disincentive to prevent these practices. In New Zealand the penalty for unlicensed practice is NZ$100,000 and/or up to seven years' imprisonment. In Australia, a penalty of two to ten-year imprisonment may only be imposed when the unregistered practitioner has charged for the immigration assistance given. The message that this illegal activity has consequences needs to be supported with suitable financial penalties that are aligned with the grant of damages.

Recommendation 27

The MIA recommends that the financial penalty for providing unregistered immigration assistance be increased to statutory penalty points equivalent to $100,000 to provide a more realistic disincentive.

Refusal of applications from unregistered practitioners.

As the jurisdictional limitations to 'policing' overseas unregistered practice seem insurmountable, the Department should look to other methods of protecting consumers. One method would be to prevent the situation that allows consumer fraud to occur in the first instance. For example, in both the Canadian and New Zealand immigration systems, applications are only accepted from licensed immigration advisors, even if domiciled offshore, or from the applicant themselves. Similarly, in Canada the applicant is held responsible for using an unlicensed advisor and their application may be negatively impacted.

The idea of the introduction of a similar system in Australia has been previously suggested to the Department but has been rejected because it was thought that unregistered operators would find ways to circumvent this system. While the MIA accepts that it would be impossible to prevent all fraudulent activities, the Department's increasingly sophisticated existing technology and online

systems already have data matching capacity that could be utilised to combat such practices. For example, it is known that unregistered practitioners will often create an individual ImmiAccount for each client they lodge an application for and generic email address. The Department's computer systems, for example, could identify frequently used IP addresses. Similarly, access to organisational ImmiAccounts and the ability to lodge multiple applications could be restricted to registered migration agent and authorised organisations only. Further mechanisms could be built into applications to more readily identify unregistered operators, such as improved recording of information about who provided assistance with preparing applications and requiring evidence of their legal right to assist with the application, for example, evidence of the familial relationship or of being an exempt person.

Additionally, if the Department increased its focus on working more co-operatively with registered migration agents by improving communication channels and giving registered migration agent prepared applications priority service, consumers would observe the advantages of using a registered migration agent, over an unregistered operator, and reduce the demand for these unregulated and unregistered services.

Recommendation 28

The MIA recommends that the Department of Home Affairs only accepts migration applications from registered migration agents, legally exempt persons and individual applicants.

Recommendation 29

The MIA recommends that only registered migration agents and legally exempt persons/organisations be authorised to operate 'ImmiAccounts' that allow multiple application lodgement.

Recommendation 30

The MIA recommends that individuals who have been provided advice related to their migration applications provide evidence of the legal right of that person to provide that assistance.

Recommendation 31

The MIA recommends that the Department of Home Affairs investigates the existing capacity of its computer systems, programs and data for identifying individuals and companies utilising unregistered practice to lodge migration applications.

Term of reference 5

Review the appropriateness of migration agents providing other services to clients.

The MIA acknowledges that potential exists for conflicts of interest to arise in the migration advice profession, as it may do in any other profession. The migration advice profession, also in common with other profession is governed by a formal Code of Conduct.

The Code of Conduct for Registered Migration Agents addresses conflicts of interest in Part 2[38]:

2.1A A registered migration agent must not accept a person as a client if the agent would have any of the following conflicts of interest:

(a) the agent has had previous dealings with the person, or intends to assist the person, in the agent's capacity as a marriage celebrant;

(d) there is any other interest of the agent that would affect the legitimate interests of the client.

2.1B If it becomes apparent that a registered migration agent has a conflict of interest mentioned in clause 2.1A in relation to a client, the agent must, as soon as practicable taking into account the needs of the client, but in any case within 14 days:

(a) tell the client about the conflict of interest; and

(b) advise the client that, under the Code, the agent can no longer act for the client; and

(c) advise the client about appointing another registered migration agent; and

(d) cease to deal with the client in the agent's capacity as registered migration agent.

Registered migration agents are required to adhere to this Code or risk sanctions if it is breached. Registered migration agents who are also legal practitioners are similarly governed by the Australian Solicitors Conduct Rules.

