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2007-08 Review of Statutory Self-Regulation of the Migration Advice  
Profession  
C/- Migration Agents Section  
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Dear Mr Hodges

It is with pleasure that I present The Migration Institute of Australia's submission to the 2007-08 Review of Statutory Self-Regulation of the Migration Advice Profession.

We consulted widely with our membership in the preparation of our submission. The submission has been prepared in a way which reflects positions adopted by the MIA as both the peak professional association for the migration advice profession and as the Migration Agents Registration Authority which regulates the profession under Part 3 of the *Migration Act 1958*.

Yours sincerely

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

## *The MIA's Submission*

### *Executive Summary*

Australia's registered migration agents play a critical role in providing immigration advice and are now used by more than 70 per cent of applicants in some visa classes. As a group, they are amongst the most professional in the world; they have high level knowledge of Australian migration law and procedures, and meet high professional and ethical standards.

The Migration Institute of Australia (MIA) wholeheartedly supports the Government in saying that the migration advice profession has matured significantly over the past 15 years of regulation. Australian Registered Migration Agents (RMAs) on the whole provide accurate, timely and lawful advice and demonstrate high ethical and professional standards.

There have been great strides made over the five years since the last review, with the level of professionalism, consumer confidence and protection, and the capacity of the Migration Agents Registration Authority (MARA) to assist consumers increasing significantly. The introduction of compulsory Continuing Professional Development (CPD) in 1998, as recommended by the MIA, and its continuing advances, are reaping benefits for the profession.

The regulatory scheme has been pivotal in addressing unprofessional and unethical conduct. The very few miscreants remaining in the profession continue to be dealt with through the disciplinary functions available to the MARA. Consumer protection is paramount and the profession remains committed to efforts that properly deal with those who would damage consumers or tarnish the professional reputation of the majority. In this context, the profession is very concerned that not enough is being done to curtail the unscrupulous activities of unregistered overseas agents, which damage consumers and lead to negative media reports tarnishing the reputation of Australia's Registered Migration Agents.

The profession strives for further growth, which will benefit the many people who choose to use a migration agent, and the MIA aims to help the profession develop further for the benefit of Australia and consumers.

Our key recommendations are:

- I. The registration scheme's development needs to keep pace with the development of the profession so that it best meets the needs of consumers and the profession. Amendments to the *Migration Act 1958* and *Migration Agents Regulations 1998* are recommended to achieve this outcome. Some of the key amendments requested are:
  - (a) "Emergency" powers to protect consumers that would allow Courts to grant orders to the MARA.
  - (b) Where clients are in high risk situations, the MARA be given the power to immediately suspend a RMA until an investigation has been completed or the risk has been ameliorated.
  - (c) Establishment of a fidelity fund.
  - (d) The graduated approach for dealing with regulatory non-compliance be complemented by the ability to restrict practice (such as being unable to prepare cases for the Migration Review Tribunal or Refugee Review Tribunal), impose a requirement for supervised practice and require a RMA to complete targeted CPD without a sanction.
  - (e) The movement towards self-regulation be demonstrated by giving responsibility for CPD to the profession.
  - (f) The movement towards self-regulation be demonstrated by giving responsibility for prescribing the entry level course and exam to the profession.
  - (g) The movement towards self-regulation be demonstrated by giving responsibility for the Code of Conduct to the profession.
  - (h) The disciplinary committee of the MARA be able to include both RMAs and individuals who are independent of the MIA.
- II. There not be a requirement for all RMAs to complete the Graduate Certificate in Australian Migration Law & Practice.
- III. Australian Legal Practitioners continue to be required to be RMAs should they be giving immigration assistance.
- IV. Priority processing for "approved" RMAs be introduced, with the details of the priority processing scheme being worked out in close consultation with stakeholders.
- V. The MIA supports recognition of excellence through a tiered membership structure within the profession, but not within the regulatory framework. The MIA is actively exploring this concept.
- VI. Persons giving immigration assistance offshore be required to be registered with the MARA. This outstanding recommendation from the last review needs to be implemented as a priority.

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## BACKGROUND TO THE MIA

1. The Migration Institute of Australia (MIA) is the peak professional association for Australian RMAs. The MIA began in 1987 as the Australian Migration Consultants Association (AMCA) and, in 1992, became the MIA. In 1998 the MIA accepted the appointment as the Migration Agents Registration Authority (MARA) as an opportunity to take increasing responsibility for the service standards and integrity of the profession.
2. MIA members are dedicated professionals who provide a quality service and represent their clients' interests. MIA members undertake challenging work by providing migration advice in an environment where migration legislation, policies and procedures are complex and change frequently.
3. The MIA membership is diverse. Many are members of other professional associations through their qualifications, for example as a lawyer or accountant.
4. Before 1992, the Australian migration advice industry was largely unregulated. Migration agents were not required to satisfy any minimum educational or academic standards. Unlike other professionals, such as lawyers or accountants, migration agents did not need a common qualification as an entry requirement.
5. The MIA is committed to enhancing the standing of the migration advice profession. The MIA:
  - (a) Provides opportunities for members to network with each other, to share ideas and experiences that improve their understanding of migration.
  - (b) Provides training, education and information to members, other RMAs and people wishing to become RMAs.
  - (c) Provides a voice for members with Government about legislation, policy and procedures related to the Migration and Humanitarian Programs.
  - (d) Liaises and maintains relationships with other relevant organisations including law societies and the Department of Immigration & Citizenship (DIAC).
  - (e) Safeguards community interests by ensuring that members are equipped to provide a quality service.
  - (f) Assists the community by providing *pro bono* immigration advice (for example, our free advice service for workers brought into Australia under 457 visas who are having problems with their employers).
  - (g) Performs the role of the MARA.

6. The MIA operates through a National Executive with a branch structure that encompasses members in each Australian State or Territory. In addition, the MIA has some members living and working overseas. The profile of each State or Territory branch of the MIA is influenced by the membership profile in the particular State or Territory. Of the 1740 RMAs who are MIA members, the largest number practice in New South Wales.

<b>Region</b>	<b>No. of Members</b>
Australian Capital Territory	19
New South Wales	640
Northern Territory	6
Queensland	239
South Australia	76
Tasmania	14
Victoria	373
Western Australia	235
Overseas	138
<b>TOTAL</b>	<b>1740</b>

7. The MIA has increased its representation of the profession from about 24 per cent at the time of the 1999 review to 49 per cent currently. Clearly, the proportion of RMAs who have become members of the MIA has significantly increased. This increased representation indicates that RMAs accept the MIA as an important element of their professional lives.
8. The MIA submits that, while the membership of the MIA accounts for about 49 per cent of RMAs, MIA members account for the majority of immigration advice given and migration cases handled by migration agents, both onshore and offshore.

