



Australian Government  
Department of Immigration  
and Citizenship

# 2007–08 Review of Statutory Self-Regulation of the Migration Advice Profession

Discussion Paper

September 2007





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## Foreword from the Hon Teresa Gambaro MP

I am pleased to release this discussion paper, which, in the fourth review of the profession, calls for comment on the statutory self-regulation of the migration advice profession.

As a profession which was largely unregulated in Australia before the early 1990s, the migration advice profession has matured significantly. Like many professions, it has the potential for further growth. On behalf of the Government, I am committed to seeing the performance and reputation of migration agents improve, along with the profession's expanding client base.

Migration agents play a critical role in providing immigration advice. They are now used by over 70 per cent of applicants in some visa classes.

Migration decisions are often life changing. The Government believes that consumers have a right to expect that they will be provided with advice from migration agents which is accurate, timely, and lawful, and which demonstrates high standards of professional conduct.

As Australia's migration programme continues to diversify, the migration advice profession will remain an essential service. The Government is dedicated to ensuring that the regulatory framework for migration agents facilitates the profession's goals for development and the community's expectations for reliable and professional advice.

This review assesses the readiness of the migration advice profession to move from statutory self-regulation to self-regulation. To make this assessment, the discussion paper examines the continuing adequacy of the regulatory framework for the migration advice profession, dual regulation of lawyer agents, the professional development requirements for migration agents, and the Migration Agents Registration Authority's performance as an industry regulator. It asks how priority processing might work for migration agents.

I would like to thank the External Reference Group for its expertise in overseeing this review.

I encourage all interested individuals and groups to put forward their views for consideration. I look forward to reading them.

Yours sincerely

A handwritten signature in blue ink that reads "Teresa Gambaro". The signature is written in a cursive style.

Hon Teresa Gambaro MP  
Assistant Minister for Immigration and Citizenship

# 1 Introduction

## 1.1 Purpose of this review

- 1.1.1 The migration advice profession has been the subject of three previous reviews, the last of which was conducted in 2001–02. Each review has assessed the effectiveness of the regulatory scheme and the state of the migration advice profession at that time.
- 1.1.2 The 2007–08 Review of Statutory Self-Regulation of the Migration Advice Profession (the Review) will assist the government assess the readiness of the migration advice profession for a move from statutory self-regulation to self-regulation by examining, among other things:
- the legislative framework within which the Migration Institute of Australia Limited (MIA), acting as the Migration Agents Registration Authority (MARA), operates;
  - the level of professionalism within the industry;
  - consumer confidence and protection; and
  - the capacity of the MARA to deal with complaints.
- 1.1.3 This Review will make recommendations on how Australia's migration advice profession might further develop and become more professional.
- 1.1.4 Approval for the Review was given by the former Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs, the Hon Andrew Robb AO MP, on the basis that it be conducted by the Department of Immigration and Citizenship (DIAC) under the guidance of a four person External Reference Group. The Hon Teresa Gambaro MP, Assistant Minister for Immigration and Citizenship, has approved the Terms of Reference which are guiding the Review.

## 1.2 Terms of reference for the review

- 1.2.1 The Terms of Reference are to:
- a) evaluate the capacity of the migration advice profession to move to full self-regulation;
  - b) evaluate the role of the MIA as the industry regulator in a deregulated environment;
  - c) examine the effectiveness of the legislation and other relevant documentation in delivering the policy objectives under review. This includes Part 3 of the *Migration Act 1958* (the Act), the Migration Agents Regulations 1998 (the Regulations) and the Deed of Agreement between the Commonwealth and the MIA (the Deed);
  - d) evaluate the costs and benefits of the scheme to consumers and the community, and to fee charging and non-fee charging agents;

- e) evaluate the dual regulation of lawyer migration agents;
- f) examine the success of the Continuing Professional Development (CPD) scheme as well as its relevance and accessibility to agents;
- g) examine the options for priority processing of applications submitted to DIAC by registered migration agents; and
- h) report on the effectiveness of, and possible improvements to, the current statutory framework in regulating the migration advice profession.

1.2.2 This Review is being conducted with regard to the Commonwealth's best practice processes for regulatory review and reform as outlined in the *Best Practice Regulation Handbook*, which is at: [www.obpr.gov.au/bestpractice/index.html](http://www.obpr.gov.au/bestpractice/index.html)

### 1.3 External Reference Group to guide the review

1.3.1 The External Reference Group guiding the Review is chaired by the Hon John Hodges. Mr Hodges has had a long association with immigration issues in his capacity as a former Federal Minister for Immigration and Ethnic Affairs. He is a founding member of the MIA, a former registered migration agent, a member of reference groups for both the 1997 Review of the Migration Agents Registration Scheme and the 1999 Review of Statutory Self-Regulation of the Migration Advice Industry and is the current Chair of the Immigration Detention Advisory Group.

1.3.2 Other members of the External Reference Group are:

- Mr Glenn Ferguson, a Queensland solicitor and registered migration agent, who is a member of the executive of the Law Council of Australia (LCA), current President of the Immigration Lawyers Association of Australasia (ILAA) and a former President of the Queensland Law Society;
- Ms Helen Friedmann, a registered migration agent with her own consultancy and a former DIAC officer; and
- Mr Len Holt, a registered migration agent, former Queensland State President of the MIA and the Immediate Past President of the MIA.

1.3.3 Drawing on their expert leadership and knowledge, the External Reference Group will provide guidance to the DIAC Review team. The External Reference Group has approved the content and format of this discussion paper. It is responsible for approving the final Review Report and its recommendations, which will be forwarded to the Minister for Immigration and Citizenship, through the Assistant Minister.

## 1.4 Making submissions to the review

- 1.4.1 This Review will involve consultation with stakeholders to identify their views. Initial consultations have been held with key stakeholders: the MIA, the MARA and the LCA. The purpose of this discussion paper is to provide background on the migration advice profession and the current regulatory framework, to promote discussion with all stakeholders on the issues and to stimulate further informed input into the Review process. It invites submissions from key stakeholders, from the public, private and community sectors, employer and employee associations and migration agents themselves.
- 1.4.2 Submissions may address the Terms of Reference, some or all of the issues raised in this paper, or may raise other issues in relation to the migration advice profession, with a view to improving the operations of the profession.
- 1.4.3 Submissions can be forwarded to the Review at: [migrationagents.review@immi.gov.au](mailto:migrationagents.review@immi.gov.au).
- 1.4.4 Submissions should be made by 26 October 2007.

## 2 History and Overview of the Migration Advice Profession

### 2.1 History

- 2.1.1 Prior to the 1990s, migration advice in Australia was largely unregulated. Following amendments to the *Migration Act (1958)* in 1989, the visa application and decision making processes for migration became more complex. The period following these amendments saw an increase in consumer complaints against migration agents. In September 1992, migration advice was brought under full government regulation through the Migration Agents Registration Scheme (MARS), which was administered by DIAC. This initiative reflected the government's concern over the level and nature of complaints made against incompetent or unscrupulous agents. The government recognised that many consumers of migration agents' services were not able to make an informed choice about the quality of the migration advice they purchased and were thus vulnerable to exploitation. Since industry regulation commenced, in Australia only registered migration agents, or certain exempt persons are permitted to provide 'immigration assistance' as defined by the Act.

### 2.2 The first review

- 2.2.1 In June 1996, the government commissioned a review of the MARS. This was the first regulatory arrangement to be reviewed by the Commonwealth as a party to the *Competition Principles Agreement*. In line with this agreement, the Terms of Reference of that Review included reporting on: *"the appropriate arrangements for any regulation of the migration advice industry, including the prospects for enhanced self-regulation"*.
- 2.2.2 The MARS Review was published in March 1997. After considering the findings of the Review, the government decided that the migration advice profession should move towards voluntary self-regulation after a transitional two year period of statutory self-regulation. Following amendments to Part 3 of the *Migration Act (1958)*, and subject to a sunset clause (s333 of the Act), statutory self-regulation commenced on 21 March 1998 for a period of two years until 21 March 2000. During that time, a review of the arrangements would occur. On 23 March 1998, the then Minister for Immigration and Multicultural Affairs, the Hon Philip Ruddock MP, appointed the MIA as the MARA to administer the relevant provisions of the Act and to undertake the role of industry regulator.
- 2.2.3 The appointment of the MIA (a private sector industry association) and the establishment of the MARA to take on the Commonwealth Government's regulatory function fundamentally changed the way the migration advice industry was regulated.

At the same time, a rigorous and publicly defensible set of procedures for this regulation was developed and implemented in a short time, under the close scrutiny of government, migration agents, consumer groups and the general public.

- 2.2.4 On 1 April 1998, the Regulations came into effect. Among other things, the Regulations include a Migration Agents Code of Conduct (Code of Conduct), which is at: [www.themara.com.au/ArticleDocuments/Code%20of%20Conduct.pdf](http://www.themara.com.au/ArticleDocuments/Code%20of%20Conduct.pdf)

## 2.3 The second review

- 2.3.1 The Review of the transitional period of statutory self-regulation commenced in August 1999. This Review assessed the effectiveness of the statutory self-regulation framework and the capacity of the migration advice industry to move to full self-regulation. This Review found that statutory self-regulation had achieved its objectives of improving consumer protection, competence and ethical standards in the migration advice industry. However the Review also found that the industry was not ready to move to full self-regulation and recommended that the period of statutory self-regulation be extended, with a further review of statutory self-regulation to be undertaken during this period.
- 2.3.2 The government endorsed these findings and decided to extend the period of statutory self-regulation for a further three years, until 21 March 2003, stipulating that a further review be conducted prior to that date.

## 2.4 The third review

- 2.4.1 The third Review of the industry was undertaken in 2001–02. This Review found that while the MIA/MARA had improved its performance, it needed more time to achieve key goals. It also found that the profession was not yet ready to move to full self-regulation.
- 2.4.2 In recommending an extension of statutory self-regulation, the 2001–02 Review also recommended that this regulatory framework “*should be reviewed again at an appropriate juncture*”. In a press release issued in September 2002 to launch the report of the 2001–02 Review, the Hon Gary Hardgrave MP, then Minister for Citizenship and Multicultural Affairs, committed the government to a further review of statutory self-regulation of the profession by June 2008. In 2003, the new *Deed of Agreement between the Commonwealth of Australia and the Migration Institute of Australia Limited* stated that the Commonwealth “*shall review the regulation arrangements (the Review) within five years of the Commencement date*” that is, by June 2008.

