



## Refugee Council of Australia

JOINT STANDING COMMITTEE ON MIGRATION

### **SUBMISSION ON EFFICACY OF CURRENT REGULATION OF AUSTRALIAN MIGRATION AGENTS**

The Refugee Council of Australia (RCOA) is the national umbrella body for refugees, people seeking asylum and the organisations and individuals who work with them, representing over 190 organisations and 1,000 individual members. RCOA promotes the adoption of humane, lawful and constructive policies by governments and communities in Australia and internationally towards refugees, people seeking asylum and humanitarian entrants. RCOA consults regularly with its members, community leaders and people from refugee backgrounds and this submission is informed by their views.

RCOA welcomes the opportunity to provide our feedback to the Joint Standing Committee on Migration on the efficacy of current regulation of Australian migration agents. Migration agents play a vital role in assisting refugees and people seeking asylum gain protection and reunite with separated family members. Often, their support can mean life or death for a person or their loved ones.

However, there has been a marked decrease in the funding available for migration agents to provide this vital assistance. This has forced people who cannot afford a migration agent to rely on family and community members to assist them with their visa applications, resulting in incomplete or inadequate application.

Further, the desperation of people to seek protection in Australia, or bring their family member to Australia, has also pushed people to fall into the hands of unscrupulous migration agents. These agents may offer to fast-track a visa application or provide support where they have no power to make these decisions. Further, private migration agents who are not experienced in refugee law may provide substandard advice, leading to often terrible consequences.

The key way to address the unethical practice of migration agents and to stop people resorting to using friends and family to complete their applications is to adequately fund free, expert migration advice. Further, the powers of the Office of the Migration Agents Registration Agency (OMARA) must be increased to better deal with unscrupulous agents, including the power to recover funds from unethical practitioners. This will go a long way in addressing some of the serious concerns held by refugee communities and the organisations that support them.

RCOA also endorses the submission of the Humanitarian Group to this inquiry.

#### 1. The importance of migration agents

1.1. Migration agents, including those holding dual regulation as legal practitioners, play a vital role in refugee protection. The provision of sound migration advice is essential for the rule of law and to ensure Australia makes the correct decision in matters such as refugee status determination. Without sound migration advice, there is a concern that people seeking asylum will not be able to adequately express their claims for protection, presenting a risk that Australia may return someone with legitimate claims of persecution back to harm.

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1.2. Australian refugee law is incredibly complex, onerous and ever-changing. The current protection application form requires completing 33 pages and answering 87 questions, in addition to providing detailed statements of a person's fear of persecution and life history. This form must be completed in English, providing a substantial barrier for many people seeking asylum. This issue is compounded by a person's lack of understanding of Australian migration law and their past and current trauma. It is practically impossible for many people seeking asylum to put in an adequate protection application without the assistance of a migration agent.

1.3. In addition, migration agents play a vital role in helping reunite separated families, many of whom are still in dangerous situations and facing persecution overseas. Migration agents assist former refugees to sponsor their family members, either through the Special Humanitarian Program or through the Family Stream of the Migration Program. Again, migration agents provide a vital assistance which many former refugees are unable to do themselves.

2. Decrease in funding for migration agents leading to unregistered advice and unscrupulous agents

2.1. For a number of years, RCOA has expressed concern with the decreasing migration assistance available for people seeking asylum and refugee communities. In 2013, the Department of Immigration and Border Protection ended funded migration advice under the Immigration Advice and Application Assistance Scheme (IAAAS) for people who arrived by boat.

2.2. Likewise, there has been a sharp decrease in the funding available for former refugees who wish to reunite with their family members. In March 2014 the Department of Immigration also removed funding under the IAAAS scheme for family reunion assistance. This has placed a heavy burden on people from refugee backgrounds who wish to sponsor family members to come to Australia yet cannot access the funds required to pay a commercial registered migration agent.

2.3. This reduction in funding has pushed people to borrow substantial funds in order to afford private migration agents or rely on friends and community members who are not migration agents to assist them in completing their applications. The provision of migration advice by those who are not registered migration agents is not only illegal under the *Migration Act 1958* but also may result in incomplete or inaccurate applications. This can have a significant impact on a person's visa situation, resulting in people being returned to danger or being unable to bring their family to Australia.

2.4. While providing migration advice without a being a migration agent is a criminal offence, this has not stopped people helping their friends or community members to complete their applications. Further, this criminalisation has also not stopped people seeking advice from those who are not registered migration agents, often out of desperation.

