

## Changing Together:

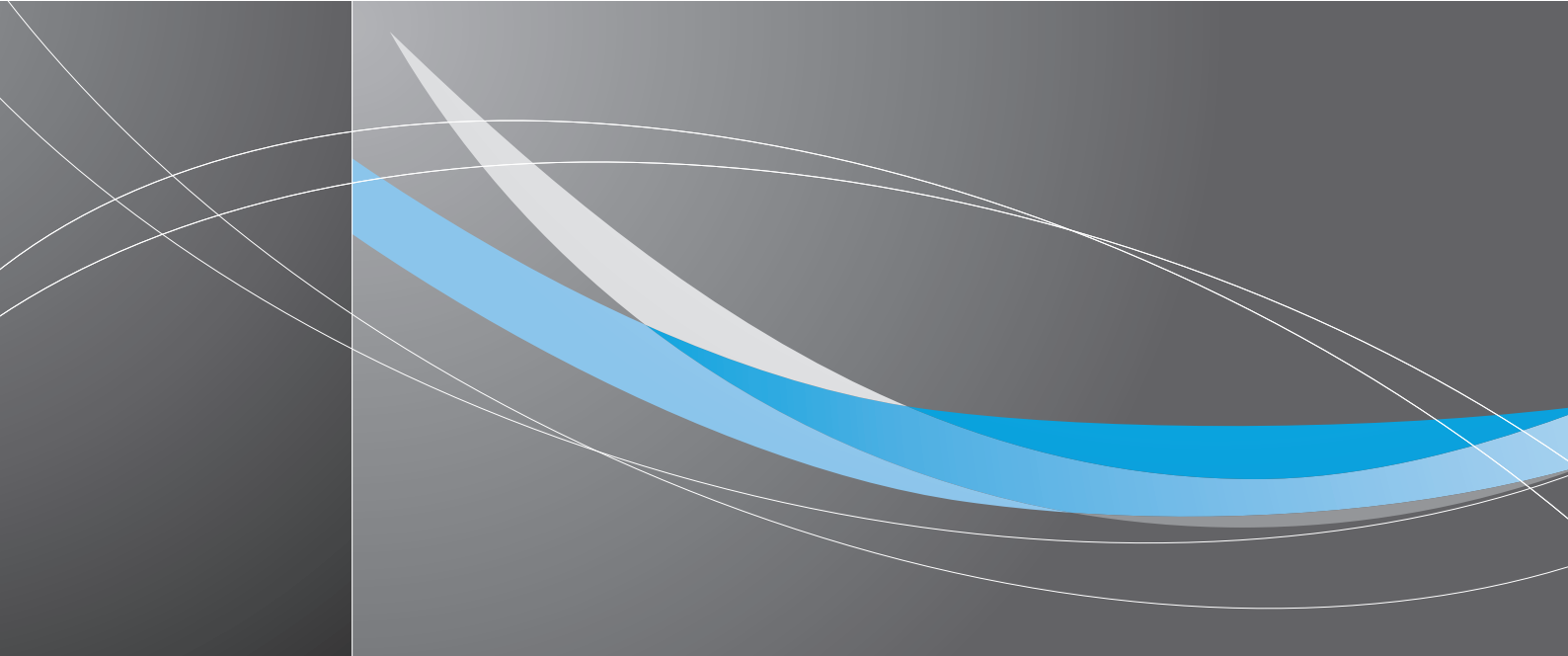
Perceptions and proposals for reform from stakeholders in the migration advice community



**PREPARED FOR:**  
Migration Agents Registration Authority

**JUNE 2009**





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*The challenge of change is to  
“effectively ping the naughty guys  
and to exonerate the good guys.”*

*— Educator*



## Executive Summary

# About this Report

THINK: Insight & Advice was commissioned by the Migration Agents Registration Authority to evaluate improvements in the conduct of professional migration advice over the past decade. *Changing Together* is the product of that evaluation as well as a deliberative process that was used to produce an action plan in response to the study findings.

The report was developed through a two-phase approach. Stakeholder perceptions were first gathered through a multi-stakeholder perception study. Then, THINK's proprietary "Committee Process" was used to develop the action plan.

The action plan was developed by a "planning committee" which was broadly-representative of the migration advice community. The 28 member committee included individuals from every state and territory and represented the full spectrum of professional training and practice. The committee came together over a day-and-a-half meeting to review stakeholder perceptions and to develop proposals for reform. While the committee meeting was adjourned at the end of the in-person meeting, members were invited to remain involved and make individual changes to a first draft of the action plan following the session.

## Multi-stakeholder Perception Study Sample

52 stakeholders who have a line of sight of RMAs, their clients and their work, from among eight groups of key stakeholders, were interviewed for this study:

**EDUCATORS** – University lecturers who offer the Graduate Certificate in Australian Migration Law and Practice, providers of continuing professional development for migration agents and university administrators who assist overseas students with migration matters

**ASSESSORS** – Professional representative or regulatory bodies that are charged with verifying credentials and reviewing employment experience in connection with visa applications

**COMMUNITY** – Lawyers, registered migration agents and administrators who are employed by community legal clinics and migrant resource centres

**ADVOCATES** – Advocates for refugees and migrant settlement issues

**PARLIAMENTARIANS** – Members of the House of Representatives, Senators and their advisors from all parties

**MEDIA** – Reporters and editors from mainstream daily newspapers and culturally and linguistically diverse community newspapers

**COURTS** – Officers of courts and tribunals and their assistants reporting on views canvassed from judges and tribunal members

**DEPARTMENTAL** – DIAC and DEEWR officials

By speaking to stakeholders this study is a proxy of sorts for measuring the quality of advice provided by Registered Migration Agents to their clients. If, during the time period for the study, we could have identified and interviewed a random sample of unbiased migrants who had received advice, we would have. However, given privacy concerns and other logistical impediments, we were unable to include their views in this study. It is proposed that research among RMA clients and complainants to the MARA be undertaken as a separate inquiry. That work will undoubtedly add a further dimension to these findings.

## Purpose of the Multi-stakeholder Perception Study

The original purpose of the study was to canvass stakeholder perceptions in advance of a legislative review that was to coincide with the renewal of the Deed of Agreement between the Commonwealth of Australia and the Migration Institute of Australia Ltd to act as the Migration Agents Registration Authority. However, when the Minister announced his decision not to reappoint the MIA as the MARA in January 2009, the study was refocused to provide 'advice to the regulator' based on the previous ten years' experience in operating the regulatory scheme.

Although the initial brief was to track community perceptions of improvements in the professionalism and integrity of Registered Migration Agents, stakeholders encouraged the research team to broaden the inquiry to investigate myriad related issues. From their accounts, a full picture of migration advice in Australia emerged. Not only did these experts share their considerable insights into the operation of the regulated profession but they also provided their unique perspectives on the modus operandi of unregulated operators. As such, it examined the interweaving roles and responsibilities of migration agents, the MIA as the professional representative body, the MARA as the regulator, educators, the community non-profit sector and federal and state governments in developing and enforcing policy in this field.

## Stakeholder Perceptions

The perceptions of stakeholders were captured qualitatively and quantitatively. For a full description of the research methodology employed, please see page 32. The data was gathered and the findings were analysed independently by THINK: Insight & Advice. The section entitled “Stakeholder Perceptions” (pp. 31–79) and the “Research Summary” which is embedded in the Action Plan (pp. 19–22) was independently drafted by THINK consultants and the content was not edited or influenced by representatives of the MARA, the MIA or members of the planning committee.

The consensus opinion of stakeholders is that while significant improvements have been made to the education and training of Registered Migration Agents over the past ten years, most notably through the introduction of the Graduate Certificate in Australian Migration Law and Practice, the changes have not gone far enough, fast enough to satisfy stakeholder demand. According to them, there is still too much evidence of substandard practice along a spectrum of concern from lapses in professional knowledge and competence, through to ethical breaches, to involvement in fraudulent activity either directly or indirectly. While it is without doubt the vast majority of Registered Migration Agents regularly perform to a high standard, too many are perceived to charge unjustifiably high fees.

However, equally strong findings indicate that the most egregious exploitation of migrants comes at the hands of untrained, unregistered, unlawful, unscrupulous operators both in Australia and overseas. Under the legislation, DIAC is responsible for investigating and prosecuting unregistered and illegal practitioners at home and working with DFAT to reign in their counterparts overseas. While stakeholders were critical of the MARA for failing to adequately regulate Registered Migration Agents, there were equally or more critical of DIAC for failing to assiduously bring these operators and their accomplices to heel. As a consequence they said, the image and reputation of Registered Migration Agents has been disproportionately battered because few people make a clear distinction between legally registered agents and illegal unregistered operators. According to them, greater policy and regulatory clarity is required to close off loopholes to unlicensed operators, including education agents, who infiltrate the profession and offer illegal, and faulty or fraudulent advice to vulnerable visa applicants.

For more information on the 7 separate key findings, please refer to the Summary of Key Findings which follows and to the Detailed Findings at the back of this report.

## Proposals for Reform

Members of the migration advice community responded to the findings of the report with determination to undertake sweeping change in order to draw a line under the past and to restore public confidence in the professionalism and integrity of Registered Migration Agents. In all, their action plan includes 36 proposals for reform. However, given the interconnectedness of many of the issues, the responsibility for implementing the action plan must necessarily be shared among all the key players including the federal and state governments, the new Office of the MARA, educators and the MIA.

The planning committee focused on a small number of key strategic issues beginning with the need to raise entry standards, including a higher standard of English language competency. It proposes to build on the recent agreement in principle with the universities to move from a Graduate Certificate to a Graduate Diploma in Australian Migration Law and Practice by adding a practical work experience requirement and uniform final assessment prior to full registration as an agent. In order to better prepare agents for practice and to better inform consumers, a graduated system of registration is proposed for the first time. Most notably, all currently registered RMAs will be asked to requalify to a new higher standard by either taking an examination or an assessable short course. It is felt that through this dramatic gesture, the profession will be able to restore the full trust of key stakeholders and the public.

At the same time, the committee recommends that government work harder to stamp out illegal practice in Australia and overseas, establish clearer legislative boundaries around the practice of migration advice and close off regulatory loopholes which allow unscrupulous operators to infiltrate the industry. The plan calls for education agents working for Australian educational and training institutions to be regulated for the first time. At the same time it puts forward options for bringing overseas agents under Australian government control, either through offering access to visa e-portals in exchange for supervision or by requiring them to work through an Australian Registered Migration Agent. It recommends limiting the ability of visa applicants to appoint ‘authorised recipients’ to only those persons named within an application and for self-managing individual applicants to specifically declare

that they have not received advice in connection with the migration process. In order to end any ambiguity about the role of Registered Migration Agents in the exploitation of vulnerable applicants, the plan calls for legislation to be changed to prevent RMAs who are not Australian Legal Practitioners from representing any client in a court proceeding. The plan also recommends that all refugees be provided with a holistic government-funded migration service through the non-commercial sector.

Lastly, the plan calls for the reinvigoration of the institutions of the profession. The transfer of responsibility for the MARA from the MIA to DIAC presents an opportunity to redress the ingrained cynicism which has surrounded the regulation of migration advice. The chief recommendation of the committee is to create an independent Migration Consumer Complaints Commission to provide consumers assurance that their complaints will be taken seriously and considered impartially. Other recommendations propose a range of initiatives to enhance the transparency of agent fees and to increase consumer understanding. Finally, there is a proposal to make the MIA a more representative body and to charge it with greater responsibilities for educating the public and for partnering with government.

In order to bring about such comprehensive reform, a ministerial working group, supported by a stakeholder reference group is proposed. By necessity, change will only come through committed and coordinated action by government policymakers, the new Office of the MARA, educators and the MIA, among others.

This plan is an excellent first-step in recognising that the need for change is pressing and opportunity to undertake it has never been greater. If it is achieved, the effect on the migration advice profession will be transformative; the benefits for Australia and the people who come here enormous.

