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## Proposals for Reform- Action Plan



Extract from Changing Together

JUNE 2009

*An action plan by the migration  
advice profession in response  
to stakeholder perceptions.*

This is an extract from the report *Changing Together: Perceptions and proposals for reform from stakeholders in the migration advice community*, prepared for the Migration Agents Registration Authority June 2009

Copies of the full report are available from the **Migration Institute of Australia Limited**  
PO Box Q102, QVB Post Office, NSW 1230 or [www.mia.org.au](http://www.mia.org.au)

# Proposals for Reform – Action Plan

## Purpose

### *The challenge of change is...*

To set out a plan for coordinated action by government policymakers, the regulator, educators and professional associations to strengthen consumer protection by increasing the regulation of migration advice and enhancing the professionalism of Registered Migration Agents.

## Vision

### *The result of our collective efforts will be to create...*

An environment where prospective migrants, temporary residents and their supporters can rely unreservedly on the professionalism and integrity of Australian Registered Migration Agents.

## Values

### *As we work with prospective migrants and temporary residents, we believe...*

- Australia benefits from the net economic and social contributions of migrants and temporary residents to this country
- In a free and open society, immigration should be available to those who qualify and basic visa applications should be simple enough to lodge without the aid of a professional
- Given the personal and professional stakes involved in moving countries, those who desire assistance should be encouraged to seek the services of a Registered Migration Agent
- Because many refugees are vulnerable, they should be provided a holistic migration service through the government-funded non-commercial sector
- Professional advice is just advice; only an applicant can make a final decision about the type of visa application to be lodged
- Migration is a sensitive matter; communication about a visa application should only be addressed to persons named within a visa application or an appointed Registered Migration Agent

- Consumers should be provided with clear, objective information about the costs and benefits of professional migration advice and have access to an independent complaints commission
- The knowledge and expertise of Registered Migration Agents make a significant contribution to the efficient operation of Australia's immigration system

## Research Summary

### *We are challenged by stakeholders' perceptions of the current situation...*

With slightly more than 4,000 Registered Migration Agents (RMAs), the migration advice profession is small. However, the migration advice industry is much larger, including many unregistered, untrained and often unscrupulous operators both in Australia and overseas. Unfortunately, when measuring perceptions, the overall impression created by both the regulated profession and the unregulated industry is what counts. While many stakeholders were quick to point out that most agents regularly perform to a high standard, a troublesome minority make a disproportionately negative impact on the image of all RMAs. The difficulty, according to many of the participants in this study, is that it is often impossible to discern if the person providing the advice is part of the registered profession or the unregulated industry.

Unlike many regulated professions, migration advice doesn't have a well-defined area of practice restricted solely for licensed professionals. As a result, this profession is notoriously difficult to regulate. It is porous to infiltration from a wide array of people who practise formally and informally in Australia and overseas, some of whom charge fees and some of whom don't. As a free and open society, Australia believes its immigration system should be free and open too. We might not recommend that migrants 'go it alone' through our immigration system but we don't want to stop them either. According to DIAC officials, RMAs help ensure Australia's immigration system runs smoothly; without them, the migration process would be mired in incomplete and unmeritorious applications. Unfortunately, what is said in private is not always reflected in public pronouncements. If Australia wants to bring much needed skills to this country, policymakers will need to do more to protect the registered migration advice profession from infiltration by untrained and unscrupulous operators.

At the same time, many stakeholders also said 'It's too easy to become a migration agent.' Because migration advice is an area of the law that is open to practice by people who are not lawyers, it is perceived to be a short cut to a paralegal designation and a high income. Part-timers and others who are looking for a sideline to complement an existing business will naturally be attracted if it takes less than six months to achieve registration. According to stakeholders, the key is to raise the barriers to entry early to keep out those who are uncommitted or undesirable.

Some believe that high standards and high expectations should be set before students enrol in any course of study leading to a licence to practise as a Registered Migration Agent. An important first step would be to raise the standard for English language capability. While many current RMAs share a language with new arrivals, the vast majority of stakeholders believed that the need to speak and write English effectively outweighs the need to communicate in a foreign language. Given the high stakes for applicants, many felt that English proficiency is a standard that must be upheld in the long-term interests of prospective migrants and the profession.

While the six-month Graduate Certificate in Australian Migration Law and Practice was acknowledged to be the single most visible improvement in the training of Registered Migration Agents in the past decade, a year-long Graduate Diploma is believed to be a long overdue next step. Still others believe that academic training on its own will not be sufficient. Since theoretical concepts are best learned in real life practice situations, a 'professional year' following a Graduate Diploma is seen as a good way to impart a practical understanding of ethics to new entrants. Some further suggested that those ethical concepts be examined at the conclusion of the professional year to ensure a uniformly high standard of behaviour. Still others wondered if a provisional or tiered licensing system for graduates might not provide better consumer protection and encourage new agents to specialise in particular visa classes.

At present, stakeholders report that there is tremendous variability in the quality of migration advice available. Some ascribe it to the multiple qualifications regimes that have been in place over the past decade. Others blame the increasing complexity of Australian migration law and policy. Still others say the continuing professional development system has failed to keep members up to date. Nonetheless, some stakeholders argued quite forcefully that any attempt to lift the standards for new entrants to the profession should be matched by an equally stringent requalification requirement for all existing RMAs. According to them, it is only by drawing a line under its past that the migration advice profession will gain the trust of the community and move forward into the future.

While some of the most blatant and highly publicised exploitation of migrants is said to have originated overseas, it would be naive to assume that all of the reported cases occur offshore, or are limited to illegal unregistered operators here in Australia. Stakeholders listed a litany of complaints about Registered Migration Agents onshore from minor lapses in professional knowledge and competence, to questionable or indefensible business practices, to ethical breaches and conflicts of interest to outright fraudulent behaviour. The result, they said, is a 'mixed bag.' The quality of migration advice is highly variable not only across the entire industry but also within the regulated profession. Several stakeholders said that the challenge of change is to "effectively ping the naughty guys and to exonerate the good guys."