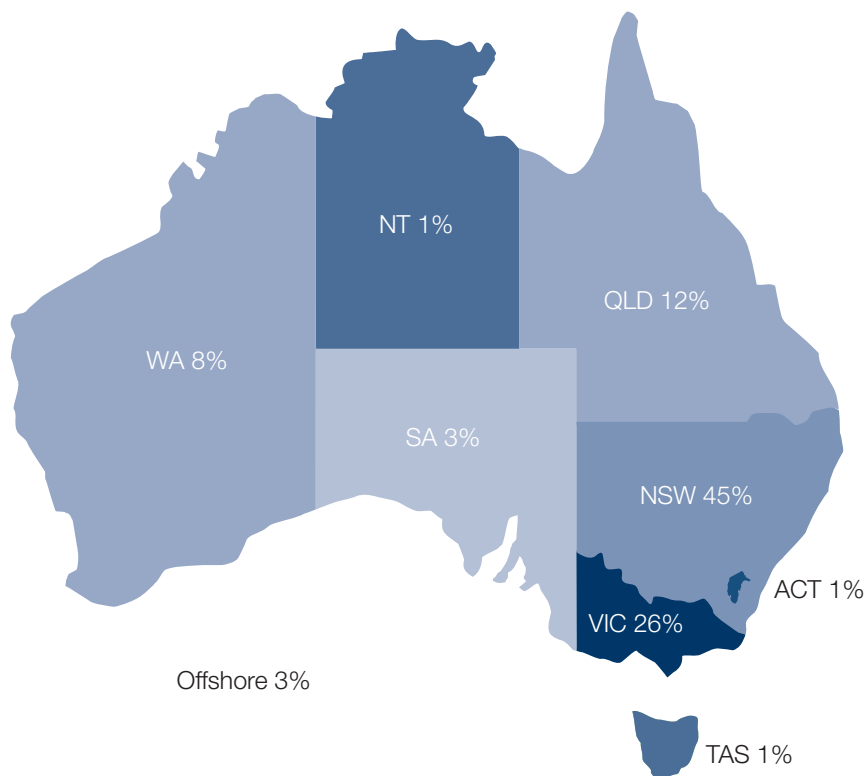
- 2.4.3 The report of the *2001–02 Review of Statutory Self-Regulation of the Migration Advice Industry* was published by the Hon Gary Hardgrave MP in September 2002. The report made 27 recommendations, almost all of which have since been implemented. **Attachment A** sets out the recommendations and the progress made on their implementation.
- 2.4.4 The main recommendation still outstanding from the 2001–02 Review is that registration be extended to migration agents operating outside Australia. This recommendation is still being reviewed and options to address offshore migration agents are being developed.

## 2.5 Overview of the profession

- 2.5.1 As at 30 June 2007, there were 3495 migration agents registered with the MARA. Almost one third (1035) of these held legal practising certificates and around seven per cent of registered migration agents operate in not-for-profit or non-commercial organisations such as Legal Aid Centres.
- 2.5.2 As at 30 June 2007, of a total of 3495 registered migration agents, 1599 (or 46 per cent) were members of the MIA. At the time of the last Review in 2001–02, there were 2429 agents, of whom 37 per cent (900) were MIA members. This reflects a numerical and proportional increase in the MIA's reach within the industry.
- 2.5.3 The ILAA, which is part of the LCA, represents the interests of some lawyers who are also migration agents. Some migration agents are members of both the MIA and ILAA, while a significant number of migration agents appear to be members of neither organisation.
- 2.5.4 The majority of registered migration agents have only been registered for a short period of time. Almost 49 per cent of all currently registered migration agents became registered in the past three years. The percentage of currently registered migration agents who have been registered for over 10 years is around 14 per cent.
- 2.5.5 The number of cases handled by individual registered migration agents varies greatly. Some agents only handle one or two cases per year, while some of the larger practices handle over a thousand. Some agents specialise in certain visas, while others work across a wide range of visa classes.

2.5.6 Chart 1 shows the geographical distribution of registered migration agents in Australia. Significantly, almost half of all registered agents are located in New South Wales and just over a quarter are in Victoria. While only about three per cent of registered agents have given an overseas address as their permanent address, there are an unknown number of registered migration agents who, while based in Australia, regularly travel overseas to provide immigration assistance to applicants for Australian visas.

Chart1: Distribution of registered migration agents



## 3 The Regulatory Framework

### 3.1 The role of the MARA

3.1.1 The MARA is the sole body vested with the power under Part 3 of the *Migration Act (1958)* to make decisions in relation to the registration and discipline of migration agents in order to protect consumers. The MARA's powers and functions include:

- registering new agents and re-registering continuing agents;
- administering the CPD scheme and sound knowledge requirements for agents;
- monitoring the conduct of, investigating complaints about, and applying disciplinary action against registered migration agents;
- investigating complaints about lawyers in relation to their provision of immigration legal assistance and referring complaints to appropriate legal professional associations;
- monitoring the adequacy of the Code of Conduct; and
- referring offences under the Act, such as unregistered practice, to DIAC.

### 3.2 Registration requirements for agents

3.2.1 Initial registration as a migration agent is contingent upon an applicant meeting a number of requirements set out in the *Migration Act (1958)* and includes the following:

- being a fit and proper person and a person of integrity;
- holding professional indemnity insurance;
- having access to a professional library (as evidenced by subscribing to LEGENDcom or other Commonwealth law websites);
- having a satisfactory level of English (at least equivalent to International English Language Testing System (IELTS) level 6); and
- meeting knowledge requirements.

### 3.3 Knowledge requirements for migration agents

3.3.1 To first register as a migration agent, an applicant must demonstrate that he or she has satisfied the entry level requirements stipulated under section 289A of the *Migration Act (1958)*, which include either holding a current legal practicing certificate in an Australian state or territory or completing a prescribed course and passing a prescribed examination. Those who successfully complete the prescribed examination have twelve months in which to apply for registration as a migration agent.

- 3.3.2 Prior to 1 October 2006, the prescribed course was either a formal course or self-directed learning and the prescribed examination was the Migration Advice Professional Knowledge Entrance Examination (MAPKEE). The last MAPKEE was held in Sydney, Melbourne, Brisbane, Adelaide, Perth and London on 15 July 2006.
- 3.3.3 In July 2006, the MAPKEE was replaced by the Graduate Certificate in Australian Migration Law and Practice (Graduate Certificate). The Graduate Certificate is offered by The Australian National University, Griffith University, Murdoch University and Victoria University. The course is delivered face-to-face and on-line in Australia.
- 3.3.4 Graduates of the Graduate Certificate, who have passed the prescribed examination with a minimum pass mark set by the MARA, will be recognised as satisfying the knowledge and practice requirements for initial registration as a migration agent.
- 3.3.5 There is no current requirement for existing registered migration agents to complete the Graduate Certificate. The exception to this is if an existing agent allows their registration with the MARA to lapse and it is not renewed within twelve months of their previous registration, and the agent does not hold a current legal practicing certificate at the time of re-registration. In these cases agents will be required to complete the Graduate Certificate before they can re-register with the MARA.

### 3.4 CPD

- 3.4.1 Since 21 March 1999, in order to qualify for repeat registration as a migration agent, all applicants must provide the MARA with evidence of having fulfilled their CPD requirements. These requirements are discussed in greater detail in Chapter Five.

### 3.5 Other components of the regulatory framework

- 3.5.1 Part 3 of the *Migration Act (1958)* also includes the following provisions:
- appointment and functions of the MARA;
  - requirements for registration as a migration agent;
  - obligations of registered migration agents;
  - definitions of ‘immigration assistance’<sup>1</sup> and ‘immigration legal assistance’<sup>2</sup> and who may provide them;

1 Immigration assistance involves: providing advice to an applicant, sponsor or nominator; preparing or helping to prepare visa applications, cancellation review applications, nominations or sponsorships; representing applicants before courts or review proceedings; or helping with a request for ministerial intervention.

2 Immigration legal assistance involves: preparing for or acting on behalf of applicants, sponsors, or nominators before a court, or the provision of legal advice not directly related to an application

- decision-making and investigations by the MARA;
- disciplining registered migration agents and former registered migration agents;
- actions in relation to inactive and deceased migration agents; and
- a range of criminal offences related to unauthorised migration practice.

3.5.2 The Migration Agents Regulations (1998) provide for:

- publication of notice of intention to apply for registration as a migration agent;
- prescribed qualifications for initial registration as a migration agent;
- CPD requirements for registered migration agents;
- the Code of Conduct;
- publication of notice of suspension or cancellation of registration; and
- persons who may make complaints.

3.5.3 Other components of the regulatory framework are the:

- *Migration Agents Registration Application Charge Act (1997)*;
- Migration Agents Registration Application Charge Regulations (1998); and
- The *Deed of Agreement between the Commonwealth of Australia and the Migration Institute of Australia Limited*, which sets out the arrangements and performance standards by which the MIA, acting as the MARA, and DIAC fulfil their respective functions.

## 3.6 Monitoring agent conduct

3.6.1 The conduct required of registered migration agents is set out in the Migration Agents Code of Conduct. A registered migration agent has the overriding duty to act at all times in the lawful interests of their client.

3.6.2 The Code of Conduct aims to establish proper standards of professional conduct of business for migration agents, and the minimum attributes and abilities that a person must demonstrate to perform as a migration agent.

3.6.3 The Code of Conduct sets out:

- the obligations of a migration agent to their client, any employees of the agent and the Australian Government and its agencies;
- requirements for relations between agents;
- procedures for setting and charging fees by migration agents;
- standards for a prudent system of office administration and financial accounting;

- requirements for agents to respond to complaints and participate in mediation if requested to do so by the MARA; and
- provisions to ensure that agents make their clients aware of the Code of Conduct.

3.6.4. The MARA is responsible for administering the Code of Conduct and has the power to investigate the conduct of *registered migration agents*, in response to complaints received or complaints initiated by the MARA itself. The MARA has the power to apply four possible sanctions if a breach of the Code of Conduct is found to have occurred: a caution; suspension of registration; cancellation of registration; or barring from registration. An agent who has had complaints lodged against them may be referred to mediation. The MARA's decisions to apply sanctions are subject to merits and judicial review.

3.6.5 Unregistered practice is illegal and complaints about *unregistered practice* and other criminal allegations are referred to DIAC for investigation and prosecution.