**Randall Pearce**

Think: Insight & Advice Pty Ltd  
Sydney, June 2009



# Stakeholder Perceptions – Summary of Key Findings

## 1.0

While improving, overall perceptions of migration agents are ‘mixed’ at best. The challenge is to reform the system to allow good migration agents to continue to practice while weeding out unscrupulous operators

- 1.1 Many respondents were quick to point out that most agents regularly perform to a high standard; unfortunately, a troublesome minority make a disproportionately negative impact on the image of all migration agents
- 1.2 Participants cited many instances of lapses in the professional knowledge and competence of RMAs ranging from technical errors, to poor practice management, to poor client communication
- 1.3 The fees charged by regulated or unregulated agents alike were the most frequent target of criticism by participants. To many stakeholders, fee amounts and the way they are applied are the clearest evidence of exploitation of migrants by agents
- 1.4 Stakeholders gave examples of serious ethical breaches from abuse of power within ethnic communities, to conflicts of interest arising from other business interests, to launching unmeritorious claims on behalf of unmeritorious applicants, through to failing to identify involvement in matters before a court
- 1.5 Stakeholders cited extensive evidence that leads them to suspect that some migration agents, both registered and unregistered, may be involved in fraudulent activity either directly or indirectly both in Australia and overseas
- 1.6 On the basis of the weight of evidence gathered through the course of this study, it would be difficult to argue that further reform can be delayed any longer; stakeholders are looking for concerted action from the profession, the regulator and the government

## 2.0

A quantitative analysis of the perceptions of federal electorate officers further reinforces the perceptions of other stakeholder groups about the quality of advice provided and the need for reform

- 2.1 Electorate officers have an informed perspective given their migration workload and exposure to RMAs and their clients
- 2.2 Electorate assistants are most critical of RMA client communication skills and ethics
- 2.3 Three quarters of all electorate assistants report that they are aware of exploitation by RMAs; awareness of exploitation increases with migration caseload
- 2.4 Electorate assistants believe that their migration workload would not be so high if RMAs gave a more realistic assessment of the chances of approval and if client-agent communications were improved

## 3.0

While some stakeholders did acknowledge improvements have been made over the past decade, the changes have not gone far enough, fast enough to satisfy stakeholder demand; barriers to entry need to be raised

- 3.1 In order to attract the right candidates to the profession and to dissuade uncommitted or undesirable candidates, it may be necessary to promote the profession to candidates with a different profile, according to some educators
- 3.2 A more stringent standard of English language capability is needed according to many stakeholders
- 3.3 While the Graduate Certificate is a vast improvement over what went before, a Graduate Diploma is seen to be a long overdue next step in basic qualification
- 3.4 Theoretical concepts, including ethics, are best learned in situ, according to several stakeholders. A ‘professional year’ post qualification is seen as a good way to impart a practical understanding to new entrants to the profession

- 3.5 Many stakeholders suggested providing a graduated or provisional license to new graduates to enhance consumer protection
- 3.6 A more rigorous program of continuing professional development might serve to remind RMAs of their ongoing responsibility to keep up to date in their field; at the same time it might dissuade anyone who is not committed to serious practice

#### 4.0

### Effective regulation is difficult when a profession is porous and 'open' to non-professionals and professionals alike; stakeholders cited several factors which leave Australian immigration particularly vulnerable to abuse

- 4.1 Australia's policy preference for an 'open' immigration system makes it difficult to regulate professionals practising within it and sends mixed signals about their value
- 4.2 An unclear legislative definition of what constitutes 'migration advice' contributes to confusion about the proper role of RMAs and others who provide advice formally and informally
- 4.3 What constitutes 'good advice' or 'bad advice' is even less well-understood, making education critical for consumer protection
- 4.4 Stakeholders report that there is tremendous variability in the quality of advice available, even among registered agents; although the highest quality advice seems to be available both for a fee and for free
- 4.5 Regulation has been divided. While the MARA has been responsible for regulating Registered Migration Agents, DIAC has been responsible for monitoring unregistered and illegal practice. Unfortunately, there is little evidence to suggest that DIAC has been any more successful than the MARA
- 4.6 Some aspects of Australia's migration system are perceived to be vulnerable to abuse, making effective regulation extremely difficult

#### 5.0

### The transfer of responsibility for the MARA from the MIA to DIAC presents both opportunities and threats for the migration advice community

- 5.1 While many stakeholders accept and even support the transfer of the MARA from the MIA to DIAC, a majority believe an independent complaints body must be formed to avoid replacing 'one conflicted entity with another'
- 5.2 Stakeholders felt that the regulator should adopt some features of the regulatory regimes of other professions
- 5.3 Some stakeholders believe that any new qualification standards need to be applied retrospectively, if the profession is to draw a line under its past and restore confidence in the competency of Registered Migration Agents
- 5.4 There is a strong interest among DIAC officials to use data to enhance regulation
- 5.5 Stakeholders strongly believe that enhanced transparency and stronger regulation of fees is essential to restoring trust in RMAs
- 5.6 Stakeholders believe that exploitation has flourished because the community sector has not been sufficiently resourced to serve vulnerable applicants
- 5.7 There is a widely held view that the MIA operates as a trade association rather than as a professional representative body and needs to attract a wider membership if it is going to effectively speak for the profession or work productively with government
- 5.8 Stakeholders perceive that the MARA hasn't been effective at communicating about the profession or its role, leaving consumers uninformed and unprotected

### Appendix A – The Role of MP Electorate Assistants

- A.1 Parliamentarians believe individuals should be able to access Australia's immigration system on their own but most still believe everyone can benefit from professional advice
- A.2 While MP electorate assistants often feel that they are prepared to assist, awareness of RMAs and the MARA is low among this important stakeholder group

# Proposals for Reform – Summary of Key Initiatives

## 1.0

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

- 1.1 Increase the English language competency of new RMAs
- 1.2 Hold an orientation session with new MIA student members to provide information and set expectations about the profession and their role
- 1.3 Require all graduate RMAs to complete a practical work experience term under the supervision of an Approved Practice Supervisor
- 1.4 Introduce a uniform final assessment of all graduate RMAs upon completion of the practical work experience term
- 1.5 Require all current RMAs to satisfy bridging requirements to the new higher standard of professional competence within two years
- 1.6 Develop an assessable short course for existing RMAs on current issues in migration law and practice
- 1.7 Conduct a review of the current professional development offerings
- 1.8 Support legislative change to enable improvements to the CPD scheme

## 2.0

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

- 2.1 Introduce entry level registration for Graduate Migration Agents
- 2.2 Enhance registration requirements for Registered Migration Agents
- 2.3 Add top level registration for Registered Migration Specialists
- 2.4 Add top level registration for Registered Legal Migration Specialists
- 2.5 Prohibit RMAs from providing service for a fee to refugees
- 2.6 Advocate for greater funding of the non-commercial sector
- 2.7 Provide more information about RMAs on the MARA website

## 3.0

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

- 3.1 End the ability of applicants to appoint an 'authorised recipient' who is not named within a visa application
- 3.2 Regulate persons acting as Education Agents on behalf of Australian educational and training institutions
- 3.3 Work with state governments to ensure proper regulation of vocational training providers
- 3.4 Require unregistered overseas agents to lodge applications either through a DIAC e-portal or through Australian Registered Migration Agent
- 3.5 Change legislation to prevent RMAs who are not Australian Legal Practitioners from representing any client in a court proceeding
- 3.6 Amend definition of 'migration advice' within the *Migration Act*

## 4.0

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

- 4.1 Increase investigation and prosecution of unregistered and illegal practice in Australia
- 4.2 Establish an independent Migration Consumer Complaints Commission
- 4.3 Renew regulation of RMA fees
- 4.4 Develop and offer a CPD course on 'Fair Fees' for RMAs

## 5.0

### Invest in comprehensive multi-stakeholder communications


- 5.1 Share the research findings and the action plan widely among RMAs and stakeholders to recruit support for broad-based change
- 5.2 Undertake a recruitment campaign to attract a new generation of RMAs
- 5.3 Run a public education campaign on 'Fair Fees' to increase consumer protection
- 5.4 Institute a Journal of Professional Migration Advice
- 5.5 Publish a short guide to the RMA Code of Conduct
- 5.6 Develop an annual program for Parliamentary Advisors on the role and function of RMAs
- 5.7 Develop guidelines on 'What constitutes good migration advice?'

## 6.0

### Support a more representative professional body for RMAs

- 6.1 Encourage MIA membership as an integral part of registration
- 6.2 Provide direct statutory recognition of the profession by naming the MIA as the professional representative body
- 6.3 Provide greater service to MIA members nationally
- 6.4 Require MIA to invest in comprehensive stakeholder communication
- 6.5 Create the practical work experience term
- 6.6 Develop the short course for re-qualifying RMAs
- 6.7 Form a working group to progress the graduated registration model





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



## Proposals for Reform – Action Plan

# 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.

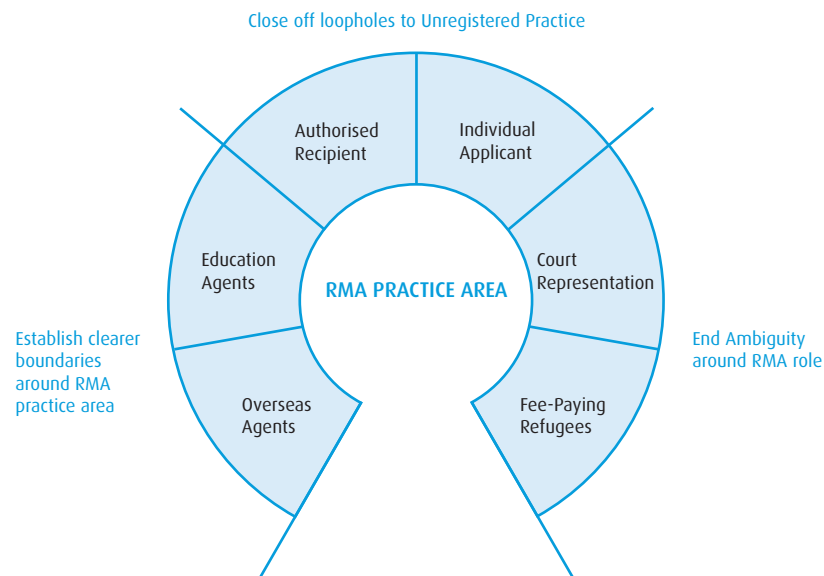
Tier	Qualification	Practice rights
<b>Graduate Migration Agent</b>	IELTS score 7.0+ or equivalent Graduate Diploma in Australian Migration Law & Practice	<ul style="list-style-type: none"> <li>All work must be signed off by an Approved Practice Supervisor</li> </ul>
<b>Registered Migration Agent</b>	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

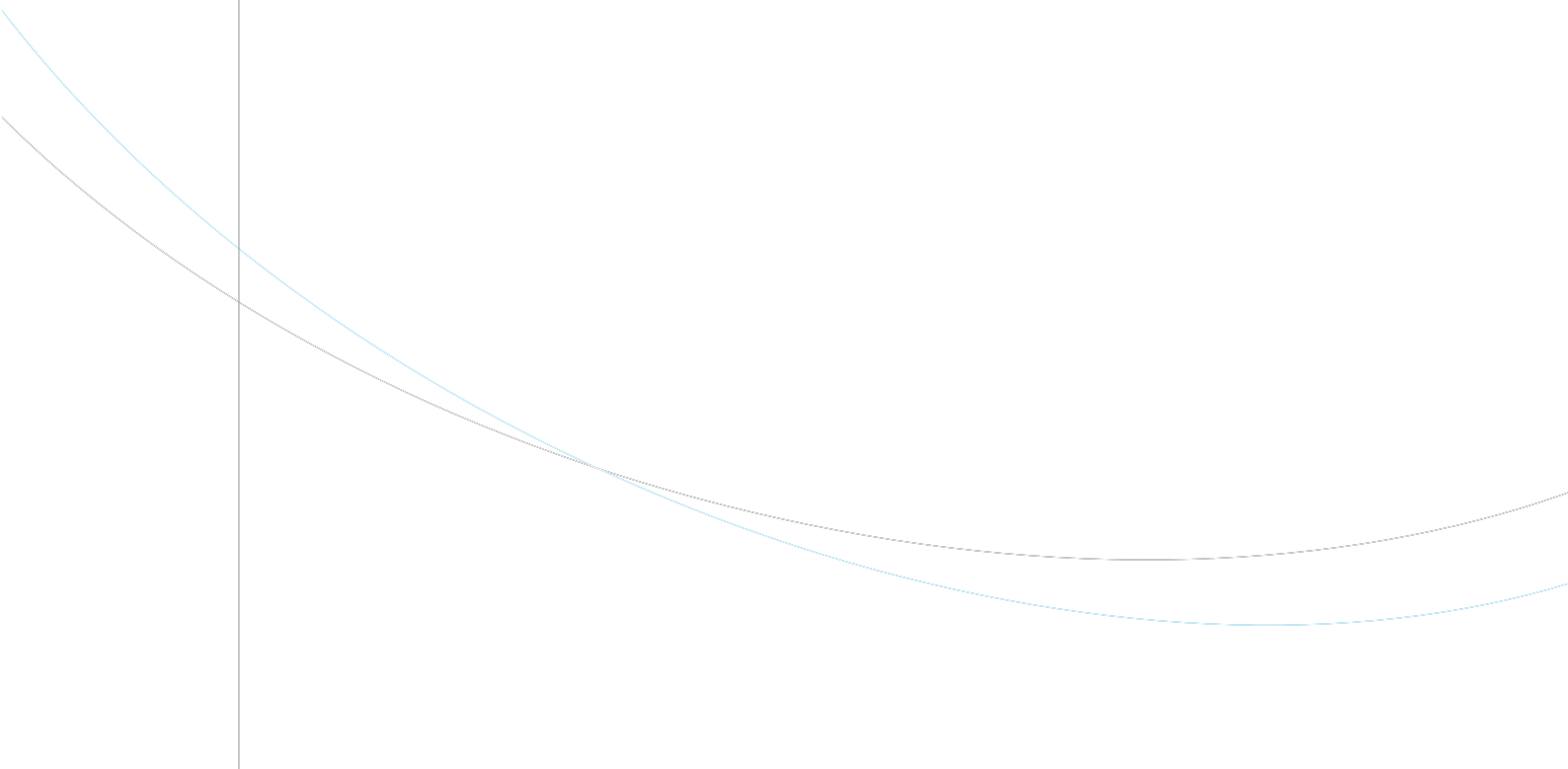
*Accordingly, each stakeholder group will need to measure its progress...*

<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>





## Stakeholder Perceptions – Research Findings



# Research Methodology

*Changing Together* is a mixed methods study incorporating both qualitative and quantitative data.

