



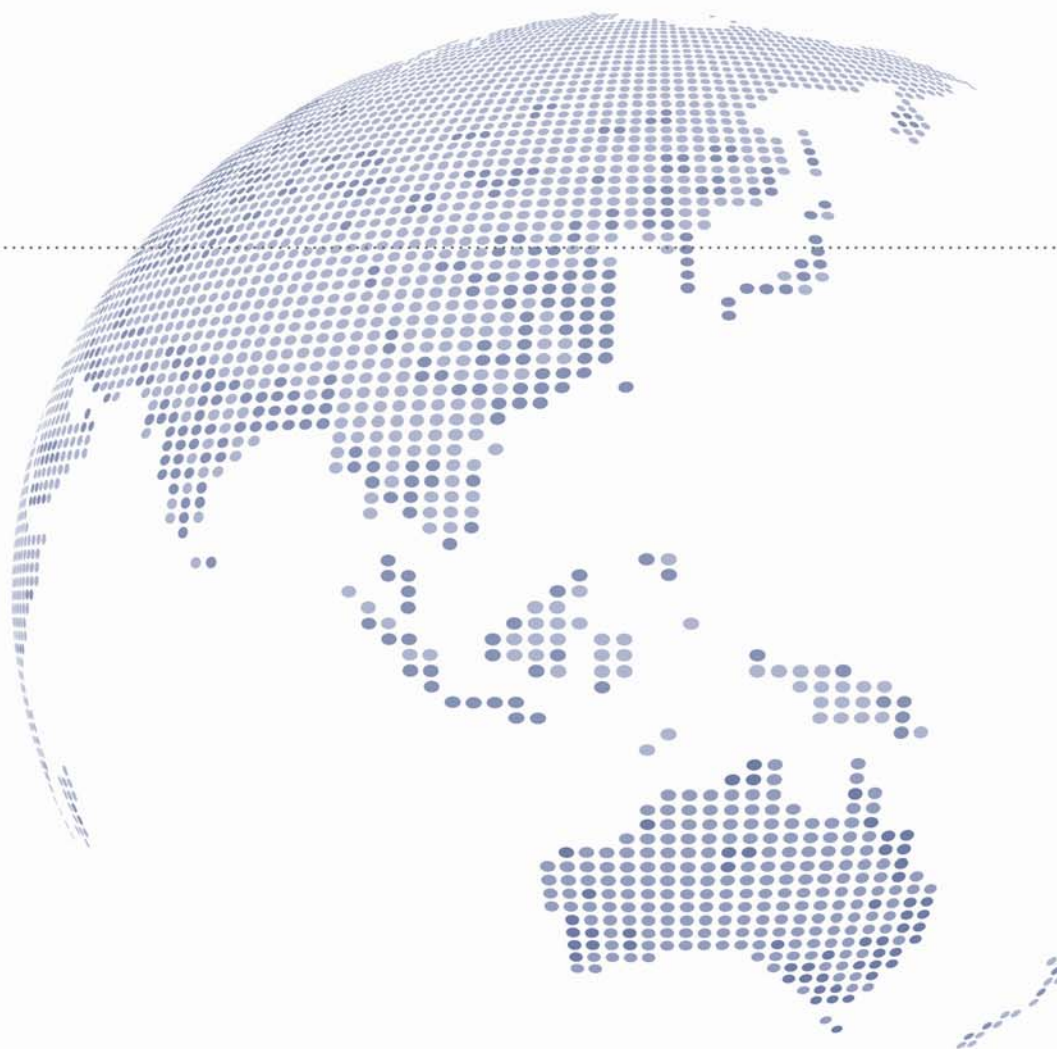
Australian Government

Department of Immigration and Citizenship

Migration Agent Activity Report:

Quarterly report on the provision of immigration assistance in Australia

January – March 2011



Migration Agent Activity Report: January – March 2011

TABLE OF CONTENTS

1. EXECUTIVE SUMMARY	2
1.1. About this report	2
1.2. Key issues highlighted in this report	2
2. INFORMATION ABOUT MIGRATION AGENTS	3
2.1. Numbers of registered migration agents	3
2.2. Summary of registration applications	4
2.3. Refused registration applications	4
2.4. Number of agents withdrawn from the register	4
2.5. Visa applications lodged by registered migration agents	5
3. COMPLAINTS PROCESSING BY THE OFFICE OF THE MARA	6
3.1. Office of the MARA complaint activity summary	6
3.2. Sources of new complaints to the Office of the MARA	6
3.3. Analysis of complaints: Breaches of the Code of Conduct	6
3.4. Analysis of complaints: Standards of Professional Conduct	7
3.5. Complaint outcomes	8
4. SANCTION DECISIONS MADE BY THE OFFICE OF THE MARA	9
4.1. Sanction outcomes	9
5. APPEALS TO THE ADMINISTRATIVE APPEALS TRIBUNAL (AAT) AND LITIGATION	11
6. INVESTIGATIONS BY THE DEPARTMENT OF BREACHES OF THE <i>MIGRATION ACT 1958</i>	12
6.1. Unregistered Practice	12
6.2. Migration Infringement Notice (MIN) Scheme	12
6.3. Allegations received regarding breaches of the <i>Migration Act 1958</i>	12
6.4. Active allegations*	12
6.5. New brief/formal sanctions* lodged with DPP	13
6.6. Case active – court activity	13
6.7. Finalised cases	13

1. EXECUTIVE SUMMARY

1.1. About this report

- ❖ This report presents an analysis of the migration advice industry in Australia. The tables contain data primarily from ICSE (Integrated Client Service Environment) and the Office of the Migration Agents Registration Authority (MARA). This means that data entered into other departmental systems, such as those used offshore, will not be reflected in parts of this report. Discrepancies may occur between sums of the component items and totals where figures have been rounded. Furthermore, statistical reports provided from other areas have been generated at different times and while these statistics were correct at the time of generation they may vary slightly from those contained in other reports.
- ❖ The Migration Agents Section coordinates the handling of complaints made against registered migration agents and unregistered agents by departmental staff. The Section liaises with the Office of the MARA and departmental investigations areas regarding the resolution of these and other complaints. The Section is also focusing on the analysis of complaints trends and the development of strategies to address these trends.

1.2. Key issues highlighted in this report

- ❖ The total number of registered migration agents has remained stable with a slight decrease from 4448 at 31 December 2010 to 4433 as of 31 March 2011.
- ❖ During this quarter, 61 per cent of 457 visa applications; 16 per cent of student visa applications; and 63 per cent of protection visa applications were lodged by registered migration agents.