[38] https://www.mara.gov.au/media/553229/Code_of_Conduct_April_2017.pdf

As detailed earlier in this submission registered migration agents most often come to this profession with as a minimum an undergraduate degree, but more likely a post graduate qualification and varied employment experience. The law and accountancy are the most common professional backgrounds of registered migration agents. For example, around one third of MIA members hold Australian legal practicing certificates.

MIA member survey respondents indicated that 69% provided extra services to their migration clients. The respondents were asked if the potential for conflicts of interest arose, how these were managed. While a number of the respondents reported having formal processes for dealing with potential conflicts, most referred to the relevant Code of to inform their practices.

The MIA has little concern that where a practitioner is appropriately licensed or registered to provide other services to their migration clients, that they will observe the appropriate protocol in accordance with the relevant Code. Certified practising accountants and solicitors, for example, should not be prevented from providing relevant professional advice to their migration clients.

The MIA has serious concerns about the provision of additional services to migration clients, where the practitioner is not formally qualified or appropriately accredited to provide those services. Of particular concern is the lack of consumer protection afforded by the conflicts of interest surrounding business and investor visas, and the often large amounts of money that are involved.

The MIA suggest that professional standards be strengthened further to prevent registered migration agents without professional accreditation from providing other services to the same migration advice client. This strengthening of the standards would provide additional protection to migration advice consumers.

Recommendation 32

The MIA recommends that registered migration agents who retain appropriate formal professional accreditation not be prevented from providing those services to migration clients in accordance with the relevant Codes of Conduct or practice conditions as determined by the relevant governing professional bodies.

Registered Migration Agent / Immigration Adviser Accreditation Requirements - Country Comparison Matrix

	Australia	Canada	New Zealand	United Kingdom
Regulatory Authority	Office of the Migration Agents Registration Authority (OMARA)	Immigration Consultants of Canada Regulatory Council (ICCRC-CRCIC)	Immigration Advisors Authority (IAA)	Office of Immigration Services Commissioner (OISC)
Professional Code of Conduct	Code of Conduct for Registered Migration Agents	Code of Professional Ethics	Licensed Immigration Advisers Code of Conduct	Code of Standards
Regulatory mandate	• Determine and approve entry to practice requirements • Register migration agents • Ensure agents understand their obligations • Determine and approve continuing professional development standards • Maintain effective complaint mechanism • Investigate complaints and administer disciplinary procedures	• Establish entry-to-practice requirements/ accreditation processes • License immigration advisors • Oversee professional development and conduct • Receive, investigate and adjudicate complaints • Administer disciplinary process and sanction licensed advisors	• Approve entry to practice requirements • License immigration advisors • Maintain competency standards and a code of conduct for immigration advisers • Investigate complaints • Investigate unlicensed practice • Investigate complaints and refer to Disciplinary Tribunal	• Administer entry to practice and further professional examinations • License immigration advisors and register organisations • Receive and Investigate complaints and administer disciplinary process • Ensure advisors remain fit and competent through CPD scheme. • Monitor/audit CPD?
Entry to practice accreditation	Graduate Diploma in Migration Law and Practice and Capstone Exam or Australian Legal Practicing Certificate	Immigration Consultant Diploma and Full Skills Exam	Graduate Diploma in NZ Immigration Advice or exempt if holder of NZ Legal Practising Certificate	Specified periods of relevant work experience and tiered examinations, and legal or other relevant qualifications to obtain Level 2 and above practitioner status