## Qualitative Phase – Stakeholder Interviews

This study is based on a series of 52 one-on-one interviews conducted with key stakeholders. The participants were selected from a list provided by the Migration Agents Registration Authority.

Each interview was conducted in-person and lasted approximately one hour. The fieldwork was conducted in Canberra, Sydney, Melbourne, Brisbane, Adelaide, Perth and Hobart. Telephone interviews were substituted in the small number of cases where an in-person interview was not able to be scheduled. Most interviews were recorded and transcribed by a professional transcribing service. All interviews were conducted between 3 February and 5 March 2009.

A non-directive technique was used to moderate the discussions. Where possible, the asking of direct questions was avoided and participants were invited to engage in spontaneous discussion of the topic. All participants were guaranteed anonymity in order to encourage full and frank disclosure of views. Comments have been edited for brevity, clarity and to hide the identity of the respondents. In order to further maintain our pledge of confidentiality, there is no distinction made between the specific roles of individuals within the stakeholder groups and no reference to their geographic location is made. Because of the small sample size, particularly of the stakeholder groups, the list of interviewees is not published with these findings.

The data generated through interview discussion is essentially qualitative and anecdotal. Accordingly, no attempt has been made to quantify the findings although emphasis is given to those opinions and attitudes which appeared to be consistent across the whole sample.

Notably, there was considerable consensus around the main findings of this report.

The iterative nature of the fieldwork process allowed the members of the research team to form tentative hypotheses in field and to test them with subsequent respondents. The logical implications of some participants' comments suggested options which were in turn presented to successive respondents for reaction and discussion.

Verbatim quotations are italicised. Third party sources are cited where they appear.

## Quantitative Phase – MP Electorate Assistant Survey

Because electorate assistants of Members of Parliament provide frontline migration assistance, they have extensive exposure to the work of Registered Migration Agents and unregistered operators, their clients and the outcomes of their work. For this reason, this special group was polled by telephone using a quantitative survey methodology.

The telephone poll was used to validate the general direction of the qualitative perceptions of other stakeholder groups. The quantitative findings of the telephone poll reported in Section 2 largely confirm the qualitative perceptions reported in Section 1. Additional results of the poll which deal with the extent and type of assistance provided by MPs and their assistants are reported in Appendix A.

The poll was conducted as a census of the electorate offices of all 150 Members of the House of Representatives. 95 offices participated giving the poll a response rate of 63%. The sample was broadly representative of the composition of the 42nd Parliament by political affiliation and by distribution of seats by state.

Party	Sample	Percent	Seats	Percent
ALP	56	59%	83	55%
LIB	33	35%	55	37%
NAT	5	5%	9	6%
IND	1	1%	3	2%
<b>Total</b>	95	100%	150	100%

The geographic distribution of the sample also closely resembled the distribution of the population nationally:

State	Population	Percentage	Sample	Percentage
<b>NSW</b>	7,017,000	33%	32	34%
<b>VIC</b>	5,340,000	25%	23	24%
<b>QLD</b>	4,320,000	20%	20	21%
<b>SA</b>	1,608,000	7%	6	6%
<b>WA</b>	2,189,000	10%	9	9%
<b>TAS</b>	499,000	2%	3	3%
<b>NT</b>	221,000	1%	1	1%
<b>ACT</b>	346,000	2%	1	1%
<b>Total</b>	21,540,000	100%	95	100%

The margin of error on a sample of this size is +/-5.96% 19 times out of 20. However, caution should be exercised when dealing with sample sizes this small, particularly when looking at subclasses such as states and political affiliations.

The fieldwork was conducted by ICQA certified interviewers from the 20th to the 27th of February 2009.

# Detailed Findings

## 1.0

### While improving, overall perceptions of migration agents are ‘mixed’ at best. The challenge is to reform the system to allow good migration agents to continue to practice while weeding out unscrupulous operators

Since this study is a proxy of sorts for measuring the quality of migration advice in Australia, the research team began by asking these knowledgeable stakeholders if they perceive that people coming to this country are receiving good advice from migration agents. Many participants began their comments with a caveat, ‘there are plenty of good ones’; but then went on to catalogue a litany of complaints 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.”

*It’s highly variable. From ‘a mixed bag’ to a profession that has ‘a reputation as shonky.’ [Educator]*

*So you get a very mixed bag. You get some people who are highly competent and well trained, experienced and with a sound and professional service and you get others at the fringe, who often are holding out expectations and often exploit people by building up a view that they can achieve particular outcomes. [Parliamentarian]*

*There’s a definite cohort of agents that are very good, very reputable and very knowledgeable and obviously are able to give good advice to their clients. There’s another whole batch that are a disgrace to the industry. [Department]*

*Well, there’s a whole range of migration agents. There are those who are competent and very professional in their approach and there are an increasing number of those, I would say. There are those who are incompetent, very unprofessional in their approach; and those that are just completely unscrupulous and don’t really care. [Educator]*

*Migrants are getting extremely uneven advice. I think it’s very across-the-board. I think there’s a very uneven approach taken. [Community]*

## 1.1

### Many respondents were quick to point out that most agents regularly perform to a high standard; unfortunately, a troublesome minority make a disproportionately negative impact on the image of all migration agents

Contrary to the views of at least one parliamentarian who said that the Department of Immigration and Citizenship (DIAC) perpetuates a negative stereotype of Registered Migration Agents, the DIAC officials participating in this study were the first to point out that most RMAs regularly perform to a high standard. Although one official noted that there may be a tendency in the Department to view all agents through ‘a negative prism’ based on the actions of some, the fact that these officials held mainly positive impressions indicates the potential for professional respect between DIAC officials and RMAs.

*The majority of the time, I would say that RMAs are really good. Of course, some are better than others. [Department]*

*I’d be concerned that all the focus would be on the unscrupulous ones because there are so many good operators out there. There’s a whole spectrum, I guess, people who are down one end who aren’t so good and people down the other end. [Department]*

*Some RMAs think a little more outside of the box and are skilful at giving us options to consider. They advocate for the client’s best interest and are willing to question us on our interpretation of the law. [Department]*

According to some academics who are more comfortable with data than perceptions, the facts speak for themselves; the vast majority of Registered Migration Agents have never had a complaint made against them.

*I was having a discussion with someone yesterday about this because this strongly came out in the review and has strongly come out from the Minister that the migration industry is riddled with corrupt and diabolically devious agents. If you look at the MARA annual report, almost 70 to 80 per cent of migration agents have never had a complaint made against them. That doesn't mean that they are 100 per cent perfect, but I think there's a big perception that this is an industry that's very shonky. I think that probably was the case but I think with the increased level – the standards that are being brought in, that it's getting better. I think people have to give that a chance to take effect, but I think a lot of people are operating in a mindset of several years ago.* [Educator]

*I think you can see from the data, the number of complaints has reduced; the seriousness and the numbers of complaints per migration agent have reduced. I think it's reflected in that data.* [Educator]

Unfortunately, from a perceptual point of view, unregistered illegal operators and a minority of Registered Migration Agents make a disproportionately negative impact on stakeholder opinion of agents overall.

## 1.2

### Participants cited many instances of lapses in the professional knowledge and competence of RMAs ranging from technical errors, to poor practice management, to poor client communication

Knowledge is a professional advisor's stock-in-trade. Not only does a professional need to meet a basic standard of knowledge in order to qualify for a license to practice but they must also keep up-to-date on developments in their field. When a professional's knowledge is incomplete or outdated, serious consequences can arise.

While a lot of discussion with stakeholders was devoted to the knowledge needed to qualify as a Registered Migration Agent (see Sec 3 for a discussion of qualifications), a good deal also focused on the application of that knowledge in practice. According to stakeholders, the best way to evaluate the quality of advice is to evaluate the quality

of the outcome of that advice for a particular client. Unfortunately, in too many instances participants gave examples where the outcomes fell short of the ideal. Looking back, several raised questions of basic competence.

*There is a whole range of difficulties in being able to give good advice but there's absolutely no excuse for not doing it every day. It's not done well. The profession has very serious problems and a lot of it relate to knowledge, competency and also to some degree what I would also call at times undesirable practices generally, professionally undesirable practices.* [Community]

*Sometimes it's not about training; sometimes it's just about competence, such as keeping up to date with policy changes.* [Department]

*We deal with the agent directly and find out that they are unfamiliar with the legislation that they are supposed to be advising on. Two, we see the applications or what they have advised clients and shake our heads going "Why on earth did the agent send them on this pathway?"* [Department]

Professionals not only need to be experts in their field but they need to be expert in conveying their advice to clients. As several participants pointed out, migration is an area where few clients have ever taken advice before and migrants, particularly refugees, may have no prior experience of professional advice, like legal or tax advice. This makes client communication a particularly important competency for migration agents. Because of the many time-limitations imposed on visa applicants, timely as well as effective communication is needed. This is another area where stakeholders felt improvement is needed. Certainly this concern was echoed by MP electorate assistants who were polled on this question (see Sec 2 for a full report on the results of a poll of MP assistants).

*Migration agents could be a little bit more forthcoming in explaining why they're not suitable for that visa as opposed to just saying, "No, you can't apply for that, I think you should apply for this one." Instead, they could say, "No, you're not eligible to apply for that. If you were to apply for it you would not be successful because of these reasons." Like just take a bit more customer care, focus and actually explain to them why they're not eligible for that one or wouldn't be eligible and then go along the lines of, "These are your other options for your personal circumstances."* [Department]

*They won't bother to take time to send the documents on to them, or to make sure that they understand what it means. I'm not talking about all migration agents. There are some that are really good. I work at the Legal Aid Commission and a lot of them will refer people's decisions to us for comment about judicial review. But there are certainly some that don't pass it on quickly. And this is also a real problem at the primary level. [Advocate]*

*So I think sometime the agents probably don't say, "We have prepared your application, it's all in and I will contact you in X amount of days or when I hear something or give you updates in a certain amount of time," or something so that the client understands what's going to happen. Maybe it's more of a big picture that clients need. [Department]*

### 1.3

#### **The fees charged by regulated and unregulated agents alike were the most frequent target of criticism by participants. To many stakeholders, fee amounts and the way they are applied are the clearest evidence of exploitation of migrants by agents**

Money is a volatile ingredient in the migration mix. Some refugee advocates suggest that 'the profit motive' is poisonous when it comes to working with vulnerable people and it should be removed altogether. Others suggest that because migration is one area of the law open to people who are not legal practitioners and legal advice commands high fees, a license to offer migration advice is seen as akin to a license to print money.