## INTRODUCTION

9. Australia's Registered Migration Agents (RMAs) play a critical role in providing immigration advice in Australia and are now used by more than 70 per cent of applicants in some visa classes.
10. The migration advice profession has matured significantly over the past 15 years of regulation. There have been great strides made over the five years since the last review, with the level of professionalism, consumer confidence and protection, and the capacity of the Migration Agents Registration Authority (MARA) to deal with complaints increasing significantly. The introduction of compulsory CPD in 1998, as recommended by the MIA, and its continuing advances are reaping benefits for the profession.
11. We are a young profession, taking the development path that many other professions have followed. Entry level standards have increased. Ethical and competency standards have improved significantly. RMAs on the whole provide accurate, timely and lawful advice and demonstrate high ethical and professional standards. Like many professions, the potential for further growth exists. We are committed to seeing the performance and reputation of RMAs improve.
12. Entry level educational requirements will have to continue progressing to ensure that standards continue to improving. We see the next stage to be a Graduate Diploma, which will build upon the already developed Graduate Certificate in Australian Migration Law & Practice. The Graduate Diploma should include a practical element to ensure that RMAs have had practical experience before starting out in business.
13. Once the Graduate Diploma has gained acceptance, the next logical step would be developing entry qualifications in the form of an undergraduate degree. It is our view that once this is achieved it should not be that difficult for a RMA to complete additional subjects so as to receive a law degree.
14. Should entry arrangements develop in this way, in the longer term (and this might involve a timeframe of 15 years or more) the MIA could see the migration advice profession merging with the much larger legal advice profession. This means that the profession needs to work more closely with the legal profession than ever before to align our requirements. It also suggests that the whole push for exemption and challenge may be rather pointless. In the longer term, this may mean that MARA becomes part of the registration and disciplinary processes of the legal profession. Those remaining non-Australian Legal Practitioners would be required to register with the MARA within the legal profession. Already, we are seeing increasing numbers of lawyers in the migration advice profession.

## IMPROVING THE REGULATORY FRAMEWORK

(Review Reference: Chapter 3)

*Extract of the September 2007 Discussion Paper 2007-08 Review of Statutory Self-regulation of the Migration Advice Profession*

- *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?*

### Overview

15. The professional migration advisor improves the efficiency and effectiveness of visa programs by helping potential applicants decide on the most appropriate visa, if any, to apply for, and delivering complete, well structured applications to DIAC.
16. The MIA believes the registration scheme is structured soundly. However, but needs to keep pace with developments in a growing sector, in order to best meet the needs of consumers and the migration advice profession.
17. Strengths within the scheme are:
  - (a) The protection of consumers.
  - (b) Growing awareness in the community and its representatives of the scheme and its benefits.
  - (c) Broad acceptance and support for the scheme among the registered migration agent community.
  - (d) The record of cooperation between DIAC and the MIA in administering, refining and developing the scheme.
  - (e) The continued operation of the scheme in a financially responsible way.
18. Areas of concern in the operation of the scheme, while limited, include:
  - (a) Migration agents operating outside Australia are not compelled to be registered.

- (b) Slowly declining registrations of community sector non-commercial RMAs.
- (c) Dealing with cases of RMA cessation and clients who are left out of pocket.
- (d) The level of commitment of Government to planning for self-regulation.
- (e) The limited jurisdiction of the MARA to assist clients with refunds, obtaining client files, etc.

## **Effectiveness of legislation & framework**

- 19. There is general agreement that Part 3 of the *Migration Act 1958* has too much detail. Many details currently in the Act could be transferred to the *Migration Agents Regulations 1998*, leaving only the essential provisions. For example, registration application requirements could move to the Regulations. It would also be appropriate to move details in the Act that match provisions in the Regulations into revised Regulations that clarify what is required. For example, “relationship by employment” (section 278 and regulation 3U) and the details recorded in the Register of Agents (section 287 and regulation 3V).
- 20. The Immigration portfolio is a busy one, with an extensive program of legislative change before Parliament. Competition for slots in the legislative timetable is keen and legislation of migration advice has not always received priority. This has meant that legislation does not always keep pace with the development of the profession. Legislative changes agreed more than 12 months ago have not been tabled in Parliament.

### Recommended Amendments to the *Migration Act 1958*

- 21. Key changes agreed previously are listed in Appendix 1. In addition to these the MIA recommends the following changes to the Act:
  - (a) To best tackle regulatory non-compliance, we need a graduated approach enabled by legislation. Currently the range of options are:
    - Encouragement (persuasion, guidance, education & training);
    - Direction (warning letters, warning letters with an unenforceable direction, published warning in the form of a caution with directions);
    - Suspension; and
    - Cancellation.

The MIA recommends the following improvements to current approaches to non-compliance:

- (i) An ability to restrict practice areas, either as a condition of a caution or after lifting a suspension. For example, restricting

- the ability to develop and represent cases for the Migration Review Tribunal or the Refugee Review Tribunal.
- (ii) An ability to require a period of supervised practice, either as a condition of a caution or after lifting a suspension.
  - (iii) An ability to require a RMA to attend CPD activities on specific topics as part of a directive issued without a sanction decision. A compulsory training requirement would serve the public interest by forcing remedial action. This would enable the MARA to employ a positive and proactive approach to quality improvement in the profession, enlarge the range of its options where RMAs present with impaired competence but where it would be inappropriate to apply a sanction.
- (b) Currently, suspended RMAs remain listed on the Register of Agents, so consumers could easily think that they are suitable to engage. The MIA recommends that suspended RMAs be removed from the Register for the duration of their suspension.
- (c) Provide greater protection to consumers, so that they can recover moneys as a debt due in a greater variety of situations than those under section 313 of the Act. For example, where services terminate *before* a decision has been made by the Minister, a tribunal or DIAC. Currently, consumers can only recover moneys as a debt due if a decision *has* been made.
- (d) Protect consumers by making it explicit in legislation that RMAs cannot avoid their responsibilities by operating their business through a corporate structure (ie not hide behind a “corporate veil”).
- (e) To remove uncertainty as to whether non-RMAs who are legal practitioners can appear in the AAT on character cases and business visa cancellations, redefine “review authority” in s 275 to include the AAT. This is necessary to reflect the increasing role of the AAT in reviewing decisions under the *Migration Act 1958*, especially in regard to character matters.

### Recommended Amendments to the *Migration Agents Regulations 1998*

22. A robust and clear code of conduct is important to any profession. The MIA has had its own members’ Code of Conduct for many years. In 1992, Government introduced a Code of Conduct for all RMAs. The MIA has since worked with Government to strengthen the Code, providing better structure and coverage. However frequent changes to the Code – with its combination of broad principles and detailed prohibitions – have made it confusing for consumers and migration agents. Both consumers and RMAs need the Code to be easier to navigate and understand.