Appendix A

	Australia	Canada	New Zealand	United Kingdom
Number of licensed/accredited advisors	7272 (2017)	4284	688 (2014)	3417 individual and 1587 registered organisations (March 2017)
Identified professional competencies/standards	• Approved qualifications • Provide professional advice to clients • Apply knowledge of Australian migration legislation and policy • Act ethically and in accordance with the Code of Conduct • Prepare, review, and lodge applications and appeals • Represent clients effectively before the Department • Maintain business and financial records • Maintain currency of knowledge through ongoing professional development	• Approved qualifications • Demonstrate understanding Canadian immigration law and policy • Research skills • Communication and writing • Ethics and professional responsibility • Practice / small business management • Basic bookkeeping • Working/representing clients	• Approved qualifications and experience • Knowledge of NZ immigration advisers licensing scheme • Knowledge of NZ immigration law and operational instructions • Prepare, lodge and administer immigration applications. appeals, requests, claims and other representation • Communication in English language • Conduct business professionally, ethically and responsibly • Continuing profession development.	• Knowledge of Immigration and asylum law • Interviewing and advising skills • Ability to draft letters, complete application forms and provide appropriate evidence • Awareness of good practice and Code of Standards responsibilities • Record keeping and file management • Represent and advocate for clients, lodge appeals • Level 3 only – Undertake specialist casework, representing clients at Tribunals, instructing barristers
English language	IELTS Academic 7 minimum overall with no lower than 6.5 in any module – formally tested if required or equivalent	IELTS Academic 7.5 listening, 6.5 speaking, reading and writing modules or equivalent **OR** French Level 8 language equivalent	IELTS Academic 7 minimum overall with no lower than 6.5 in any module or equivalent	Written assessment of language skills

	Australia	Canada	New Zealand	United Kingdom
Continuing professional development	10 points per year – 12.5 minimum hours – mandatory Ethics or Code of Conduct point required	16 hours per year	20 hours per year	Amount not prescribed, but must keep record of that undertaken that is may be audited for compliance
Complaint processes and sanction powers	• Authority to investigate complaints against registered practitioners only • May impose range of sanctions up to level of cancellation of registration and barring from practice	• Authority to investigate complaints about registered practitioners only • Investigate and refer to Disciplinary Committee if required, which proceeds in similar manner to an Australian Tribunal with sanctions up to level of revoking registration	• Initial assessment of complaint against licensed advisor • If founded, refers to Complaints and Disciplinary Tribunal • Sanctions up tot cancellation of license and orders to refund fees, costs, pay penalties and/or compensation	• Investigation of complaint • Sanctions up to immediate cancellation of license or company registration • May also refer as a disciplinary charge to the Immigration Services Tribunal
Unregistered practice	No jurisdiction to investigate unregistered practice – referred to Home Affairs – Fines UP TO $100,000 and two years' imprisonment	No jurisdiction to investigate unauthorised practitioners – referred to law enforcement agencies	Ability to prosecute unlicensed practice. Fines from $10,000 - $100,000 and/or imprisonment for 2 – 7 years	Ability to prosecute illegal provision of immigration advice. penalties up to unlimited fine and/ or 2 years imprisonment

Appendix B

2.5 Visa applications lodged by registered migration agents

This table shows the proportion of visa applications lodged by registered migration agents between 1 July and 31 December 2017. The source of this data is the Integrated Client Service Environment (ICSE); it does not include data from the Immigration Records Information System (IRIS).

Visa class	Migration agent used	Total applications	% lodged by a migration agent
Family	14,539	34,434	42%
Employer sponsored	18,287	21,789	84%
General skilled	14,118	42,949	33%
Business skills	5,821	9,014	65%
Student	30,109	194,091	16%
Visitor	20,380	1,347,579	2%
Bridging	1,798	15,722	11%
Temporary protection	1,919	3,825	50%
Permanent protection	2,150	13,280	16%
Returning resident	409	79,802	<1%
Temporary resident	32,851	95,689	34%
457 temporary work (skilled)	25,252	34,214	74%
TOTAL (in ICSE)	**167,633**	**1,892,388**	**9%**

Migration Agent Activity Report 1 July to 31 December 2017

2.5 Visa applications lodged by registered migration agents

The table and graph below show the proportion of visa applications lodged by registered migration agents between January and June 2017. The source of this data is the Integrated Client Service Environment (ICSE); it does not include data from the Immigration Records Information System (IRIS).