*There doesn't seem to be any real cap on what they can charge people, what they announce on their websites or their brochures or whatever they have is very unrealistic as to what they actually end up charging. That's the feedback that I've got. It depends on what their focus is and what their actual aim of the game is, whether they want to service these people to, you know, enter Australia lawfully or whether they're going, "Here's a market that I can exploit for my own personal gain and I don't really care if this person gets upset or they don't get the visa that they actually want because at the end of the day I'm still gonna charge them \$10,000 to fill out their paperwork." [Department]*

*And you hear from time to time complaints about, "Well, I paid you X thousands of dollars. I didn't get what I wanted." The agent says one thing and the client says another and that has an impact on how the whole profession is seen. [Parliamentarian]*

*We often get people who have been through the system and we will have documents from previous agents that have represented them. They will quote to us the fees that they were charged for a piece of work that is in front of us. The fees are often high; the advice wrong and incomplete. But that's – I don't want to tarnish the entire profession. There are some very competent professionals. But there are, without a doubt, practitioners that are taking advantage of people's vulnerabilities; whether it's to over-charge, whether it's to promise something that can't be delivered or to suggest certainty in an outcome which can never be certain. [Community]*

Because the role and value of a Registered Migration Agent are not well understood, it is difficult for many people to see a justification for the fees that are charged for 'filling out a form' (for a full discussion of the role of a migration agent, see Sec 4). Others cite instances where applications and filings were padded solely to pad the bill.

*I think people are getting the services [of agents] that they are paying for. But I think some of the charges that we hear about are just out of all proportion. [Educator]*

*Now, we have heard sums of \$20/25,000 but that's their word. It mightn't be \$25,000, but we have seen some accounts of \$9,000. But I just feel what I'm hearing is that there's all different fees. They don't have set fees. I mean, we have heard \$1,000, 2,000, and 3,000 just to fill in an application form. I think the Department has tried to make those application forms as straightforward as possible. [Parliamentarian]*

*From time to time we hear that the fees are exorbitant. RMAs are setting their fees like lawyers. While they may publish an hourly rate, they can stretch out the time it takes to do something. However, there would be merit in regulating fees. [Parliamentarian]*

Others question whether agent fees are structured to deceive or to 'string along' applicants until they have little other choice than to pay more to complete the process. Some don't shy away from labelling such practices blackmail.

*There were a lot of people on temporary protection visas who were going through permanency and some of them had to give \$3,000 and another \$3,000 and then another \$3,000 to a migration agent. Now, the tribunal would come back with, "You need to give us more information." Our point and the client's point was, "Why didn't the migration agent ask me for all of that upfront?" In other words, migration agents have been known – and I'm talking about the bad now and I will talk about the good as well – to have given information which, in my opinion and in a lot of people's opinions, is almost like once you've got a client who needs to be serviced, you can charge whatever you like. So people have just been charged through the nose and so there is a real feeling of not trusting migration agents. But they are a necessary evil. It's a sad indictment that they have become a little bit like used car salesmen. [Community]*

*We do hear allegations of students, particularly onshore, who are being charged quite extravagant fees for – this is all allegations, it's not confirmed yet – but they obviously pay a fee for the package when they are in, say, India, for example. They come onshore. They then pay for the qualifications documents. Then they pay for their work experience documents and then one of the requirements for us is they must have a letter of completion of study from their education provider. So, they pay for that too. And we are getting several allegations now coming through that students are being asked to pay an additional \$4,000 for a letter that says they have now completed their study. It is fairly blatant sort of blackmail. And they are paying \$25/30,000 Australian. That's onshore. Offshore, it's probably a lot cheaper because the Rupee is a slightly different exchange rate and the agents live in India, so the cost of living is somewhat less. [Department]*

#### 1.4

**Stakeholders gave examples of serious ethical breaches from abuse of power within ethnic communities, to conflicts of interest arising from other business interests, to launching unmeritorious claims on behalf of unmeritorious applicants, through to failing to identify involvement in matters before a court**

The relationship between a client and a professional advisor is, by its nature, an unequal one. In migration, this inequality can be greater than in other professional relationships because the client is so vulnerable. Ethics are one way to ensure that professionals use their superior knowledge responsibly and in the interest of the client they are serving.

*I would say is that you need strong ethics whenever you are representing anyone and I think that anyone who is interested in migration to Australia has an exposed vulnerability, in that their objective is very clear. [Community]*

#### **Abuse within culturally and linguistically diverse communities**

Client-advisor relationships can become even more unequal within ethnic communities. Stakeholders were able to point to both registered and unregistered migration agents who are known to have used their power to exploit clients within their own language or cultural group. While established communities often relied on well-known Registered Migration Agents, new and emerging communities, such as those from sub-Saharan Africa, were seen to be at the mercy of the most unscrupulous, untrained and unregistered people posing as migration agents.

*The different ethnic groups often go to migration agents from their own ethnic group. And these cases concern us as well because of the quality of them; it's low quality advice. It's like a template claim. We all say "You've got to be kidding". There's not even any modification. It's just a template claim; there are massive holes in the argument for that visa class. And my fear with these particular ethnic groups is that there is some manipulation in it. There's an overreliance on them. And these people often come at a hefty rate as well. We've had people giving tens of thousands of dollars for an application, for a generic claim. [Community]*

*In some migrant communities, most people will have a lack of English when the ones that want to migrate, particularly refugees – they tend to be more comfortable going to agents within the community and their lack of English also means that he controls the situation. He controls the flow of information to the people. And they seem to rely on that person. But they don't have any other independent advice. So if that person intends to just take their money and run, then they have a huge advantage in doing that. By the time the person discovers that they have been ripped off or been given bad advice, it's almost too late to do anything about it or go seek assistance elsewhere. [Parliamentarian]*

*New communities (especially Sub-Saharan African at the moment) are susceptible to fellow countrymen who purport to offer a service for a fee but who are unqualified and unregistered. They maintain anonymity and avoid complaint. They frequently have a better 'strike rate' than RMAs and so a mythology builds up that you just have to pay enough money to the right person and your problem will be fixed. It's always disappointing when you hear that someone has come on the advice of 'that man.' They can't understand why we don't know them. [Parliamentarian]*

### Conflicts of interest

Recognising potential conflicts of interest and steering clear of them depends on a sound understanding of ethics and a high level of personal integrity. Several stakeholders provided examples of real or perceived conflicts of interest arising from some agents' other business interests including recruitment companies, training organisations or rental agencies.

*I know of one agent who also has a few apartments that they are the landlord for that they rent to their clients that they've represented at a migration level, charging them exorbitant amounts of money for a one bedroom flat and stuff like that. They're exploiting them on the migration side but then once they're here, they're taking advantage of them as well. [Department]*

Unregulated Education Agents were cited repeatedly as the most egregious example of operators who have a vested commercial interest of their own in obtaining a particular visa outcome for a client; an outcome which may not be in the long-term best interest of the client themselves (for a full discussion of the presence of unregulated education agents, please see Sec 4.1).

*Offshore, migration agents have got this network of dozens, hundreds of people out there who will get this tiny little commission if they recruit someone. They have spotters. Offshore, the migration agents get not only the student's fee, but they get a commission from the institution for recruiting them. So they get it two ways. [Educator]*

*Offshore educational agents and migration agents are the same thing. [Educator]*

*If you went to my city – I don't know if you noticed this – but there are banners for education in Australia, like it is a PR dream... and then you have the phone number to call. Most people think education agents and migrations agents, offshore, are the same thing but they are not. You find that education agents, the way they talk about education in Australia, they will tell you that the Permanent Residency dream and they will tell you exactly how you are going to go and you will be making zillions of dollars when you get there, so sign up now. It's a very unfortunate scenario. [Educator]*

### Unmeritorious or vexatious claims

Serious ethical concerns also arise when migration claims are advanced or prolonged for no other apparent purpose than obtaining a fee for the migration agent. According to some stakeholders, when an unscrupulous migration agent has exhausted all avenues available through the visa application process to extend a stay s/he may turn to the legal system to further drag out the proceedings, thereby allowing an unmeritorious applicant to remain in the country despite little-to-no prospect of permanent residency.

*We make decisions according to law – many of the cases that are brought are manifestly hopeless and unmeritorious. So anyone who is providing support/ advice, you have to ask, “Well, how is that acting ethically?” Presumably taking a fee, to provide advice and support for someone, to enable them to enforce or to protect whatever legal rights they have, when it goes to the court, the highest – sometimes all the way up to the High Court and the court’s view is that this is a manifestly unmeritorious claim. So it’s not something which could go either way, it’s not a borderline case; it’s something which is on any reckoning hopeless. [Court]*

*We’ve seen the dodgiest. They lodge applications from people who have absolutely no prospects of success. They take their money. These claims are absolutely baseless – something that will clearly never invoke the refugee’s convention. [Community]*

In an area as complex as migration, pro forma filings are given little hope of success in court. To some, it is clearly unethical to use them when they are unlikely to yield any prospect of success. In the words of one judge, it is not only an abuse of the client but of the legal migration process itself.

*I mean to confirm that and to quote – and without attributing a name – this is a point raised by one of the judges in a note to me. “I have had recent experience with claims, in which the identical notices of appeal have been reproduced repeatedly in different matters.” So the judge has said, “This means the migration agent has taken no steps whatsoever to certify the prospects of success and suggests that they do not care about the outcome,” and in the judge’s view “constitutes a clear abuse of the process”. Frankly, I would have to agree with that. [Court]*

*That’s most commonly seen in the court, in pro-forma documents. So they will file their notice of appeal or application and the documents won’t be specific to the person, to the client. It will rather be worded exactly the same as other documents filed in the court. So they will file this one document; it will set out the exact same grounds of review, despite who the person is that’s actually... Even down to the same spelling mistakes and same formatting and same unusual formatting and everything, right down to that detail; missing full stops. [Court]*

### **Failure to identify as a migration agent**

Court officials who participated in this study said that some individuals can regularly be spotted in the registry office, filing pro forma claims on behalf of ‘friends.’ This evidence suggests that these individuals are either immensely popular or that they are acting as agents, registered or unregistered, advising clients through court proceedings without revealing their role. Aside from filing the documents, the agent might not appear in court other than to lurk in the background, leaving the applicant to represent themselves in a proceeding they don’t understand.

*Well, speaking to some of the judicial officers, they have said when they have talked to the person in court, the person’s admitted that what they have done is they have signed a blank document and then that document gets filled in later. So, they don’t actually know what’s in the document at the protection visa stage or in a court document, what’s actually contained. So they will sign a blank document and then the judge will say, “You have said this in this document?” The person won’t know what they are talking about because they don’t know what’s contained within the document. [Court]*

Reportedly, some judges suspect that these ‘shadowy figures’ at the back of their courtrooms are advising clients. However, the question is, “What sort of advice are they providing: immigration advice or immigration legal advice?” (For a full discussion of the distinction between immigration advice and immigration legal advice, see Sec 4.2) 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. Registered migration agents may shy away from appearing in court for fear of contravening the Act, while unregistered individuals may simply seek to escape discovery altogether.

*Another problem with migration agents that’s slightly tangential, is a lot of them are lodging applications at the Federal Magistrates Court. So somebody’s been refused by the Migration Review Tribunal and they want to stay here a bit longer, they don’t understand the legal process at all, and somebody says, “You can go to court”. The migration agents will prepare pro forma applications to the court that the person signs, and then off they go. Sometimes the migration agent will appear at the first directions viewing. But generally people aren’t represented, and it’s just strangling the Federal Magistrates Court. [Advocate]*

*Probably transparency of migration agent involvement is important because often the migration agent will declare their involvement when the person is before the tribunal, so all the documents will go through them. But when they get through to the court process, they won't declare their involvement. So the applicant will put down, say, two addresses. One will be the home address and another one will be a PO Box address. So we will send the documents to that PO Box address as well, but without knowing who is at the other end of that PO Box address. And I think some members of staff have actually gone down to a PO Box and seen hundreds of these things because they don't all fit into the PO Box. So that would suggest that this is someone with a lot of friends.*  
[Court]

*One of the comments made by a number of the judicial officers is, there are people who they recognise standing in the back of the court or in the corridors, but whose name is not actually attached or affixed to any documentation and who don't actually appear. So we don't know who they are. I think in some instances we have suspicions that they are registered agents and in other instances we really don't know. We suspect they are probably unregistered.* [Court]

## 1.5

### Stakeholders cited extensive evidence that leads them to suspect that some migration agents, both registered and unregistered, may be involved in fraudulent activity either directly or indirectly both in Australia and overseas

Fraudulent activity does not just violate a professional code of conduct, it is also unlawful. Stakeholders gave repeated examples of where migration agents, registered and unregistered, were suspected of being involved in fraudulent activity either directly by manufacturing and accepting fraudulent credentials and employment references or indirectly by establishing ongoing networks and associations with overseas operators. Overseas relationships can range from partnerships where the lodgement of fraudulent claims is outsourced offshore and the profits are split, to referral arrangements where agents refer applicants to people who can supply fraudulent documents either overseas or in Australia. One of the most obvious forms of fraud occurs when fly-by-night operators

set up and subsequently close down migration agencies, often absconding with the fees paid to them and the fees deposited with them for payment to DIAC.