23. Key changes were requested last year. However since then the MIA has had time to reconsider the Code. The MIA suggests that the Code be entirely rewritten.
24. The MIA recommends that the Code be rewritten to provide a clear structure, with a focus on principles illustrated by examples. It must still ensure that unethical or unbecoming conduct results in a sanction or a warning. Enforceability of the Code remains paramount. The MIA also sees this as an opportune time to give control of the Code to the profession, through the MARA. Redeveloping the Code would require input from stakeholders including RMAs, the legal profession and DIAC. If need be, the new version of the Code could require approval by the Minister.
25. To protect existing clients when their RMA is under supervision, when a stay of a suspension or cancellation decision has been issued by the Administrative Appeals Tribunal (AAT) or the Federal Court, the role of the supervising RMA needs to be clarified. The supervisor currently checks applications prior to lodgement, checks preparations for review hearings, and works directly and regularly with the supervised RMA to ensure compliance with the Code. However there is generally no contact between existing clients and the supervisor unless the supervised RMA is attending hearings at the AAT, Refugee Review Tribunal (RRT) or Migration Review Tribunal (MRT). The supervising RMA needs to be able to meet with or telephone ongoing clients, to explain their role to the client regardless of the views of the supervised RMA.
26. A rewrite of the Code of Conduct might also address DIAC concerns regarding unscrupulous exploitation of “loopholes” in legislation contrary to the national interest and the wider interests of consumers. This is a difficult area and would benefit from DIAC, the MIA and other stakeholders working together on this to ensure that a correct balance is achieved between clients needs and the national interest.

#### Amendments to Form 956

27. The MIA believes that the current DIAC Form 956 has the effect of blurring the distinction between an authorised recipient and a RMA. It is confusing to clients and almost encourages them to be taken in by unregistered people both in Australia and overseas. The MIA recommends that the Form 956 be replaced with two separate forms, one for appointing a RMA and one for appointing an authorised recipient. This will help consumers and allow the form to be better designed for its particular purpose, rather than being too many things to too many people.
28. The DIAC Form 956 for appointing a RMA should be quick and easy for a client to complete and take into account the nature of multiple RMA

practice and allow other employees of a multiple RMA practice to deal with DIAC on matters. This would assist clients of multiple RMA practices to lodge applications and additional documentation quickly, especially when the client's principal RMA is overseas or otherwise out of the office.

29. The MIA also believes that these forms should include a reminder of the effect of the "deemed receipt" provisions under the *Migration Act*, in particular the operation of sections 494B(5)(b) and 494C(5) of the Act that deem documents as received at the end of the day upon which it was transmitted. A warning is important because the Migration Act differs from the *Electronic Transactions Act 1999*, which generally prescribes the time of receipt of an email as when it "enters" the information system or comes to the attention of the addressee.

## MARA'S PERFORMANCE AS THE PROFESSION'S REGULATOR

(Review Reference: Chapter 4)

*Extract of the September 2007 Discussion Paper 2007-08 Review of Statutory Self-regulation of the Migration Advice Profession*

- *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?*

30. The regulatory scheme exists to protect consumers, especially the vulnerable. In protecting consumers, the MARA performs activities to raise consumer confidence and awareness of the scheme, improves professionalism, registers migration agents and investigates and decides complaints. These areas are explored below.

### Consumer Confidence & Protection

31. There is wide acceptance that the MARA has improved and continues to improve. Can more be done? The answer, of course, is yes. Emphasis on improving consumer awareness and mediation as ways to resolve complaints, before they go to the MARA, needs to continue. Recent focus has been on improving consumer understanding about "why" decisions are taken, especially through plain English explanation of decisions. These help consumers understand that their complaints have been properly addressed.

## Publicity & Consumer Awareness

32. Key consumer awareness messages are:

*The MARA helps to uphold the position of Australia's migration agents as amongst the most professional in the world by ensuring that they have high level knowledge of Australian migration law and procedures, as well as meeting high professional and ethical standards.*

*We can help consumers with finding an agent and advice about the fees that agents might charge. We may also be able to help if you have a dispute with an agent.*

*Always use a registered migration agent. You may also want to consider using one who is a member of the Migration Institute of Australia as they are the most professional.*

33. In our experience, the first thing a consumer does when choosing a migration agent is ensure that they are dealing with a RMA. However, it appears that once a client determines that someone is a RMA, they go on to choose a migration agent on the basis of:
- (a) Perceived prospects of success if a particular migration agent is used,
  - (b) Indications given about prospects of success, and
  - (c) Ease of communication.
34. Word of mouth is very important. It is a significant contributor to perceived prospects of success. Whilst price is important, it is our view that getting the visa is more important to a consumer. It is important that consumer awareness programs take this into account.
35. The MIA considers that awareness of the existence of the scheme has increased. The MARA and DIAC have implemented several measures to improve consumer awareness and education.

### *Consumer Awareness Initiatives*

36. A key vehicle for consumer awareness of the scheme is the *Information on the Regulation of the Migration Advice Profession* (IRMAP) leaflet. RMAs give clients the IRMAP before they begin working for them. In 2007, the IRMAP leaflet was simplified and shortened, then translated into 12 foreign languages. Consumers can learn much from the IRMAP about the migration advice profession – such as the MARA's role, the complaints process and the laws regulating the profession. RMAs download the IRMAP from the MARA's website in English and generally print an Arabic, Bahasa Indonesian, Chinese (simplified and traditional), English, Hindi, Japanese, Korean, Russian, Spanish,

Tagalog, Thai and Vietnamese translation (as appropriate) on the reverse.

37. Since October 2003, the benefits of using a RMA have been promoted through a multilingual newspaper advertising and television campaign in Australia, together with a series of posters and brochures and information on the MARA website. In an effort to gauge the utility of trying to encourage consumers overseas to use a RMA over an unregistered one, a trial advertising campaign in major UK publications was run in June 2007. This included advertisements in *The Times*, *The Guardian*, the free commuter newspaper *Metro* and the glossy monthly *Australian and New Zealand Magazine*.
38. Consumer information about the range of fees that RMAs charge for different types of work is published on the MARA website. This helps consumers understand the relative price of the service they are receiving. There is also advice regarding choosing a migration agent.
39. We continue to publish advertisements for the MIA and the MARA in telephone directories where RMAs are listed. We are revamping both of our websites into more user-friendly sites, with added features for consumers and RMAs. We are continuously seeking ways to improve the information available to consumers. Activities currently afoot include:
  - (a) Developing information for advertorials, brochures, posters, and an information kit on “how best to employ a RMA” and consumer rights, preparing a complaint and the process involved in investigating and resolving complaints. This includes targeting particular communities through liaison meetings dealing with areas of misunderstanding.
  - (b) Updating the existing brochures on the MARA and the complaints process to make them more user friendly.
  - (c) Following positive consumer reaction to the translation of IRMAP into key languages, the translation of other consumer information is also being explored.
  - (d) Fostering partnerships with community organisations in targeted languages and communicating with high-risk groups via detention centres, community organisations, student accommodation, educational institutions, recruitment agencies, and State and Commonwealth agencies to improve awareness of the MARA’s role, how it can help a consumer and how the consumer can best employ a RMA.
  - (e) Fostering partnerships with legal representatives and CPD providers that promote best practice amongst RMAs in responding to complaints.
  - (f) Further sharing of ideas with other regulatory bodies on common issues and different approaches (both in Australia and overseas).

- (g) Visiting immigration detention centres to assist detainees wanting to make complaints about RMAs.