Visa Class	Migration agent used	Total applications	Percentage lodged by a migration agent
Family	19,046	45,682	42%
Employer Sponsored	35,793	41,657	86%
General Skilled	15,499	43,039	36%
Business Skills	5,611	10,421	54%
Student	30,306	214,405	14%
Visitor	12,813	899,103	1%
Bridging	1,839	31,061	6%
Temporary protection	5,908	8,640	68%
Permanent protection	1,749	9,272	19%
Returning Resident	245	80,912	<1%
Temporary Resident	18,978	75,468	25%
457 Temporary Work (Skilled)	40,212	52,607	76%
TOTAL (in ICSE)	187,999	1,512,267	12%

https://www.mara.gov.au/media/605906/MAAR_Jul_Dec_2017_Web.pdf;

https://www.mara.gov.au/media/574483/MAAR_Jan_Jun_2017_Web.pdf

Appendix C

Code of Conduct Clauses relating to fees and charges to migration clients

Part 2

2.20(b) A registered migration agent must give the client written advice of the amount of each fee and charge;

Part 5

5.2 A registered migration agent must:

(a) before starting work for a client, give the client:

(i) an estimate of charges in the form of fees for each hour or each service to be performed, and disbursements that the agent is likely to incur as part of the services to be performed; and

(ii) an estimate of the time likely to be taken in performing the services; and

(b) as soon as possible after receiving instructions, obtain written acceptance by the client, if possible, of:

i) the estimate of fees; and (ii) the estimate of the time likely to be taken in performing the services; and

(c) give the client written confirmation (an Agreement for Services and Fees) of:

(i) the services to be performed; and

(ii) the fees for the services; and (iii) the disbursements that the agent is likely to incur as part of the services; and

(d) give the client written notice of any material change to the estimated cost of providing a service, and the total likely cost because of the change, as soon as the agent becomes aware of the likelihood of a change occurring.

5.3 A registered migration agent:

(a) must not carry out work in a manner that unnecessarily increases the cost to the client; and

(b) must, if outside expertise is to be engaged and the client agrees, fully inform the client of the likely extra cost; and

(c) must, especially if a solicitor or barrister, warn clients of possible delays and likely cost involved in pursuing a particular course of action before tribunals and in the courts, for example:

(i) any need to engage and pay expert witnesses;

(ii) the need to meet legal costs if a case were lost;

(i) the need to pay Departmental fees and charges;

(ii) the need to pay translation and interpreter fees and charges.

5.4 A registered migration agent must give clients written advice of the method of payment of fees and charges, including Departmental fees and charges.

5.5 A registered migration agent must be aware of the effect of section 313 of the Act, and act on the basis that:

(a) the agent is not entitled to be paid a fee or other reward for giving immigration assistance to a client unless the agent gives the client a statement of services that is consistent with the services, fees and disbursements in the Agreement for Services and Fees mentioned in clause 5.2; and Note: The statement of services may be an itemised invoice or account. See clause 7.2 and 7.4.

(b) a statement of services must set out:

(i) particulars of each service performed; and

(ii) the charge made in respect of each such service; and

(c) a client is entitled by the Act to recover the amount of a payment as a debt due to him or her if he or she:

(i) made the payment to the agent for giving immigration assistance; and

(ii) did not receive a statement of services before making the payment; and

(iii) does not receive a statement of services within 28 days after a final decision is made about the visa application, cancellation review application, nomination or sponsorship to which the immigration assistance related.

Part 7

7.1 Subject to clause 7.1B, a registered migration agent must keep separate accounts with a financial institution for:

(a) the agent's operating expenses (the operating account); and

(b) money paid by clients to the agent for fees and disbursements (the clients' account).

7.2 A registered migration agent must hold, in the clients' account, an amount of money paid by a client for an agreed block of work until:

(a) the agent has completed the services that comprise the block of work; and

(b) an invoice has been issued to the client for the services performed in accordance with the Agreement for Services and Fees mentioned in clause 5.2, showing:

(i) each service performed; and

(ii) the fee for each service

7.4 A registered migration agent must keep records of the clients' account, including:

(a) the date and amount of each deposit made to the clients' account, including an indication of the purpose of the deposit and the client on whose behalf the deposit is made; and

(b) the date and amount of each withdrawal made in relation to an individual client, and the name of each recipient of money that was withdrawn; and

(c) receipts for any payments made by the client to the agent; and

(d) statements of services; and

(e) copies of invoices or accounts rendered in relation to the account.