Migration Agents Section
Migration and Visa Policy Division

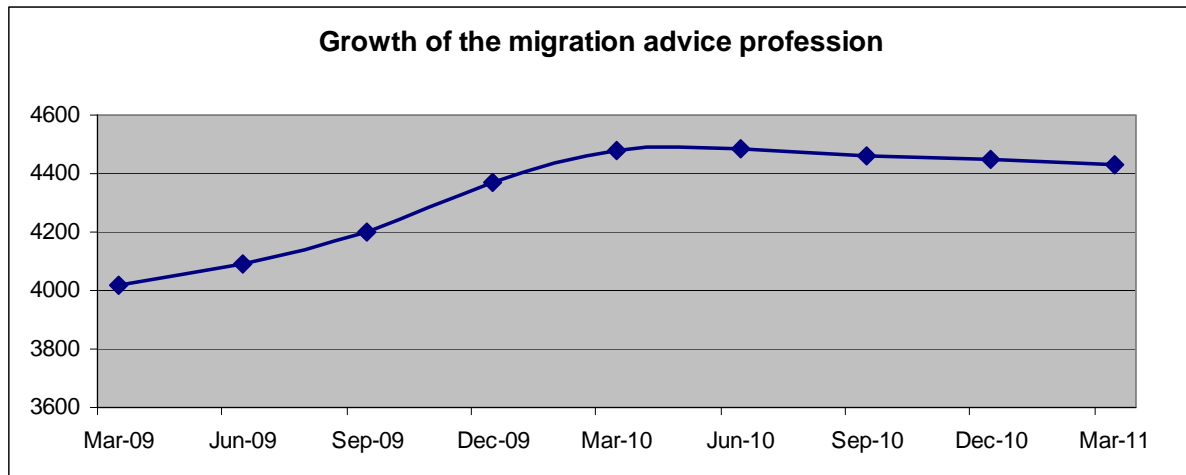
2. INFORMATION ABOUT MIGRATION AGENTS

2.1. Numbers of registered migration agents

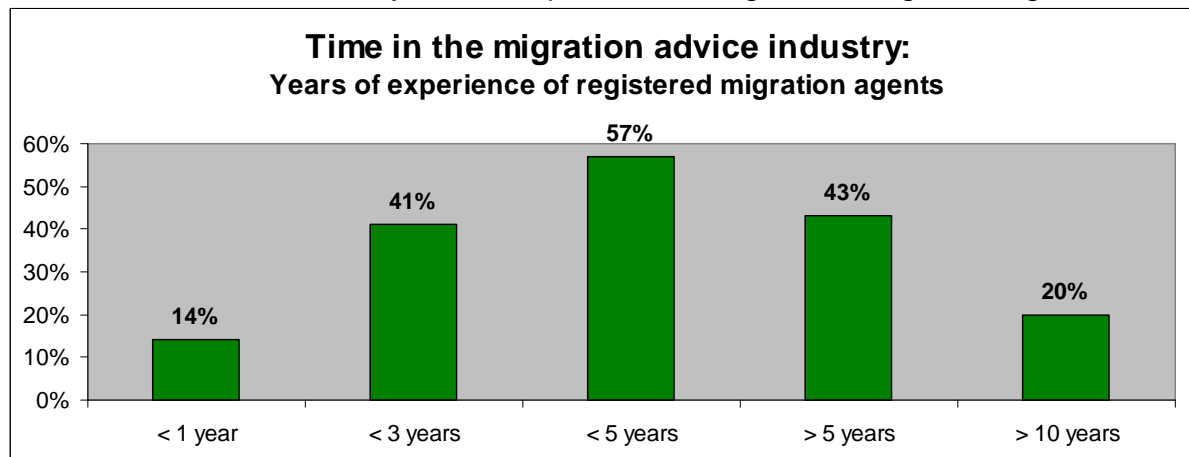
The table below shows the number of agents registered with the Office of the MARA as at 31 March 2011. It also shows the proportion of registered migration agents that work in the non-commercial sector and the proportion of agents who have legal qualifications.

	as at 31 March 2011	%
Total number of registered migration agents:	4433	
Agents operating on a commercial basis	4162	94%
Agents operating on a non-commercial basis	271	6%
Agents with no legal qualifications	3137	71%
Agents with legal practising certificates	1233	28%
Agents with legal qualifications (but no practising certificate)	63	1%

The table below shows how the number of registered migration agents has steadily increased over the past two years before a slight decrease in the past two quarters.



The table below shows the years of experience of registered migration agents.



Migration Agent Activity Report: January – March 2011

2.2. Summary of registration applications

The table below shows the number of agents applying to be registered with the Office of the MARA during the quarter January – March 2011:

	New registration applications	Repeat registration applications	Total
On hand at start of quarter	91	276	367
Received	150	1052	1202
Approved	151	1148	1299
Withdrawn	3	2	5
Incomplete	1	10	11
Deemed	N/a	3	3
Refused	1	3	4
On hand at end of quarter	91	162	253

2.3. Refused registration applications

During the March 2011 quarter, there were a total of **4** refusal decisions with **1** refused at the initial application stage and **3** refused at the repeat application stage.

Type of application	Date Refused	Reason for Refusal
Initial	3/03/2011	s290 – bankruptcy s290 – English 290(2)(h) – Other matters
Repeat	13/01/2011	s290A – CPD
Repeat	7/02/2011	s292 – previously cancelled
Repeat	31/03/2011	s290 – miscellaneous

2.4. Number of agents withdrawn from the register

The table below reflects the number of migration agents whose name was withdrawn from the register.