### 3.7 DIAC's role in supporting the MARA

3.7.1 DIAC's support includes:

- providing administrative, policy and legal support to the MARA, including the payment of registration fee income to the MARA;
- monitoring the performance of the MARA in relation to registration, complaints handling and financial management, in accordance with the *Deed of Agreement between the Commonwealth of Australia and the Migration Institute of Australia Limited*;
- indemnifying the MIA, acting as the MARA, with respect to legal costs or expenditure incurred in preparing for, conducting or defending any proceedings in a Court or Tribunal;
- preparing, referring (where appropriate), arranging carriage and prosecution or defence of any litigation arising in relation to the MARA functions;
- investigating alleged criminal offences under the *Migration Act (1958)* and other legislation as appropriate; and
- providing advice to the government and within DIAC on the operation of the regulatory framework, including briefing materials and responses to Parliamentary Questions.

### 3.8 DIAC's role in investigating offences under the *Migration Act (1958)*

3.8.1 Both the 1999–2000 and 2001–02 Reviews considered the problem of unlawful conduct in the migration advice industry and found that DIAC's predecessors needed to do more in terms of ensuring the integrity of the industry.

3.8.2 DIAC is responsible for investigating individuals who are suspected of committing offences under the *Migration Act (1958)*, including involvement in immigration fraud, providing immigration assistance while unregistered, and the publication of false and misleading advertisements. Where it is suspected that an individual has been involved in such activities, the information is referred to the relevant DIAC investigations area.

3.8.3 Depending on the type and severity of the offence(s) committed by the individual, DIAC has a range of responses for dealing with unregistered practice and related offences, as follows:

- disruption activities, including site visits and interviews;
- issuing an infringement notice; and
- criminal prosecution.

3.8.4 The infringement notice is a criminal sanction and may be used as an alternative to prosecution. It may be issued when an authorised officer has the reasonable belief that a person has provided immigration assistance without being registered, and without being exempt from this provision. The penalty is 12 penalty points, or \$1320, which must be paid within 28 days, or such further period allowed by the authorised officer. If the penalty is not paid, the matter may be referred to the Commonwealth Director of Public Prosecutions for prosecution. It is anticipated that this infringement notice scheme will be operational by the end of 2007.

3.8.5 During the 2005–06 financial year there was a total of four convictions relating to unregistered migration agents and one conviction relating to a registered migration agent, all relating to offences committed by the individuals whilst providing immigration assistance. In the 2006–07 financial year there were two convictions relating to unregistered migration agents.

### 3.9 Concerns with the current regulatory framework

3.9.1 Separate to the issue of whether the migration advice profession is ready for full self-regulation, is the issue of how well the associated legislation serves the profession. The level of detail in Part 3 of the *Migration Act (1958)* may be contrary to best practice, where the general authority and power rests in the Act, with other details in subordinate legislation such as regulations. For example, section 287 of the Act sets out what must be included on the Register of Migration Agents (the Register). Suggestions have been made to include other information on the Register in order to provide better information for visa applicants, for example whether or not an agent also holds a current legal practising certificate. However, this would require a change to the Act, which is a longer and less certain process than the regulation change process.

- 3.9.2 Other sections of Part 3 of the Act appear cumbersome, yet still may not include everything that is required, for example the definition of ‘immigration assistance’ in section 276. One way of addressing this issue might be to adopt the approach in New Zealand’s *Immigration Advisers Licensing Act (2007)*, where the definition of ‘migration advice’ covers everything, except for certain exclusions. Alternatively, the detail of what is included or excluded could be prescribed in the regulations, which would allow for more timely amendment as required.
- 3.9.3 There is a level of confusion surrounding the crossover between authorised recipients (defined in s494D of the *Migration Act (1958)*) and migration agents. This has been demonstrated in a number of court cases where it has not been clear with whom DIAC should communicate and notify decisions. Concern has also been raised that some authorised recipients are providing immigration assistance, possibly for fees or reward, without being registered migration agents. There is evidence that some formerly registered migration agents may be listed as authorised recipients, while in fact providing immigration assistance, in breach of the Act. The impact of possible exploitation and other detriment to clients can be significant in these cases.
- 3.9.4 This Review also provides a timely opportunity to examine the Code of Conduct to ensure that all parts of it continue to be relevant and to see if it might be strengthened. For example, while the Code of Conduct clearly specifies that migration agents must act lawfully in the legitimate interests of their client, it does not indicate that agents must operate within the policy intentions of the government and to the satisfaction of the government.

#### Issues for discussion:

- Is there too much detail in Part 3 of the Act and are there matters that should be simplified? For example, should the definition of ‘immigration assistance’ be simplified?
- Are there details within the Act that might better be placed in the Regulations? For example, should the information that is included on the Register be included in the Regulations and removed from the Act?
- Should further limitations be placed on who can represent visa applicants? For example, should DIAC limit communications to visa applicants, registered migration agents or those exempt from the need to be registered in section 280 of the Act?
- Are there changes that might be made that would strengthen the Code of Conduct?
- Are there other legislative changes that could be made to improve the regulatory framework?

## 4 The MARA's Performance as the Industry Regulator

4.1 Previous reviews have examined how the MARA carries out its regulatory functions and how it can assist in raising the professionalism of the migration advice industry. Several recommendations relating to the MARA's performance were made in the 2001–02 Review and have largely been implemented. This chapter provides an overview of the MARA's performance as the regulator in recent years, including the impact on performance from having implemented those recommendations. More detailed information about the MARA's performance is available on its website [www.themara.com.au](http://www.themara.com.au) and in the MARA's annual reports which can be accessed via the MARA website.

### 4.2 Publicity and consumer awareness

4.2.1 Measures introduced since the 2001–02 Review to improve consumer awareness of the role of the MARA have included:

- development of a booklet, 'Information on the Regulation of the Migration Advice Profession', with the requirement that, from 1 March 2003, all registered migration agents provide a copy to their clients;
- introduction of two Customer Service Charters, one to address standards of service provided by the MARA to registered migration agents (published October 2003) and one for clients of migration agents (published June 2005);
- removal of an automated message service and opening of the telephone lines to the public during business hours from 1 July 2005;
- since November 2005, collection and publication of average fees of registered migration agents;
- commencement of an advertising campaign, with an annual budget of approximately \$120 000, specifically targeted at raising awareness of the MARA amongst those most at risk in the community;
- addition of two Public Access Officers and a Receptionist to improve public accessibility; and
- attendance at skills expos and immigration forums to publicise the migration advice profession and the activities of the MARA.

## 4.3 Improvements to education standards for registered migration agents

- 4.3.1 As discussed in Chapter 3, the entry level requirements for initial registration as a migration agent were raised through the replacement of the MAPKEE with the Graduate Certificate. The MARA partnered with four universities to develop the Graduate Certificate. While it is expected that this course will increase the knowledge, competence and professionalism of migration agents, it will probably be several years before the cohort of agents who have completed the course is large enough for an assessment to be made as to whether this is the outcome. Furthermore, only some graduates will go on to apply to become registered migration agents and it will be some time before currently registered migration agents, who are being encouraged by the MARA to complete the course as part of their CPD, do complete the course.
- 4.3.2 The MARA has also taken steps to raise the standard of CPD activities. It developed a framework of mandatory CPD activities. The MARA is working towards developing professional standards for registered migration agents and aligning CPD activities with these standards.
- 4.3.3 The MARA has continued to support CPD pro bono activity providers by contributing to the costs of administering and overseeing their programmes. CPD activities are discussed in more detail in Chapter Five.

## 4.4 Registering agents

- 4.4.1 One of the MARA's key performance indicators is how it is meeting client service standards for registration. In 2006–07 over 97 per cent of initial and repeat registration applications were processed within customer service timeframes.
- 4.4.2 Table 1 demonstrates that the number of successful initial registrations decreased in 2004–05 and 2005–06. The MARA attributes the decline to more stringent knowledge requirements introduced in July 2004.

Table 1: Initial registrations

	2001–02	2002–03	2003–04	2004–05	2005–06	2006–07
Approved	677	677	611	361	396	649
Refused	12	10	12	12	5	2
% Finalised < 2 Mths.	64.95%	65.60%	93.97%	97.80%	98.00%	97.8%

4.4.3 In the six years since the 2001–02 Review, the MARA has refused 158 applications for registration, including both initial and repeat applications. Over 50 per cent of these applications were refused based on integrity grounds. Refusals dropped noticeably in 2005–06 to the lowest level since the establishment of statutory self-regulation. This may suggest a greater awareness of, and compliance with, the MARA registration requirements.

#### 4.5 Complaints handling and disciplining agents

4.5.1 Table 2 demonstrates that the number of complaints against registered agents from outside the MARA increased in 2006–07, with the number of complaints generated by the MARA decreasing significantly.

Table 2: Total complaints handled by the MARA

	2003–04	2004–05	2005–06	2006–07
Complaints received from outside the MARA	560	347	282	323
Complaints generated by the MARA	164	203	274	71
Complaints reopened	3	2	29	17
Total complaints	728	552	585	411

4.5.2 Table 3 shows that the total number of complaints handled by the MARA relates to eight to 10 per cent of registered agents in the four years to 2005–06, with a decrease to six per cent in 2006–07.

Table 3: Level of agent involvement in complaints

	2002–03	2003–04	2004–05	2005–06	2006–07
Total Registered Agents	3084	3274	3144	3163	3495
No. Agents Complained About	310	310	269	283	214
% Agents Complained About	10.05%	9.47%	8.56%	8.95%	6%

4.5.3 Most complaints handled by the MARA relate to standards of professional conduct. Table 4 shows that while the proportion of complaints about professional conduct has remained constant between 2003–04 and 2004–05, this proportion declined significantly in 2005–06, and again in 2006–07. Clearly though, professional conduct is still an issue of some importance for the profession.

Table 4: Categories of issues raised in complaints

	2003–04	2004–05	2005–06	2006–07
Standards of Prof. Conduct	1774	1638	905	693
+ Competence*	838	792	359	324
+ Integrity*	476	367	235	139
+ MARN Not Advertised*	68	47	75	32
+ Keep Client Informed*	110	145	62	59
+ False/Misleading Advertisement*	36	44	48	24
+ Imply Relationship with DIAC/MARA*	16	26	44	10
+ Mislead about Prospects*	52	36	30	18
+ Act in Timely Manner*	34	44	21	22
+ Conflict of Interest*	13	28	13	14
+ Vexatious/Grossly Unfounded*	120	93	9	10
+ Submit App'n without Docs.*	10	9	4	7
+ Imply Relationship with Minister*	1	4	3	5
+ Procure Particular Decision*	-	3	2	8
+ Other (including maintaining prof library)	-	-	-	19
Termination of Services	19	29	51	45
Duties to Employees	7	15	48	46
Financial Duties	34	46	75	61
Record Keeping & Management	32	47	43	32
Fees and Charges	82	99	84	112
Obligations to Client	72	97	71	46
Relations Between Agents	9	7	5	11
Client Awareness of Code	75	39	68	32
Complaints Handling Process	14	9	4	10
<b>Total</b>	<b>2118</b>	<b>2026</b>	<b>1354</b>	<b>1088</b>

\*Note: The above figures reflect the number of Code of Conduct breaches alleged in complaints. Most complaints involve several breaches of the Code of Conduct, and hence can be represented multiple times in this table.