According to some stakeholders, market forces are able to effectively regulate the profession in the big end of town. Business visa clients (often corporate HR departments) do know good advice from bad and will purchase accordingly. Refugees are largely serviced by the non-commercial sector. The problem is with the middle market. Participants repeatedly said that the 'profit motive' is what taints commercial migration advice. According to them, fees motivate agents to engage in a range of unethical behaviour from lodging 'an unmeritorious application for an unmeritorious applicant' to turning a blind eye to fraudulent documents. Others say some agents overcharge or overservice or both; many more say that the fee structures aren't realistic or transparent. Still others say that the government's official ambivalence toward the need for and role of migration agents sends a mixed message to prospective migrants: 'If you pay for advice you really don't need, what are you paying for...influence or access?' If that's the case, the sky's the limit.

Ironically, some stakeholders say the best quality migration advice is offered for free through community legal clinics and migrant resource centres, much of it by RMAs working pro-bono. The only problem is that they are not funded to serve enough people or to provide enough service. One of the problems undermining funding is that ‘migration advice’ is narrowly defined in the *Act*; yet, in the real world, ‘migration advice’ lies along a continuum from immigration information, to immigration assistance through to immigration advice, to immigration legal advice. The stakeholders who participated in this study held varying views about where the boundaries should be. However, members of the community non-profit sector felt that most of the distinctions should be eliminated so that a holistic service can be provided. According to them, a properly funded ‘immigration service’ would prevent a lot of exploitation of vulnerable clients by fee-charging agents.

While Registered Migration Agents have been tarred with the same brush as illegal operators onshore and criminal elements offshore, they can hardly be held solely responsible for their battered image. Regulation has been divided; the Migration Agents Registration Authority (MARA), under management of the Migration Institute of Australia since 1998, has been responsible for regulating RMAs while the Department of Immigration and Citizenship (DIAC) has held responsibility for monitoring unregistered practice in Australia and for working with consular officials to close off unlawful pathways to Australian immigration from overseas. On the basis of this study, there is no evidence to suggest that DIAC has been more effective in discharging its responsibilities than the MARA has in its. Others say that some traditional pathways to migration like tertiary education, vocational training and special skilled visa classes have left the Australian immigration system open to abuse.

Ultimately, according to stakeholder opinion, Registered Migration Agents may need to agree not only to high standards of qualification and requalification but also to greater regulatory scrutiny if the profession is ever to rid itself of unscrupulous operators and throw off its tarnished image. In this respect, the recent transfer of responsibility for the MARA from the MIA to DIAC presents some opportunities. For once, the regulation of both the regulated profession and the unregulated industry will be under the control of one agency. And there may be a greater opportunity for data to be used to help monitor and manage agent behaviour here and overseas.

The final piece of the puzzle will be to create a complaints body that is independent of both the MIA and DIAC. According to some stakeholders, to fail to do so will be to replace ‘one conflicted entity with another’ and to delay much needed reform.

Given the weight of evidence contained in this report, it is unlikely that perceptions can be turned around without decisive, coordinated action by the profession, the government and the regulator acting together. As many stakeholders explained in painful detail, the impact of exploitation by unethical migration agents can be severe; refugees can be deported to repressive and dangerous regimes; families can remain divided between the first world and the third; and skilled people can face costly disruptions to their lives, careers and businesses. By not taking action now, Australia may deprive future generations of the net social and economic benefits of migration.

## Urgency

### *We have a sense of urgency because...*

The transfer of responsibility for the MARA from the MIA to DIAC presents a unique opportunity to...

- Restore confidence in the regulation of professional migration advice by making one government agency responsible for regulating Registered Migration Agents and for investigating and prosecuting unregistered and unscrupulous operators in Australia and overseas
- Establish the new Office of the MARA as a regulatory body free of perceived or real conflict of interest by creating a consumer complaints body which is independent of both the MIA and DIAC from the outset
- Lift the credibility of a new and more representative MIA, free of the perceived conflict of interest of its previous regulatory role
- Engage the stakeholders of the migration advice community in a process of concerted and coordinated reform

The approval in principle to replace the Graduate Certificate in Australian Migration Law and Practice with a Graduate Diploma presents a similarly unique opportunity to...

- Implement full-scale reform of the entry standards for Registered Migration Agents from pre-admission qualifications to academic training to practical work experience to final assessment
- Create a system of graduated registration as a form of consumer protection against unqualified practice and as a professional ladder for agents
- Restore public confidence in the RMA designation by requiring all current license holders to requalify to a higher standard

## Key Strategic Issues

### *In confronting the challenge of change, we need to address several critical issues...*

#### 1. It's too easy to become a migration agent

As noted in the research, many stakeholders observed that 'it's too easy to become a migration agent.' While the MIA has recently completed an agreement in principle with universities to move to a Graduate Diploma as the base qualification for new RMAs, it is just one of many steps envisaged as part of a comprehensive overhaul of the education and training of RMAs. Three key proposals emerged:

**PRE-ADMISSION QUALIFICATIONS** – Historically, few people have set out to become Registered Migration Agents from the beginning of their careers. Many have come to migration advice as a second profession, often after having successfully migrated to Australia themselves. University educators say that because the Graduate Certificate only takes six months to complete, it is attractive to mature-aged students at mid-career. However, the migration advice profession has a notoriously high attrition rate compared to other professions; few RMAs stay in the profession for long. While it may look appealing to practice in an area of the law without a legal practicing certificate, it often proves more demanding and less financially viable than on first glance.