7.5 A Registered Migration Agent must make available for inspection on request by the Authority:

(a) records of the clients' account; and

(b) records of each account into which money paid by a client to the agent for fees and disbursements has been deposited.

7.6 If a registered migration agent provides a service to a client on the basis of a conditional refund policy, a 'no win, no fee' policy or an undertaking to similar effect:

(a) the agent must have sufficient funds available to be able to cover any amount that the agent may become liable to pay to the client under the policy or undertaking; and

(b) the agent must meet that obligation by:

(i) keeping funds in the clients' account; or

(ii) keeping a security bond; or

(iii) maintaining adequate insurance.

Part 10

10.1(b) Within 7 days of giving the written notice, the agent must:

(a) update the client's file to reflect the current status of each case or application undertaken by the agent for the client; and

(b) deliver all documents to which the client is entitled to the client or to the appointed registered migration agent; and

(c) ensure that all financial matters have been dealt with as specified in the contract.

Appendix D

Comparison average Registered Migration Agent fees 2013 – 2017

	Visa type	1 July 2016 - 30 June 2017[39]	1 Jan – 31 Dec 2015[40]	1 March - 30 June 2013[41]
Temporary visa services	Bridging visa	$150 - $550	$150 - $700	X
	Business (visitor)	$500 - $1,500	$500 - $1,500	X
	Graduate - Skilled	$990 - $2,500	$900 - $2,200	X
	Other temporary resident	$1000 - $2,500	$550 - $2,800	X
	Other visitor	$500 - $1,500	$400 - $1,500	X
	Student	$500 - $2,420	$500 - $1,650	$500 – $2000
	Student Guardian	$550 - $2,000	$500 - $1,800	X
	Temporary Graduate	$750 - $2,500	$900 - $2,200	X
	Temporary Non-business	$1000 - $3,000	$500 - $3,500	$550 – $3000
	Temporary Work Skilled (457)	$2,000 - $5,000	$1,800 - $5,000	$1750 – $4500
	Tourist	$330 - $1,500	$300 - $1,000	X
	Working Holiday	$500 - $1,250	$200 - $1,100	x
Permanent visa services	Australian Declaratory visa	$550 - $5,500	$500 - $4,000	X
	Business Skills	$3,700 - $18,000	$4,000 - $15,000	X
	Child Migration	$1,500 - $3,800	$1,100 - $3,300	X
	Employer Nomination Scheme	$2,500 - $5,500	$2,000 - $5,500	$3000 – $5400
	General Skilled Migration	$2,000 - $4,800	$1,500 - $4,400	$1500 – $4400
	Humanitarian Offshore	$1,500 - $4,950	$1,200 - $3,500	$1500 – $4400
	Onshore Protection	$1,100 - $5,500	$1,500 - $4,000	$1500 – $4000
	Other Skilled	$2,200 - $5,000	$1,500 - $4,500	X
	Parent Migration	$2,000 - $4,200	$1,500 - $3,800	$1500 – $4000
	Partner Migration	$500 - $4,400	$500 - $4,000	$1600 – $3850
	Regional Sponsored Migration	$3,300 - $6,000	$2,500 - $5,500	X
	Scheme	$500 - $2,000	$500 - $2,000	X
	Returning Resident	$2,200- $4,750	$1,800 - $4,000	X
	Skilled Independent	$1,300 - $5,500	$1,600 - $4,400	x
	Special Migration			
Other	NZ Special Category visa	$500 - $2,200	$500 - $3,500	X
	Review Application	$1,500 - $5,000	$1,300 - $5,000	$1500 – $4400

Source: OMARA Agent Fee data, various dates

[39] https://www.mara.gov.au/using-an-agent/working-with-your-agent/agent-fees/
[40] https://web.archive.org/web/20170323211024/https://www.mara.gov.au/using-an-agent/working-with-your-agent/agent-fees/
[41] https://web.archive.org/web/20140328215041/https://www.mara.gov.au/using-an-agent/working-with-your-agent/agent-fees/

Appendix E

Statutory guidance

Guidance on Competence 2017 - Level 1

Updated 30 March 2017

Contents

1. OISC Level 1 - Advice and Assistance
2. Work permitted at Level 1
3. Work not permitted at Level 1
4. Competence requirements

1. OISC Level 1 - Advice and Assistance

2. Work permitted at Level 1

Level 1 advisers are permitted to make applications that rely on the straightforward presentation of facts to meet a set of qualifying criteria. Such applications will not be discretionary or concessionary in nature and applicants will not have an immigration history which is likely to adversely affect the application in question.