Note: All numbers in the grey fields are proportions of the total numbers seen in the "Standards of Professional Conduct" complaint type.

- 4.5.4 Concerns have been raised in the media about the level of fees charged by some migration agents. In 2006–07, there has been an increase in complaints made to the MARA about fees and charges, despite the MARA now publishing the range of fees charged by registered migration agents.
- 4.5.5 Over recent years, the MARA has demonstrated significant improvements in its complaint handling processes. As at 30 June 2005, the MARA had 432 complaints on hand, with 174 of these complaints being over 12 months old. However, as at 30 June 2007 the MARA had reduced its complaint backlog to 114 complaints on hand, with 13 of these being over 12 months old.
- 4.5.6 Recent reviews into the MARA's complaints handling processes by both DIAC and the Commonwealth Ombudsman have confirmed that significant improvements have been made while at the same time providing recommendations for further improvements. The MARA has agreed with all the Ombudsman's recommendations. The Ombudsman's report number 05/2007, which includes the recommendations, is available on the Ombudsman's website at: [www.comb.gov.au](http://www.comb.gov.au)
- 4.5.7 Directly related to the MARA's complaints handling processes are the sanctions that can be imposed as a result of these complaints. The total number of sanction decisions increased significantly in 2006–07.
- 4.5.8 Table 5 shows that no further action was taken by the MARA in response to a number of complaints. The MARA may decide to take no further action if it does not consider that the conduct displayed is severe enough to warrant a sanction or where an agent has taken proactive steps to amend their behaviour, or if there is insufficient evidence.

Table 5: Actions resulting from complaints

	2002–03	2003–04	2004–05	2005–06	2006–07
Total Complaints Received	510	728	552	585	411
Complaints Received (Registered)	470	682	519	554	366
Complaints Received (Unregistered)	40	46	33	31	45
No Further Action	148	363	345	385	294
Discontinued	142	122	207	241	60
Total Sanction Decisions	12	41	37	39	78

4.5.9 As an alternative to sanctioning an agent, the MARA has the power to invite all parties involved in a complaint to seek a mediated resolution, particularly where the complaint involves a relatively minor breach of the Code of Conduct. In the first instance, the MARA can either refer the matter to the agent to resolve or offer formal mediation involving a professional mediator. This may provide immediate restitution for the client, while not precluding further investigation and possible sanction where considered appropriate by the MARA. Over the last six years, the MARA has coordinated 25 mediations, with 16 being resolved to the satisfaction of the parties involved.

## 4.6 Safeguarding of clients' monies

4.6.1 The MARA has the power to impose administrative sanctions for breaches of the Code of Conduct. In a case where a registered migration agent misapplied clients' monies, the MARA sanctioned the agent. However, these clients will not be able to recover their money, unless the police are able to recover it as part of a successful criminal conviction.

4.6.2 Lawyers, accountants and real estate agents are required to hold clients' monies in a trust account (with a separate ledger for each client). Compared with the Code of Conduct, legislation providing for the operation of trust accounts in these professions is far lengthier and places a greater onus on professionals in relation to recording requirements. Nonetheless, both clients' accounts and trust accounts operate in a similar way in that they hold money from clients, separate from general operating accounts. Like registered migration agents, these professionals have ready access to, and control of, the monies within the trust accounts.

4.6.3 Fidelity funds, like professional indemnity insurance, can be used to indemnify professionals such as architects, accountants, lawyers and migration agents for their legal liability to their clients and others relying on their advice, and/or services. It can provide indemnity cover in the event that a client suffers a loss (material, financial or physical) which is directly attributed to negligent acts of the professional.

4.6.4 Fidelity funds are also known as compensation funds. The term 'fidelity fund' is usually used to describe a fund that provides compensation for *wrongdoing*, as opposed to *negligence*. Fidelity funds differ from professional indemnity insurance, which provides indemnity cover for a professional where a client suffers loss that can be directly attributable to the negligent acts of that professional. Fidelity funds usually provide protection for a client where the professional concerned has acted dishonestly, for example, has misapplied trust monies. The nature of claims differs according to the profession being indemnified. Accountants, lawyers, investment advisers, valuers and registered migration agents, for example, can be sued for economic loss occurring as a result of advice provided.

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4.6.5 Fidelity funds can complement professional indemnity insurance. Fidelity funds are used in industries where many parties are able to combine their economic resources into a funds pool, which is held in trust on behalf of the shareholders. The fund is usually managed by a fund manager who invests the funds and makes payments to claims against a member of the fund. Typically, member organisations are required to contribute to the fund with one larger initial contribution and smaller annual payments. The fund manager determines the amount to be lodged. A number of issues would need to be thoroughly considered as part of any decision regarding a fidelity fund for the migration advice profession.

## 4.7 Emergency powers

4.7.1 At various times in the past, members of the MARA Board have expressed concerns that the MARA only has discretionary powers to sanction registered migration agents and lacks the power to act swiftly in circumstances they see as warranting such action. It would be possible, through legislative change, to give the MARA emergency powers similar to the regulatory bodies of other professions, such as those for lawyers and tax agents, to suspend a migration agent's registration where there are strong grounds to believe that a client is at risk.

## 4.8 Judicial review

4.8.1 Given that an adverse decision made by the MARA can affect the livelihood and the perceived integrity of an agent, it is not surprising that sanctioned agents often seek merits/judicial review of sanction decisions. DIAC is responsible for conducting all appeals and litigation on behalf of the MARA. Currently DIAC funds all litigation arising from the MARA decisions and the total costs are substantial. If full self-regulation of the migration advice profession is realised, the regulator would need to meet these costs.

4.8.2 Both DIAC and the MARA analyse the outcomes of all litigation matters to ascertain any lessons that might be learnt from each case, to assist in better decision-making in the future. An analysis of merits and judicial review appeals lodged by agents between 1998 and 2005 shows a steady increase in the number of appeals being lodged by agents. As the level of success of these appeals fluctuates from year to year, it is difficult to gauge the appropriateness of the MARA's decisions.

### Issues for discussion:

- Has the MARA adequately met its responsibilities in relation to consumer awareness, registration, complaints handling and dispute resolution? If not, what other measures or activities could the MARA undertake to improve its performance in these areas, in addition to those measures already agreed to by the MARA in the Commonwealth Ombudsman's report?
- Are the MARA's complaints handling procedures effective? If not, how might consumer complaints be better addressed?
- Should consideration be given to setting a schedule of fees that may be charged by registered migration agents?
- How else might consumers be protected to prevent complaints regarding registered migration agents?
- How might litigation be undertaken and funded by the MARA if the profession moves to full self-regulation, or if it is otherwise decided that the profession, and not DIAC, should meet these costs?
- How might the level of litigation be reduced?
- How might legislation be strengthened to further discourage registered migration agents from committing offences?
- Is there a need for a fidelity fund for registered migration agents? If so, what issues need to be considered and which model(s) would be appropriate? If a fidelity fund is not appropriate, how might consumers' monies be otherwise protected?
- Is there a need for the MARA to have "emergency" sanctioning powers?

## 5 Continuing Professional Development

- 5.1 All registered migration agents must complete a minimum of 10 CPD points annually to qualify for repeat registration. If an agent fails to obtain 10 points, their application for repeat registration cannot be approved and the agent will be excluded from practicing in the industry for a period of 12 months, after which time they may reapply for registration. At least six of the 10 points must be accrued from the completion of approved core activities that relate specifically to the *Migration Act (1958)* and to portfolio policies and procedures. Agents may accumulate their remaining points by completing additional core activities or selecting from a range of elective activities.
- 5.2 In addition to the requirement to complete six core points, the 2001–02 Review recommended that some activities should be made mandatory for registered migration agents in the first year of their registration, and periodically thereafter. As a result, the MARA developed a framework for the delivery of mandatory CPD activities by all CPD providers. Mandatory CPD and repeat registration requirements came into effect on 1 July 2006.
- 5.3 The CPD activities that are mandatory during the first year of registration are:
- Accounts Management;
  - Business Management;
  - Ethics and Professional Practice; and
  - File Management.
- 5.4 All other applicants for repeat registration will be required to have completed one of the above mandatory CPD activities in the 12 months immediately before the date on which they apply for repeat registration.
- 5.5 Since 1 July 2003, all CPD activities are approved at one of three levels:
- Level 1 activities are designed to cater for larger groups where there are no prerequisites for participation. Level 1 activities attract one point.
  - Level 2 activities are designed to give agents a deep and substantial understanding of migration matters. To complete Level 2 activities, agents must have two or more years experience as a registered migration agent or have completed 20 or more approved CPD activities. Level 2 activities attract 2 points.

- Level 3 activities are designed to give agents a deep and critical understanding of particular aspects of immigration assistance. To complete Level 3 activities, agents must have four or more years experience as a registered migration agent or have completed 10 or more Level 2 activities, or 60 or more Level 1 activities, or 60 or more approved CPD activities, as specified by the MARA. Level 3 activities attract 3 points.
- 5.6 As at 30 June 2007, 694 approved CPD activities were available to migration agents, an increase of 37 from the previous year. There were 112 newly approved activities throughout the year. Seminars, lectures, workshops and conferences remained the most popular form of CPD activity, with 3529 agents claiming 25 955 points from 341 activities. Assessment activities continued to be the second most popular form of activity for 2006–2007 with 1121 agents claiming 3389 points from 67 activities.
- 5.7 During 2006–07, 35 per cent of all registered migration agents collected more than the mandatory 10 points from their CPD participation. An average of 11.2 CPD activity points was claimed per agent from an average 9.8 activities. There were 36 organisations that provided approved CPD activities throughout the reporting period.
- 5.8 Criticisms made of the MARA's CPD scheme largely relate to:
- concerns that the system is too complex;
  - a perceived conflict of interest arising from the MIA being the regulator of CPD activities as well as a major CPD provider; and
  - a belief that many of the Continuing Legal Education (CLE) activities offered to Australian lawyers should be recognized by the MARA as CPD activities. This position is strongly held by some lawyer agents, who argue that qualified lawyers should not be expected to expend time and money on CPD activities when they have already completed CLE activities, particularly when they view some CPD activities as being too simplistic.
- 5.9 In early 2007, the MARA undertook an internal review of CPD activities for migration agents. One of the likely outcomes of this is that migration agents who are also members of certain other professional bodies which require ongoing professional development may be able to claim up to four CPD points from their other training activities.
- 5.10 In the United Kingdom, the registration process for immigration advisers, run by the Office of the Immigration Services Commissioner (OISC) includes the assignment of a competence rating. Further details are included at **Attachment B**.