Some blame the profile of new entrants to the profession for the high attrition rate and obvious shortcomings, including a low level of English language competency. Educators blame university policies for allowing students with sub-optimal English language capabilities into the course in the first place. Some wonder if potential registrants should obtain a minimum score on an IELTS test *before* they are permitted to enrol. Others suggest there should be an orientation process in place to ensure that students entering the profession have good information and realistic expectations.

**PRACTICAL WORK EXPERIENCE TERM** – Within many professions, prospective members are required to complete a period of practical work experience under the supervision of a senior practitioner(s) before registration or licensure. According to some stakeholders, it is only through exposure to real-life situations that candidates can gain a full understanding of the ethical principles which underlie professional work. Others say that not everything can or should be taught in a classroom. They argue that new

RMA's need instruction on how to manage a practice and believe that a practical work experience term would help new entrants master how to put ethics into practice and maintain proper filing systems, accounts and professional libraries.

**UNIFORM FINAL ASSESSMENT** – If the migration advice profession is going to lift the overall professional knowledge and competency of its members, it will require a quality standard against which to measure performance. Some wonder if a uniform final assessment should not be included at the end of the practical work experience term as a final step to registration for RMA's. The test results can be compared year-over-year as a measure of the effectiveness of the new education and training regime.

## 2. One size no longer fits all

Some professions have tiered registration systems whereby new entrants to the profession are given a limited license to practice within certain tightly-proscribed areas. Sometimes, practitioners are required to pass examinations or undergo assessments to pass from one tier to the next. In this way, professional bodies are able to test the knowledge and competency of members at several points in their careers.

Some stakeholders maintain that migration is too complex an area of the law for someone to proceed directly from university into unrestricted practice. They believe a tiered system would allow new RMA's to gain practical experience before attempting unusual or difficult cases on their own. Others favour a tiered system because it could provide a signal to consumers about the level of expertise a new agent has before they contract with them. Still other stakeholders believe that a tiered system of registration would ensure that agents automatically refer matters outside of their normal scope of work to RMA's with greater experience in the area. Some refugee advocates argue for restricting humanitarian visa applications to RMA's with a legal practicing certificate; the clients are too vulnerable to risk an error, according to them.

To re-instate confidence in the professional knowledge and competence of all RMA's, some wonder if it might not be best to ask all currently registered agents to requalify by passing an IELTS test with a score of 7.0 or better and to complete an examination on the current migration legislation. It is felt that through this dramatic gesture, the profession will be able to draw a line under its past and move forward with the confidence of all stakeholders in the migration advice community.

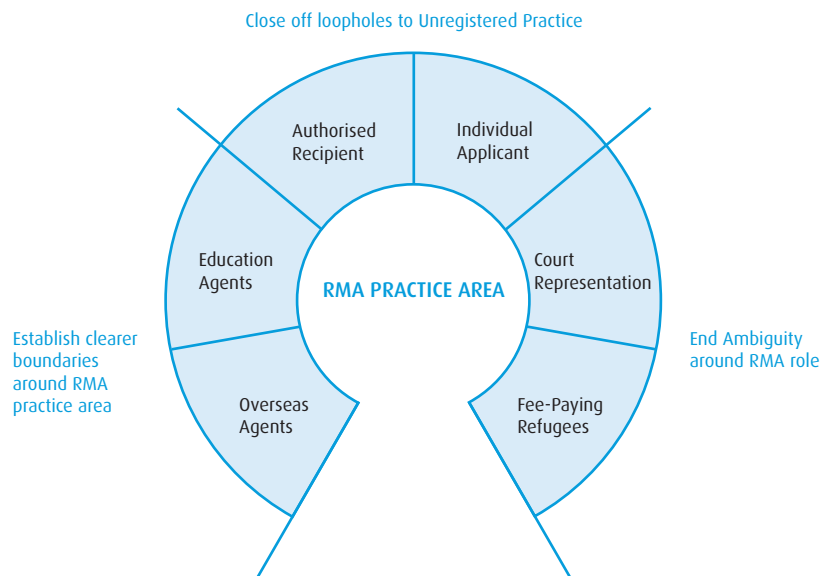
Tier	Qualification	Practice rights
<b>Graduate Migration Agent</b>	IELTS score 7.0+ or equivalent Graduate Diploma in Australian Migration Law & Practice	<ul style="list-style-type: none"> <li>All work must be signed off by an Approved Practice Supervisor</li> </ul>
<b>Registered Migration Agent</b>	All new graduate qualifications PLUS <ul style="list-style-type: none"> <li>Practical work experience</li> <li>Uniform final assessment</li> </ul> OR for existing RMA's <ul style="list-style-type: none"> <li>IELTS score 7.0+ or equivalent</li> <li>Requalification through assessable short course or exam</li> </ul>	<ul style="list-style-type: none"> <li>Current rights except:                             <ul style="list-style-type: none"> <li>May not make applications for ministerial intervention or tribunal review</li> <li>May not act on behalf of refugees for a fee</li> <li>Only Australian Legal Practitioners may appear before a court or lodge an application to a court</li> </ul> </li> </ul>
<b>Registered Migration Specialist/ Registered Legal Migration Specialist</b>	All RMA qualifications PLUS <ul style="list-style-type: none"> <li>Immigration Law Specialist accreditation OR</li> <li>MIA specialist accreditation OR</li> <li>MIA Approved Practice Supervisor</li> </ul>	<ul style="list-style-type: none"> <li>All RMA rights PLUS</li> <li>Applications for ministerial intervention or tribunal review</li> <li>May operate as an Approved Practice Supervisor (for graduate RMA's)</li> </ul>

### 3. A profession open to infiltration

Unlike many other regulated professionals, Registered Migration Agents don't have a well-defined area of practice that is protected for their exclusive use. As noted in the research, migration advice is dispensed by a wide array of people who practice formally and informally in Australia and overseas; some charge fees and some don't. Some are highly trained and registered; others are untrained or simply practising illegally. Unscrupulous operators are seen to make a disproportionately negative impact on the image of Registered Migration Agents.