Where a case becomes complicated or an application is refused an adviser must refer the client as soon as possible to an adviser authorised to practise at a higher Level. Level 1 advisers can work on Leave to Remain applications only where the client has extant leave.

All work at Level 1 will be within the Immigration Rules or Nationality Law and EEA Regulations. However, some applications that fall within the Rules or Nationality Law are not classified as Level 1 work (see later in this Guidance). This is because they require the presentation of additional representations or legal argument which are not Level 1 competencies.

2.1 Asylum and Protection

Level 1 advisers authorised in Asylum and Protection can undertake the following work:

- notifying UKVI of a change of address
- straightforward applications to vary the conditions attached to leave granted, including conditions attached to bail granted by the Secretary of State, for example the right to work or study, restrictions on residence or reporting requirements
- travel document applications for someone granted Humanitarian Protection/Discretionary Leave to Remain.

No substantive asylum work, such as making applications or appeals, is permitted at Level 1.

2.2 Immigration

Level 1 advisers authorised in Immigration can undertake the following work:

Applications for entry clearance, Leave to Enter or Leave to Remain

Basic applications that are within the Immigration Rules in the following categories:

- visitors
- spouses/unmarried partners
- fiancé(e)s
- other dependent relatives
- Points Based System
- diplomats, their family members and domestic staff

Level 1 advisers making the applications listed above should satisfy themselves that their clients do not have relevant human rights grounds that should be raised at this application stage. Where such grounds exist it will be important that the claim is comprehensively argued, explained and documented and as such the case should be referred to a higher level adviser.

Level 1 advisers may deal with FLR (FP) applications based on Family Life as a parent under the five year route and may also deal with ILR applications made under the 10 year lawful residence route.

Level 1 advisers may deal with out-of-time applications made within 14 days of the client's leave having expired, where there is good reason for the delay that was beyond the adviser's or their client's control.

Nationality and Citizenship under UK law

Basic applications for:

- registration of a child as a British Citizen
- naturalisation as a British Citizen
- confirmation of British Nationality status.

EEA Regulations

Basic applications for the following:

- residence permit for an EU/EEA national
- family permit for a non-EU/EEA family member
- entry clearance and residence documents for non-EU/EEA family member, including an extended family member but only where they clearly meet the definition as such
- Schengen Visas
- Accession State casework.

Administrative Review

Lodging and dealing with an application for Administrative Review for any Level 1 type application with the exception of applications refused on the basis of credibility or a fundamental issue of genuineness of documents, or relationships.

Varying conditions of leave

Straightforward applications to vary the conditions attached to leave granted. For example, an application to remove the condition related to 'No Recourse to Public Funds'. Level 1 advisers may also apply to vary the conditions already set for clients on bail granted by the Secretary of State, for example the right to work or study, restrictions on residence, or reporting requirements.

