

## **Proposal from the Board of the Migration Institute of Australia to the Minister for Immigration, the Hon. Chris Evans**

### **Renewal Options for Deed of Agreement to Regulate the Migration Advice Profession**

#### **Background**

##### **The MARA**

The Migration Agents Registration Authority “the MARA” is a division of The Migration Institute of Australia Limited (“the MIA”), the peak professional body representing registered migration agents (“RMAs”) in Australia.

We were appointed by the federal government under a statutory self-regulation scheme in 1998 to assist and protect consumers and to maintain high standards of knowledge, ethics and professionalism in the migration advice profession.

The MARA operates nationally to regulate the migration advice profession under section 316 of the Migration Act 1958 and through a Deed of Agreement with the Minister for Immigration and Citizenship (“the Minister”) which, unless renewed, will expire on 31 March 2009.

The MARA’s functions under these arrangements include:

- Processing applications for registration and re-registration of migration agent (it is against the law to give migration advice unless a migration agent is registered).
- Administering a scheme of continuing professional development that ensures that migration agents maintain a high level of sound knowledge.
- Providing protection to consumers by monitoring the conduct of agents and investigating complaints where possible breaches of the Migration Agents Code of Conduct (“the Code”). The code contains mandatory standards of ethics and professionalism for RMAs.

##### **The MIA’s Record**

The MIA’s record demonstrates a strong commitment to raising professional standards and thereby enhancing the standing of the profession within the community. It is extremely serious about ethical and professional standards within the migration advice profession and will not tolerate or protect, in any way, a member or members who are found guilty of incompetent or unethical practice. The MIA’s interests are served by strong and appropriate remedial action, whether this be discipline, training or mentoring or supervision.

The MIA is serious about protecting the vulnerable, and it does this by ensuring all RMAs, whether in the voluntary or fee charging sector, have satisfied the same appropriate and high of level competency standards. This attitude extends to all RMAs including those who provide pro bono services to those in need.

##### **The Relationship**

The Migration Act provides for the MARA, which operates as a separate entity, to come within the MIA. While there is some inter-relationship, primarily a common CEO and Financial Controller, there is, in practice, a complete separation in terms of responsibilities, powers, functions and funds with the decision making processes undertaken independently.

## **The Deed of Agreement**

Pursuant to the current arrangement, there is an agreement between the Minister and the MIA to regulate the RMAs. Each Party entered into this Agreement with the commitment that both Parties would communicate and work together in an open and cooperative manner towards the shared goal of high quality, ethical migration advice which, at the same time, protects consumers through the efficient and effective regulation of the migration advice profession.

The legislation provides the basis for the MIA, acting as the MARA, to exercise specific powers that are to be performed by the MARA as a non-government body exercising statutory powers. The objective of these statutory powers is to provide optimum protection to the public and to consumers.

As the current agreement expires on 31 March 2009, its immediate renewal is vital to continuity and public confidence so as to ensure that:-

- good governance is not jeopardized and is seamlessly maintained;
- present staff gain some surety of their continued employment;
- the ability to provide authorization of professional courses being offered by universities for the 2009 academic year as authorization is pending the renewal of the MIA's agreement with the Minister.
- commitments to the profession and its clients continue to be met.

## **The 2007-08 Review**

The findings and report of the 2007 Review of the Statutory Regulation of the Migration Profession ("the Review"), which is with the Minister, should be released quickly to enable the profession to progress and to have the matters raised by the Review appropriately addressed.

Pending the release of the Review, the MIA has considered some of the matters believed to have been raised by the Review and has charged the recently appointed Chief Executive Officer, Maurene Horder, with the task of assessing the processes and arrangements in place with the purpose of addressing any areas where there may be a conflict of interest, either real or perceived and advise the MIA Board on what immediate actions needed to remedy this.

In addition, the CEO is to examine whether the level of support presently provided to non-commercial RMAs and their clients is effective.

## **Assessment**

The following constitutes the CEO's assessment and conclusions of the CEO's investigations to date:-

- 1 Conflict of interest in the migration process potentially entraps many people if not managed at an adequate arms length. This includes individual migration agents advocating and representing prospective migrants and visa holders; the professional body representing those agents and the Department and its Officers as the "gatekeepers" delegated with responsibilities for approving applications.