Australia's policy preference for a free and open migration system means that the system must remain open for individuals to lodge their applications without the assistance of a professional. This is a reality that is supported by RMAs but it makes effective regulation difficult.

However, in order to shut out unscrupulous operators and regulate RMAs more effectively, loopholes which allow unlicensed operators to infiltrate the industry need to be closed and clearer boundaries need to be established. Six key areas were targeted for attention:



***Some will help establish clearer boundaries around the practice rights of Registered Migration Agents...***

**OVERSEAS AGENTS** – While the Australian Government is unable to easily regulate businesses offshore, it could manage unregistered overseas agents in return for access to the Australian immigration system's e-visa portals. Alternatively, it could require that overseas agents work through Australian Registered Migration Agents to lodge their applications.

**EDUCATION AGENTS** – Education agents both onshore and overseas are widely perceived to be offering migration advice either illegally or unscrupulously. There is a clear conflict of interest between an education agent's obvious commercial interest in recruiting a student to an Australian educational institution and the requirement

for that person to lodge a successful visa application. The temptation to offer migration advice may be irresistible to some, according to stakeholders. Education agents are completely unregulated at the moment and there is anecdotal evidence which suggests many offer migration advice illegally. Worse yet, some are said to be involved in producing fraudulent documents to gain entry for unmeritorious applicants. Some university educators acknowledge that by assisting students to fraudulently gain entry to Australian education and training institutions, this group is dragging down the reputation of the entire education sector. Given the sector's importance to Australian exports, agents wonder if consideration should be given to regulating education agents to ensure they are not straying into migration advice intentionally or unlawfully.

***Some will close off loopholes to unregistered practice...***

**AUTHORISED RECIPIENT** – The provision to appoint an ‘authorised recipient’ is based on the principle that most people should be able to self-manage their migration to Australia but may need the assistance of a friend to receive mail or to translate English language documents. It is a provision born out of practicality but it is also an avenue open to abuse.

Reportedly, unscrupulous operators pose as ‘authorised recipients’ to circumvent regulation. Their clients may believe that they have hired an agent but may not understand the distinction between appointing an agent and appointing an ‘authorised recipient’; at the moment the same form is used to appoint both. Once appointed as the ‘authorised recipient’ the operator is in control; all correspondence now passes between the unregistered operator and DIAC and the client is left out of the communications loop. The client relies upon the operator posing as an ‘authorised recipient’ to communicate the instructions of the department and when they must be carried out. If they don’t, the applicant could be in the dark up until ‘the last painful moment’ with little recourse for appeal. Many wonder if convenience can still be used to justify this gaping hole in the regulation of migration advice.

**INDIVIDUAL APPLICANT** – At present, individuals can nominate a person to act as an ‘authorised recipient’ or as their migration agent. Some suggest that, in the future, individuals lodging their own applications should have to declare that they did *not* pay for immigration advice in connection with the application process. Some suggest that such a declaration might help further close loopholes to unregistered practice.

***Some will end the ambiguity around the role of RMAs and eliminate any doubt that RMAs exploit the courts, their clients or refugees...***

**COURT REPRESENTATION** – While the *Migration Act* permits a Registered Migration Agent to advise on immigration matters before a court, it does not permit them to provide immigration legal advice unless they also hold a legal practicing certificate. So when an RMA steps into court, the question arises (at least in the minds of court officials), “What sort of advice are they providing: immigration advice or immigration legal advice?”

Some judges believe that unscrupulous operators, both registered and unregistered, may use the court process for the sole purpose of stringing out a matter and allowing an applicant additional time in Australia. They suspect the legal system may also be used to inflate the agent’s fee or to placate an unreasonable client. Either way, court officials believe that this is as much an abuse of the courts as it is an abuse of clients.

Agents wonder if it might not be better to end the ambiguity and change the legislation to make it clear that RMAs should not represent clients in court proceedings. That way, according to them, the ‘shadowy figures’ lurking at the back of court rooms could never be mistaken for a Registered Migration Agent.

**FEE PAYING REFUGEES** – The profit motive is sometimes blamed for tainting commercial migration advice. To remove any potential for exploitation of these particularly vulnerable applicants, the committee which produced this action plan believes refugees should be offered a holistic immigration service through the non-commercial sector. However, in order to do so, government will need to broaden the definition of ‘migration advice’ it will fund and to substantially increase the funding available to this well-deserving sector.

#### 4. Need to end the ingrained cynicism around the complaints process

When consumers complain, they need to have confidence that their complaints will be taken seriously and considered impartially. Similarly, RMAs also need to have confidence that legitimate claims will be dealt with fairly and that spurious claims will be dealt with swiftly. According to stakeholders participating in the research, one of the key criticisms of the MARA under the management of the MIA was a perception that the discipline system was susceptible to influence.

With the transfer of responsibility for the MARA to DIAC, a similar concern has arisen, ‘Will complaints be taken seriously?’ Some stakeholders wonder how MARA officials, themselves DIAC employees, will be able to fairly and objectively investigate complaints made by DIAC.

Several participants felt strongly that the migration advice profession should model itself after the legal profession and establish an independent complaints body along the lines of the Legal Services Commissioner. Not only should this body hear complaints about the nature of advice given but it should also be empowered to consider the appropriateness of fees charged, according to them. To fail to establish a complaints body which is independent of both the MARA under DIAC and the MIA would be ‘to replace one conflicted entity with another.’

However, it must be transparent as well as independent. The new complaints body will need to provide much more publicly available information about its reasons for taking ‘no further action’ decisions if it is to gain the trust of stakeholders.

#### 5. A more representative professional body?

A strong and vibrant association is essential for a healthy profession. Unfortunately, the MIA fails to meet several of the tests usually applied to determine the health of an association. With approximately 2,000 of the 3,793 Registered Migration Agents in 2007/08, the MIA represents only half of the registered agent community. The leadership of the Institute is perceived to be dominated by independent entrepreneurs.