Appendix F

Classification	Classification Description	Allegations	Future Risk Indicator	Client / Complainant Impact	Possible Outcomes
Minor	• Minor breaches that are rectifiable and/or isolated	• Failure to respond (to the client , the Tribunal, the Department) • Poor advice • Disputes over provision of services and fees • Office practice deficiencies	• Agent acknowledges mistake/misconduct and willing to amend/rectify the conduct • Agent co-operates during the investigation • Little or no previous history of minor complaints against the agent	• Inconvenience to client • Little or no impact on migration outcome for the client • Little or no financial loss sustained.	• Informal action* • Referral to monitoring / registration section of the OMARA • Referral to a relevant body (consumer tribunal or legal regulator) • No breach found • No action
Moderate	• Breaches of the Code of Conduct indicating systemic poor practices • Indifference to professional responsibilities • Multiple breaches of the Code of Conduct	• Lack of knowledge of relevant law • Repeated failure to satisfy professional responsibilities • Failure to manage client funds • Conflict of interest • Failure to supervise employees • Dishonest or reckless behaviour	• Previous history of minor complaints against the agent • Agent unwilling to rectify the conduct • Lack of cooperation during the investigation • Evidence that the agent has attempted to conceal their culpability	• Some effect on migration outcome for the client • Some financial loss sustained (e.g. costs of relocation, lost fees). • Reputational damage to employer agency and /or profession	• Informal action – Warning letter • Caution the agent with or without conditions imposed • Suspend the agent's registration (up to 5 years) with conditions imposed • Referral to a relevant body (consumer tribunal or legal regulator) (for lawyers)
Major	• Conduct demonstrates that the agent is not a person of integrity or is not a fit and proper person to give immigration assistance (s303(1)(f) of the Migration Act 1958) • single incidence of serious breach or breach of the Code of Conduct • Serious repeated breaches of the Code of Conduct • Indifference to/general disregard of Australian laws	• Fraudulent and other criminal behaviour • Fundamental lack of knowledge of relevant law • Dishonest or reckless behaviour	• Agent has a serious record of misconduct • Real likelihood that misconduct will continue • Agent's potential to rectify practices/ misconduct is low • Evidence that the agent has attempted to conceal their culpability • Agent misled the OMARA during the investigation	• One or more clients affected • Continued registration of the agent is not in the public interest • Reputational damage to profession • Major effect on migration outcome for client • Financial loss sustained by client	• Suspend the agent's registration (up to 5 years) with conditions imposed • Cancel the agent's registration • Bar the agent from practicing up to 5 years • Referral to the Department or a relevant body for criminal /other investigation • Referral to a relevant body (consumer tribunal or legal regulator) (for lawyers)

Note: * decision outcomes may involve:

- **Corrective action:** recommendation to the agent to correct or improve their practices in accordance with the minimum standards of practice set out in the Code.
- **Negotiated fee outcome:** negotiated outcome for disputes regarding fees charged by the agent in relation to immigration services.
- **Corrective advertising:** recommendation to the agent regarding compliance with clauses 2.10 – 2.14 of the Code only.
- **Warning letter:** advice to the agent that failure to correct or improve conduct could result in future disciplinary action.

Source:https://legend.online.immi.gov.au/migration/2017-2020/2018/13-04-2018/policy/Pages/_document00001/_level%20100011/level%20200106.aspx#7

Appendix G

COMMONWEALTH OMBUDSMAN
OVERSEAS STUDENTS

Education agents

Education providers must ensure their agents adhere to the same standards as providers themselves

The Office of the Commonwealth Ombudsman (the Office) recognises that many education agents play a crucial role in recruiting and assisting overseas students to pursue their study goals in Australia. The *National Code of Practice for Providers of Education and Training to Overseas Students 2018* (the National Code) makes it obligatory for registered providers to require their education agents to:

- declare and avoid conflicts of interests
- observe confidentiality and transparency in dealings with overseas students
- act honestly, in good faith and in the best interests of the student, and
- understand the Australian International Education system, including the Australian International Education and Training Code of Ethics.

In practice, these obligations can be met by ongoing monitoring of agent activity, a robust complaints and appeals process capable of investigating complaints made about education agents, escalation of serious concerns and taking immediate corrective action when required.

Ensuring the best interests of the student

As a registered provider you should ensure:

- you do not accept tuition fees without receiving evidence that the student has accepted your written agreement
- you are aware of any additional fees charged by the education agent to the student, for example an agency fee, or Overseas Students Health Cover fee (if your institution is arranging the cover)
- any refunds are paid to the person as specified in the written agreement
- where a student's request to withdraw is received from the agent after your cut-off date, you check the date that the request was received by the agent and consider this to be the date the request was made, and
- your internal complaints policy and procedure includes immediate escalation where a student claims an education agent has behaved fraudulently.