### *DIAC Activities*

40. We applaud the efforts of DIAC to promote how to use a migration agent through a brochure developed in the last year, and ensuring appropriate advice is available on DIAC forms about RMAs. We consider that more could be done to ensure consistency and effectiveness of this effort.
41. The need for DIAC officers to show positive attitudes to the role of migration agents is also pertinent. Experience of MIA members still suggests that some officers in DIAC regional processing offices and in overseas posts do not always appreciate the positive role migration agents perform. MIA members frequently encounter DIAC officers who are uncooperative and unhelpful *because they are migration agents*. Instances of DIAC staff questioning clients about why they used a migration agent or not sending notices to an appointed RMA (despite this being required under section 494D of the *Migration Act 1958*) are still frequent. More action needs to be taken to enforce DIAC staff to comply with the requirements of section 494D of the *Migration Act 1958* and to improve attitudes and build relationships.
42. The MIA believes that there should be greater consultation with the Migration Advice Profession about policy changes and the development of procedures. The current quarterly liaison meetings with the MIA are useful, but too often legislative and policy changes are developed quickly and the need for consultation is given insufficient priority. We see this as an opportunity for the Migration Advice Profession to add value to legislative and policy development so that clients of both DIAC and RMAs benefit from better outcomes for all.

### Consumer Protection

#### *Expanding the Existing Emergency Power*

43. When the worst happens with a RMA's practice, the MARA does not always have access to enough power to intervene and ensure that clients are protected.
44. Currently under its one emergency power (Division 3A<sup>1</sup> of the Act) the MARA can request copies of client files to return them to clients. This power is very limited.

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<sup>1</sup> Under Division 3A the MARA can ask for client files or copies of the files, from an inactive agent (agent whose registration has ended, been cancelled or suspended) or the legal personal representative of an agent who has passed away. These materials must be given by the MARA to the client.

45. The impotency of the MARA in this regard has been highlighted recently. In one case a former RMA: was locked out of their office by their landlord; did not provide the files locked in the office when asked to provide copies; did not give permission to the MARA to obtain the files; and was generally very difficult to contact. The landlord: was unwilling to give access without legal authority; wanted indemnity if access was provided; and wanted the MARA to take all “paper” documents, including many that were not client files. In another case, clients’ interests were protected as the RMAs landlord gave MARA permission to remove the files. Both cases highlight how the MARA relies on the permission of a RMAs landlord to gain access for the purposes of ensuring that the interests of clients are protected.
46. Clients need the MARA to protect them where continued advice is not arranged or where their money is at risk. Clients need a copy of their file and any original documents that they have given to the RMA, to ensure that they can continue with their immigration plans and not be delayed or disadvantaged by the RMAs business failure.
47. The emergency power needs to be broadened and strengthened to ensure that the MARA can effectively protect consumers.
48. We recommend that the Act specify that the MARA can seek a court order to enter a property and seize client files to return them to clients.

#### *Ensuring a range of intervention options*

49. A range of options needs to be available for intervention in the business and professional affairs of a RMA to protect clients, the general public and RMAs, including the owners and employees of the business, so far as their interests are not inconsistent with those of the general public and clients.
50. The current emergency power does not allow the MARA to intervene immediately when clients are at risk. Clients could be at risk because:
  - (a) The RMA becomes an insolvent under administration.
  - (b) The business for which the RMA works is wound up.
  - (c) The MARA forms a belief, on reasonable grounds, that the business, or a RMA within the business, is not dealing adequately with clients’ account money.

#### *Suspension*

51. We recommend that the MARA be able to immediately suspend a RMA, where there is high risk in the above situations of consumer harm, until an investigation has been completed or the risk has been ameliorated. This would allow the MARA to return documents to clients using its emergency power under Division 3A (mentioned earlier). This

power should not be open ended and should be reviewable by the AAT with the opportunity for the decision to be stayed by the AAT.

#### Appoint a Receiver

52. We recommend that to protect client moneys the MARA should be able to seek an order from a court to appoint a MARA approved and qualified receiver. The MIA would need indemnification and protection from consequential loss and damage as a result of any action taken.

#### Establish a Fidelity Fund

53. We recommend that to further protect clients' moneys a fidelity fund be established, using MARA's surplus to establish the fund. A fidelity fund to protect consumers would complement existing arrangements that require RMAs to hold professional indemnity insurance.
54. The MIA believes that the fidelity fund should be established with strong legislative backing. Development of the proposal should involve DIAC, the various state law societies and the Law Council of Australia to ensure that it operates properly for the benefit of consumers. The MIA envisages a fund along the following lines:
- (a) The fund should recompense fees paid by consumers to RMAs for services not provided and recompense visa application fees dishonestly taken by a RMA. Payment of claims will need to be subject to the funds available in the fund. This means, to ensure that the fund remains solvent, that limits to payments may need to be set.
  - (b) Payment from the fidelity fund should require that a RMA be sanctioned by the MARA for acting dishonestly with client moneys. Such findings should be posted on the MARA website and sent to all known clients of the RMA (note: DIAC assistance with identifying clients would be required). Payments from the fund would be approved by the MARA after a set period (like that of the NSW Law Society). The MARA would also need the power to obtain records from a RMA to verify claims.
  - (c) The fund would be administered by MARA and operate like those maintained for Australian Legal Practitioners. The scale is likely to be much smaller, and it would not be possible to source funding from interest on trust accounts or recovery of payments from the seizure of trust account funds. Seed funding to establish the fidelity fund should be \$2 million from the accumulated MARA surplus. The MARA should add progressively to the fund, building towards a target of \$5 million. The fidelity fund would be topped up by interest generated through investment of money held in the fund. Should the fund's value drop below \$5 million, the MARA should be able to use any operating surplus to top it up. Legislative provision should also be made to allow a levy to raise additional funds (subject to sensible limits) if necessary.

- (d) Claimants would need to sign an agreement to cooperate with any investigation of the matter and to provide evidence in any court action taken against the RMA. The MARA or the Commonwealth should be given the power to take action against the RMA or the RMA's estate to recover any moneys paid. Any recoveries should be paid to the Fidelity Fund.

### *Overcharging for services*

55. The MIA's review of media coverage of overcharging of visa applicants for advice indicates that most cases relate to fees charged by unregistered individuals based offshore. This highlights why the Government should act urgently to implement the recommendation of the last review to extend the scheme offshore.
56. The MARA produces a range of indicative fees that RMAs charge for services. This can give guidance to clients but competition within the market place would be disrupted by setting fee scales for services. It may also distort prices in some markets, to the disadvantage of consumers. The fees that RMAs charge vary, as they should. This is best illustrated through an example. If a client were to approach a large prestigious international firm whose reputation precedes them, the client knows that if they are dissatisfied with the service provided, the company will take it seriously. Clients see the expensive offices and expect to pay top dollar. However, if a client approaches a RMA operating their business from home, the client should know that their cost structures are much lower and the client should expect lower fees. Fees set are a combination of reputation and the operating costs of the business.
57. That said, there has been a significant increase in complaints received by the MARA about fees and the costs of advice. Such complaints now comprise 15 per cent of complaints received (compared to seven per cent three years ago). This suggests consumer awareness has increased since the MARA published average fee information on their website.