While the MIA had responsibility for the management of the MARA it was seen to be conflicted and sometimes compromised. The transfer of responsibility for the MARA from the MIA to DIAC presents an opportunity to recast the form and function of the Institute. Freed of its regulatory responsibility, the MIA could now become a much more effective advocate for good migration policy in Australia. However, to do so, it will need to demonstrate that it represents more members of the profession and it will need greater certainty in terms of its funding.

Some wonder if one way to achieve this is to encourage MIA membership as an integral part of the registration process. Historically, many professions have required membership in the professional association/institute as a condition of licensure. By requiring all agents to join, the MIA could become more representative. Individuals who might not otherwise have become involved could emerge to take leadership roles. By cementing its place as the peak industry body, the MIA would have greater authority and become a more reliable partner for government in formulating future policy directions. It could become more effective in setting the policy agenda rather than reacting to circumstances. Some others suggest that with the additional funding that comes with mandatory membership, the MIA could take on important but costly communications to inform and protect consumers.

## Key Initiatives

### 1.0

#### Raise education and training standards for new and existing RMAs

##### Rationale:

Standards of education and training of RMAs have steadily increased over the years. While the Graduate Certificate in Australian Migration Law and Practice is the most visible improvement over the past decade, the changes have not gone far enough or fast enough to satisfy stakeholder demand. With an agreement in principle in place between the MIA and the universities to move to a Graduate Diploma, now is the time for end-to-end reform of the professional training of RMAs. In order to lay to rest stakeholder concerns about existing RMAs, current agents will be asked to re-qualify to a new, higher standard of professional competence.

Initiative	Description	Responsibility
1.1 Increase standard of English language competency of new RMAs	<ul style="list-style-type: none"> <li>Require all prospective RMAs to achieve a score of 7.0 or better on an IELTS test</li> <li>Work with universities to apply standard prior to acceptance into the Graduate Diploma program</li> </ul>	MARA MIA Universities
1.2 Hold an orientation session with new MIA student members to provide information and set expectations about the profession and their role	<ul style="list-style-type: none"> <li>MIA-designated volunteers to conduct an orientation session with new student members of the MIA within the first three months of membership</li> </ul>	MIA
1.3 Require all graduate RMAs to complete a practical work experience term under the supervision of an Approved Practice Supervisor	<ul style="list-style-type: none"> <li>Form a Working Group to develop the exact form of the requirement including the length of the term, the role and responsibilities of graduate RMAs and Approved Practice Supervisors and the remuneration/incentives for graduates and supervisors                             <ul style="list-style-type: none"> <li>Consideration should be given to a term of 12 months full-time equivalent supervised practice, spread between a minimum of two Approved Practice Supervisors</li> <li>Consider integrating work experience with the Graduate Diploma</li> </ul> </li> </ul>	MIA Universities MARAs
1.4 Introduce a uniform final assessment of all graduate RMAs upon completion of the practical work experience term	<ul style="list-style-type: none"> <li>Working Group (as above) to develop the exact form of the assessment including the method of assessment and the topics to be covered                             <ul style="list-style-type: none"> <li>Consideration should be given to continuous assessment (during the work experience term) which would reflect real practice situations including ethical dimensions</li> </ul> </li> </ul>	MIA Universities MARAs
1.5 Require all current RMAs to satisfy bridging requirements to the new higher standard of professional competence within two years	<ul style="list-style-type: none"> <li>Require all current RMAs (including holders of legal practising certificates) to pass an assessable short course or exam; unsuccessful candidates after two attempts must take the Graduate Diploma</li> <li>AND, pass IELTS with score of 7.0+ or equivalent</li> </ul>	MARA MIA

Initiative	Description	Responsibility
<i>continued</i>		
1.6 Develop an assessable short course for existing RMA's on current issues in migration law and practice	<ul style="list-style-type: none"> <li>Develop an intensive short course covering the competencies taught through the Graduate Diploma for those RMA's wishing an alternative to the examination</li> <li>- Course to be in lieu of the CPD requirement in the year it is completed</li> </ul>	MIA
1.7 Conduct a review of the current professional development offerings	<ul style="list-style-type: none"> <li>Appoint an external, independent educator or academic to assess the rigour and variety of the current CPD offerings</li> </ul>	CPD Providers
1.8 Support legislative change to enable improvements to the CPD scheme	<ul style="list-style-type: none"> <li>Accelerate the proposed legislative change for accrediting CPD providers</li> </ul>	MARA DIAC*

\* DIAC involvement limited to legislative change

2.0

**Introduce a system of graduated registration to enhance consumer protection and the professionalism of RMAs**

**Rationale:**

Building upon the new education and training framework, a system of graduated registration could enhance consumer protection. At the same time, it could enrich the opportunities of both graduate and senior RMAs. It would offer graduate RMAs an immediate prospect of employment, albeit under supervision and it would offer senior practitioners recognition of their superior training and experience. Consumers would benefit by being shielded from inexperienced practitioners and by providing a signal about the level of experience a practitioner has. For the first time the expertise of holders of the Immigration Law Specialist accreditation would be formally recognised within the registration scheme.

