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Department of Home Affairs
Canberra, Australia

BY INTERNET

Dear Sir/ Madam

RE: CREATING A WORLD CLASS MIGRATION ADVICE INDUSTRY

I am writing in regard to the Law Council of Australia’s report on the “Efficacy of Current Regulation of Australian Migration Agents.”¹ The Law Council of Australia (LCA) represents approximately 60,000 solicitors across Australia.² Within the LCA there are approximately 2,000 solicitors who work in the migration advice industry³. In other words, approximately 3.3% of Australian solicitors chose to go into the migration advice industry.

In comparison, the number of non-solicitor registered migration advice (RMA) practitioners hovers around 7,249, or three times the number of registered migration solicitors.⁴ The LCA states that it “exists to . . . promote the administration of justice [and] access to justice.”⁵ The restrictions that the LCA seeks to impose on RMAs is in direct contravention of their own mission statement as it denies individuals seeking to migrate to Australia access to justice. There can be no access to justice without the existence of RMAs.

¹ Law Council of Australia. Submission 18 to the Joint Standing Committee on Migration, Parliament of Australia, *Efficacy of current regulation of Australian migration agents*, 11 May 2018, 1.

² Ibid 3.

³ Department of Home Affairs (Cth), ‘Migration Agent Activity Report 1 July – 31 December 2019’ (Media Release 2020) 4 < https://www.mara.gov.au/media/682329/MAAR_Jul_Dec_2019_Web.pdf>.

⁴ Ibid 4.

⁵ Law Council of Australia. Submission 18 to the Joint Standing Committee on Migration, Parliament of Australia, *Efficacy of current regulation of Australian migration agents*, 11 May 2018, 3.

The Migration Institute of Australia (MIA), which serves as the professional association for Registered Migration Agents has different values.⁶ First, they seek to support their members through ongoing information, education, and representation.⁷ Second, their members come from fee-charging and not for profit RMAs.⁸ Finally, the MIA conducts more than 200 seminars nationally each year to education, inform, and renew the knowledge of RMAs.⁹

The LCA overlooks the regulatory conditions already placed on RMAs under the Office of the Migration Agents Registration Authority (OMARA). Under OMARA, the RMA industry is already regulated, non-solicitor RMA practitioners are subject to sanctions and supervision under OMARA, and the public has a right to complain to OMARA about unscrupulous practices committed by RMAs.

Further, the LCA has no factual basis for requesting stricter oversight of RMAs. As of 31 December 2019, 73% of the 7,249 RMAs had never had a complaint filed against them.¹⁰ Overall, from 1 July to 31 December 2019, only 267 complaints were filed against RMAs.¹¹ Of those, 208 were dismissed or no breach was found.¹² In comparison, in 2011 there were 13,100 complaints filed against solicitors.¹³ One solicitor alone recorded an astonishing 101 complaints in less than five years.¹⁴ This raises questions about the efficacy of the LCA training and educating its members but also reveals that it has no ground on which to criticize RMAs.

Our industry has for nearly 70 years given immigration assistance to citizens from every conceivable concern of the earth. Our nation has flourished because of the rich diversity that migrants bring and has shown our compassion to the world by accepting refugees, asylum seekers, and individuals from impoverished countries. RMAs are at the forefront of this work. We, through our work with migrants, have made significant contributions to Australia's diversity, its economy, and international relations with a multitude of countries.

⁶ Migration Institute of Australia, *About Us* <<https://www.mia.org.au/about-us/about-us>>.

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ Department of Home Affairs (Cth), 'Migration Agent Activity Report 1 July – 31 December 2019' (Media Release 2020) 4 <https://www.mara.gov.au/media/682329/MAAR_Jul_Dec_2019_Web.pdf>.

¹¹ *Ibid.* 8.

¹² *Ibid.*

¹³ Geesche Jacobsen, 'Watchdog bares teeth in battle to discipline dodgy lawyers', *The Sydney Morning Herald* (online), 8 July 2011 <<https://www.smh.com.au/national/nsw/watchdog-bares-teeth-in-battle-to-discipline-dodgy-lawyers-20110707-1h4v4.html>>.

