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Committee Secretary  
Joint Standing Committee on Migration  
PO Box 6021  
Parliament House  
Canberra ACT 2600

Dear Secretary,

**Re: Inquiry into the efficacy of current regulation of Australian migration agents**

We are pleased to provide these submissions to this review. If we can assist with policy development in this area in any other way, please do not hesitate to contact Simon Haag, Senior Associate (Government Relations) on direct line (03) 9613 9349 or by email to [shaag@fragomen.com](mailto:shaag@fragomen.com).

Kind Regards,



**Alex Paterson**  
**Co-Managing Partner, Australia and New Zealand**  
**MARN 1385851**

## 1. ABOUT FRAGOMEN

- 1.1. As a specialist immigration firm comprising both legal professionals and Registered Migration Agents (**RMA**s), Fragomen is well-placed to assist with inquiries into the regulation of the migration advice profession.
- 1.2. In Australia, Fragomen is the largest immigration law firm with over 175 professionals and support staff nationally, including **RMA**s, qualified lawyers, Accredited Specialists in Immigration Law and other immigration professionals. With offices in Brisbane, Melbourne, Perth and Sydney, Fragomen assists clients with a broad range of Australian immigration services from corporate visa assistance, immigration legal advice, audit and compliance services, litigation and individual migration and citizenship applications. In 2017 we have assisted clients with lodgment of more than 10,000 applications to the Department of Home Affairs (**Department**).
- 1.3. Globally, Fragomen is one of the world's leading global immigration law firms, providing comprehensive immigration solutions to our clients. Operating from over 40 offices in 19 countries (with capabilities in more than 160 countries), Fragomen provides services in the preparation and processing of applications for visas, work and resident permits worldwide and delivers strategic advice to clients on immigration policy and compliance.
- 1.4. Further information about Fragomen, both in Australia and globally, is available at [www.fragomen.com](http://www.fragomen.com).

## 2. PROFESSIONAL REGULATION AND CONDUCT

- 2.1. RMAs work diligently to provide the best possible advice and service to clients. For many RMAs, their livelihood relies on repeat business and word of mouth referrals developed through an established good reputation as a trusted adviser. In 2014, Dr Christopher Kendall was appointed to conduct the Independent Review of the Office of the Migration Agents Registration Authority (**Kendall Review**). The Kendall Review concluded that the vast majority of RMAs perform diligently and competently and have never been the subject of a complaint; and that the incidence of serious misconduct is low.
- 2.2. Given the complexities of migration law, it is important that the public have confidence in the migration advice profession. Regrettably, issues and community perceptions of RMAs often stem from individuals who purport to provide migration assistance without registration. This is particularly the case with rogue agents based overseas. Invariably, unregistered agents target the most disadvantaged and vulnerable groups. Provision of migration advice and assistance without registration is an offence under the Migration Act. The Department should take more action to identify and prosecute individuals who seek to provide immigration assistance without registration, as it is a significant problem which harms the reputation of the industry and public confidence.
- 2.3. In relation to RMAs, the Kendall Review found that the greatest risk to consumers stems from the lack of supervision of relatively inexperienced RMAs, who receive unconditional registration on first entering the profession. Where inexperienced RMAs practice as an employee of an agency, it is in their employer's interest to ensure that the RMA is practicing within the limits of their competency and is receiving ongoing professional development support. Our concern is where a newly registered RMA is able to establish themselves as a sole practitioner and hold themselves out to consumers as a practitioner in all areas of migration advice and assistance.
- 2.4. We broadly agree with the findings of the Kendall Review that:
- A broader range of disciplinary options should be available to the Office of the Migration Agents Registration Authority (**OMARA**) to facilitate early intervention and correction;
  - Consideration should be given to conditional registration for both inexperienced RMAs, and RMAs re-registering following disciplinary action; and
  - Absent criminal conduct, the gravest sanctions should be imposed by an independent body, and/or BE the subject of review by the Administrative Appeals Tribunal.

### Sanctions

- 2.5. Current regulation provides the OMARA with a very limited range of disciplinary action in response to a breach. If the circumstances warrant action beyond counselling or a warning, the OMARA is limited to suspending or cancelling registration, which the OMARA can impose only in the case of repeated errors or serious misconduct. This means that where conduct may be more minor in nature, the OMARA must wait until a series of repeat breaches collectively amount to conduct which warrants more serious sanctions such as suspension of registration. The disciplinary framework would benefit from a range of intermediary sanctions available to the OMARA allowing earlier intervention and correction

of a RMA's behaviour. This could include establishing a time limit within which a RMA must rectify an identified deficiency, as a precondition of being able to renew registration in the following registration year. Intermediary sanctions could also include limiting the RMA to supervised practice; limiting the RMA to particular areas of practice; and/or requiring further training (but without suspension). Where a suspension sanction is imposed, or where a RMA is prevented from re-registration for failing to take remedial action, re-registration should be subject to conditional practice, similar to those discussed below in relation to newly registered RMAs.