Initiative	Description	Responsibility
2.1 Introduce entry level registration for Graduate Migration Agents	<ul style="list-style-type: none"> <li>Create Graduate Migration Agent (GMA) designation for individuals who have:                             <ul style="list-style-type: none"> <li>IELTS score 7.0+ or equivalent</li> <li>Graduate Diploma in Australian Migration Law &amp; Practice OR legal practising certificate</li> </ul> </li> <li>All work must be signed off by an Approved Practice Supervisor</li> </ul>	MARA MIA Education providers DIAC*
2.2 Enhance registration requirements for Registered Migration Agents	<ul style="list-style-type: none"> <li>Update Registered Migration Agent requirements to include:                             <ul style="list-style-type: none"> <li>Requirements for new applicants:                                     <ul style="list-style-type: none"> <li>Requirements for GMA PLUS</li> <li>Practical work experience</li> <li>Uniform final assessment</li> </ul> </li> <li>Requirements for existing RMAs:                                     <ul style="list-style-type: none"> <li>Existing registration PLUS</li> <li>Bridging requirements</li> </ul> </li> </ul> </li> <li>Current rights except:                             <ul style="list-style-type: none"> <li>May not make applications for ministerial intervention or tribunal review</li> <li>May not act on behalf of refugees for a fee</li> </ul> </li> </ul>	MARA MIA Education providers DIAC*
2.3 Add top level registration for Registered Migration Specialist	<ul style="list-style-type: none"> <li>Create Registered Migration Specialist for individuals who have:                             <ul style="list-style-type: none"> <li>All updated RMA qualifications PLUS</li> <li>MIA specialist accreditation OR</li> <li>MIA Approved Practice Supervisor</li> </ul> </li> <li>Practice rights include all PLUS                             <ul style="list-style-type: none"> <li>Applications for ministerial intervention or tribunal review</li> </ul> </li> </ul>	MARA MIA Education providers DIAC*
2.4 Add top level registration for Registered Legal Migration Specialist	<ul style="list-style-type: none"> <li>Holds Immigration Law Specialist accreditation from relevant law society</li> <li>No restrictions on practice rights of any kind</li> </ul>	MARA MIA DIAC*

Initiative	Description	Responsibility
<i>continued</i>		
2.5 Prohibit RMAs from providing service for a fee to refugees	<ul style="list-style-type: none"> <li>To alleviate any concern about the influence of profit on vulnerable clients, RMAs should be prohibited from advising an applicant for a refugee visa unless they are working in the government-funded non-commercial sector</li> </ul>	DIAC* MARA
2.6 Advocate for greater government funding of the non-commercial sector	<ul style="list-style-type: none"> <li>Advocate to ensure greater availability of professional migration advice to vulnerable applicants</li> </ul>	MIA Non-Commercial Sector
2.7 Provide consumers more information about RMAs on the MARA website	<ul style="list-style-type: none"> <li>Provide more information about individual RMAs on the MARA website including prior tertiary qualifications and current level of registration (e.g. including status as an Accredited Immigration Law Specialist or Registered Migration Specialist)</li> </ul>	MARA

\*DIAC involvement limited to legislative change

### 3.0

#### Provide greater policy clarity to reduce the potential for exploitation

##### Rationale:

While the agent community and the regulator can do much to enhance the knowledge and competency within the registered profession, policymakers need to take legislative action to ensure unlawful operators are unable to circumvent regulation to pose as migration agents. RMAs are happy to cede some areas of practice if ending the ambiguity will help shut out unscrupulous operators. At the same time, the legislative definition of what constitutes migration advice needs to be reviewed to ensure that deserving applicants aren't driven into the arms of unethical practitioners due to a too-narrow funding formula.

Initiative	Description	Responsibility
3.1 End the ability for applicants to appoint an 'authorised recipient' who is not named within a visa application	<ul style="list-style-type: none"> <li>Change the legislation to limit an applicant from naming an 'authorised recipient' other than a person named within an application (e.g. sponsor, nominator, employer, immediate family member)</li> <li>Require individuals who self-lodge applications to declare that they did not pay anyone for assistance in preparing to lodge the application</li> </ul>	DIAC
3.2 Regulate persons acting as education agents on behalf of Australian educational and training institutions	<ul style="list-style-type: none"> <li>Regulate persons acting as education agents to prevent exploitation of students                             <ul style="list-style-type: none"> <li>Ensure no education agent provides migration advice unless also registered as an RMA</li> </ul> </li> </ul>	DEEWR/DIAC/MARA
3.3 Work with state governments to ensure proper regulation of vocational training providers	<ul style="list-style-type: none"> <li>Ensure that vocational training providers and registered training organisations are not providing migration advice or circumventing the <i>Migration Act</i> through their operations</li> </ul>	DIAC
3.4 Require unregistered overseas agents to lodge applications either through a DIAC e-portal or through Australian Registered Migration Agents	<ul style="list-style-type: none"> <li>Unregistered overseas agents should be required to lodge applications either through a DIAC e-portal or through Australian Registered Migration Agents or become registered themselves</li> <li>Build upon the recent pilot of the Student E-Visa portal to incentivise unregistered overseas agents to submit to DIAC regulation</li> </ul>	DIAC/DFAT
3.5 Change legislation to prevent RMAs who are not Australian Legal Practitioners from representing any client in a court proceeding	<ul style="list-style-type: none"> <li>RMAs who are not Australian Legal Practitioners should be prevented from representing any client in a court proceeding. This aims to prevent abuse of the legal system by unscrupulous operators lodging unmeritorious applications to extend the stay of an applicant or to inflate a fee</li> </ul>	DIAC

Initiative	Description	Responsibility
<i>continued</i>		
3.6 Amend definition of migration advice within the <i>Migration Act</i>	<ul style="list-style-type: none"> <li>• Amend the definition of migration advice in the <i>Act</i> to make clear the distinctions between the provision of immigration information, immigration assistance, immigration advice and immigration legal assistance and specifically state who is permitted/not permitted to offer each.</li> <li>• Consider adding a special provision to allow government-funded non-commercial centres and clinics to offer the full spectrum from immigration information to immigration legal advice</li> </ul>	DIAC

4.0

**Build trust and integrity in the new regulatory regime**

**Rationale:**

Given that responsibility for the regulation of registered agents and the prosecution of unregistered operators is placed under one governmental authority for the first time in more than a decade, there can no longer be any doubt about which body is responsible for building trust and integrity in the new regulatory regime. The new Office of the MARA will need to do two things to gain the confidence of stakeholders: pursue illegal practitioners and establish an independent complaints body for consumers. To do one without the other will perpetuate ingrained cynicism within the migration advice community.