## **Improving Professionalism**

58. RMAs are much more knowledgeable than they were a decade ago, due to higher entry standards and good Continuing Professional Development (CPD).

### Entry Level Standards

59. The entry level standard has improved a great deal since the MIA took on the role of the MARA. In 2001, the MIA introduced common questions to all entry level courses and, in 2003, the MIA introduced

the Migration Advice Profession Knowledge Entrance Examination. In 2006, the MIA introduced the Graduate Certificate in Migration Law and Practice. We want the next step to be a Graduate Diploma, incorporating work experience and more practice-oriented activities. As the profession matures, and is recognised as a professional pathway, we want to look to a Bachelor of Law (Migration) becoming the new entry requirement.

60. High levels of English language proficiency are also important in the profession to ensure that client needs for representation with DIAC, Ministers, Courts and Tribunals are well conducted. Completion of a Graduate Certificate at an Australian University does require English proficiency but concern has been raised by some members of the profession and DIAC staff that this level of proficiency may not be sufficient. To address this concern, the MIA recommends that the entry level requirement for all initial registration applicants to demonstrate proficiency in the English language be increased to a requirement for a score of 7 in the IELTS Academic module.

#### Continuing Professional Development

61. The MIA proposed the introduction of CPD as a compulsory requirement for registration when the MARA began in 1998. Since then the MIA has ensured that CPD, regulated by the MARA and provided by the MIA and various other CPD providers, has helped to move the profession forward. CPD has raised competency levels in the migration advice profession, improved the quality of service and, as a result, does a better job protecting consumers. The standard of CPD activities has improved dramatically since CPD began in 1999.
62. See the major heading "CPD" later in this document for further comments on the CPD system.

#### **Registering Migration Agents**

63. The MARA is preparing to launch a new process for applying for repeat registration. The new process should improve the quality of applications, while also implementing comprehensive monitoring arrangements in key areas of practice that are currently only checked through a small audit sample.
64. After analysing the results of the 2006 audit of RMAs compliance with the Code, the MIA decided that better monitoring of all RMAs adherence to the requirements for operating clients' accounts and the keeping of professional libraries could best be achieved through the repeat registration process. The MIA has been concerned about high failure rates in the existing audit process. Significant numbers of RMAs that were audited did not demonstrate that they were adequately maintaining a clients' account or a professional library. The MIA had

already targeted communication of the required standards, incorporated the requirement into the registration application form, distributed newsletters and created mandatory CPD activities on these topics, as methods to increase compliance. However compliance rates did not sufficiently improve. A solution to this problem has been developed and will be implemented shortly: 100 per cent of RMAs will be audited through the re-registration process.

65. Over the next 12 months, it is intended that the initial registration process will move to a substantially electronic application process. This will improve the quality of applications and speed-up processing time. Efficiency will be created through reduced data entry and correspondence with the applicant.

## **Complaints Handling & Disciplining Migration Agents**

### Ombudsman's report

66. In June 2007, the Commonwealth Ombudsman released a report on the MARA's complaints-handling process. The Ombudsman found:

*This investigation revealed that MARA's complaints-handling process has improved significantly over the past 12 months, particularly relating to the development of procedures and supporting documentation. Identifying opportunities to be more flexible in its operation should now be the focus. In our view, MARA has demonstrated a willingness to develop a more client-focussed and accountable culture.*

67. There were 18 recommendations made to enable the MARA to improve consumer awareness and access to the complaints process and to ensure efficiency, fairness and planning and risk assessment. The MIA welcomed the fresh insights into the MARA's operations, and while good progress has been made, acknowledges the Ombudsman's findings that further improvements are required.
68. Work is well underway on implementing the recommendations although Recommendation 11 requires legislative change. The MIA recommends to Government that the legislation be amended so that this recommendation can be implemented.

### Effective Procedures for Handling Complaints

69. Protecting consumers is central to the MARA's role. Resolving complaints as promptly as possible is in the best interests of all parties.
70. The challenge of complaints backlogs has been largely overcome. A good level of service to consumers who lodge complaints is now being

provided. The MARA continues to improve its ability to finalise complaints within timeframes acceptable to consumers, RMAs and Government. This means that most matters lodged by consumers can now be fully investigated within three months of receipt.

71. On 25 October 2007 there were 96 complaints (excluding MARA matters) on hand, with four being over 12 months old. This compares with 281 complaints (excluding MARA matters) being on hand on 30 June 2002 (just before the last review was published) with 55 being over 12 months old.

### *Initiatives*

72. In 2006 the MARA published its delegation instruments and the associated written directions on its website. With these documents was an explanation of who makes decisions. This was one of the first steps aimed at making the MARA processes more open, transparent and accessible.
73. In February 2007 Fact Sheets about the complaints process were distributed to all RMAs, to help improve RMAs' understanding of the complaints handling process. Additionally the MARA publishes a quarterly newsletter to RMAs that includes information regarding complaints handling, registration and tips on matters that relate to the Code of Conduct and day to day business operations.
74. Some members of the MIA have previously felt that they could not seek advice from senior members of the profession about complaints, because they saw their elected representatives as responsible for making disciplinary decisions. The MIA recently established a panel of senior members of the profession to whom members can turn for independent, free advice on complaint matters.
75. The MIA is exploring, as an adjunct to the mediation process, establishing a panel to look at complaints that are only about fee levels charged. The panel would consider the circumstances of each matter in an effort to mediate between the client and the RMA.

### Effective Procedures for Disciplining RMAs

76. The 2005-06 financial year saw an increase in the number of RMAs and former agents sanctioned, as compared with the average over the past seven years. That said, the number of RMAs and former agents sanctioned peaked in 2003-04 and numbers are now reducing. The last three years have seen many disciplinary decisions, which were primarily the result of finalising a hard kernel of old cases rather than indicating a worsening situation in the profession.

77. There is growing understanding by RMAs of “why” decisions are taken, especially through plain English explanation of decisions, publishing the delegation instruments and associated written directions, and including information on discipline in the MARA’s quarterly newsletters. This helps RMAs understand the reasons for decisions. Improved understanding leads to better compliance.

### Funding Litigation

78. The financial ability of the profession to defend challenges to its disciplinary decisions is a valid area of concern. We acknowledge that a move to self-regulation would involve a transfer of litigation costs. However we are concerned that Part 3 of the Act and the Code of Conduct are complex - some things are not clearly stated or ambiguous, and this breeds litigation and challenge (see earlier statements). We would be prepared to progressively accept a reasonable proportion of the burden of the litigation costs, but we would see this as something that would develop as the profession takes control of itself.
79. The MIA believes that it could lower the cost of litigation in the AAT. The Commonwealth uses a panel of top end legal firms in all of its litigation. We agree that the MARA should be a model litigant but we believe that given the small specialist nature of the litigation load, which is primarily focussed on the AAT, a single or small firm that specialises in the area could yield a better result at a lower cost.
80. The other limiting factor for the profession in ensuring that funding is available for litigation, is its size. We are small and therefore there are limited funds. Later in the discussion paper there is a discussion about Australian Legal Practitioners being exempt from registration. The departure of Australian Legal Practitioners, or one third of the profession, would substantially erode the MARA’s funding base from registration application fees and its ability to fund future litigation costs.