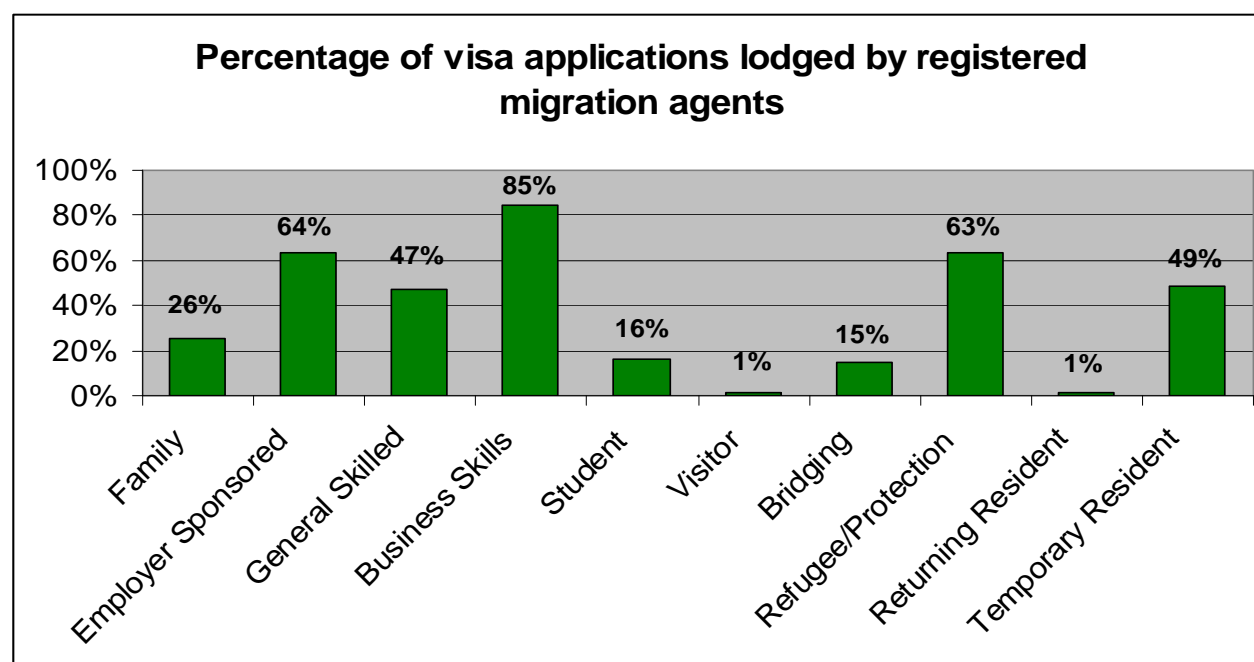
Reason for withdrawal	January – March 2011
Death	2
Request	8
Lapsed	176
TOTAL	186

Migration Agent Activity Report: January – March 2011

2.5. Visa applications lodged by registered migration agents

The table and graph below show the proportion of applications that are lodged by registered migration agents.

Visa Class	Migration agent used	Total applications	Percentage lodged by a migration agent
Family	2 386	9 326	26%
Employer Sponsored	7 085	11 144	64%
General Skilled	6 554	13 823	47%
Business Skills	661	779	85%
Student	11 659	70 780	16%
Visitor	901	76 196	1%
Bridging	1 604	10 740	15%
Refugee/Protection	2 180	3 440	63%
Returning Resident	251	18 570	1%
Temporary Resident	21 953	45 135	49%



For a more detailed breakdown of lodgement by agents by visa subclasses,

See: www.immi.gov.au/media/statistics/agent-stats/migration-agent-statistics.htm

Notes: 1. These figures do not include applications lodged by unregistered offshore migration, travel or education agents.

2. The source of this data is the Integrated Client Service Environment (ICSE); it does not include data from the Immigration Records Information System (IRIS), or the Generic Visa Portal.

3. This data relates only to certain visa applications, and does not include data about sponsorships and nominations. Visa subclasses that have not registered lodgement by a registered migration agent in the past 12 months are not included.