**INTERVIEWER:** *Is there a lot of fraud?*

**RESPONDENT:** *Define "a lot".*

**INTERVIEWER:** *I don't know. Somebody said to me, "There's a lot of fraud in Australian migration". I am just repeating back what I heard.*

**RESPONDENT:** *There's enough questionable activity and enough questionable documents to suggest that it's – well, to warrant active investigations and ongoing investigations and fairly stringent quality assurance regimes. That's probably about as far as I will go.*

**INTERVIEWER:** *Would you think that migration agents are involved?*

**RESPONDENT:** *Absolutely.* [Identity withheld]

The responsibility for detecting this behaviour rests with a number of stakeholders within the migration advice community including registered agents, assessing authorities, the Department of Education, Employment and Workplace Relations (DEEWR), universities and DIAC. Representatives from each group had a story to tell.

### Documentation Issues

In order to qualify for many skilled visas, migrants need to provide proof of their qualifications and experience. Unfortunately, stakeholders said that it is not difficult to obtain fraudulent credentials and employment references both here and overseas.

Assessing authorities are charged with vetting professional credentials and reviewing employment references. Representatives of these authorities said that they regularly encounter problems in verifying documentation, including copies certified by RMAs. The assessors don't know if agents are merely cutting corners to save time or if there is a criminal intent behind their behaviour. Because the documents originate in other countries in a range of languages, it is difficult for assessors to reject them outright, despite their suspicions.

*It may have been a mistake [to allow RMAs to certify copies of originals]. A lot of scanned copies are being copied and passed off as certified copies of originals. We have lost a bit of faith in them to be honest.*  
[Assessor]

*I think basically [having an RMA also certify original documents] is a conflict of interest in the sense that these people are looking at a document which is for a client of theirs and it's in their interest to sign this document. This is brought up at every conference we go to and there are agents who get quite irate about it but on the other hand there are agents that come around and say to you after the conference, "We don't want to certify documents. We find it ourselves; we find it a conflict of interest." [Assessor]*

*There have been some stories about dodgy operators, for example, not doing the amount of hours of work experience and there have been some people who have been supplying false certificates and charging money for it. [Media]*

### Links to fraudulent activity overseas

Some of the most blatant and most publicised fraud occurs overseas, often in partnership with registered or unregistered agents working in Australia. Australian immigration is very popular in developing countries where there is no social safety net and little access to the public education, public hospitals or public pensions we have here in Australia. As a result, Australian migration agents do a booming business.

*For example, I've just read a decision of the Refugee Review Tribunal, where people arrived in the morning from overseas, and by the afternoon had lodged a protection visa application through a migration agent. So something has to have been put in train or they must have had some information. It's hard for me to comment because I haven't been to major areas, the only place I know well is Indonesia, and certainly there are ads in Indonesian newspapers which say, "We can organise a permanent residence for you in Australia", and they're travel agents. But we don't know what that means. Whether that means the travel agent gives them the name of the migration agent or a lawyer or something. [Advocate]*

Since tertiary education and vocational training is a migration pathway to Australia, there are reports of many education agents actively promoting permanent residency as part of 'package holiday deals' for students enrolling in Australian vocational training institutions. The fact that vocational students can also work up to 20 hours a week to gain experience makes their 'working holiday' quite affordable. Earning Australian currency is a quick way to

pay off an overseas education agent, according to the popular mythology. For the better heeled, admission to an Australian university is an attractive route to permanent residency that can also be fraudulently obtained.

*The major problem, from our point of view, is that they're hooking up with dodgy education providers. So there's this network onshore of dodgy education providers and then dodgy migration agents are lodging applications for students who don't have the money and they don't have any intention whatsoever to go to this college because this college is just a shop front. There is no study there and so they're getting these people out to drive taxis and stuff and not study. [Department]*

It's true that educational agents offshore help foreign students to apply to Australian schools, colleges, etc. We call the institutions to verify foreign qualifications and we do hear examples of fraudulent documents. We are just about to start a new working group on this issue of fraudulent documentation from offshore. Sometimes we hear that the student somehow gets the foreign uni to upgrade their marks. We wonder how that happens. [Educator]

Outsourcing the lodgement of fraudulent applications offshore is a popular option for those not wanting to commit their crimes on Australian soil. The exchange rate between the Australian Dollar and the Rupee or the Yuan means that the average fee can be generously shared with offshore partners. To hear DIAC officials describe it, these offshore organisations are sophisticated syndicates run by organised crime. They are often able to telegraph the latest Australian policy changes to others within their network in order to keep one step ahead of DFAT investigators.

*There are a few migration agents here that are using offshore Registered Migration Agents to lodge their dodgy applications onshore. These people offshore have got printing companies and they've got whole stacks of letterheads that are blank that have been stamped and signed and just need to be filled in with the person's details saying that, "Yeah, they've worked at this company for the last 10 years, yeah, they earn this much money." The onshore agents, some of whom are linked with snake heads and the like in China, are getting all this stuff together and then they use an offshore non-registered migration agent to be the contact. The offshore registered agent will get 10 per cent of the total fee or whatever,*

*which is heaps for them and the onshore agent gets the rest of it without their name being anywhere near anything. [Department]*

*It's Australian migration agents who themselves have agents overseas. [Community]*

*There's been circumstances where our local overseas posts have gone out on site visits and they are run by organised crime. There are ten different phones on the desk, with sheets of paper that they work with and if the overseas posts rings them and they say, "Yeah, this is Joe Blow's engineering company. I can confirm that this person has worked here as an engineer and so on." There's a fair bit that goes on in China. [Department]*

### Fraudulent activities in Australia

It would be naive to assume that fraudulent activity only occurs overseas; there is plenty onshore, according to the participants in this study. It goes well beyond counterfeiting credentials and references (although there are clear reports that does occur here too) to include some very sophisticated means of deception. Based on this information, it is impossible to know if registered agents are directly involved or if they are only turning a blind eye when they encounter fraudulent documents.

*They use fairly sophisticated photo morphing; another service the agent provides, the registered onshore agent provides, is that you go in and say, "I need scores. My occupation is this. I need these scores on my IELTS. I have done a test. I only got 4s. I need 6s." So they will go through their gallery of people who look a bit like that person and they then provide that person – the imposter goes and sits the test and they give that result to us. Now sometimes they digitally enhance the photo, so it does look a bit like the applicant. Other times it's fairly blatant. If we ask a student, impromptu, "Where did you work for your 900 hours that you are required to do?" they don't know. "You worked there for nine months, why do you not name the business?" "I have to ring my agent". Completely fabricated, the entire thing. [Department]*

*We have got concerns about the quality of their qualifications. We know through search warrants on agents' offices, they have printing presses set up to reload qualification documents. They provide marriage certificates, they provide the entire set of documents. This is onshore. These are Registered Migration Agents. [Department]*

### Fly-by-night operators

The most unambiguous fraud is committed when individuals set up a migration agency, attract clients, collect fees for themselves and DIAC and then close down, often absconding with the money.

Since it can take as little as six months to train and register as a Registered Migration Agent in Australia, it is possible to surmise that some operators start out with good intentions and then find themselves awash with cash and over their heads. Unregistered operators may put out a shingle or practice informally with premeditated intention to steal.

*I can tell through this course, too, that there's still a lot of myths out there in the community about, "Oh, there's money to be made as a migration agent. It's not that hard. I did my own visa or I helped my sister with her visa. It's not that hard. I want to be a migration agent." Helping someone with one visa doesn't give a lot of insight into the difficulties and complexities that can arise. The statistics seem to reflect this misunderstanding: a number of people drop out after one/two years' practice. [Educator]*

*A lot of people go to the Federal Magistrates Court and say, "I know that I'm six months out of time but I didn't know that the decision had come". And a lot of people are in the problem, of they appoint a migration agent, by the time the decision comes from the department of immigration or from the tribunal, the agent has closed down or gone elsewhere. So in this situation, the letter will go to Fred Nerk, who may no longer be there, but Fred Nerk's got his \$4,000, \$5,000, from the person who paid. [Parliamentarian]*

## 1.6

**On the basis of the weight of evidence gathered through the course of this study, it would be difficult to argue that further reform can be delayed any longer; stakeholders are looking for concerted action from the profession, the regulator and the government**

The consistency of opinion across all eight stakeholder groups – educators, Departmental officials, advocates, community NPOs, assessors, parliamentarians, courts and media – is unmistakable; exploitation by migration agents, both registered and unregistered, is occurring in Australia and overseas. Regrettably, the extent of that exploitation cannot be fully measured using a qualitative methodology.

However, as many stakeholders explained in painful detail, the impact of exploitation can be severe for the individuals affected; 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.

The stakes for Australia are also high. Participants continually reinforced that damage is being done to the reputation of Australia and that of our tertiary education system by allowing exploitation to go unchecked. By not taking action, Australia may also deprive future generations of the net social and economic benefits of migration.

Given the weight of the evidence contained in this report, it is unlikely that perceptions can be turned around without decisive, coordinated action by the profession, the regulator and the government. Stakeholders expect it; after several efforts at reform, patience is running out with both agents and the government.

*We do distinguish between offshore and onshore migration agents and there is just too much negative feedback about the ones onshore to be ignored. They need a real shake up.* [Department]

*In the words of Kevin Rudd, "Free market has failed". In an ideal world, it's laissez-faire and the market regulates itself. Quite clearly it's failed to do so in the financial area, and I think the evidence suggests that it's failed to do so in this area. Maybe the balance can be recalibrated with time but sometimes one really needs to start getting tough with people in order to clean it out. There are probably some fairly unscrupulous players there and the reality is that when the area is unregulated and the standards*

*are fairly low, it takes some fairly decisive, clear action in order to clear it up and there's going to be some resistance in the short term until you clear it up.* [Court]

*There just seems to be too much negative feedback around the onshore ones. They say about all their regulations and stuff they have to adhere to and that they do that, well, they don't. If they did, we wouldn't be having this conversation, I would suggest.* [Department]

*Migration agents could [play the role of professional, acting on behalf of clients] but I think they have a hell of a lot of image to make up for; a heck of a lot of marketing and they need to regulate their own industry; and they need to rid themselves of the people that are there to exploit, to be very frank.* [Community]

*What we want is a migration advice profession that has knowledge, that operates efficiently and that operates effortlessly. Now, you'll find a large number of people in the industry want that. But it's up to the government to also support it.* [Advocate]

The alternative, while unpalatable to many, would be the complete takeover of the migration advice profession by lawyers. Throughout the study, while few would say that lawyers always offer better quality advice, they did say that the legal profession offered a better model of professional training and regulation. In particular, they pointed to the role articles<sup>1</sup> play in helping young lawyers to learn professional ethics in situ and the role of the independent Legal Services Commissioner in handling complaints. Overall, the feeling is that more reform to the training and regulation of migration agents should be attempted before a handover is contemplated.

<sup>1</sup> In this study, the term 'articles' is used to refer to the practical experience program prospective solicitors must undertake during their first year of employment after graduating in law. In some states it is known as the 'practical legal training program.' Similarly, the term 'articling student' is used here to refer to participants in practical legal training programs.

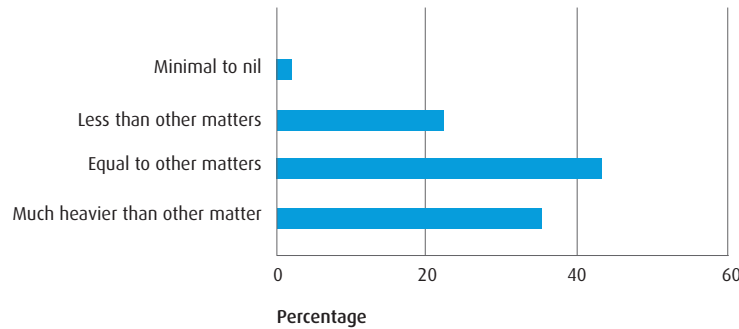
*One of the judges actually said that there's a noticeable difference with migration agents who provide advice in the area of business visas, in comparison to say protection visas. He finds the advice, the quality of advice and actions of the agent are a lot higher in that area of the law. His experiences with those law firms, generally speaking, were fairly good; reliable advice was provided in the business employment visa area as opposed to the protection visa area. And the reality is that these people are probably more likely to have money.* [Court]

*I wouldn't favour it going all to the lawyers because it would be 3,600 people in Australia who would be out of a living; half of them who deserve to be out of one and half of them who absolutely don't.* [Parliamentarian]

Clearly, there are Registered Migration Agents who hope that the profession will rid itself of unscrupulous operators; once it has, everyone in the migration advice community will benefit.