2.5. This desperation also pushes people to pay large amounts of money to unscrupulous agents, or those holding themselves out to be migration agents. RCOA has heard consistently over a number of years about migration agents (or those claiming to be migration agents) claiming they are able to get someone a visa or bring their family to Australia if they pay large sums of money. For example, one caseworker in the Northern Territory reported that:

*Corrupt migration agents are giving people false expectation that they will get someone a visa. They will give you the impression that they will fast track it which they cannot do but it is going around. We have to make the communities aware not to use those lawyers and set up community centres where we can help people to fill in the forms. If people know what is happening, we can stop this vicious cycle*

Likewise, one service provider from Queensland reported that:

*Making an application does not guarantee that your family will come. Sometimes if you lose it, whatever money you pay to a lawyer you'll never get it back. The issue there as well is that some will use and abuse the system. There are some cases where migration agents have been asking people to large sums of money.*

*And there's no proof that the migration agent has been doing anything. Some people are worried that making a complaint will affect their application.*

2.6. Another concern is the provision of advice by registered migration agents who do not have experience in refugee and protection claims. RCOA has heard of many examples of agents providing inaccurate or bad advice to refugees because they do not have experience in refugee applications. As one legal provider in Sydney noted:

*I've had clients say, "Well I know someone in Sydney said if you pay X amount, they can get your family member in", but that family member is still in-country, so she can't be sponsored for a humanitarian visa, and so it's really rife for exploitation unfortunately.*

2.7. Likewise, private migration agents who are not experienced in refugee law have failed to put in the required documentation in time, or failed to inform their client of an important letter. This sometimes results in a person being detained or being denied a chance to apply for protection. Private agents have also cut off refugee clients half way through their application process, due to their inability to cover the payment installation, as one service provider in Sydney has noted:

*if people are engaged with a private migration agent and can't afford to keep paying the instalments, they don't get the visa decision and then it's too late for them to appeal for a judicial review.*

2.8. The best way to address the situation of refugees receiving migration assistance from people who are either not registered migration agents or engage in unethical practices is to increase the funding available for free migration advice. By providing people with free, expert advice, they will not be forced to rely on non-registered community members and will not fall into the hands of unscrupulous agents. Providing government funded free migration advice to people seeking asylum and refugee communities will also ensure that refugees are able to put in a proper and complete application. This will save time for decision-makers, and also ensure that the Minister makes the correct decision on a person's refugee claim. This will help ensure that Australia does not return someone to harm and complies with its international obligations. As well, we are aware that there is a recent change to the eligibility criteria for the Immigration Advice and Application Assistance Scheme following a tender process. The people likely to be affected include refugee and humanitarian entrants applying for family reunion, and people fleeing family violence. The criteria are not yet public, although we understand that the changes are restrictive. Such changes will have the same predictable consequence of driving more people to use inappropriate people for migration advice.

### **Recommendation 1**

*The Department of Home Affairs should restore eligibility for people who arrived by boat to access the Immigration Advice and Application Assistance Scheme, and expand the criteria for access to the Scheme for other people..*

### **Recommendation 2**

*The Australian Government should restore and increase funding for migration agents to assist refugee communities to reunite with their family members.*

3. Complaints procedures and redress

3.1. As mentioned, RCOA has heard numerous examples of unethical practice from migration agents. However, the current complaints process within the Office of the Migration Agents Registration Authority (OMARA), and the ability to receive redress, is severely limited.

3.2. Often refugee communities are unaware of their rights under the migration agent Code of Conduct, consumer law and state based legal regulations. Many have expressed fear of making a complaint, worrying that it may affect their application, or they may face victimisation.

3.3. Further, making a complaint to OMARA does not provide redress or compensation to the affected individual. OMARA does not have the power to force the migration agent to refund their

fees and does not remedy an application affected by an error of a migration agent. While a person may be able to seek compensation through consumer protection law, this process often required legal assistance, which is not available freely or at a reduced cost. This leaves people with very limited pathways to remedy unethical practice.

3.4. Further, the current powers of OMARA to sanction or caution a migration agent are insufficient to properly deal with unscrupulous practices. The powers to cancel, caution or suspend a migration agent are not sufficient to address unethical practice. RCOA has heard of many examples where complaints against a migration agent have been made but that person has continued to practise. Likewise, there are few powers to restrict people from registering again after having their registration cancelled.

3.5. There are also no powers available to OMARA to deal directly with people purporting to be migration agents but who are not registered.

3.6. More power should be given to OMARA to recover funds from migration agents who have been found to have engaged in unethical practice. We also recommend that the Department of Home Affairs provide further support and exemptions for people who have had a negative outcome on their application because of unethical practice by a migration agent. This may involve allowing a person to resubmit an application even if the time limit has passed or remedying an error in the application.

### **Recommendation 3**

*The Office of the Migration Agents Registration Authority should be given powers to recover funds from migration agents who engage in unethical practices*

### **Recommendation 4**

*The Department of Home Affairs should provide support for people who receive a negative outcome on their application due to the unethical practice of migration agents. This should include allowing a person to resubmit an application even if the time limit has passed or remedying an error in the application.*