## **Conditional Registration**

- 2.6. RMAs are able to provide immigration assistance on any aspect of making an application to the Department or a review authority, and assistance with court proceedings, including the following:
- preparing a visa application to the Department;
  - preparing a review application to a review authority regarding a visa refusal or cancellation;
  - providing advice about a visa or review application;
  - preparing a document indicating that a person nominates or sponsors a visa applicant;
  - advising a person about nominating or sponsoring a visa applicant;
  - advising on, and preparing, a request to the Minister to exercise his or her discretionary powers to intervene and grant a visa to a person;
  - preparing for proceedings before a court or review authority in relation to a visa refusal; visa cancellation; or nominating or sponsoring a visa applicant; and
  - representing the visa applicant or review applicant in proceedings before a court or review authority in relation to a visa refusal; visa cancellation; or nominating or sponsoring a visa applicant.
- 2.7. For non-lawyers, the qualifications requirements for registration as an RMA are completion of a 12-month Graduate Diploma in Migration Law course and capstone examination. Lay practice of immigration law is then unrestricted in scope from the time the person becomes an RMA, including operating as a sole practitioner.
- 2.8. In our view the quality of Diploma course in Migration Law is high. Nonetheless, it is our submission that a 12-month course is insufficient training to prepare a person to competently provide unsupervised migration law assistance as a professional expert and trusted advisor, without mentoring or supervision and without any restrictions on the area of migration law that they are able to practice.
- 2.9. A tiered or graded system of registration would allow RMAs to develop their skills over time through supervised practical experience, without exposing consumers to the personal risk that flows from having their immigration affairs managed incompetently, and without exposing RMAs to the business risk that flows from disciplinary action.
- 2.10. The tiered model of registration to practice as a lawyer in Australia provides a relevant comparison to the way in which a tiered regulation system might operate. Following completion of an academic qualification in law, a person must complete practical legal training through either a Graduate Diploma of Legal Practice course, or 12 months articles of clerkship (depending on jurisdiction). Following admission to practice, a two-year period

of supervised legal practice is required before a person can apply for an unrestricted practicing certificate. Until a person obtains an unrestricted certificate they must practice under the supervision and mentoring of a person with an unrestricted certificate. In addition to an unrestricted certificate, a person who wishes to practice as a principal of a firm or a sole practitioner must complete additional training in practice management. Lawyers with a high level of expertise and experience in immigration law are able to attain Specialist Accreditation through a rigorous examination process, and if successful are able to use post-nominals and other identifiers which signify to consumers that the person has achieved a certain level of practice excellence.

- 2.11. These measures protect consumers of legal services by:
- ensuring that lawyers do not practice areas of law beyond their experience and area of expertise/ competence; and
  - ensuring that consumers have information available which better signals the practitioner's level of expertise.
- 2.12. Given the vulnerable position of many visa applicants and their reliance on RMAs to navigate through the complexities of migration law, a similar form of tiered and incremental registration would be of benefit to the community by better informing and protecting consumers of migration advice; to the Department through improvements in application quality; and to the migration advice profession through improvements in the profession's reputation and public perception.
- 2.13. In our submission, parameters that could determine the registration level of RMAs might include:
- the number of years of registration;
  - the average number of applications lodged per year and the proportion of those which are refusals;
  - how many matters the person has conducted before a review authority;
  - how many matters the person has conducted before a court;
  - whether the person has been reported to OMARA by the Minister under section 306AC of the *Migration Act 1958*; and
  - whether any disciplinary action has been taken by OMARA in relation to the person's practice as a RMA.

### **Independence of Disciplinary Body**

- 2.14. The OMARA is an agency of the Department. The Department is responsible for setting and applying the government's interpretation of migration law, which may differ from that of a particular RMA when presenting an application to the Department for processing. It is unsatisfactory that one side to such a dispute is able to commence disciplinary action against the other side, on the basis of an unfavourable migration outcome resulting from disputed interpretation of the law. As the Department is also the primary instigator of complaints about RMAs, its role as the regulator means that the Department acts as the complainant, investigator, prosecutor and arbiter in such actions.
- 2.15. Similarly, the Department is the agency which sets policy relating to the regulation of RMAs. The fact that the Department is then also the body for enforcing such regulation means that

the Department is fulfilling quasi-legislative, quasi-executive, and quasi-judicial functions, where concepts of natural justice generally require these functions to be separate.

- 2.16. In 2007-2008 the Review of Statutory Self-regulation of the Migration Advice Profession (The Hodges Review) resulted in reabsorption of the OMARA into the Department. Directly as a result of the findings and recommendations of the Hodges Review, the OMARA was established within the Department in such a way as to ensure actual and apprehended independence from the rest of the Department. Until recently, this was achieved through measures such as maintaining separate record-keeping systems and office accommodation. Consideration might be given to reinstating some of these measures following the integration of various agencies including the OMARA, the Department of Immigration and Border Protection and the Australian Border Force into the broader ministry of the Department of Home Affairs.
- 2.17. Where an investigation into RMA conduct uncovers possible criminal activity, investigation should be handed to the appropriate authorities and addressed through the criminal justice system. Where breaches by an RMA are administrative, the imposition of the most serious sanctions should be conducted by a body independent of the Department. Alternatively, that imposition should be subject to review by the Administrative Appeals Tribunal.

We are pleased to provide these submissions to this inquiry. If we can assist with policy development in this area in any other way, please do not hesitate to contact us.