*I wish it had a better reputation, you know, because I am part of it and I wish it had a better reputation. I wish it was more professional.* [Educator]

**Fig 2.1a Comparative Migration Workload**



**2.0**

**A quantitative analysis of the perceptions of federal electorate officers further reinforces the perceptions of other stakeholder groups about the quality of advice provided and the need for reform**

Parliamentarians were an important stakeholder group for this study, not just because they play an important policymaking role but also because a good deal of their electorate work revolves around migration.

Ten parliamentarians (MPs and Senators) were interviewed as part of the initial qualitative phase. In many cases, the elected official was joined by his or her electorate assistant or advisor on migration matters since the staff have the most direct exposure to RMAs, their clients and the results of their work. Many of their qualitative comments are included elsewhere in this report.

While the sample size is too small to analyse with any statistical accuracy (particularly on a state-by-state basis), the results are helpful in determining the overall direction of opinion. In most respects the quantitative results broadly reflect the opinions expressed in the qualitative phase.

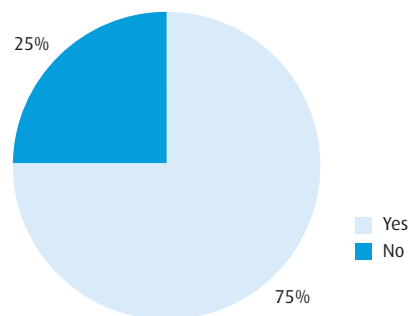
**2.1**

**Electorate officers have an informed perspective given their migration workload and exposure to RMAs and their clients**

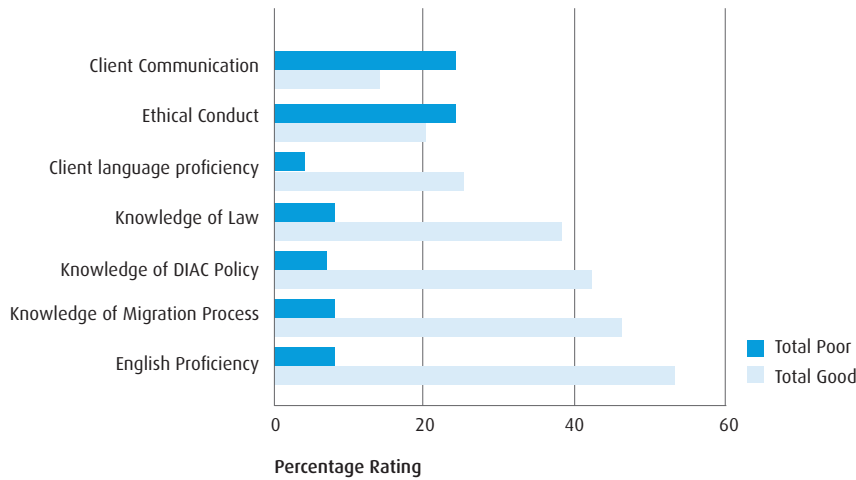
Fully one third of all electorate officers interviewed reported that migration represented a much heavier share of their overall workload than other policy matters. Significantly, almost three quarters said that migration matters were at least equal to other areas of responsibility. Given the amount of time spent on migration, this stakeholder group is considered particularly well-informed.

Presumably as a result of the degree of migration work that they do as part of their roles in electorate offices, fully three quarters of all officers interviewed said that they had encountered Registered Migration Agents or their clients in the course of their duties.

**Fig 2.1b Encountered RMAs**



**Fig 2.2a Perceptions of RMA competencies**



**2.2**

**Electorate assistants are most critical of RMA client communication skills and ethics**

Respondents were asked to rate the competence of RMAs on various aspects of practice along a five point scale from very poor, to poor, to neither good nor poor, to good, to very good.

Most electorate officers were ambivalent about the competencies of RMAs with the most popular response being “neither good nor poor” along all seven competencies measured. Two areas tied for an equal level of concern; both client communication and ethical conduct were rated either poor or very poor by 23% of respondents.

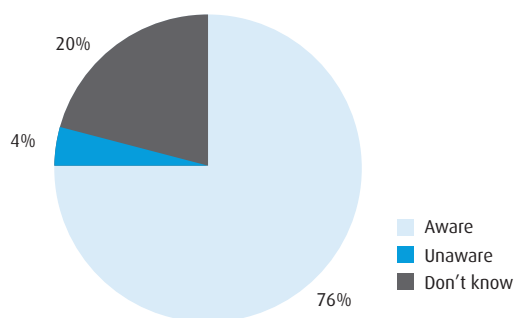
**2.3**

**Three quarters of all electorate assistants report that they are aware of exploitation by RMAs; awareness of exploitation increases with migration caseload**

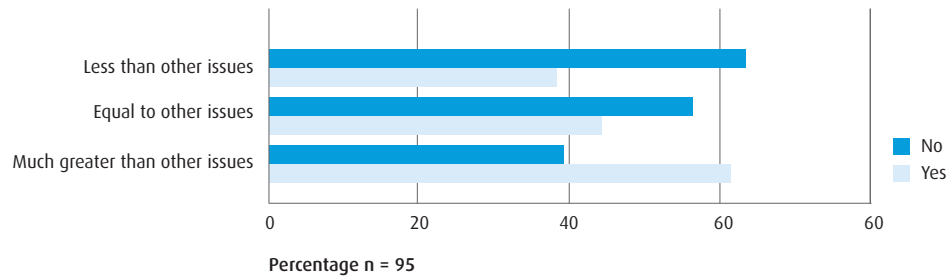
Not surprisingly, electorate officer awareness of exploitation is in direct proportion to the percent of their time spent on migration matters. It would appear, the longer one works in the field the more apparent exploitation becomes.

Again, consistent with the qualitative results, the most frequent form of exploitation, mentioned by three quarters of all officers interviewed was over-charging. The second most prevalent form of exploitation was incorrect advice regarding the best class of visa to apply for. The third is also fee-related and deals with over-servicing in order to inflate the fee.

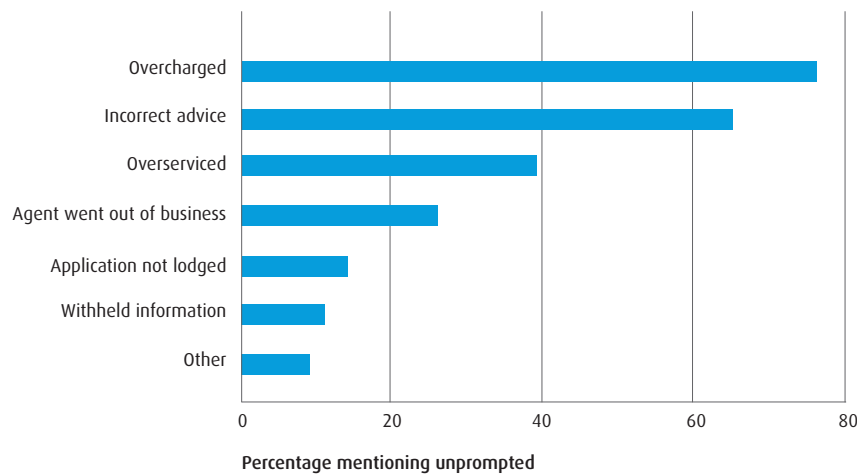
**Fig 2.3a Aware of exploitation by RMA?**



**Fig 2.3b Awareness of Exploitation by Workload**



**Fig 2.3c Forms of Exploitation**

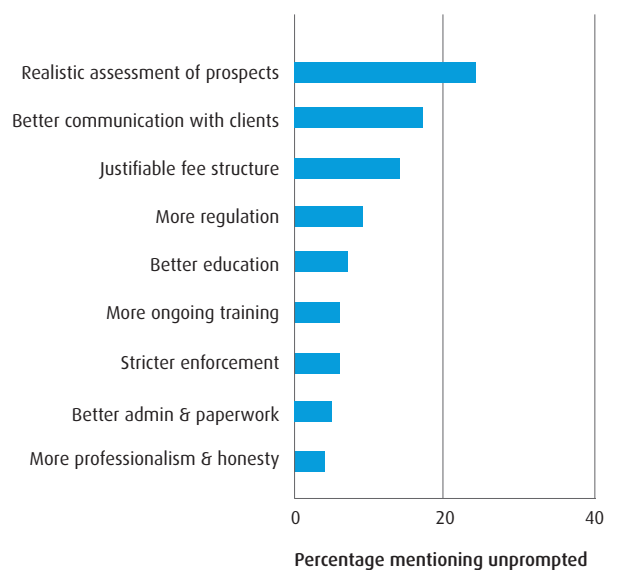


2.4

**Electorate assistants believe that their migration workload would not be so high if RMAs gave a more realistic assessment of the chances of approval and if client-agent communications were improved**

Electorate officers believe that RMAs should give clients a more realistic assessment of the chances of their visas being approved. Perhaps because the most frequent request of an MP’s assistant is to check the status of a visa application, they also say that RMAs should be in more regular communication with their clients (see Appendix A for a detailed examination of MP assistants’ workloads). Consistent with the qualitative findings, concerns about fees round out the top three issues of concern to electorate officers.

**Fig 2.4a How RMAs can serve clients better**



### 3.0

**While some stakeholders did acknowledge improvements have been made over the past decade, the changes have not gone far enough, fast enough to satisfy stakeholder demand; barriers to entry need to be raised**

*I know, you can tell there are attempts being made at this level. Streamlining is occurring and trying to happen, but at the end of the day, this all should have been done a long time ago; the whole thing should have been looked at and revamped... It's been a long time. [Community]*

#### 3.1

**In order to attract the right candidates to the profession and to dissuade uncommitted or undesirable candidates, it may be necessary to promote the profession to candidates with a different profile, according to some educators.**

A thread running through many of the discussions with stakeholders was 'it is too easy to become a migration agent.' If it only takes six months or less to qualify for a professional designation, it's easy to come and go quickly. While that suits the criminal element it also encourages part-timers and others who are looking for a sideline to complement an existing business. What it doesn't encourage is professional commitment and solidarity.

*I think that the migration industry was almost like a cottage industry. Someone described it that way, a while ago, so it's a good description. It's like something people did out of their back – out of their homes and they didn't necessarily have to have qualifications. [Educator]*

The profile of students entering the profession may explain part of the problem. Speaking to educators in the Graduate Certificate program, they said that the typical student is 'older' and their first language is typically not English. Few have a clear idea of what it is to be a migration agent and many are somewhat shocked when they realise how demanding it can be.

*[Our students are] mostly older. People who are looking to either change career or to enhance the current business. They may be working in a recruitment agency, as an education agent or something along those lines, and they may be seeking to enhance their business. [Educator]*

*People really need to know the client base they'll be working with. People may have money, but they come with a whole lot of vulnerability. Some people say "Oh this is a lucrative market for me to get into" or "I can make a tonne of money because I know so many people in my own community". But I just think: what happens when a curly question comes along? It isn't just a case of filling out a form – how will you be equipped to handle that? [Community]*

According to some stakeholders, the key is to raise the barriers to entry to keep out those who are either uncommitted or undesirable and to ensure that those who enter the profession will remain there for some time.

*So it's moving from – to being more of a profession in a true sense and part of that is – an important step is the implementation of entry standards that are quite high. I think they could be higher. [Educator]*

*Well, yes, you are right, "I can get this and I can go out and it's a license to print money." Whereas if you make it harder, it's going to deter people who want the quick fix. [Educator]*

#### 3.2

**A more stringent standard of English language capability is needed according to many stakeholders**

Raising the bar early is key, according to at least one instructor in the Graduate Certificate program. Exams might be blunt but they are an effective screener and give students a taste of what is to follow, including zero tolerance for cheating.

*One year I think I may have had a 20 per cent failure rate. But I am trying to be a bit tougher on my entry standards now, in terms of the level of English, because the bulk of them are from a non-English speaking background. If their English is poor they do badly because this requires a level of comprehension and application and analytical skills, that – if you are really not excellent in English, you are going to have to do the test. [Educator]*

*I think there needs to be some scrutiny of some of the people who register as agents. I think there should be some level of equivalency of a security test; not in the sense of a security clearance, but in the sense of "you wish to become a member of this professional organisation, do you have a tax file number? Do you pay tax? Are you a good member of the Australian community, that you should be representing future members of the Australian community?" [Department]*

*Exams are a blunt tool, pedagogically. Secondly, it cuts down cheating because to be honest this is a cohort of students who cheat. We have had high incidence of academic dishonesty. So they can't cheat in an exam. Why would people cheat in this particular cohort? Because that's the only way they can get into the profession. They want the degree. That's the only way they can get into the profession. Stakes are high. They may be pressured from their employer. They may be working for a migration agent and there may be pressure on them to do it. I don't know. [Educator]*

While many current agents became agents because they were immigrants themselves and they share a language with new arrivals, the job of the agent is to be the link between the migrant and the Australian government. Given the stakes involved in migration, the need to speak and write English effectively outweighs the need to communicate in a foreign language, according to several participants. The fact that agents are also working with legislation means their English skills have to be equal to or better than those of a native speaker. A higher standard of English is urgently required among all RMAs, new and existing, according to virtually all of the people participating in this study. While a higher standard is needed, it also needs to be tested earlier on in the registration process. According to one language assessor, the standard should be met at the time of enrolment in the program, not at the time of registration.