¹⁴ *Ibid.*

Overall, the migration advice industry is small. However, the implementation of the unnecessary and discriminatory requirements proposed by the LCA would cause the industry to shrivel. The requirements proposed by the LCA are not only setbacks to the contributions that RMAs have made to this country but it contradicts the very essence of Australia. In 1945, the Australian government created its first federal immigration portfolio.¹⁵ Our country's aim was to boost the Australian population to stimulate post-war economic development. As the result of our government's efforts migration to Australia blossomed – in 1947, the proportion of the Australian population born overseas was 9.8% and in 1971 that number double to 20%¹⁶ - demonstrating our country's commitment to welcoming others with open arms. The Australian government should not be guided by an elite group such as the LCA into making decisions that make it impossible for RMAs to do their careers.

In my many years working as an RMA, I suggest the following to create a sustainable migration advice industry. First, the annual registration renewal for RMAs is an annual process. This is cumbersome process and interferes with a practitioner's business operations and financial stability. The registration renewal should be every five years to relieve the burden on RMAs. Second, unlike solicitors, non-solicitor RMAs do not have a professional body that advocates exclusively for them. This not only leaves good-hearted RMAs open to exposure and criticism but it deprives the Australian Parliament of informed, data-driven testimony on the work of RMAs. Third, no special privileges should be afforded to legal professionals seeking to enter the RMA industry. These individuals should be held to the same standard as non-solicitor RMAs and not allowed to circumvent the English language proficiency requirement or capstone assessments.

If allowed to it would create two separate classes of individuals who do the same work but because of educational achievement one group is unfairly favoured – even when that group has more complaints lodged against it in a single year than RMAs do in multiple years. Furthermore, the English language assessment must be abolished in its entirety. This would encourage more people who speak English as a second language to practice in our profession. Languages other than English are highly appreciated in the migration advice industry. Based on empirical studies, it is easier to build trust with clients when RMA professionals are able to speak with their clients in their client's native tongue. In line with this position, new RMAs must be required to speak fluently in at least one language other than

¹⁵ Harriet Spinks, Parliament of Australia, *Australia's Migration Program* <
https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/1011/AustMigration
[11](#)>.

¹⁶ Joanne Simon-Davies and Chris McGann, *Top 10 countries of birth for the overseas-born population since 1901* <
https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1819/BornOverseas
[19](#)>.

English. Practitioners are thus able to have an option to serve a particular community and adopt a “client centric” focus.

The Capstone Assessment was introduced in 2018 for candidates who seek to register with OMARA to become RMAs. The passing mark for this exam is a 65%¹⁷ which is much higher than the passing mark for any other examination administered for professionals. Again, this creates two separate classes of individuals on an arbitrary basis as solicitor RMAs are exempted from the capstone assessment requirement. They are also not required to complete a postgraduate qualification in Migration Law and Practice. It appears that the Capstone Assessment was designed to discourage non-solicitor RMAs from entering our industry after completing their postgraduate diploma in Migration Law and Practice. An industry which is struggling to survive at the current moment with downward trends in migration and the COVID-19 global pandemic.

Section 276 of the Migration Act 1958 (Cth) (the Act) and Judicial Reviews. There have been many discussions in relation to this, especially regarding judicial reviews. Particularly with regards to non-solicitor RMAs. In my view it is in the government’s best interests that all RMAs, solicitor or non-solicitor, be provided with further guidance about this Act and subsequent reviews. Specifically, guidance regarding non-solicitor RMAs’ ‘Scope of Practice.’ Government guidance would help practitioners to safely navigate with the migration advice industry.