3. COMPLAINTS PROCESSING BY THE OFFICE OF THE MARA

A key objective for the Office of the MARA in effectively regulating registered migration agents is to ensure they comply with the Migration Agents Code of Conduct (the Code). The Code aims to establish a minimum level of professional standards for agents and includes the obligations of a registered migration agent to clients; employees and other agents; record keeping and management, and financial duties. The Office of the MARA ensures that all complaints about registered (and formerly registered) agents' adherence to the Code are appropriately addressed and disciplinary action is taken where necessary.

3.1. Office of the MARA complaint activity summary

	Apr – Jun 2010	Jul – Sep 2010	Oct – Dec 2010	Jan – Mar 2011
New complaints received	147	137	96	142
Reopened complaints	1	0	3	1
Finalised complaints	107	59	125	143
Complaints on hand at end of quarter	280	358	332	332

3.2. Sources of new complaints to the Office of the MARA

	Apr – Jun 2010	Jul – Sep 2010	Oct – Dec 2010	Jan – Mar 2011
Individuals	81	99	72	82
Office of the MARA initiated	3	4	4	16
The Department	51	20	13	16
Other migration agents	9	6	5	3
Referred by a Tribunal or Court	0	2	2	5
Other sources	3	6	0	20
Total new complaints:	147	137	96	142

3.3. Analysis of complaints: Breaches of the Code of Conduct

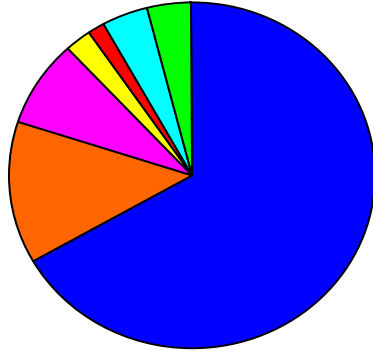
The following table and chart reflect the number of Code breaches alleged in complaints (*prima facie* breaches). Most complaints involve several alleged breaches.

Relevant Part of the Code of Conduct		This Quarter
Standards of professional conduct	Part 2	68%
Obligation to clients	Part 3	13%
Fees and charges	Part 5	8%
Financial duties	Part 7	2%
Duties to employees	Part 8	1%
Termination of services	Part 10	4%
Client awareness of the Code	Part 11	4%

*no breaches for Parts 4, 6 or 9 recorded this quarter

Migration Agent Activity Report: January – March 2011

Breaches of the Code of Conduct: Percentage for this Quarter



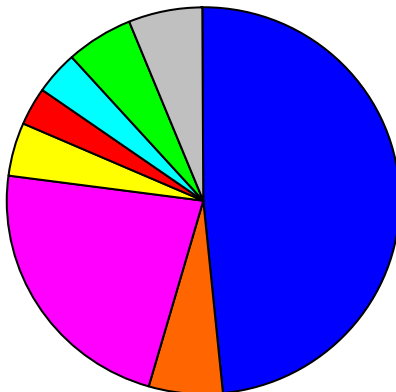
- Standards of professional conduct
- Obligation to clients
- Fees and charges
- Financial duties
- Duties to employees
- Termination of services
- Client awareness of the Code

3.4. Analysis of complaints: Standards of Professional Conduct

The majority of complaints recorded relate to Part 2 of the Code of Conduct – Standards of Professional Conduct. As illustrated in the previous table 67 per cent of complaints recorded in this quarter relate to this part of the Code. The table and chart below provide further analysis of these issues for this quarter.

Standards of Professional Conduct - Breaches	This Quarter
Competence	2.1-2.4, 2.19, 2.20 47%
Integrity	2.9, 2.15, 2.23 7%
False/misleading advertising	2.10-2.12 22%
Follow client's instructions/ keep client informed	2.8 4%
Misleading about prospects of success	2.6, 2.7 3%
Grossly unfounded applications	2.17 4%
Acting in a timely matter	2.18 5%
Other	8%

Standards of Professional Conduct - Breaches



- Competence
- Integrity
- False/misleading advertising
- Follow client's instructions/
keep client informed
- Misleading about prospects of
success
- Grossly unfounded
applications
- Acting in a timely matter
- Other