Initiative	Description	Responsibility
4.1 Increase investigation and prosecution of unregistered and illegal practice in Australia	<ul style="list-style-type: none"> <li>DIAC, courts and tribunals should work cooperatively to identify individuals who habitually appear as ‘authorised recipients’ or whose address is listed as a mailing address for numerous applications in order to target investigations</li> </ul>	DIAC Courts Tribunals
4.2 Establish an independent Migration Consumer Complaints Commission	<ul style="list-style-type: none"> <li>Establish an independent complaints body independent of DIAC, MARA and the MIA, and accountable to the Attorney General’s Department</li> <li>Should have all existing disciplinary powers of MARA</li> <li>Should have powers to review and adjust fees similar to the Legal Services Commissioner</li> <li>Should have its own budget to communicate about its role, processes and decisions</li> <li>Should have requirement to ‘name and shame’ offenders in relevant media, DIAC website, MARA website, MIA website and MIA professional journal</li> </ul>	DIAC
4.3 Renew regulation of RMA fees	<ul style="list-style-type: none"> <li>Consider:                             <ul style="list-style-type: none"> <li>Prohibit success fees or ‘no-win-no-fee’</li> <li>Prohibit contingency payments</li> <li>Define acceptable “administrative fees” at various service levels to prevent fees being hidden or concealed (define inclusions and amounts)</li> <li>Require all client payments for advice or disbursements to be processed through trust accounts so that they are able to be audited annually</li> </ul> </li> </ul>	DIAC MARA
4.4 Develop and offer a CPD course on ‘Fair Fees’ for RMAs	<ul style="list-style-type: none"> <li>Develop an education program for agents on how to estimate, invoice and account for fees so that they are able to determine the fees that need to be charged to be competitive and ensure the continued viability of their business while being a fair representation of the value provided to the client</li> </ul>	MIA

## 5.0

### Invest in comprehensive multi-stakeholder communications

#### Rationale:

It can be confronting to hear how we are perceived by others. The initial reaction of many of the agents who first received the findings of the research study was to say that many of the stakeholders were operating from incomplete or outdated information. However, stakeholders can hardly be blamed for their lack of detailed knowledge. Part of the challenge of change is to use communications to help bring stakeholders along on the journey and foster greater confidence in RMAs. Given the level of change proposed, the level of communication should be equally high. After all, in migration advice, as in so many other areas of business, information is the most effective form of consumer protection.

Initiative	Description	Responsibility
5.1 Share the research findings and the action plan widely among RMAs and stakeholders to recruit support for broad-based change	<ul style="list-style-type: none"> <li>The case for change cannot be assumed. In order to engage members and stakeholders in the degree of change contemplated in this plan, it will be necessary to share the perceptions and proposals for reform broadly</li> </ul>	MARA MIA
5.2 Undertake a recruitment campaign to attract a new generation of RMAs	<ul style="list-style-type: none"> <li>Run a recruitment campaign specifically targeting:                             <ul style="list-style-type: none"> <li>Law students</li> <li>Australians who are fluent in both English and a second language</li> </ul> </li> <li>Use a variety of mass and online media to describe the role and function of RMAs</li> <li>Communicate the diversity of agents operating from a set of common competencies; describe meaningful career paths</li> </ul>	MIA
5.3 Run a public education campaign on 'Fair Fees' to increase consumer protection	<ul style="list-style-type: none"> <li>Program should increase awareness that:                             <ul style="list-style-type: none"> <li>Fees are set in the context of running a business and covering expenses</li> <li>Fees represent the value an agents adds to the process</li> <li>Fees represent the value brought by an agent with particular language skills and/or cultural knowledge</li> <li>Fees are determined by the complexity and time required to provide advice and the expertise of the agent</li> </ul> </li> <li>Program should also be targeted to Parliamentarians and their advisors</li> </ul>	MIA
5.4 Institute a Journal of Professional Migration Advice	<ul style="list-style-type: none"> <li>Establish a quarterly professional journal to stimulate thought and discussion on issues of professional interest and as a public forum for debate among members and non-members                             <ul style="list-style-type: none"> <li>Published in hard copy and on-line</li> <li>Indexed with archives available on-line</li> <li>Should include a compendium of materials which are published more regularly (e.g. Weekly newsletters and news bulletins)</li> </ul> </li> </ul>	MIA

Initiative	Description	Responsibility
<i>continued</i>		
5.5 Publish a short guide to the RMA Code of Conduct	<ul style="list-style-type: none"> <li>Publish a short-form, plain English version of the RMA Code of Conduct and make hard copies available to each RMA for distribution to clients</li> </ul>	MIA
5.6 Develop an annual program for Parliamentary Advisors on the role and function of RMAs	<ul style="list-style-type: none"> <li>DIAC, MARA and MIA to cooperatively develop an overview course for Parliamentary advisors – particularly electorate assistants who deal with migration matters</li> </ul>	DIAC MARA MIA
5.7 Develop guidelines on “What constitutes good migration advice”	<ul style="list-style-type: none"> <li>Develop guidelines on “what constitutes good migration advice” and post on the MIA, MARA and DIAC websites</li> </ul>	MIA DIAC MARA

## 6.0

### Support a more representative professional body for RMAs

#### Rationale:

For the past decade, the MIA has tried to be both advocate and regulator. In many professions these roles are being separated to eliminate real or perceived conflicts of interest. It is also good policy to do so because it creates two organisations to bear the load of reform. Encouraging membership as an integral part of registration would give the MIA the credibility and financial strength to bear its share of the burden of change.