Reduce the Repeat Registration Application cost. Currently, it is AUD \$1,595.¹⁸ The current cost is not sustainable particularly for those practitioners who are start-ups and sole traders. These groups of practitioners should pay a significantly reduced rate compared to larger businesses. The Repeat Registration Application cost should be reduced to no more than AUD \$600.00 (including GST) per year. For other bigger business owners, they should pay a repeat registration application, they should pay at least AUD \$2,000.00 per year or over to help sustain the migration advice industry. Without this type of mechanism in place, it is difficult to have a sustainable business, especially considering stiff competition within and outside the migration advice industry. Changes to fee structures will lead to an even playing field and help to sustain the business.

¹⁷ The College of Law, *Migration Agents Capstone Assessment Frequently Asked Questions* < <https://www.collaw.edu.au/learn-with-us/our-programs/professional-development---cpd/migration-capstone/migration-capstone-assessment-faqs> >.

¹⁸ Office of the Migration Agents Registration Authority, *Registration Costs* < <https://www.mara.gov.au/becoming-an-agent/registration-requirements/registration-costs/> >.

Reduce the subscription cost for full subscription of Professional Library to a maximum of AUD \$250.00 (including GST) for a single user. Many non-solicitor RMAs tend to provide more service and offer less professional fee to client than other profession. We need to make the cost significantly lower for start-ups and solo practitioners to help grow this important industry. While law firms or solicitor RMAs may be able to spend the AUD \$800 plus additional AUD345 per user¹⁹ to access a full subscription to the Professional Library, that is not the case for a good chunk of non-solicitor RMAs who are also involved in not for profit work.

Non-solicitor RMAs are highly skilled professionals with a formal postgraduate qualification in Migration Law and Practice and many practitioners have other expertise and Australian formal qualifications that complement their work when providing immigration assistance to clients. Therefore, practitioners require a level of independence to operate freely within the migration advice industry. A form of barrier such as a ‘Tier,’ or a similar style structure is not sustainable. It is damaging to practitioners’ livelihood, in an already struggling industry and restricts the movement of professionals in our industry. Further strict rules could destroy many non-solicitor registered migration professionals’ businesses. There is no justification to introduce further restriction to an already extremely strict regulation regime.

If such recommendations come from an external body, such as the LCA and are adopted, it is a reflection that the government has failed to understand how we, non-solicitor RMAs, operate in our own industry. We will become the first casualty of a bad decision, putting our livelihood at risk, further damaging our already struggling industry and producing a negative impact to the Australian economy as a whole.

It is in the public interest that anyone wishing to enter the migration advice industry must have at least a Graduate Certificate in Migration Law and Practice to ensure that all practicing professionals are safe to operate within the industry. Special privilege or exception must not be applied to someone with a bachelor’s degree in law or juris doctor in law. A strict implementation of this criteria is required for us to create an environment where educated RMAs are properly representing their clients. CPD points (i.e. short course) in migration law is not sufficient to be able to practice safely in the migration advice industry.

¹⁹ Department of Home Affairs (Cth), *LEGENDcom How to Subscribe*, < <https://immi.homeaffairs.gov.au/help-support/tools/legendcom/subscribe> >.

Structured ‘Supervised Work’ (or University provided alternatives) in a full-time capacity for a maximum of one month is recommended for all new RMAs following their postgraduate course in Migration Law and Practice. It is crucial to provide options to people entering the migration advice industry to provide them some room for discretion in choosing their career path. Since we have a mutual agreement with the New Zealand government, this recommendation could also be adapted by the New Zealand Immigration Advisers Authority.

The Australian government has a duty of care to ensure its representatives are competent and professional when dealing with the public. OMARA or a similar independent statutory regulatory body from the Department of Home Affairs must be equipped to provide this service. The representative officials of an agency, especially their Directors, must possess a postgraduate degree level qualification in Migration Law and Practice, hold a current Registered Migration Agent license, and should have a considerable amount of field work experience in the migration advice industry to help senior decision makers to reach informed decisions which ensure the survival of the industry and provide a professional service to practitioners within the migration advice industry. This also includes the promotion of a safe environment for all to avoid damage to the industry from misinformed decision makers.