### Strengthening the Legislation

81. Legislation could be strengthened to discourage RMAs from behaving in a manner that would lead to a disciplinary decision or a refusal of registration. Clear guidelines need to be given through the Regulations to indicate specific conduct that will result in a sanction. Part of this process for development could include the profession recommending which conduct is unacceptable and should result in sanctions. Strengthening the legislation in this area will guide the AAT in its decision making and reduce litigation. An example of conduct that could be included in the regulations: deceive clients or DIAC or Tribunals or the MARA.
82. See other comments in this submission regarding legislative changes.

## CONTINUING PROFESSIONAL DEVELOPMENT

(Review Reference: Chapter 5)

*Extract of the September 2007 Discussion Paper 2007-08 Review of Statutory Self-regulation of the Migration Advice Profession*

- *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?*

83. Continuing Professional Development (CPD) is regarded as an integral part of an RMA's professional life. Being a professional implies a commitment to updating and furthering one's education. It is not enough for a person to become a professional, one must remain a professional. By completing an annual course of, a RMA increases their competence in working with complex and changeable migration legislation, and adds value to their business.
84. CPD must be undertaken each year by all RMAs.
85. CPD aims to ensure that RMAs can demonstrate:
- (a) An understanding of Australia's immigration system;
  - (b) The knowledge, understanding and skills needed to give immigration assistance in the various stages of the application procedure, and for managing their practice;
  - (c) A broad perspective of migration;
  - (d) The skills to reflect on and debate current migration concerns in Australia;
  - (e) An understanding of giving immigration assistance as a process, a craft, a career and a profession;
  - (f) A high level of interpersonal and communication skills, including both written and verbal abilities relevant to the migration advice profession; and
  - (g) A commitment to personal and professional development.
86. CPD's effectiveness comes from:
- (a) Linking CPD with training and development needs related to experience levels;

- (b) Linking CPD to the requirement for all RMAs to maintain minimum competencies in accounts management, file management, business management and ethics and professional practice;
  - (c) Being able to encourage through warning letters and direct RMAs through sanction powers to undertake CPD in specific areas to improve their competence.
87. The variety of education and training opportunities available in CPD allows a RMA to tailor a program to suit their individual professional development needs.

## **Improving the Provision of CPD**

88. The MIA's objective is to have a simple and effective CPD scheme that is tailored to meet the particular needs of the migration advice profession.
89. CPD needs streamlining so it can better evolve with the new needs of the profession. New entrants to the profession are younger and better educated, while existing RMAs are constantly reaching higher standards.
90. During October 2007, the MARA will launch a new framework to replace the existing "CPD Points Allocation Methodology". The new framework is based on the review of CPD which looked at the effectiveness of the existing framework and the pathway forward. It will be a simpler system, with the levels removed. Whilst many of the recommendations can be implemented, and will be within that month, one recommendation cannot be implemented. Namely, that the responsibility for approving CPD activities should be given to CPD providers and that the MARA be responsible for accrediting the providers and ongoing quality assurance. This recommendation requires amendments to the Migration Agents Regulations 1998, which currently require the MARA to approve activities. The MIA recommends that the Regulations be changed to allow the MARA to accredit CPD providers.
91. With amendments being made, it is an opportune time to consider passing control and regulation of CPD to the profession to a greater degree than ever before. Allowing MARA to determine the requirements relating to CPD would simplify the Regulations and give flexibility to vary requirements as the profession matures. Further, it is recommended that the listing of approved CPD activities on the MARA website and on the Federal Register of Legislative Instruments (FRLI) be streamlined. The intention of the legislation was that approved CPD activities were listed on the MARA website. However it must also be lodged with the FRLI. It would cut costs, with no perceived disadvantage for RMAs or consumers, if the need to submit lists to the FRLI were discontinued.

## **MIA as the Regulator and an Education Provider**

92. The MIA faces the same challenge as other professional organisations responsible for self-regulation, that of conflict of interest. Potential conflicts at the MIA are managed through a system of controls that separate decision-making. Staff employed within the MARA operations consider and approve CPD activities. That said, some CPD providers perceive a conflict of interest between MIA as the market leader in providing CPD and the MARA (a body within the MIA) as the regulator of CPD. The MIA takes its role as market leader seriously and its responsibility to ensure that RMAs outside of Sydney, Melbourne and Brisbane/Gold Coast have CPD activities delivered to them regularly, even though it is not always economically viable to do so.
93. The MIA believes that introducing a provider accreditation model will alleviate concerns regarding the potential for conflict of interest. Most CPD providers agree.

## **The Graduate Certificate**

94. The MIA is of the view that there is minimal benefit to the profession and consumers from making the Graduate Certificate mandatory for all existing RMAs who are not Australian Legal Practitioners. The majority of RMAs are professionals with the knowledge, skills and values taught in the Graduate Certificate. Requiring them to complete the entry qualification would add a financial and time burden to the RMA with very little benefit.
95. The MIA is of the view that the profession should be *encouraged* to complete the Graduate Certificate or achieve higher standards through recognised migration advice career pathways, as recommended later in this submission.
96. Any RMAs failing to demonstrate competency could be compelled to undertake CPD that is targeted at their particular deficiency (see earlier recommendation regarding targeted CPD without requiring a sanction).

## **Tiered System as in the UK**

97. The MIA does not support the introduction to the profession of registration for separate levels of activity (initial advice to casework to advocacy and representation) as done in the United Kingdom.

## MIA OPERATING AS THE MARA

(Review Reference: Chapter 6)

*Extract of the September 2007 Discussion Paper 2007-08 Review of Statutory Self-regulation of the Migration Advice Profession*

- *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?*

### Perception of Conflict of Interest

98. The role of the MIA as a membership organisation in managing the MARA has been questioned, with concern raised about the potential for conflicts of interest. This is especially relevant to the MIA's advocacy, CPD and member services roles. In this regard, the MIA faces the same challenges as other professional organisations with responsibility for self-regulation.
99. There is an enormous lack of understanding about this issue. At the moment some RMAs *perceive* conflict of interest. What the MIA needs is to better educate RMAs. Most consumers are comfortable with the concept of a professional body regulating and disciplining their members – they are used to it in many other professions, for example accountants, recruitment agents.
100. The MIA has a vested interest in ensuring that the profession is not brought into disrepute by unscrupulous and incompetent migration RMAs. Conflicts of interest have not arisen because potential conflicts are managed through a system of controls that separate decision-making in every instance where a conflict of interest may arise. This includes requiring Board members to absent themselves from discussions where they might have (or be perceived to have) a conflict of interest.
101. The MIA agrees that disciplinary decisions should be made by a committee comprising migration advice professionals and individuals who are independent of the MIA and the migration advice profession. However, in order for this to occur a change is required to section 319A of the Act which would allow for individuals who are not company directors or employees of the company to be part of a committee with delegated powers to make disciplinary decisions. This change was recommended to DIAC in 2006 and is fundamental to implementation of the Ombudsman's recommendation to "include one or more independent persons with experience in other areas of law, including

administrative law, and from consumer or community organisations”. The Ombudsman added that “this would assist in providing added assurance that potential conflicts of interest are managed properly, and that there is an adequate client focus”.