There are potential conflicts between the rights of applicants to have assistance and advocacy which must be independent from those who make the rulings on their applications. Paramount to any discussion of the migration advice profession is recognition of the need to protect the vulnerable.

- 2 Whilst the MIA and MARA has, and can, continue to, operate with a common executive there needs to be a visible and viable "Chinese Wall" between the two organisations. In particular, with respect to the complaints and sanctioning role there are perceived problems may need more than this.

- 3 The current arrangement, where there is a separate Executive Officer of MARA, reporting to the MIA CEO, works provided there is a clear division of responsibilities. This separation is particularly difficult at the governance level.
- 4 The concept of having the Board of Directors of the MIA operating as the Board of the MARA, in relation to the complaints and sanctions role, exhibits all of the attributes that leads to the “perception” that a conflict of interest exists. Therefore, it is necessary to create a separate body/board to take on this role. The current legislation needs amendment to devolve this function from the MARA to an independent body. This appears to be the major community concern in relation to conflict of interest with the perception that there is insufficient distance between the MARA and the MIA.
5. There is some confusion with the issue of how non registered agents are dealt with, a responsibility that falls squarely in the lap of the DIAC and not the MARA.
- 6 On an interim basis, the MARA could reform its own Professional Standards and Registration Committee (“PSRC”) /Complaints Committee to include a wider external membership. It is suggested that, in this respect, the complaint process proceed as follows:-
  - the PSRC be constituted by a minority from the MARA Board, thereby guaranteeing peer review;
  - the appointment of an independent Chair from a senior legal or judicial background for this sole role
  - maintain the involvement of representation from external legal and consumer community groups. and
  - a nominee from the Minister / Law Council.
- 7 Consideration should be given to some external auditing of the MARA process by the Joint Accreditation System of Australia and New Zealand (the “JAS-ANZ”) or at least use and declare compliance of its arrangements with the international standard ISO/IEC 17024: 2003, *Conformity assessment -- General requirements for bodies operating certification of persons*.
- 8 Consideration will also be given to the independent certification of the MARA complaints handling process or a declaration of its compliance with AS ISO 10002: 2006, *Customer satisfaction - Guidelines for complaints handling in organizations*.
- 9 There could be a clearer documentation of arrangement between MIA and MARA whereby the MARA purchases resources (admin, IT, finance, office space, etc) that is, a fee for service arrangement from MIA at today's rates.
- 10 To ensure that the Graduate Certificate courses are run in Semester 1, 2009, the nominated Universities need to be licensed/authorised by the MIA.
- 11 MIA to implement a pro- bono help /advice service to assist non commercial agents and their clients. Provide additional discounted services to non commercial agents by way of training and support.

### **Timetable**

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| November 2008 - | Minister agree in principle to the proposal that the MARA remain under the auspices of the MIA save for the functions relating to the complaint and sanction. All other existing functions, such as registration requirement, to remain as is |
| November 2008 - | Minister sign an extension of the Deed of Agreement for a period of up to 18 months.  |

- December 2008 - MIA appoint a task force to examine other professions' models, and in particular, the legal profession's "Legal Service Commission", and put forward recommendations for an adaptation of a model to undertake the functions of complaints and sanctions. This with the view that all other functions remain with the MARA under the MIA umbrella. This task force to include a senior DIAC representative.
- March 2010 - Establish new complaints and sanction regulatory body for Migration advice profession.
- January 2011 - Introduce Legislative reform to overcome already identified deficiencies and new educational standards

### **Recommendations**

- 1 That the Minister accept the MIA's proposal for an independent body to manage the new complaints and sanction conduct of migration advice profession. With all other functions of the MARA to remain as is.
- 2 An implementation task force comprised of representatives of the MIA and senior representative of the DIAC to examine and adapt other models such as the Legal Services Commission. The task force to put forward its recommendations for the development of the ways and means and the terms of the governance of the new body and advise on the necessary legislative change.
- 3 That, in the interim, and in order to facilitate the effective operation of the regulatory scheme, the Deed of Agreement with the MIA be extended for a period of 12 to 18 months.
- 4 In so far as the current deed may require some varied terms of a non statutory nature, the agreement with the Minister be to extend the Deed in principle and to re-negotiate the terms of the deed or other operating documents before 31 March 2009.
- 5 Agree to implement the suggested reforms within the timetable proposed.

### **October 2008**