Any professional providing any form of Australian immigration assistance must be registered through OMARA or a newly created independent statutory regulatory body. There must be an agency like OMARA that has the ability to impose sanctions and require certain skills and knowledge from solicitor RMAs and non-solicitor RMAs. Registration requires mandatory completion of a postgraduate degree in Migration Law and Practice.

When creating a world class migration advice industry, the Australian government has an important role to play when combating the misconduct and unlawful activity of both non-solicitor and solicitor migration agents operating within and/or outside the migration advice industry. They should act as a role model when managing the migration advice industry by providing strong leadership. Regulatory bodies should have a qualified and skilled representative ready to assist migration agent professionals to provide guidance that relates to the Code. Regulatory representatives should use the prerequisites outlined above to create a fair environment for all.

Further, the Code of Conduct for all RMAs (the Code) must be written in plain English. This will help the public to reduce their risk when using the services of RMAs and would increase compliance with the Code of Conduct. This leads to protecting the consumer and the reputation of the migration advice

industry. Studies show that when people understand a code of ethics or guidelines, they are more likely to behave in an ethical and lawful manner. Continuous professional development (CPD) is also important, but genuine support from the Australian government agency is required to increase awareness about the migration advice industry in our wider community. A free CPD program is a good start as is strict enforcement of the law, especially for those unregistered migration agents operating in Australia. Wage theft and other employment related matters (including any form of misrepresentation) must be included and punishable in the Code to protect vulnerable consumers and workers within the migration advice industry, and the reputation of the migration advice industry.

The legal industry should only provide immigration legal assistance at the judicial level and avoid the temptation to impose restrictions on RMAs to corner the market on migration advice services. These solicitors must have completed a compulsory postgraduate in Migration Law and Practice to work in this area of law to ensure legal practitioners have skills and qualification to maintain the highest level of standard of the profession and hence promote an equitable environment for all migrations. The professional misconduct in relation to the migration work by solicitors must always be of interest to OMARA, and therefore solicitors should always be part of the OMARA scheme to ensure that we all practice safely to protect the public.

The cost of practicing as a non-solicitor RMA is already astronomical. Professional indemnity insurance should remain at the same level of \$250,000.²⁰ There is no factual evidence to support a cognizable reason to increase it in the migration advice industry. Further, an incorporated Australian company must have an RMA as a company director for this type of enterprises to legally advertise Australian migration services in Australia and overseas. This way, we can increase the level of accountability of business operators to protect consumers, the reputation of our industry and the community.

As a non-solicitor registered migration professional, I am a strong believer that the more competition that exists within the migration advice industry, the better. Competition increases creativity for people working within the migration advice industry and hence equates to better service for the public. However, it is important to remember that too much regulation can severely damage an already struggling industry and it is up to the Australian government to maintain balance in order to revive it,

²⁰ Office of the Migration Agents Registration Authority, *Professional Indemnity Insurance* < <https://www.mara.gov.au/becoming-an-agent/registration-requirements/professional-indemnity-insurance/> >.

especially now that we need this critical industry to assist with the rebuilding of our nation after this current pandemic.


The existing shortcomings with the current regulation of the migration advice industry act as a barrier and create unintended negative consequences in the field. These shortcomings must be addressed if we are to create a sustainable world class migration advice industry.

We need to have well designed regulation which encourages all sectors of our community, especially those who identify as culturally and linguistically diverse (CALD) persons who are highly skilled to participate fully in our community, especially in our nation building. Utilising these talents efficiently is crucial for our nation's recovery and offers assistance in our promotion of multiculturalism and inclusivity. Achieving such goals remains in Australia's national interest.

Consultation from other sectors is welcomed, but the decision makers from the Australian government must maintain a balance to prevent any perception of bias when making decisions in order to protect the migration agent industry's reputation. It is also crucial that the Australian government consult with the individuals working on the front lines of the migration industry – non-solicitor RMAs.

If you have any question, please do not hesitate to contact me via email.

Yours faithfully



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