Contact us
ombudsman.gov.au
1300 362 072

GPO Box 442
Canberra ACT 2601

The Ombudsman has offices in:
» Adelaide
» Brisbane
» Canberra
» Melbourne
» Perth
» Sydney

The Commonwealth Ombudsman is impartial, independent and does not advocate for the student or the provider.

We use a balanced approach when investigating a dispute and look at both sides of the issue.

Investigations are conducted in private under the *Ombudsman Act 1976*.

COMMONWEALTH OMBUDSMAN
OVERSEAS STUDENTS

Tips for management of education agents

These tips are to help you to comply with Standard 4 of the National Code 2018 and manage your education agent relationship effectively:

- Enter into a written agreement with every education agent engaged to formally represent your business (see National Code s 4.2). Do not enter into an agreement with an agent you know or reasonably suspect of engaging in dishonest practices.
- Ask your agent to declare conflicts of interest, observe appropriate confidentiality and transparency, have an appropriate knowledge and understanding of Australian international education requirements and comply with the Australian Agent Code of Ethics (see National Code s 4.3).
- Enter and maintain up-to-date details of agents in the Provider Registration and International Student Management System (PRISMS).
- Take immediate corrective and preventative action as soon as you become aware of an agent being negligent, careless, and incompetent or engaged in false, misleading or unethical advertising and recruitment practices and fix any problems caused by your agents.
- Terminate your agreement with an agent who you reasonably suspect, or know, has engaged in false or misleading recruitment practices (or require the agent to terminate their relationship with the employee or sub-contractor who engaged in false or misleading recruitment practices).
- To ensure international students have the most current information when deciding to use an education agent, keep the list of agents that you work with up-to-date on your website and if you cease your arrangement with an agent, you should remove the name from the list immediately.

Read the Department of Education's Fact Sheet on Standard 4 of the National Code 2018 for useful compliance tips and examples for managing education agents.

Need more information?

We provide information about best practice complaint-handling to help private education providers manage internal complaints effectively. We also publish reports on problems and broader issues in international education which we have identified through investigations.

More information is available at ombudsman.gov.au.

Please note: This document is intended as a guide only. For this reason, the information should not be relied on as legal advice or regarded as a substitute for legal advice in individual cases. To the maximum extent permitted by the law, the Commonwealth Ombudsman is not liable to you for any loss or damage suffered as a result of reliance on this document. For the most up-to-date versions of cited Acts, please refer to the Federal Register of Legislation.

Appendix H



Education agents

Once you've made the decision to study in Australia and you know where you want to study and which course you want to undertake, you can enrol directly with the institution. If, however, you need more help with the admission application process, or the Australia visa application process, you can choose to use an education agent.

An education agent can tell you about your options for studying and living in Australia and assist with your visa and institution applications. In many cases, agents have had experience studying in Australia and can share their experiences with you. In addition, because they are dealing every day with application and visa application requirements they will be able to give you guidance for your particular situation.

Here are some tips for choosing an agent:

- Under Australian Government law, every Australian education institution that uses the services of an education agent needs to have a contract with that organisation.
- Australian education institutions usually have more than one education agent appointed in a country so speak to more than one agent – collect and compare information.
- Under Australian Government law, every Australian education institution has to list on their website every education agent it has appointed to represent them in each country.
- Choose an education agent with experience helping students study in Australia – they will have a good knowledge of the Australian education system, visas and life in Australia.
- Make sure that the agent is an authorised representative of the institution that you want to apply to. You can ask to see their letter of apointment from the institutions if you want.
- Ask about any fees that may be levied for using their services.
- Have a third party or friend help you understand the documents before you sign any documents.
- Remember, education agents cannot guarantee a permanent visa or work placement in Australia after you graduate. Their job is to help with applications, so if it sounds too good to be true, keep looking. A reputable agent will be honest about the application process.

If you need migration advice use a migration agent who is registered in Australia. Some Registered Migration Agents are located overseas or have representatives in international markets. If an education agent is based in Australia, it is against the law for them to provide you with migration advice, unless they are also a Registered Migration Agent. Further information on Registered Migration Agents can be found at: www.mara.gov.au

Source: https://www.studyinaustralia.gov.au/english/apply-to-study/education-agents#