102. There should not be a requirement that some or all of the members of the MARA Board be independent of the MIA and the migration advice profession.

### **Other Models to Regulate the Profession**

103. There are various other models including co-regulation, self-regulation and full voluntary self-regulation. See the section in this report on “Self-regulation & the Migration Advice Profession”.

## DUAL REGULATION OF LAWYER RMAS

(Review Reference: Chapter 7)

*Extract of the September 2007 Discussion Paper 2007-08 Review of Statutory Self-regulation of the Migration Advice Profession*

- *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?*

104. Australian Legal Practitioners comprise approximately 29.3 per cent of all RMAs.
105. The MIA's position is that lawyers (Australian Legal Practitioners) should be required to be registered and should be subject to the regulations.
106. In the past there have been two main reasons for this position.
107. At the time of the last review, Australian Legal Practitioners were over-represented among those RMAs sanctioned. This was a very strong reason for maintaining the registration requirements for lawyers. Australian Legal Practitioners are now underrepresented in the sanction statistics (20 per cent of RMAs sanctioned last financial year were Australian Legal Practitioners) but the number sanctioned is still sufficiently high to warrant continued regulation.
108. The likely immediate effect of removing lawyers from the migration agents registration scheme would be that many lawyers with no previous expertise in the field would offer services to clients. This scenario is likely to diminish the quality of advice offered to clients. Whilst many lawyers are required to undertake professional development, including ethics training, this is not sufficient as their professional development is not necessarily in migration legislation and policy, which is very dynamic. We do however acknowledge the double burden of two sets of professional development requirements on many lawyers. The recent review of CPD has allocated four points for lawyers who complete CPD or CLE to maintain their practising certificates (this will also apply to accountants). This represents 40 per cent of the requirements for repeat registration as a RMA.
109. Perhaps the legal profession could manage their own registration process for migration purposes. However, they would need to become active in this area. The legal profession may lack the expertise and the desire, given the small number of lawyers practising in this area, relative to the total number of lawyers. We believe that the current arrangements serve consumers well and cannot see compelling arguments for change.

## PRIORITY PROCESSING FOR REGISTERED MIGRATION AGENTS

(Review Reference: Chapter 8)

*Extract of the September 2007 Discussion Paper 2007-08 Review of Statutory Self-regulation of the Migration Advice Profession*

- *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?*

### Priority Processing

110. The MIA sees the case for DIAC providing priority processing to quality RMAs as overwhelmingly positive. Consumers will benefit in two ways:
- (a) Individual consumers who use a RMA having access to priority processing will receive quick outcomes.
  - (b) Consumers generally will benefit because the commercial advantage that RMAs able to access priority processing will have over RMAs who do not, will force an improvement in standards. In effect the bar set for access to priority processing will establish an aspirational standard that will quickly be achieved because financial imperatives will drive that outcome. The result will be an overall raising of standards within the profession.
111. DIAC faces resource constraints. The nature of visa application caseloads are such that many applications are "low risk". For example, this is so in the case of 457 visas, where an applicant comes from an ETA (Electronic Travel Authority) eligible country; is sponsored by a reputable employer known to DIAC from past sponsorships; the occupation of the applicant is in Australian Standard Classification of Occupations (ASCO) Groups 1 to 3; and the salary to be paid is well above the gazetted Minimum Salary level. Relatively junior DIAC staff can process these applications quickly if they are identified early. Other

cases may exhibit features that require closer checking by DIAC staff. To continue the 457 visa example, such cases might involve: an applicant from a country whose nationals have high “overstay” rates; a first time sponsor; an occupation with greater risk of exploitation; or where the Minimum Salary level is to be paid.

112. It would be an advantage to DIAC to have the low risk cases identified at the point of lodgement, so that they could be “fast-tracked”. It would be equally advantageous for the features of the more difficult cases to be highlighted at the same time. RMAs are in an ideal position to do this. The prospect of being able to promise their “low risk” clients fast processing would provide an excellent incentive.
113. At the same time, the MIA recognises that there must be severe disincentives to deter RMAs from falsely identifying cases as “low risk” in order to secure “fast-track” processing for their client. This suggests that only RMAs who undertake training on how to identify the “low risk” cases against thresholds set by DIAC for each visa, and agree to regular audit of their cases, should be admitted to the scheme. Breaching this trust would result in expulsion from the scheme and open RMAs to sanctions under the Migration Agents’ Code of Conduct.
114. Details of the priority processing scheme would need to be worked out in close consultation with stakeholders. The MIA believes that:
  - (a) Such a scheme should be introduced as soon as possible because visa processing backlogs are causing hardship to many clients, including Australian employers.
  - (b) Selection of RMAs for participation should have regard to factors such as their experience, professionalism, not having previously been sanctioned, caseload size, preparedness to lodge applications electronically where this would not disadvantage clients, commitment to lodge complete applications, preparedness to undertake training and preparedness to abide by conditions (eg. audits).
  - (c) No visa subclass should necessarily be excluded. Visa subclasses should be progressively considered for inclusion in the scheme, starting with employer sponsored skilled visas (both permanent and temporary), general skilled migration and those involving family sponsorship.
  - (d) It is essential that RMAs be able to choose which cases should be given priority. Otherwise, participation in the scheme would be negligible as it is not practicable for most RMAs to only take on low risk clients.
  - (e) An ability to advertise participation in the priority processing scheme is essential. There would be little incentive for RMAs without it.
  - (f) Expulsion from the scheme would be an essential deterrent, backed by existing MARA sanctions arrangements. Depending on the nature of the scheme, additional sanctions might be considered.

- (g) As a general position, the MIA is concerned about imposing mandatory sanctions because we believe that the “punishment should fit the crime”. The MIA, acting as the MARA, is prepared to impose stiff penalties where this is warranted (for example, in cases of damage to clients or abuse of Government programs that bring the profession into disrepute).
- (h) The focus that such a scheme should have on knowledge, ethics and professionalism could lead to greater recognition of the positive role that RMAs have in the eyes of consumers and DIAC processing staff.

## **Rating System - Recognising Excellence**

- 115. The profession embraces a wide range of expertise and skill. Our efforts to advance the standing of the profession and encourage excellence rely on several initiatives. Improving entry-level competence and enhancing CPD are only part of the picture.
- 116. The profession can promote excellence by following the example set in other professions, such as accounting, and introduce an accreditation system to recognise RMAs who demonstrate high levels of competence and experience. For this to develop successfully, it needs to be fostered by the profession. The MIA is actively exploring the concept of introducing a system where high-level accreditation would be granted to individual members after they prove their merit. MIA has set out a proposal at Appendix 2.
- 117. The accreditation would be a dynamic force to encourage the development of excellence in professional work.