*Some of them would not pass an IELTS test of the minimum requirement of a skilled migrant, the 'package' holiday cohort. In fact, often you think it must in fact be the client who is writing it because it's so poor. You can't understand what they are trying to say to you. And these are people who are registered agents. [Department]*

*Well, language proficiency of some agents certainly – yeah, it has been a worry with some and their argument is "I only work for my community, so I communicate with my community in – we share a common first language". The problem there is, the legislation, the policy and everything is written in English and you have to communicate with the department. So there's a need for a fluency in English. [Educator]*

### 3.3

#### **While the Graduate Certificate is a vast improvement over what went before, a Graduate Diploma is seen to be a long overdue next step in basic qualification**

The most notable and oft-mentioned change in the past ten years has been the move from the MAPKE (Migration Advice Professional Knowledge Entrance) exam to the Graduate Certificate in Australian Migration Law and Practice. While several stakeholders said that the Certificate is a vast improvement on the exam-based regime it replaced, it still falls far short of expectations for what is required to adequately prepare candidates to offer professional migration advice.

*Well, [the Graduate Certificate] has gotta be better because it used to be just a test that you'd cram for and sit and suddenly you're a migration agent. So if they are making people do some formal study before doing the test, that's gotta be better. [Department]*

*It's a very difficult area to practise in, but hopefully – I mean, I teach here in the graduate certificate – with that increased entry level requirement study and assessment, that the bar is lifting and that there's a greater level of professionalism. [Educator]*

While some are encouraged by the introduction of the Graduate Certificate, others, including instructors in the program, are not convinced it is sufficiently rigorous. Critics say that six months is not long enough to acquire all the skills needed to practise as an RMA.

*Well, at the moment a graduate certificate is only a semester. You can finish it in six months [the equivalent of three weeks of teaching]. When I tell some people in the profession, they are horrified. They are saying, "So you can come out, be registered migration agent after three weeks of teaching?" "It's possible, yes, you can." [Educator]*

*I think there should be more training required. Six months is not long enough although it is an improvement upon the exam. It should be like a law course with two years just migration. [Community]*

*For me, I think there are natural limitations to a six month course without having the backing of solid legal skills in advocacy, in research, in drafting. You can't learn that in six months. [Community]*

While the new admission standards for the Graduate Certificate required a university degree or equivalent for the first time, some stakeholders said they harbour concerns about where the initial degree was obtained and in what language. Non language-based degrees (like accounting or engineering), even when taken in English, were not seen to prepare students adequately to practice in a language intensive area like migration advice.

### 3.4

**Theoretical concepts, including ethics, are best learned in situ, according to several stakeholders. A 'professional year' post qualification is seen as a good way to impart a practical understanding to new entrants to the profession**

*In terms of ethics, do they have a good grasp of ethics? I am not sure they do, when it comes to trickier, ethical questions like, "What do I do if a client gives me a bogus document? What do I do if a client is lying to me?" those sorts of things. So it makes me think there's a lot who have graduated who don't. It's the actual practice where these things become more real so some kind of mentoring program would help because ethics is really something that's hard to teach in the abstract. [Educator]*

Many stakeholders think that a professional year or articles is essential for transmitting real world professional skills and understanding to new migration agents. To some extent an articles system would create the networks that characterise professional identity and solidarity.

*Experience is the biggest factor for improving the quality of advice given by migration agents. They need mentoring, apprenticeships and a year of articles. There's a lot at stake and there are complexities, so articles are warranted. Plus it's a professional model. [Parliamentarian]*

*There's a crying need for work experience before people can hang up their shingle and have clients. Work experience is where there's a big need. Theoretical knowledge is one thing. Putting it all into practice straight away as soon as you graduate is scary. Something along those lines as an option would be good, a huge help. That's the main issue with the Graduate Certificate, I think. [Educator]*

For those who have had the chance to work under supervision before practising on their own, they highly recommend it.

*That would be perfect [to institute a professional year]. I worked as an assistant to a migration agent for three years, so I know what to do but without that experience it would be difficult because migration is such a broad area. [Community]*

Some expressed reservations about the ability of the registered migration advice profession to be able to create sufficient training places for all new graduates. At present, three quarters of all RMAs work as sole practitioners; only 12% work in an office with six or more employees.<sup>2</sup> Others expressed concerns about the suitability of the current cohort of students for supervised employment as mature-aged workers; they may not be prepared to accept the cut in salary that would necessitate.

*Supervised practice of some kind would be good. I know that that's been proposed, quite a number of times. There are difficulties because it's not a big profession. So, the profession has to take responsibility for supervising its entry level graduates and I just don't think that they will. Whether you have some period of restricted practice during that time, I don't know. My concern is, I just don't think the profession is quite ready to supervise its junior members. It's my feeling. [Educator]*

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<sup>2</sup> Migration Agents Registration Authority, 2007-08 Annual Report. Sydney, 2008.

*I strongly recommend to all of them, "Don't practise on your own. Go and work for somebody for a period of time until you get experience." But a lot of them are (a) older; they have got families, they can't take the salary cut; and, (b) some of them find it a little bit difficult to get a fit with an organisation; [ particularly] when they are older and maybe they have had their own business for a long time they're just not the sort of employees that some of the larger firms are looking for. [Educator]*

### 3.5

#### Many stakeholders suggested providing a graduated or provisional license to new graduates to enhance consumer protection

Many stakeholders questioned the wisdom of offering new graduates an unrestricted license. They felt that consumers need to be protected from inexperienced or incompetent practitioners by a graduated or provisional system of licensure. Newly-minted RMAs, according to them, could subsequently expand their areas of practice by pursuing additional CPD in an area or by working under the supervision of a mentor.

*In so far as the registered is concerned, well, I can't see why not, as a matter of principle. I mean, it seems to have worked in other areas, including the financial services area where their restricted licences and authorisations is dependent on what studies you have done and what skills you bring. [Court]*

*I would want to see the migration advice profession to have a number of levels where humanitarian entrants and people who were unemployed and on very low wages were able to access free migration advice and a service that's more important than just advice because advice is just telling somebody what they can do and a service, through an NGO like, for example, our own, through qualified people who are registered and receive ongoing funding. [Community]*

Some refugee advocates felt that refugee work should be limited to immigration lawyers or to specially-qualified RMAs working in the community non-profit sector. They cited the high stakes for refugees as a rationale for their suggestion. Others were concerned that such a move could reduce the already short supply of advisors who will work with refugees.

*That would be my preference. Because some refugees, they're refugees but they're like Saddam Hussein's right-hand man who's jumped on a boat. He's not poor but he's a refugee because he will die [if he goes back] – you know, just as a total extreme. But the majority of them don't have two dollars to rub together and unless you're gonna get lawyers that are doing pro bono work – so pro bono lawyers or non-fee-collecting community group leader people, which is generally who – they do everything for them and they're wonderful, the way it's set up and they have to go through a stringent thing to be a recognised community group. [Department]*

*Refugee law is quite complex because you also have to read cases and you need to know the interaction of case law and legislation. Whereas in other areas of migration law, there are not so many cases, there are not so many court decisions, not so fluid in that sense. I know very many good migration agents who are not lawyers, who are excellent. They are good at what they do. Maybe when a case becomes more complex, they are smart enough to know when a case becomes too complex for them, to refer it to someone who is a lawyer. [Educator]*

### 3.6

#### A more rigorous program of continuing professional development might serve to remind RMAs of their ongoing responsibility to keep up to date in their field; at the same time it might dissuade anyone who is not committed to serious practice

The combined efforts of the MARA CPD providers, including the MIA to offer a quality program of continuing professional development have been less well-received over the past ten years. Stakeholders tended to view the quality of the program based on the quality of the output they observed. Several remarked that the current CPD program just wasn't preparing agents for the demands of professional practice.

*I can see it more so when they file against the regulations, particularly since the new regulations were passed in '07. I would think that they haven't kept up to date. [Department]*

*I'm not quite sure what compliance infrastructure sits across it, but it would seem to be, based on the information that we have, that the training is an area that could certainly benefit from perhaps a rewrite or some bolstering and grafted over that compliance or managing systems that would allow MARA as an agency to be satisfied that its licensed agents are properly trained and that it's not a one-off training; that they are committed to ongoing training. [Court]*

Apparently, CPD for many RMAs is a perfunctory compliance activity geared solely to logging the required number of hours each year. Since many of the participants in this study were also Registered Migration Agents, they spoke from direct experience. Few felt that the course offerings were sufficiently rigorous to be of much value. Some stakeholders were still under the impression that the entire annual requirement can be satisfied in a day and wondered how demanding it could be.<sup>3</sup>

*From what I have seen – look, I guess it seems to be – I don't think it's fully patronised by the people who require that service or should be able to take advantage of that service. I think there are – again, there's a broad spectrum. Those who attend religiously and go there fully intending to be up skilled and become conversant with whatever the subject matter is so on. And there are others who go there to get their points up. [Department]*

*Well, there's some of it which just involves – seems to just involve guest speakers from the department, which some agents say was a waste of time. They didn't learn anything. Perhaps the provision of some course materials with each CPD, rather than just "come along, have a glass of wine and listen to someone from the department speak". [Educator]*

*Some providers offer all ten CPD points in a day and this practice is of profound concern to us; at the Law Institution in Victoria, you are not allowed to get more than six hours of your points in any one day and six hours I reckon is stretching it. We are very concerned. There's a whole range of issues, but these are particularly serious; really undesirable practices. [Community]*

Several stakeholders alluded to the conflict of interest inherent in the MIA offering courses and the MARA approving them. While it was not explicitly stated, some implied that the courses were designed for and targeted to the commercial operators who make up the bulk of the MIA membership. RMAs working in the non-commercial sector (who were over-represented in the sample for this study) nonetheless complained that they felt that the range of CPD course offerings was simply too narrow to fulfil their needs.

*There's just not a lot of choice in CPD. So for example when I need to go and get my 10 points, I'll have to do stuff that I don't practice in, just because the CPD programs are directed towards what's more commercially viable. [Advocate]*

*I don't go to any MIA seminars. I used to really dislike having to go. I felt they offered me nothing. I mean, you go because they are the cheapest and you have to do it. But that's why people go. They're not going for any reasons but CPD, sadly, because they just weren't offering what I needed and not very many providers are because there's not a real market for what I needed. To be honest, I used to go with a book and sit at the back and work, marking, whatever. I would go, "I have to be here," I will sign in. But now I talk to my ex-students who go and they don't like them. They find them to be a frustrating waste of time. [Educator]*

While the courses are not perceived to be professionally rigorous, many stakeholders said that they are administratively onerous; for RMAs working in the community sector they can also be financially onerous. The structure of the program needs to be more responsive to the needs of attendees.

*But the CPD structure has forced a lot of community-based advocates out, especially people that work in migrant resource centres. For example, at the moment, at Blacktown, a migrant resource centre, I think there's one where just an agent. But it's a real area where there's refugee communities living. So there's a big demand for advice on refugee law or assistance, and there's only one person at the migrant resource centre. Because the resource centre can't pay the fees and can't keep up with the CPD requirements. [Advocate]*

<sup>3</sup> Given recent changes, the annual CPD requirement requires a minimum of fifteen hours to satisfy.

*But a lot of the CPD training isn't to the point. I think the whole CPD scheme's got to be reassessed. We used to do it where I work. I used to run the program, but it just became such an administrative nightmare, we couldn't do it. Really, CPD needs to be far more flexible. It's very prescriptive. [Advocate]*

Looking ahead, stakeholders felt that CPD needs to take a more holistic view of the profession. As one participant said, 'a business visa can quickly become a spousal visa and a student visa, you don't know where it will all lead.' Others felt that migration advice is more of an end-to-end service and isn't always contained within the narrow confines of what is currently known as 'migration advice.' Still others felt that RMAs need to develop sensitivity as much as acquiring new skills.