Initiative	Description	Responsibility
6.1 Encourage MIA membership as an integral part of registration	<ul style="list-style-type: none"> <li>Mirroring the historical practice in many other regulated professions, including membership in the MIA as an integral part of the registration process would ensure that the MIA could speak with one voice on behalf of all RMAs</li> </ul>	DIAC MARA
6.2 Provide direct statutory recognition of the profession by naming the MIA as the professional representative body	<ul style="list-style-type: none"> <li>Provide specific statutory recognition of the MIA’s responsibilities, including:                             <ul style="list-style-type: none"> <li>- Professional education</li> <li>- Standards of practice</li> </ul> </li> </ul>	DIAC MIA
6.3 Provide greater service to MIA members nationally	<ul style="list-style-type: none"> <li>Establish state-based MIA offices to serve members nationally</li> </ul>	MIA
6.4 Require MIA to invest in comprehensive stakeholder communications*	<ul style="list-style-type: none"> <li>Cost should be reported separately and the program effectiveness should be evaluated every three years with results shared with the regulator</li> </ul>	DIAC MIA
6.5 Create the practical work experience term (see 1.3)	<ul style="list-style-type: none"> <li>As part of its responsibility for professional education, MIA should develop curriculum for the practical work experience term for graduate RMAs</li> </ul>	MIA
6.6 Develop the short course for re-qualifying RMAs	<ul style="list-style-type: none"> <li>As part of its responsibility for professional education, MIA should develop curriculum for the short course for requalifying RMAs</li> </ul>	MIA
6.7 Form a working group to progress the graduated registration model	<ul style="list-style-type: none"> <li>Create a working group to develop a model, conduct consultations and make recommendations</li> </ul>	MIA MARA Law Council

\* If MIA membership made an integral part of registration process

## Commitment

### *In order to achieve the degree of change required, we recognise...*

No one stakeholder in the migration advice profession can effect change in isolation. By necessity, change will only come about through committed and coordinated action by government policymakers, the new Office of the MARA, educators and the MIA, among others. Two coordinating structures are proposed to bring about profession-wide change:

#### 1. Ministerial Working Group

A group composed of representatives of:

- DIAC
- DEEWR
- DFAT
- MARA
- MIA

The role of the group would be:

1. To ensure cross-departmental cooperation and coordination in implementing the recommendations contained in this action plan; and
2. To effect cultural change within DIAC and the agent community to support a more cooperative and collegial approach to the administration of the immigration system based on mutual trust and respect

Supported by:

#### 2. Stakeholder Reference Group

A multi-stakeholder reference group composed of representatives of:

- DIAC
- MARA
- MRT/RRT/AAT
- MIA
- Educators (CPD providers and members of the Graduate Diploma Course Coordination Committee)
- Skills Assessing Authorities
- State and Territory Governments
- Regional Certifying Bodies
- Advocates (representatives of peak bodies)
- Community sector representatives
- Law Council of Australia
- Consumer Groups

The role of this group would be:

1. To facilitate communication and cooperation among all stakeholders implementing change within the migration advice community; and
2. To support the Ministerial Working Group as required

## Measures

*Accordingly, each stakeholder group will need to measure its progress...*

<b>Overall</b>	<ul style="list-style-type: none"> <li>• Percentage of visa applications assisted by Registered Migration Agents measured annually from July 2009</li> <li>• Number of favourable/unfavourable media stories concerning migration agents measured annually from July 2009</li> <li>• Public opinion research monitoring – 2009 benchmark and updates as required</li> <li>• RMA client (visa applicants and sponsors) satisfaction research – 2009 and every three years thereafter</li> <li>• Migration advice stakeholder research – 2012 comparison against 2009 benchmark (e.g. Changing Together)</li> <li>• Number of Education Agents registered as RMAs measured annually from July 2009</li> <li>• Activity level of Ministerial Working Group and Stakeholder Reference Group from July 2009</li> </ul>
<b>Educators</b>	<ul style="list-style-type: none"> <li>• Introduction of Graduate Diploma in Australian Migration Law and Practice by January 2011</li> <li>• IELTS score of 7.0+ established as Graduate Certificate/Diploma pre-requisite by January 2010</li> <li>• Results of uniform final assessment measured annually from July 2013</li> </ul>
<b>MIA</b>	<ul style="list-style-type: none"> <li>• Percentage of RMAs who are members measured annually</li> <li>• Percentage complaints against members v. non-members measured annually</li> <li>• Attrition rate of RMAs measured annually</li> <li>• Number of advocacy proposals accepted over three-year period 2009–2012</li> <li>• Public recall of consumer protection information measured at end of three year period 2009–2012</li> <li>• Public awareness of benefits of using a Registered Migration Agent measured at end of three year period 2009–2012</li> </ul>
<b>Office of the MARA</b>	<ul style="list-style-type: none"> <li>• Transparent financial accounting evaluated over three year period 2009–2012</li> <li>• Degree and speed of regulatory change over three-year period 2009–2012</li> <li>• Data relating to setting and enforcing entry standards clearly communicated over three year period 2009–2012</li> <li>• 95% of complaints finalised within 6 months of receipt measured on a rolling basis and reported annually from July 2009</li> <li>• Sanction decisions published in culturally and linguistically diverse and mainstream media measured annually from July 2009</li> <li>• Regular audits of RMAs conducted measured annually from July 2009</li> <li>• Satisfaction survey of registered migration agents conducted and published every three years beginning in July 2010</li> </ul>
<b>DIAC</b>	<ul style="list-style-type: none"> <li>• Number of unregistered overseas agents enrolled in e-visa portal programs measured annually from July 2009</li> <li>• Degree and speed of policy change over three-year period 2009–2012</li> <li>• Number of unregistered operators investigated measured annually from July 2009</li> <li>• Percentage unregistered operators investigated v. prosecuted measured annually from July 2009</li> </ul>





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