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### Issues for discussion:

- Are there ways in which the regulation of the CPD scheme and its provision could be improved?
- Are there issues associated with the MIA being both the regulator and the main provider of CPD activities? If so, how might these be addressed?
- To what extent do CPD activities contribute to improved professionalism of registered migration agents?
- Should the Graduate Certificate, or parts of it, be either compulsory CPD or a requirement for continuing registration for migration agents who were registered prior to it being a requirement of registration? If so, over what time frame?
- Would a tiered system, such as that which operates in the United Kingdom, resolve issues relating to the level of knowledge and professionalism of registered migration agents? If so, how might such a system operate within the Australian regulatory framework?

## 6 MIA operating as the MARA

### 6.1 History

6.1.1 In appointing the MIA to operate as the MARA in 1998, an objective of the government was to increase consumer protection *and* provide a basis for the future voluntary self-regulation of the migration advice profession. During the following nine year period of statutory self-regulation, the government has monitored and reviewed the regulatory arrangements.

6.1.2 The MIA is Australia's largest industry body representing those in the migration advice profession. The MIA promotes the interests of the migration advice profession in addition to the desirability of increased professionalism within the industry. It lobbies government in the interests of its members, provides an information service for its members, has actively sought to work in greater partnership with DIAC and is a major provider of CPD activities for migration agents.

### 6.2 Perception of conflict of interest

6.2.1 The MARA is one division of the MIA, and regulates almost 3500 registered migration agents, of whom about 1600 are also members of the MIA. The MIA Executive comprises the same people who sit on the Board of the MARA, which makes decisions about disciplining registered migration agents. Among some registered migration agents and consumers, there is a perception of a conflict of interest that arises from the major professional organisation for registered migration agents also being the statutory regulator. Conversely, the MIA may be expected to have a vested interest in ensuring that the profession is not brought into disrepute by unscrupulous practitioners.

6.2.2 There are administrative arrangements and procedures in place that separate functions between the MARA staff and the MARA Board. The MARA's Professional Standards Team investigates and analyses registration applications and complaints and, where necessary, refers matters to a Professional Standards Committee (PSC) member for advice. Where officers or PSC members recommend disciplinary action, they issue a notice to the agent to provide them with an opportunity to make submissions that put forward their case. If a decision is then taken to proceed with disciplinary action, a recommendation is made to the Professional Standards and Registration Committee (PSR Committee). Members of the PSR Committee are directors of the MIA and it is only the PSR Committee members and members of the Board of Directors of the MIA who can make disciplinary decisions.

## 6.3 Review of MARA decision-making

- 6.3.1 In terms of independent review of the MARA decision-making, DIAC undertakes an annual audit. The Commonwealth Ombudsman's Office also recently investigated the MARA's complaints handling processes, as discussed in Chapter 4. The MARA agreed with the Commonwealth Ombudsman's recommendation to include independent persons on the MARA PSR Committee. However, legislative amendment will be required to implement this recommendation.
- 6.3.2 In addition, where the MARA Board makes a decision to refuse registration or to discipline a migration agent, that decision may be appealed to the Administrative Appeals Tribunal (AAT) and to Federal Courts, thus providing independent scrutiny of the Board's decisions.
- 6.3.3 By way of comparison, other professions in Australia such as accountants, lawyers, taxation agents and customs brokers are either regulated by their professional body or by a body set up by legislation. Information about these professions can be found at **Attachment C**.

## 6.4 Funding

- 6.4.1 Concerns have also been raised about a perceived conflict of interest between DIAC and the MIA in terms of how the MARA is funded.
- 6.4.2 The MIA currently receives funding from the Australian Government to undertake the statutory functions as the MARA. Concerns have been raised about the perception that these funds might be used for funding other MIA activities. Some have drawn the conclusion that simply because DIAC administers funding for the MARA, that DIAC therefore exercises control over the MARA's decision-making capacity.
- 6.4.3 The MARA is funded according to the amount of registration and re-registration fees paid by migration agents to the MARA. On behalf of the Australian Government, the MARA collects the registration and re-registration fees and forwards these on to the Australian Government. An appropriation equal to this amount is made by Parliament and is administered by DIAC, who pays it to the MARA. Each year, the MARA pays DIAC \$150 000 to provide legal support to the MARA. The MARA's finances are kept separate from the rest of the MIA and are audited separately.

6.4.4 While \$150 000 is paid back to DIAC each year to assist in meeting legal support costs, the actual legal costs to DIAC in relation to legal advice and litigation are substantially higher. While DIAC does, therefore, provide indirect funding for these activities on behalf of the MARA, DIAC does not make decisions for the MARA. For example, during the course of litigation DIAC may recommend a certain course of action, but as the MARA is the client, it is the MARA that provides instructions for the litigation lawyers.

6.4.5 Further details about funding arrangements and what the funds are used for are set out in the Deed. This may be found on the MARA website at: [www.themara.com.au](http://www.themara.com.au)

#### Issues for discussion:

- Is there a real or perceived conflict of interest from the MIA acting as the MARA?
- Should there be a requirement for some or all members of the MARA Board to be independent of the MIA and the migration advice profession?
- What other models could be used in regulating the migration advice profession?

## 7 Dual Regulation of Lawyer Agents

### 7.1 History

- 7.1.1 When statutory regulation of migration agents began in 1992, lawyer agents were included in the regulatory scheme to ensure that standards of professional conduct and quality of service would be consistent and that the industry was unified for the benefit of consumer awareness and protection. Lawyer agents were kept within the regulatory framework when statutory self-regulation commenced in 1998, in line with recommendations from the 1997 Review of MARS.
- 7.1.2 Lawyers who wish to provide ‘immigration assistance’ to visa and cancellation review applicants, are required to be registered with the MARA. Lawyers are not, however, required to register with the MARA to assist a failed visa or cancellation review applicant before the AAT or a court, as this is ‘immigration *legal* assistance’. ‘Immigration assistance’ and ‘immigration legal assistance’ are set out in sections 276 and 277 of the *Migraton Act (1958)*, respectively.
- 7.1.3 In recognition of lawyers’ legal training and qualifications, the regulatory scheme has fewer requirements for practising lawyers who hold current legal practising certificates:
- The knowledge requirement for initial registration as a migration agent is satisfied and the lawyer does not need to complete the Graduate Certificate and associated assessment items.
  - The requirement to hold professional indemnity insurance is satisfied and the lawyer is not required to take out additional professional indemnity insurance.
  - Some CLE activities that are done by lawyers as part of their legal practising requirements may soon be counted as CPD activities for re-registration.

### 7.2 Concerns about dual regulation

- 7.2.1 There has been longstanding opposition by some lawyer agents to their inclusion in the regulatory scheme. Lawyer agents, supported by the LCA, challenged the validity of Part 2A of the *Migration Act (1958)* that provided for the inclusion of lawyers in the regulatory scheme. In 1994 the High Court upheld the validity of Part 2A of the Act (*Cunliffe and Another v the Commonwealth of Australia* (1994) 124 ALR 120).
- 7.2.2 Despite this loss before the High Court, debate within the lawyer agent sector on the inclusion of lawyers within the regulatory scheme has continued, with the LCA maintaining its opposition to the dual regulation of lawyer agents.

### 7.3 Disadvantages of regulating lawyer agents through the scheme

7.3.1 In a submission to the Hon Andrew Robb AO MP on the *Regulation of Migration Lawyers*, 3 November 2006, the LCA claimed that lawyer agents should not be regulated under the regulatory scheme for the following reasons:

- The regulation of lawyer agents by the MARA is oppressive and unnecessary because the legal profession is one of the most heavily regulated professions in Australia and it is government policy to simplify regulation and reduce the burden of red-tape on business.
- The regulation of lawyer agents conflicts with the comprehensive regulatory framework established for the legal profession and these conflicts include disrupting the efforts of the Attorney-General's Department to create a uniform scheme of regulation for the legal profession, duplicating CPD and professional indemnity insurance requirements, and dual complaint handling and disciplinary procedures for misconduct.
- The regulation of lawyer agents conflicts with legal practitioners' duties to their clients and as officers of the court, and includes limiting the duty to provide comprehensive legal advice and the threat of sanctions by a non-legal body, without respect for a lawyer's duty to protect client legal privilege.
- Dual regulation is a disincentive for lawyers to practise migration law.
- Dual regulation restricts the capacity of community legal advice centres to provide legal advice because they have difficulty attracting experienced lawyers, and those who do practise in these centres are often inexperienced and must be closely supervised.
- As a key professional body for registered migration agents, there is a conflict of interest in the MIA acting as the MARA, in exercising its regulatory functions.
- There is no distinction made between lawyer agents and non-lawyer agents and some non-lawyer agents hold themselves out to clients as lawyers.
- Australia is the only western country that subjects lawyer agents to dual regulation.

### 7.4 Advantages of regulating lawyer agents

7.4.1 There are a number of reasons why it may be advantageous for lawyer agents to be included in the regulatory scheme:

- It supports a unified migration advice profession that will better benefit consumer awareness and protection through consistent standards of professional conduct and quality of service across the profession.
- Practising lawyers are not necessarily experienced or knowledgeable in migration law and policy, which are very complex and change frequently. This lack of knowledge is demonstrated by the considerable number of lawyer agents who contact DIAC seeking advice, which, as practising agents, they would be expected to know.

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- Since 1998 over 18 per cent of the MARA's sanction decisions have been against lawyer agents with a legal practising certificate. It has been found that state and territory law societies may not always action complaints about lawyer agents in a timely manner, thus demonstrating the need for this additional consumer protection.
  - The MARA is able to address complaints against lawyer agents that state law societies might not consider sufficient to warrant disciplinary action.

**Issue for discussion:**

- Should lawyer agents continue to be required to be registered with the MARA in order to act as migration agents? If not, why not? If so, are there some requirements currently placed on lawyer agents by the MARA that could be changed or removed?