## SELF-REGULATION & THE MIGRATION ADVICE PROFESSION

(Review Reference: Chapter 9)

*Extract of the September 2007 Discussion Paper 2007-08 Review of Statutory Self-regulation of the Migration Advice Profession*

- *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?*

118. The MIA is addressing the challenge of moving the profession from a position directly controlled by the Government, to a position where the profession could control itself under a system of statutory self-regulation. High professional standards continue to be maintained through the ongoing involvement of elected members of the MIA Board and the MARA Board.
119. The MIA advocates that full self-regulation is desirable, but is a privilege that the profession should earn. We believe that this is a long term objective that should be achieved progressively. We believe that the profession is evolving positively, with high levels of knowledge, ethics and professionalism being exhibited. This warrants the Government recognising progress.
120. We need to learn from models used in other countries and other professions. If there is any one message that the MIA has taken on, it is that the Government should give the profession more power to manage itself. This is especially the case, given the way the profession has matured over the past eight years of statutory self-regulation. There should be progress towards further self-regulation. The profession has matured to an extent that it should be given greater control of its own destiny.
121. In this context, the MIA is asking for control of CPD and entry-level standards be passed to the profession via the MARA. The MIA would also like to work with Government on devolving responsibility for the Code of Conduct to the profession. We do not see the MIA/MARA acting alone in this – the whole profession needs to be involved (not just MIA members). There are other key stakeholders – consumers and the Government (especially through DIAC). The Code of Conduct itself needs substantial revision. It does not meet the current needs of consumers. It is not well structured and difficult to interpret. The MIA would undertake to review the Code quickly, in close consultation with all key stakeholders. We believe that investigative and sanction

powers, particularly, must remain within a regulatory framework in the short to medium term, given the level of litigation encountered.

122. It is evident that while most of the migration advice profession supports the present statutory scheme of regulation, many RMAs – especially those in the most professional and competent sections of the profession – are restless about the degree of regulatory intervention that exists. They would like Government and DIAC to show a clearer commitment to moving towards self-regulation.

## OFFSHORE REGISTRATION

(Review Reference: Chapter 2)

123. The lack of coverage of the scheme of offshore unregistered persons is a major concern for consumers, the MIA and the profession. This is an anomaly in the system, weakening the credibility of the current scheme. It brings the profession into disrepute through negative media coverage of overseas so-called "agents" giving incompetent or excessively expensive advice and behaving badly.
124. DIAC efforts to act independently of the migration advice profession to provide electronic access to certain (generally higher quality) overseas agents while meeting DIAC's operational needs has further blurred the distinction between RMAs and these "DIAC approved" unregistered overseas agents. The use of access numbers that mirror the migration agent registration number only acts to detract and undermine Australian registration requirements. This is particularly the case when unregistered overseas agents advertise their DIAC access number as if it is a migration agent registration number in what sometimes appears to be a deliberate attempt to deceive consumers.
125. The MIA believes that registering overseas persons is essential to consumer protection and creating a "level playing field" for Australia's RMAs. Continued exemptions are likely to put consumers at risk. Quick action is required.
126. Key factors to enable offshore registration include:
  - (a) Removing s294 of the *Migration Act 1958* (that currently requires that applicants not be registered unless they are Australian citizens, permanent residents or New Zealanders with special category visas);
  - (b) Defining the overseas registration scheme, so that all RMAs meet the same registration requirements as RMAs in Australia;
  - (c) Changing section 494D of the *Migration Act 1958* (that currently requires the Minister to deal with "authorised recipients" and prevents DIAC from administratively refusing to deal with a migration agent unless they are registered).

## APPENDIX 1

Some of the key changes to the *Migration Act 1958* agreed with DIAC early in 2006 are listed below.

1. The delegation power under section 319A be amended to allow external individuals to be delegated powers under the Act. Currently the Act only allows employees, directors and officers of the company, or a group of them as a committee, to be delegated powers. The Ombudsman recommended that the MIA be able to appoint individuals who are independent of the profession to the disciplinary committee, called the Professional Standards & Registration Committee. The MIA is keen to do this.
2. Making it clear that the fit and proper person and person of integrity factors considered in disciplining a RMA (that is section 303) match those used to refuse an application for registration. (These are set out in section 290 of the Act.)
3. To ensure effective consumer protection, expand the factors that result in a former agent being barred from registration (section 311A) to include those used for disciplining a current RMA (see section 303).
4. Define “client”, for the purposes of Part 3, as a person to whom immigration assistance is given. This will clarify that where a RMA, who is engaged by a sponsoring/nominating company, gives advice to the company and the visa applicant, both the company and the applicant are the RMAs “clients”. These amendments aim to clarify the persons to whom RMAs owe professional obligations under the Code of Conduct (Code).
5. For the benefit of consumers, amend the Act to allow the MARA to publish refusal decisions based on integrity grounds.
6. Provide the MARA with discretion not to publish on the Register the business address of certain RMAs, so that in the rare case that this information is sensitive (for example, if the RMA works at a woman’s refuge) it will not be unnecessarily disclosed.
7. Make it clear that the AAT must not order a stay of a decision by the MARA to cancel or suspend a RMAs registration unless it is satisfied that the prescribed supervisory requirements are in place. The ambiguous wording in the Act states that supervisory requirements are taken to be a condition of such stay orders (ss306AA & AG) has led to sanctioned RMAs being granted stay orders that enable them to practise without an appropriate supervisor. This amendment will provide clarity to sanctioned RMAs and the AAT about the granting of stay orders, and aims to achieve the Government’s intention of protecting consumers by requiring sanctioned RMAs granted a stay order to be supervised.

## APPENDIX 2

A career progresses from early practitioner to an experienced practitioner to an accomplished or leading practitioner. Whilst the titles are unimportant, the career stages are. The MIA is working towards a model for recognising these various career stages.

An *early practitioner* is beginning their migration advice career. They are in the induction & early practitioner phase. They have undertaken an approved program of preparation or are an Australian Legal Practitioner. They identify their development needs and seek advice and support from colleagues.

An *experienced practitioner* has a successful practice as a migration agent. They keep abreast of changes and contribute to discussions. They identify their development needs, and seek advice and support from colleagues. They are able to contribute to the professional learning of others and are able to interact professionally with the community.

An *accomplished or leading practitioner* has a record of outstanding practice that contributes to the development of the profession and is recognised by others as having in-depth subject knowledge. They are committed to enhancing the quality of migration advice and advocate for the profession. They have outstanding interpersonal and leadership skills which are underpinned by principles of integrity, truth, accuracy and honesty. They actively promote and encourage others in the profession to achieve their potential, particularly through mentoring, teaching and coaching, and interact professionally with the community.