3.5. Complaint outcomes

The table below shows the outcomes of complaints finalised by the Office of the MARA about breaches of the Code of Conduct. This report now includes the number of matters that do not proceed to sanction and that are subsequently resolved through informal mediation or result in a corrective action recommendation or warning letter to the agent. The Office of the MARA has updated its database so that it can now report on the following 4 outcomes:

1. **Breach found: resolved and finalised without sanction** - Issues considered insufficient to warrant a sanction. May be resolved by negotiation, conciliation, mediation or issuing a corrective action recommendation or a warning letter.
2. **No breach found** - Complaints are “Closed with no breach found” if the agent has been found not to have breached the Code after investigation of a complaint; or the complaint is withdrawn by the complainant.
3. **Dismissed or referred** - Complaints are dismissed where the Office of the MARA has no jurisdiction (eg. complaints about overseas agents); if the complaint refers to the practice of law (rather than immigration assistance) and is referred to the relevant-body for disciplining lawyer agents; there is insufficient evidence to pursue; or if the complainant will not provide consent for the complaint to be published to the agent.
4. **Resulted in sanction decisions** - Sanction decisions occur where serious breach(es) of the Code of Conduct have been found. Sanction decisions include: Caution; Suspension, Cancellation of registration and, for former registered migration agents, Barring from applying for registration.

	Jan – Mar 2011
Breach found: resolved and finalised without sanction	17
No breach found	69
Dismissed or referred	47
Resulted in sanction decisions	10
Total	143

4. SANCTION DECISIONS MADE BY THE OFFICE OF THE MARA

The table below shows the number of complaints that have resulted in sanction decisions.

	Apr – Jun 2010	Jul – Sep 2010	Oct – Dec 2010	Jan – Mar 2011
Caution	2	0	0	0
Suspension	0	0	0	0
Cancellation	0	0	14	9
Barring	1	0	3	1
Total	3	0	17	10

Please note: Sanction decisions may result from multiple complaints about a single agent

4.1. Sanction outcomes

During the March 2011 quarter a total of 10 complaints resulted in 2 sanction decisions.

On 25 March 2011, the Office of the MARA:

- **barred William SUI, (MARN 0102863)**, from being registered as a migration agent for a period of 5 years. The former agent failed to:
 - act in accordance with the law and the legitimate interests of his client;
 - deal with his client competently, diligently and fairly;
 - make adequate arrangements to avoid financial loss to his client;
 - have due regard to his client's dependence on his knowledge and experience as a migration agent; and
 - take reasonable steps to maintain the reputation and integrity of the migration advice profession

Taking into account the serious consequences and impact that the former agent's conduct had on his client the Authority was also satisfied that the former agent was not a person of integrity or a fit and proper person to provide immigration assistance. Accordingly, the Authority considered that a decision to bar the former agent for the maximum five year period was appropriate in the circumstances as his conduct posed a considerable risk to vulnerable clients.

On 3 February 2011, the Office of the MARA:

- **cancelled the registration of Ronald WRIGHT, (MARN 0324843)**. The cancellation will be in effect for a period of 5 years. The Office of the MARA investigated 9 complaints relating to his conduct whilst he was a registered migration agent. Mr Wright:
 - repeatedly breached his obligations to act in the best interests of his clients;
 - failed to have due regard to his clients dependence on his knowledge and experience;

Migration Agent Activity Report: January – March 2011

- received fees from the complainants for services that he either failed to perform or performed so poorly as to disadvantage their migration prospects, and for some clients allowed an unregistered person to provide immigration services contrary to the law;
- did not act in accordance with instructions provided to him by his clients, in some cases leading to an invalid visa application;
- accepted payment for professional fees and did not follow client instructions;
- allowed an unregistered person to have access to clients' money held in trust on their behalf;
- allowed an unregistered person to mismanage client funds and to abscond with a large amount of money held in trust on behalf of his clients, and;
- demonstrated a lack of due diligence in regard to the keeping of client files and records.