## 8 Priority Processing for Migration Agents

- 8.1 DIAC receives several million visa applications per year. Of these, registered migration agents lodge almost 140 000 visa applications, ranging from simple visitor visas through to complex partner applications. Migration agents are used by over 70 per cent of applications in some visa classes (Attachment D). Migration agents also lodge sponsorship, nomination and review applications on behalf of their clients.
- 8.2 Many migration agents specialise in particular visa subclasses. Over time, these agents may develop expertise in relation to the requirements of those visa subclasses and lodge applications that may be decision-ready. These applications may then be dealt with more expeditiously by DIAC, thereby reducing processing times.
- 8.3 The MIA has proposed that a model be developed for prioritising and streamlining the processing of applications lodged by registered migration agents. This model could include guidelines as to how migration agents can access such a scheme. It is not proposed that all registered migration agents receive priority processing privileges for all applications lodged. Criteria for inclusion would need to be developed. The MIA has also proposed that any such scheme should be balanced by increased sanctions against any migration agent who acts unethically while part of this scheme.
- 8.3.1 The potential benefits for migration agents include:
- provision of more timely services to applicants;
  - priority processing status would provide individual agents with some recognition of their competence and knowledge; and
  - potential marketing opportunities.
- 8.3.2 The potential benefits of such a scheme for DIAC could include:
- DIAC case officers may be better used on assessing higher risk cases;
  - resource savings, balanced by minimal risk to the integrity of Australia's visa scheme; and
  - this being seen as an incentive for offshore agents to become registered, or otherwise recognised or accredited.
- 8.3.3 Potential benefits for applicants may include:
- faster outcomes of visa applications; and
  - more assurance of the competency of the agent being used.

- 8.4 DIAC is currently conducting a trial of eVisa access for education agents in a number of overseas countries. The decision to grant access is made by overseas posts and is broadly based on an assessment of an education agent's performance and good record, visa approval rate and level of knowledge. In return for eVisa access, agents are required to retain relevant documentation and are subject to regular audits to ensure their compliance. If irregularities are found, the education agent faces withdrawal of their eVisa access. The outcomes of this trial may inform any decision to provide priority processing privileges to migration agents.
- 8.5 In the same way that priority processing privileges could provide incentives to migration agents and improve information available to clients about the standard of services provided by these agents, an agents rating scheme may also be useful to encourage and reward further provision of high quality professional services by agents. Such a rating scheme could involve the allocation of three, four or five star ratings to experienced agents with reputations for excellence. Such a scheme could be extended to overseas agents, and leverage market forces to discourage unscrupulous or incompetent agents where Australian laws do not apply.

#### Issues for discussion:

- Should priority processing for applications lodged by registered migration agents be introduced?
- If it were introduced, what criteria could be used to decide which migration agents would receive priority processing privileges, for example volume of applications, approval rates or some other criteria?
- Which visa subclasses or other services could be included or excluded from a priority processing scheme?
- Should migration agents be able to state which of their applications they recommend receive priority processing, thus allowing non priority processing of any 'borderline' applications they may wish to lodge?
- Should migration agents be able to advertise or market that they may be able to secure priority processing of applications for their clients?
- How could the sanctions regime be changed, if at all, to cater to a priority processing environment, including the criteria to be applied to determine when a sanction should apply?
- Should a rating scheme be developed to recognise excellence in the profession and provide clients with further information about the quality of the migration services they are purchasing?

## 9 Self-Regulation and the Migration Advice Profession

### 9.1 The MIA's position

9.1.1 The MIA has long advocated the view that the migration advice profession should be self-regulated. Following each review, recommendations on how to professionalise the industry have been implemented leading to a growing level of professionalism. As with previous reviews, the Terms of Reference of this Review require an assessment of the state of readiness of the profession for its desired move from statutory self-regulation to complete self-regulation. Chapter Four provided an analysis of the performance of the MARA as the regulator. This chapter seeks to provide an analysis of the performance of the profession as a whole in order to answer two questions:

- Is self-regulation a desired outcome for the migration advice profession?
- Is the migration advice profession ready to self-regulate?

### 9.2 Self-regulation

9.2.1 Regulation can be considered as a spectrum ranging from self-regulation where there is little or no government involvement to explicit and prescriptive government regulation or legislation. Self-regulation can range from a simple code of ethics, to codes that are drafted with legislative precision, together with sophisticated customer dispute resolution mechanisms.

9.2.2 Effective self-regulatory schemes tend to promote good practice and target specific problems within industries, impose lower compliance costs on business, and offer quick, low cost dispute resolution procedures. However, a level of community scepticism regarding industry self-regulation may result in a distrust of self-regulatory schemes, unless schemes operate effectively and consumers have confidence in them.

9.2.3 In an address to the *27th International Conference of Data Protection and Privacy Commissioners* in September 2005, the Australian Privacy Commissioner, Ms Karen Curtis, outlined findings of the *Taskforce on Industry Self-Regulation*. The Taskforce identified that the conditions under which self-regulation is likely to be most effective are:

- where there are clearly defined problems but no high risk of serious or widespread harm to consumers

(Note: concerns are repeatedly raised with the government and DIAC of the serious impact that unscrupulous agents can have on their clients.)

- in a competitive market where industry participants are more likely to be committed to self-regulation, either to differentiate their products or for fear of losing market share

(Note: while migration advice is certainly a competitive market, it is not certain that most migration agents are committed to self-regulation.)

- in a mature industry that may administer more effective self-regulation because industry participants are more likely to have sufficient resources and be more committed, while any ‘shakeout’ of rogue traders may already have occurred

(Note: migration advice is not a particularly mature industry and although significant improvements have been made in recent years, concerns continue to be raised that ‘rogue traders’ still operate.)

- where firms recognise that their future viability depends not only on their relationship with their current customers and shareholders, but also on the wider community

(Note: concerns have been raised about whether migration agents consistently act in the best interests of the wider community by assisting to meet the government’s objectives of the migration program.)

- where a scheme has a high level of consumer recognition, to the point where consumers will favour scheme participants when making purchasing decisions, creating incentives for non-members to join the scheme

(Note: concerns continue to be raised that the image of migration agents in the general community is not necessarily a positive one, although some of these concerns relate to unregistered offshore agents.)

### 9.3 Good practice self-regulation

9.3.1 Good practice in self-regulation is useful to consider when contemplating whether self-regulation is appropriate for the migration advice profession. This section provides a summary of good practice principles and issues covered in the paper.

9.3.2 Consultation between industry, consumers and government ensures that specific problems and social policy objectives can be identified and addressed. As the largest industry representative body, and as the body appointed to act as the MARA and industry regulator in the statutory self-regulation framework, the MIA has a well-developed working relationship with government at all levels. *The Deed of Agreement between the Commonwealth of Australia and the Migration Institute of Australia Limited* formalises the relationship required of both parties, but the MIA also works with DIAC to promote the interests of its members and to consult on policy and legislative change.

- 9.3.3 The regulatory scheme needs wide industry coverage to ensure that the benefits from standards of practice in schemes flow to consumers. As outlined in Chapter Two, all migration agents in Australia are required to be registered with the MARA in order to be permitted to provide immigration assistance, so all migration agents are subject to regulation. Chapter Two also outlines the growth in the membership of the MIA as the largest industry representative body, although they represent just under half of all registered migration agents.
- 9.3.4 Consumer awareness of regulatory schemes is needed to ensure that consumers know their rights and where to lodge complaints. Chapter Four outlines a series of initiatives undertaken to raise consumer awareness of the migration advice profession, the role of migration agents and the regulatory framework within which they operate.
- 9.3.5 Effective industry awareness campaigns and education about schemes are required to make sure industry participants understand their obligations. Chapter Four explains that the Graduate Certificate was introduced with the intention of increasing knowledge levels and professionalism among agents. Chapter Five outlines CPD requirements for all registered migration agents.
- 9.3.6 An effective administrative body is required to identify issues including systemic issues, collect data, monitor the scheme, enhance credibility and ensure compliance costs are at an effective minimum level. Chapter Four provides information on the performance of the MARA.
- 9.3.7 Where the standard of conduct has been breached, self-regulatory schemes should incorporate complaint handling and dispute resolution mechanisms to provide appropriate redress to consumers. Chapter Four sets out the complaints handling mechanism that the MARA administers.
- 9.3.8 A range of sanctions can be used by industry in order to achieve compliance depending on the nature of the specific problem and consequences of non-compliance. Chapter Three outlines the regulatory framework within which registered migration agents operate and the options for disciplinary action.

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9.3.9 Monitoring, reviews and annual reporting should be undertaken to assist in the transparency and accountability of schemes. Preferably, reviews should be periodic, independent and the results made publicly available. The migration advice profession has been the subject of regular reviews, each of which has been conducted under the guidance of an external reference group and provided to the Australian Parliament. In addition, the MARA publishes an annual report and the operations of the MARA are monitored by DIAC. DIAC also reports on the Migration Advice Profession on a quarterly basis to the Minister and Assistant Minister for Immigration and Citizenship.

**Issues for discussion:**

- Is self-regulation a desired outcome for the migration advice profession?
- Has the migration advice profession demonstrated a level of professionalism indicative of an industry ready to self-regulate?
- If the migration advice profession is not yet ready for self-regulation, or if self-regulation is not the desired outcome for the profession, are there alternative regulatory models that might be more appropriate?