On 17 February 2011 the Agent lodged an application for extension of time with the AAT foreshadowing a late application for review of the Authority's decision to cancel his registration. On 17 March 2011 the agent lodged his application for review, paying the relevant fee on 25 March, 2011, which was the lodgement date and therefore the date of the request for the extension of time.

5. APPEALS TO THE ADMINISTRATIVE APPEALS TRIBUNAL (AAT) AND LITIGATION

The table below shows Administrative Appeals Tribunal and Litigation activity.

	Apr – Jun 2010	Jul – Sep 2010	Oct – Dec 2010	Jan – Mar 2011
Appeals awaiting consideration by AAT	1	2	1	3
Appeals finalised by AAT	0	0	2	0
Cases awaiting consideration by Full/Federal/High Courts	0	0	0	0
Cases finalised by the courts	1	0	0	0

One new application was received during the reporting period.

6. INVESTIGATIONS BY THE DEPARTMENT OF BREACHES OF THE *MIGRATION ACT 1958*

6.1. Unregistered Practice

The Department is responsible for investigating breaches of the *Migration Act 1958* including unregistered individuals offering immigration assistance and registered agents involved in fraud. Substantiated allegations are referred to the Director of Public Prosecutions (DPP) for consideration and prosecution action. Penalties include up to 10 years imprisonment or financial penalties, or both.

If an investigation into claims of unregistered practice lacks the evidence required for disciplinary action, the Department will consider lesser compliance activity such as the issuing of a warning letter, conducting education/disruption activities or issuing a Migration Infringement Notice (MIN).

6.2. Migration Infringement Notice (MIN) Scheme

A Migration Infringement Notice (MIN) scheme is available to the Department to be used as an alternative to prosecuting persons for unregistered practice. Under this scheme, delegated departmental officers are able to impose a fine on persons engaging in unregistered activity.

Information regarding the possible provision of unregistered practice can be provided to the complaints mailbox,

Email: migration.agent.complaints@immi.gov.au

6.3. Allegations received regarding breaches of the *Migration Act 1958*

Type of Alleged Offender	Apr – Jun 2010	Jul – Sep 2010	Oct – Dec 2010	Jan – Mar 2011
Migration Agent - Registered	6	4	3	4
Migration Agent - Unregistered	19	9	9	6
Total	25	13	12	10

6.4. Active allegations*

Type of Alleged Offender	Apr – Jun 2010	Jul – Sep 2010	Oct – Dec 2010	Jan – Mar 2011
Migration Agent - Registered	66	77	67	72
Migration Agent - Unregistered	187	172	153	147
Total	253	249	220	219

* Multiple allegations may attach to a single agent. A count of 100 active allegations does not mean that 100 registered agents are under investigation.

Migration Agent Activity Report: January – March 2011

6.5. New brief/formal sanctions* lodged with DPP

Type of Alleged Offender	Apr – Jun 2010	Jul – Sep 2010	Oct – Dec 2010	Jan – Mar 2011
Migration Agent - Registered	0	0	0	0
Migration Agent - Unregistered	2	1	0	0
Total	2	1	0	0

*Brief/formal sanctions include:

- Brief of Evidence - a brief of evidence has been compiled and handed to the DPP.
- Proceeds of Crime - when the proceeds of crime process is initiated with the Australian Federal Police (AFP) and DPP in order to determine if assets were lawfully obtained.
- Briefs prepared and handed to the Department of Education, Employment and Workplace Relations (DEEWR)/ Vocational Education and Training Accreditation Board (VETAB) in order to initiate the removal of accreditation process of an education provider.

In addition to the above there are new sanctions in place - employer sanctions, and the newly introduced Migration Infringement Notice (MIN). These are not currently recorded in ICSE Investigations permission requests.

6.6. Case active – court activity

There are currently two unregistered individuals and one registered migration agent before the courts.

6.7. Finalised cases

Type of Alleged Offender	Apr – Jun 2010	Jul – Sep 2010	Oct – Dec 2010	Jan – Mar 2011
Migration Agent - Registered	14	15	13	1
Migration Agent - Unregistered	10	40	21	15
Total	24	55	34	16