## Attachment A

### Recommendations of the 2002 Review

No.	Recommendation	Implemented	Comments
1	<ol style="list-style-type: none"> <li>1. Statutory self-regulation to be extended and reviewed.</li> <li>2. Sunset clause to be removed from current framework.</li> <li>3. The deed of agreement to be renegotiated to reflect recommendations – key milestones to be included.</li> <li>4. Minor legislative changes to be made to the present statutory scheme endorsed by this Review.</li> </ol>	<ol style="list-style-type: none"> <li>2. Sunset clause removed 24/02/03.</li> <li>3. Deed signed June 2003 with key milestones.</li> <li>4. Relevant amendments to the Migration Act 1958 (the Act) came into effect July 2004.</li> </ol>	<ol style="list-style-type: none"> <li>1. Currently being reviewed.</li> </ol>
2	The MARA to be able to include key stakeholders in its decision-making processes.	The Act was amended on 1 July 2004 to allow the MARA Board to delegate its powers under Part 3.	
3	<ol style="list-style-type: none"> <li>1. The prescribed course and exam to be more comprehensive.</li> <li>2. An alternative means of entry to profession to allow for supervised practice followed by an examination.</li> <li>3. Exemption from initial entry requirements for current legal practising certificate holders.</li> </ol>	<ol style="list-style-type: none"> <li>1. The Graduate Certificate in Australian Migration Law and Practice (Graduate Certificate) was introduced July 2006 and is being offered by four universities.</li> <li>3. Relevant amendments to the Act and the Migration Agents Regulations 1998 (the Regulations) came into effect on 1 July 2004.</li> </ol>	<ol style="list-style-type: none"> <li>2. Graduate Certificate has superseded the need for this recommendation.</li> </ol>

No.	Recommendation	Implemented	Comments
	4. Ability to refuse registration to applicants without a sound knowledge of migration procedure or other relevant qualifications.	4. As per 3.	
4	Allow for bulk publishing of community organisation employees' details.	Relevant amendments to the Act and the Regulations came into effect on 1 July 2004.	
5	Requirement for the completion of a minimum number of mandatory and elective CPD activities each year before repeat registration allowed.	Relevant amendments to the Regulations came into effect on 1 July 2004.	
6	<p>1. Cross-accreditation with legal professional bodies should continue to be pursued by the MARA.</p> <p>2. The MARA to make the process whereby prospective CPD activities are screened more transparent.</p>	<p>2. The MARA continues to review its CPD accreditation processes to identify improvements.</p>	1. The MARA is currently considering some degree of cross-accreditation with continuing legal education.
7	Develop an educational program on best practice to assist registered migration agents understand the requirements of the 'fit and proper person' and 'person of integrity' tests.		Currently being developed.
8	DIAC and the MARA to introduce regular client surveys and surveys of registered migration agents.	A 2003–04 survey of Business Skills visa applicants resulted in over 80 per cent of respondents rating their agent as "Good" or "Excellent". The MARA conducts surveys of registered migration agents every two years.	<p>Future surveys of other registered migration agent client groups will be developed.</p> <p>Questions relating to registered migration agents to be included in DIAC feedback tools.</p>

No.	Recommendation	Implemented	Comments
9	<p>1. The MARA to have power to require registered migration agents to meet CPD requirements within an appropriate time frame.</p> <p>2. Define registration requirements for all agents applying to register for initial or re-registration.</p>	<p>1. Relevant amendments to the Act and the Regulations came into effect on 1 July 2004.</p> <p>2. Relevant amendments to the Act came into effect on 1 July 2004.</p>	
10	The MARA to have the power to apply a 'fit and proper person' test in respect of applicants for re-registration.	Relevant amendments to the Act came into effect on 1 July 2004.	
11	<p>1. Consultations regarding the development of a Certified Migration Agent (CMA) scheme to encourage high standards of professionalism and consumer protection.</p> <p>2. Explore requiring migration agents to hold professional indemnity insurance at a specified minimum level.</p>	<p>2. Relevant amendments to the Act came into effect on 1 July 2004 and further amendments to the Regulations came into effect on 1 July 2005.</p>	<p>1. The MIA commenced consultations from 2002 through 2005 about a CMA scheme with the outcome that such a scheme was not considered feasible. The new Graduate Certificate and CPD improvements aim to encourage professionalism and consumer protection.</p>
12	Strengthen existing sanctions to caution registered migration agents, to allow for conditions to be attached, with the onus on the agent to satisfy the MARA that conditions have been complied with.	Relevant amendments to the Act came into effect on 1 July 2004.	

No.	Recommendation	Implemented	Comments
13	Strengthen the definition of 'relationship by employment'.	Relevant amendments to the Act and the Regulations came into effect on 1 July 2004.	
14	<p>1. Increase the penalty for inactive agents who fail to comply with s306d of the Migration Act 1958.</p> <p>2. The MARA to have the power to:</p> <p>(a) require an agent to return original documents to the client and apply a penalty should the agent fail to comply.</p> <p>(b) obtain necessary client information from migration agents whose registration it is considering cancelling, suspending or not renewing, or from agents who choose not to renew their registration.</p> <p>(c) appoint a representative to obtain copies of client files from the premises of a deceased or inactive agent.</p>	<p>1. Relevant amendments to the Act and the Regulations came into effect on 1 July 2004.</p> <p>2.a and b Relevant amendments to the Act and the Regulations came into effect on 1 July 2004.</p>	<p>2(c) After further research and consultation, this will not be implemented.</p>
15	Strengthen the MARA's powers to publish names of agents who have been sanctioned and the reasons for the caution, suspension or cancellation.	Relevant amendments to the Act and the Regulations came into effect on 1 July 2004.	
16	Improve the monitoring of registered migration agents and develop effective means of sanctioning agents lodging high numbers of vexatious, unfounded or incomplete applications.	Relevant amendments to the Act and the Regulations, as well as a Ministerial Determination, came into effect on 1 July 2004.	

No.	Recommendation	Implemented	Comments
17	Provide the MARA with the power to investigate matters referred by an organisation.	Implemented on 1 March 2003.	
18	Strengthen the code of conduct to require registered migration agents to: <ul style="list-style-type: none"> <li>• Provide clients with (MARA provided) detailed and clear information, including complaint mechanism.</li> <li>• Maintain evidence that it has been provided.</li> <li>• The MARA to develop an education strategy aimed at more vulnerable consumers, including regular consultations with the community sector.</li> </ul>	Implemented on 1 March 2003.	The MARA continues to develop education strategies.
19	<ol style="list-style-type: none"> <li>1. Clarify and strengthen conflict of interest provisions in the Code of Conduct.</li> <li>2. Clarify the code regarding financial duties of registered migration agents.</li> <li>3. Enable the MARA to require information from applicants by statutory declaration and/or at interview.</li> <li>4. Enable the MARA to charge a pro rata for a change in status from non-commercial to commercial registration.</li> <li>5. Ensure wider publication of criminal and civil sanctions.</li> </ol>	<ol style="list-style-type: none"> <li>1. &amp; 2. Implemented on 1 March 2003.</li> <li>Relevant amendments to the Act came into effect on 1 July 2004.</li> <li>3. &amp; 4. Relevant amendments to the Act, the Regulations and the Migration Agents Charge Act and Regulations came into effect on 1 July 2004.</li> </ol>	<ol style="list-style-type: none"> <li>5. DIAC publicised prosecution successes in 2004 via press releases and continues to do so.</li> </ol>

No.	Recommendation	Implemented	Comments
20	Legislation to be amended to extend registration to foreign nationals.		Currently being reviewed.
21	<p>1. The MARA board to establish specialist sub-committees responsible for specific types of decisions.</p> <p>2. MARA officers to receive more frequent training on administrative decision-making.</p>	<p>1. Specialist subcommittees have been established.</p> <p>2. Training is delivered to members of the MARA Board and the MARA's Professional Standards Committee on an annual basis.</p>	
22	A client service charter setting out the MARA's service standards and responsibilities towards migration agents and their clients to be completed and posted on the MARA's internet website and made available in hard copy.	Client service charters in relation to the MARA's communications with agents and in relation to its communications with the clients of migration agents have been developed and are available on the MARA website and in hard copy.	
23	Procedures and practices to be reviewed and streamlined to enable proper public access to the MARA secretariat, especially regarding complaints and registration inquiries.	Multiple phone lines for enquiries (with a specific number for complaints enquiries) and a staffed front counter providing face to face contact for agents and their client are now provided.	
24	All remaining recommendations of the Ernst & Young review of the Migration Agents Registration Authority of September 2000 to be implemented.	All remaining recommendations have been appropriately addressed.	

No.	Recommendation	Implemented	Comments
25	<p>DIAC should:</p> <ol style="list-style-type: none"> <li>1. where other priorities allow, attach higher priority to investigations of unregistered practice;</li> <li>2. build stronger relationships with the Commonwealth Department of Public Prosecutions to facilitate prosecution and finalisation of cases;</li> <li>3. revise its guidelines to its employees on referring cases of suspected unregistered practice or immigration fraud to DIAC's investigations units to improve both the quality of information referred and the speed of referral; and</li> <li>4. undertake wider publicity of prosecutions of unregistered practice.</li> </ol>	<ol style="list-style-type: none"> <li>1. Investigations of unregistered practice are given high priority if practicable.</li> <li>2. Relationships have been progressively developed.</li> <li>3. Guidelines are continuously reviewed and updated where necessary.</li> <li>4. Information about prosecutions is disseminated as appropriate.</li> </ol>	
26	<p>The client information to be developed by the MARA (Recommendation 18) should include guidelines on how best to employ a migration agent and "average fee" information to better ensure clients receive value for money.</p>	<p>Client information on how best to employ an agent became available on 1 March 2003 and all agents are required to give it to their clients.</p> <p>The MARA collects average fee information from agents, which is published on the MARA website.</p>	<p>The document <i>Information on the Regulation of the Migration Advice Profession</i> was produced by the MARA in 2003 and agents are required to provide copies to clients.</p>
27	<ol style="list-style-type: none"> <li>1. Strengthen existing prohibitions regarding abusive, offensive and intimidatory behaviour by migration agents towards individuals.</li> <li>2. Develop clearer guidelines regarding DIAC employees' obligations towards registered migration agents.</li> </ol>	<ol style="list-style-type: none"> <li>1. The MARA has addressed this via CPD activities and the Graduate Certificate.</li> <li>2. Guidelines have been developed and disseminated.</li> </ol>	

## Attachment B

# Regulation of the Migration Advice Profession by Other Countries

### United Kingdom: independent statutory body

The *Immigration and Asylum Act (1999) (Part V)* established a scheme to regulate immigration advisers in the UK. It set up the Office of the Immigration Services Commissioner (OISC), an independent public body to ensure that immigration advisers are fit and competent and that they act in the best interests of their clients. The OISC receives and investigates complaints and refers complaints to other bodies such as the Law Society when relevant. It is currently consulting on the introduction of a Continuing Professional Development scheme.

Unless exempt, immigration advisers in the United Kingdom must be registered with the OISC, or authorised to practice by a designated professional body, (eg Law Society), or by an equivalent in the European Economic Area.

The OISC determines initial registration and continued registration by assessing an applicant's competence, measured through the application process and on audit. Applicants are required to submit a statement of competence and then undergo a formal written competence assessment. Immigration advice and services are divided into three levels of activity depending on the complexity of the work. The three levels of possible registration are:

- Level 1 – Initial advice;
- Level 2 – Casework; and
- Level 3 – Advocacy and representation

Further information on this tiered system of registration can be obtained from:

[www.oisc.gov.uk/publications/pdfs/policy-documents/OISC\\_guidance\\_on\\_competence.pdf](http://www.oisc.gov.uk/publications/pdfs/policy-documents/OISC_guidance_on_competence.pdf)

### Canada: self-regulation

All practising immigration consultants in Canada must be members in good standing with the Canadian Society of Immigration Consultants (CSIC), a Canadian law society, or the *Chambre des Notaires du Québec*, to participate in new matters before Citizenship and Immigration Canada, the Immigration and Refugee Board and the Canadian Border Services Agency.

The CSIC is an independent, not-for-profit, self-regulatory body for immigration consultants, that was incorporated on 8 October 2003. The CSIC requires, and provides, Continuing Professional Development for its members and investigates complaints about its members.

## New Zealand: statutory body and tribunal

On 4 May 2007, the *Immigration Advisers Licensing Act (2007)* received Royal Assent. The Act requires the establishment of a regulatory body, the Immigration Advisers' Authority (IAA), to administer the licensing of New Zealand immigration advisers in order to protect consumers of immigration advice, and to enhance the reputation of New Zealand as a migration destination. The Act includes a three year implementation period – one year for establishment of the IAA, one year for New Zealand-based advisers to become licensed, and a further year for overseas-based advisers giving New Zealand immigration advice to become licensed.

The IAA is currently being established as a separate authority within the New Zealand Department of Labour. The authority, which will be headed by a registrar, will provide minimum standards for the industry, administer a code of conduct, organise professional training for licensed advisers and establish a complaints mechanism.

In addition, the legislation requires the establishment of the Immigration Advisers Complaints and Disciplinary Tribunal (the Tribunal). Once established, the Tribunal will independently administer adjudication of the complaints and disciplinary powers relating to immigration advisers, administratively supported by the Ministry of Justice.

Under the legislation all immigration advisors will be required to be licensed unless exempt. Lawyers will be exempt from the scheme.

## Attachment C

# Regulation of Comparable Advice Professions in Australia

### CPA Australia – self-regulation

CPA Australia is a self-regulating professional association whose members voluntarily agree to be bound by various professional, technical and ethical standards. It is governed by a Board of Directors. To become a member of CPA Australia, the minimum qualification is an undergraduate degree accredited by CPA Australia.

CPA Australia investigates complaints about its members. Its Disciplinary Committee may conduct a formal hearing and if the member is in breach, may discipline the member.

The Accounting Professional and Ethical Standards Board was established, as an initiative of CPA Australia and the Institute of Chartered Accountants in Australia, as an independent body, to set the code of ethics and the professional standards by which their members are required to abide.

Members of the accounting profession who are members of CPA Australia are regulated by their professional association and not by legislation.

Sources: [www.cpaustralia.com.au](http://www.cpaustralia.com.au)  
[www.apesb.org.au](http://www.apesb.org.au)

### New South Wales Law Society – statutory self-regulation

The Law Society of New South Wales is both the professional association that solicitors may join, and the statutory regulatory body for solicitors working in NSW. It is funded from a number of sources, including voluntary membership fees, and recovers expenditure incurred by it in the exercise of its statutory functions. Its powers and functions are set out in the *Legal Profession Act (2004)* (NSW).

The Law Society issues annual practising certificates to solicitors who have met the required conditions. It administers the Specialist Accreditation Program that recognises practitioners who specialise in, and have demonstrated proficiency in, a particular area of practice. It is also empowered to deal with and investigate complaints against NSW solicitors, and to take disciplinary action and institute prosecutions.

The Office of the Legal Services Commissioner is an independent statutory body set up in 1994 in accordance with the *Legal Profession Act (1987)*(NSW). It co-regulates NSW solicitors with

the Law Society and receives all complaints about NSW solicitors. It may investigate, mediate or dismiss a complaint or refer it to the Law Society, and may discipline NSW solicitors.

Sources: *Legal Profession Act (2004)*

[www.lawsociety.com.au](http://www.lawsociety.com.au)

[www.lawlink.nsw.gov.au](http://www.lawlink.nsw.gov.au)

## Taxation Agents' Boards – independent statutory bodies

The Tax Agents' Boards are independent statutory bodies constituted under the *Income Tax Assessment Act (1936)*. There is a Board in each State and each Board acts autonomously in the execution of its duties. The role of the Boards is to administer the tax agent registration requirements. The Boards are responsible for determining the suitability of applicants to be registered as tax agents, dealing with complaints about tax agents and ensuring that proper standards are maintained across the tax agent profession.

The Boards are independent of the Commissioner of Taxation, who is responsible for the general administration of the *Income Tax Assessment Act (1936)*.

The Tax Institute of Australia (TIA) is a professional organisation for tax advisors.

Sources: *Income Tax Assessment Act (1936)*

[www.tabd.gov.au](http://www.tabd.gov.au)

[www.ato.gov.au](http://www.ato.gov.au)

[www.taxinstitute.com.au](http://www.taxinstitute.com.au)

## Australian Customs Service – statutory regulation

The *Customs Act (1901)* provides for the licensing of customs brokers by the Australian Customs Service. All practising brokers must be licensed.

The Chief Executive Officer (CEO) of the Australian Customs Service licenses customs brokers subject to certain conditions.

The CEO, or a Regional Director of the Australian Customs Service for a state or territory, may refer customs brokers to the National Customs Brokers Licensing Advisory Committee for investigation. The composition of the Committee is set out in the *Customs Act 1901*. It includes members of the Customs Brokers and Forwarders Council of Australia Inc (CBFCA), which is the peak industry association for customs brokers.

The Committee reports and makes recommendations to the CEO who may discipline licensed customs brokers.

Sources: *Customs Act (1901)*

[www.customs.gov.au](http://www.customs.gov.au)

[www.cbfca.com.au](http://www.cbfca.com.au)

## Attachment D

### Percentage of Visa Applications Lodged by Agents

This table shows the percentage of visa applicants who used a registered migration agent for applications for selected visa subclasses in April–June 2007. It includes visa subclasses which have more than 500 applications for the quarter or where more than 15 per cent of applications were lodged by registered migration agents.

Visa Subclass	Migration Agent Used	Total Applications	% of Applicants Who Used a Migration Agent
<b>Family</b>			
143 Contributory Parent (Migrant)	53	245	22%
820/801 Spouse	996	4982	20%
802 Child	37	115	32%
804 Aged Parent	107	331	32%
826/814 Interdependency	28	118	24%
835 Remaining Relative	18	92	20%
836 Carer	15	90	17%
838 Aged Dependent Relative	6	29	21%
864 Contributory Aged Parent (Residence)	96	195	49%
884 Contributory Aged Parent (Temporary)	19	29	66%
<b>Employer Sponsored</b>			
119 Regional Sponsored Migration Scheme	107	251	43%
857 Regional Sponsored Migration Scheme	397	1087	37%
855 Labour Agreement	94	327	29%
856 Employer Nomination	1979	3527	56%
858 Distinguished Talent	30	43	70%

Visa Subclass	Migration Agent Used	Total Applications	% of Applicants Who Used a Migration Agent
457 Business (Long Stay)	17029	33736	50%
121 Employer Nomination Scheme	173	423	41%
<b>General skilled</b>			
136 Skilled – Independent	3250	11414	28%
137 Skilled – State/Territory Nominated Independent	283	775	37%
138 Skilled – Australian Sponsored	735	1592	46%
496 Skilled Designated Area Sponsored (Provisional)	310	645	48%
880 Skilled – Independent Overseas Student	2622	4471	59%
881 Skilled – Australian Sponsored – Overseas Student	188	317	59%
882 Skilled – Designated Area Sponsored – Overseas Student	147	186	79%
124 Distinguished Talent	10	39	26%
134 Skill Matching	88	557	16%
495 Skilled Independent Regional (Provisional)	684	1422	48%
497 Graduate Skilled	251	365	69%
<b>Business Skills</b>			
845 Established Business In Australia	42	75	56%
890 Business Owner	6	18	33%
892 State/Territory Sponsored Business Owner	254	393	65%
<b>Protection</b>			
866 Protection Visa – Permanent Residence	399	1073	37%
<b>Student</b>			
571 Schools Sector	953	5524	17%

Visa Subclass	Migration Agent Used	Total Applications	% of Applicants Who Used a Migration Agent
570 Independent Elicos Sector	197	6997	3%
572 Vocational Education And Training Sector	1273	14396	9%
573 Higher Education Sector	1028	31417	3%
574 Masters/Doctorate Sector	11	1632	1%
575 Non-Award Foundation/Other Sector	24	6073	0%
576 Ausaid/Defence Sponsored Sector	0	625	0%
580 Student Guardian	88	460	19%
<b>Visitor</b>			
417 Working Holiday	1	32192	0%
459 Sponsored Business Visitor (Short Stay)	45	168	27%
676 Tourist (Short Stay)	209	17779	1%
679 Sponsored Family Visitor (Short Stay)	667	4819	14%
<b>Other</b>			
050 Bridging E (BE)*	963	10412	9%
155 Five Year Resident Return	319	15995	2%
157 Three Month Resident Return	4	26	15%
405 Investor Retirement	38	56	68%
410 Retirement	97	728	13%
416 Special Program	8	676	1%
420 Entertainment	35	3080	1%
422 Medical Practitioner	87	329	26%
428 Religious Worker	101	289	35%

\* Does not include BVEs lodged as part of an existing protection visa, only those lodged as stand alone visas.

Note:

1. These figures do not include applications lodged by unregistered offshore migration, travel or education agents.
2. This data relates only to visa applications and does not include data about sponsorships and nominations.
3. All percentages are rounded to the nearest per cent.

## Glossary

### Acronyms

AAT	Administrative Appeals Tribunal
CLE	Continuing Legal Education
CPD	Continuing Professional Development
DIAC	Department of Immigration and Citizenship
ILAA	Immigration Lawyers Association of Australasia
IELTS	International English Language Testing System
LCA	Law Council of Australia
MAPKEE	Migration Advice Professional Knowledge Entrance Examination
MARA	Migration Agents Registration Authority
MARS	Migration Agents Registration Scheme
MIA	Migration Institute of Australia
PSC	Professional Standards Committee (of the MARA)
PSR Committee	Professional Standards and Registration Committee (of the MARA)

### Abbreviations

Code of Conduct	Migration Agents Code of Conduct
Graduate Certificate	The Graduate Certificate in Australian Migration Law and Practice
The Act	<i>The Migration Act (1958)</i>
The Deed	The Deed of Agreement between the Commonwealth and the Migration Institute of Australia Ltd
The Regulations	The Migration Agent Regulations 1998
The Review	The Review of Statutory Self-Regulation of the Migration Advice Profession