*I would urge MIA and MARA to emphasise a training component to the industry, so that their members are not simply versed in the law, but have a sensitivity to the wider, multicultural issues that are driving diversity in Australia, and the migration and refugee experience. There would probably be quite a lot of room there for interface with the rest of the settlements ethno-sector. So it's not one or the other, it is a collaborative, partnership type of arrangement. [Community]*

*There is not always an understanding of what it is to move to another country, especially not the language difficulties or the impact of a very different culture. More can be done here – like increasing the types of information and assistance that migration agents and DIAC can give and providing more funding for MRCs and ethnic associations. It's not about skilling migration agents up to play this role, but getting them to be sensitive to these issues and direct migrants to community resources accordingly. [Parliamentarian]*

## 4.0

### Effective regulation is difficult when a profession is porous and 'open' to non-professionals and professionals alike; stakeholders cited several factors which leave Australian immigration particularly vulnerable to abuse

#### 4.1

#### Australia's policy preference for an 'open' immigration system makes it difficult to regulate professionals practising within it and sends mixed signals about their value

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:

- Registered Migration Agents both onshore and overseas
- Registered Migration Agents onshore who also hold another (frequently more dominant) professional designation (e.g. immigration lawyer, professional accountant), some of whom may hold another formal

immigration accreditation (e.g. Immigration Law Specialist accreditation)

- Lawyers/articling students without specific migration training
- Members of Parliament, Senators' their advisors and assistants
- Unregistered migration agents overseas
- Illegal unregistered operators onshore
- Labour and education agents overseas
- Unregistered labour and education agents onshore
- Unregistered employers providing advice to employees
- Unregistered volunteers in the non-commercial sector

The biggest argument in favour of an 'open' system is maintaining access to Australian immigration. To listen to stakeholders describe it, the need for migration advice is analogous to the need for other sorts of professional advice, like legal advice. While it may be unwise to represent yourself in court, it is important that we allow everyone to do so if they choose. So, to deny someone who can't afford the services of a Registered Migration Agent access to Australian migration violates our belief in a free and open society. We might not recommend that migrants 'go it alone' but we don't want to stop them either.

**Table 4.1 Percentage of visa applications lodged by migration agents (January – March 2008)<sup>4</sup>**

Visa Subclass	Total applications	Migration agent used	Percentage who use a migration agent
<b>Family</b>	6,448	1,371	21.2%
<b>Employer sponsored</b>	33,502	18,438	55.0%
<b>General Skilled</b>	27,570	11,414	41.4%
<b>Business Skills</b>	376	273	72.6%
<b>Student</b>	105,478	7,523	7.1%
<b>Visitor</b>	28,063	1,019	3.6%
<b>Temporary/other</b>	31,546	2,464	7.8%
<b>Total</b>	<b>232,983</b>	<b>42,502</b>	<b>18.2%</b>

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

2. The source of this data is Integrated Client Service Environment (ICSE) and it does not include data from the Immigration Records Information System (IRIS).

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

<sup>4</sup> Commonwealth of Australia, *2007-08 Review of Statutory Self-Regulation of the Migration Profession*. Canberra, 2008.

*I think getting preliminary advice is always a good idea. Not everyone needs representation; not everyone needs their hand held through the application process, but given that quite large fees are attached to making a visa application and that that fee is not refundable and that there are statutory bars on making further applications once you have had a visa application refused, I think that getting advice before lodging an application is a smart thing to do. [Community]*

*I personally don't have a big issue with [volunteers] so long as they're not charging. They can break down the language barrier because sometimes that can be quite a barrier for us to actually get them understanding exactly what we need. I've dealt with a few community people who do that and they do it very well and they do it very conscientiously and you can tell the ones that are being legit because they're upfront with what they're doing. [Department]*

*With unregistered advice, I think there are several different categories of people that you are dealing with. There are well-meaning people who have heard things, who know it is expensive to get immigration advice, who are just offering their opinion and not realising that they may be causing detriment. [Community]*

*Well, you're never going to stop people wanting to help people within their community. There's always Uncle Harry who's an expert on migration law. I think there needs to be a lot more community education that says, "You can't give migration advice". [Advocate]*

The reality is that the vast majority of visa applications in Australia are lodged by individuals, without the assistance of migration agents. As the table opposite illustrates, up to three quarters of all applications are lodged without the help of migration agents, although it should be noted that "In 2007, migration agents were used for approximately 45 percent of Temporary 457 Business (Long Stay) visa applications and more than 50 percent of applications lodged in several other visa classes."

Some say that official ambivalence toward the need for 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?" For people coming from different, often corrupt countries, it might be easy to make an incorrect assumption, despite this notice on the DIAC website:

You do not need to use a migration agent to lodge any kind of visa application or asylum claim. Your application will not be decided any sooner if you use a migration agent and they cannot influence the outcome of your application.<sup>5</sup>

*There was no – this is the point – there was absolutely no suggestion from the Department – in fact, no perception that it would be necessary to refer people for legal assistance. When I say legal assistance, I mean migration advice. That to me speaks loudly about a systemic problem in the department; that is, there's never been a common and clear perception about the role of migration advice. It varies. It relates to a deeper issue, I think, about the institutional view about the role of migration agents. My basic view is this: that there is a deep institutional view that migration agents are essentially vehicles for the Department to do its work; that they are essentially there to help people who can't otherwise present a case to do it, so the Department can get on with the work of deciding whether someone is eligible or not, cancelled refused or whatever. [Community]*

*The Department tells them to contact the MARA and our advice with somebody who is trying to lodge themselves but they're getting in a kerfuffle because they don't understand the regulations – which why would they? – is we say, "The other option to you is to get a migration agent or a lawyer that has access to be a migration agent but choose carefully and consult the MARA for recommendations to agents close to you and ask them upfront what their fees are, I'd always say that. [Department]*

<sup>5</sup> [www.immi.gov.au/students](http://www.immi.gov.au/students)

*So I don't think everyone needs advice, I think there's a range. If people are applying for a difficult subclass and they don't speak English, I think the likelihood of them succeeding without advice is pretty low – is lower than it would be if they had got that advice.*  
[Department]

#### 4.2

### **An unclear legislative definition of what constitutes 'migration advice' contributes to confusion about the proper role of RMAs and others who provide advice formally and informally**

Unlike other regulated professions, migration advice doesn't have a well-defined area of practice reserved solely for licensed professionals. As a result, the role of the Registered Migration Agent is poorly understood, even by migration agents themselves, according to some stakeholders. Others pointed out how a person from a developing country might be under the impression they are speaking to a government official when they first meet their agent and fundamentally misunderstand their role.

*I know this is probably all trite to you, but if you sat down and asked a lot of migration agents about this stuff, "What's your role, what do you do?", a lot of them wouldn't have a clue about the importance of explaining those things really clearly. That's my view. I don't think a lot of people appreciate how important it is to actually explain to people what your role is and what you can and can't do and about options and not promising people more than you can deliver and all this sort of stuff. But this role about being an advisor where you give options and help somebody to come to a decision is crucial. I actually don't think a lot of the time it is well appreciated by the consumer.*  
[Community]

*As to knowing what they are in there for [with a migration agent], I think in some cases people think they are with a government official, not a private provider. So I think there needs to be quite a lot of teasing out about what clients, as users of the services, can expect. You know, users' rights. This is a role for the government or a regulatory authority.*  
[Community]

One problem that was frequently mentioned was that 'migration advice' is narrowly defined in the Act; limited to advice provided to a 'visa applicant' or to a 'cancellation review applicant' in the course of lodging an application. 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. Members of the community non-profit sector felt that most of the distinctions should be eliminated so that a holistic service could be provided.

*We take them through the whole process. We don't call it migration advice; we call it a migration service. What we do is prepare people to apply and that is ensuring that they've got the correct forms, that they get the correct information and that they have – we basically take them through, including providing advocacy for them, like ringing the department of immigration and to push them to ring the embassies where clients are. We see them as a client 'til the decision comes through.* [Community]

*When someone's going through the asylum seeking process, we will meet their every need. Not just legal needs but counselling, accommodation, food, teaching them English, social and recreation. It's case work – everything they need to settle in as quickly and effectively as possible – because of the deadlines in the refugee determination system, if they're missed, they're so punitive. So [without help] these people can end up without work rights, without study rights, without Medicare, without anything. That's why the Centre is the safety net. But we have no federal funding, so we rely on philanthropy. There are organisations that provide work on a pro bono basis, but they are limited more to the legal side of things, as opposed to the holistic approach at the Centre.*  
[Community]

According to them, an 'immigration service' includes up to four types of assistance along a continuum from information to legal representation:

1. **IMMIGRATION INFORMATION** – Strictly speaking, immigration information involves the provision of information about the Australian immigration system. While information is provided via the DIAC website, it was widely acknowledged, even within DIAC, that non-English speaking migrants would struggle to access and understand this information and so they would require basic help from translation through to an explanation of Australia's laws and customs. At present, community groups and MP offices often provide this sort of basic information. However, it raises expectations among applicants that more free service can be found.

*If you had very poor English... the thing about the website is that if you know what you are looking for, then you can take your time and read the bits you want to read. But if you struggle, well, the website's completely useless because it's all in English.*

[Department]

*All the government agencies provide pamphlets and reams of conditions and all that sort of stuff. It's a waste. You can provide more literature but I don't know that it is going to help, that much. In the first couple of years, there's so much information being bombarded at them that it's information overload.*

[Community]

Some participants noted that people looking for help on migration issues generally don't understand the difference between immigration information and immigration advice. In this context, a little information may be truly dangerous.

*The issue is more about not knowing the difference between information and advice. You can look on the Department of Immigration website or any number of websites; commercial agents have their websites that give information in the hope that they will have people asking them for more advice. Some people go ahead based on this information. Yeah, I have actually seen a case where someone got advice from the counter at the Department of Immigration and then filled in the particular forms. There wasn't just the language barrier, there was a culture barrier, because the law doesn't recognise cousins or uncles; only immediate family. And that [error] has led to years of review.* [Community]

2. **IMMIGRATION ASSISTANCE** – 'Immigration assistance' is particularly amorphous. It could range from helping an applicant to become 'application-ready' by helping them collect documents from their country of origin through to filling out forms. Forms are a legal 'grey area.' Some DIAC officials have said that community volunteers should fill out forms even though mistakes can easily arise. Paradoxically, while RMAs are trained in how to complete the forms, they are not funded or insured to do so in many community non-profit centres.

*If you take a question too literally or not literally enough, then you will give the wrong information on your application. That can have massive penalties as well.* [Community]

*The definition of migration advice [i.e. must be connected to the filing of an application] restricts refugee case workers from filling out forms when this is the sort of assistance that is most sorely needed. Government wastes money on brochures that aren't read but won't fund the staff needed to explain things.* [Community]

*The department has stated that it doesn't really believe the job of providing advice is a long one, you know, it's sort of probably worth three hours or something like that. It's not a simple job with people who come from Africa where document collecting and the story-telling and putting things down on paper is all new.* [Community]

3. **IMMIGRATION ADVICE** – Immigration advice was frequently compared to taxation advice. While a professional migration agent, like a professional tax agent, could advise on a range of options an applicant might take up, only the applicant could make the final determination of which course of action to take. Unfortunately, a visa applicant may not be at all familiar with the concept of ‘advice’ and is really looking for direction.

*The best advice tells you the best way to get to where you want to go. There’s no difference from immigration advice to advice on employment law or advice on your tax position. You know, it’s so highly subjective. It is legitimate, in my view, for an advisor to have a view on the best way forward for a client, which might vary from another professional’s view. But the more important point is: you say to a client, “This is your situation, this is what you want to do. These are the options available to you. From what I am hearing, you would rather go this way; is that correct?” A client professional advice situation is not a professional telling the person what they should do; it’s about the two of them coming together, coming out with what they understand to be the best result for their situation and where the client buys into it. [Educator]*

4. **IMMIGRATION LEGAL ADVICE** – While the Act clearly states that no one who is not a lawyer may offer legal advice, RMAs may provide migration advice in matters before the courts. As noted above, this ambiguity may lead registered agents, and unregistered operators, to leave clients with a false sense of security when appearing before the court because they cannot tell the difference between immigration advice and immigration legal advice.

*As lawyers, we never distinguish between information and advice. A lawyer is not there to impart information, but because a lawyer is there to advise, we do whatever we need to assist the client to make the best possible decision in their best interests. [Community]*

#### 4.3

#### What constitutes ‘good advice’ or ‘bad advice’ is even less well-understood, making education critical for consumer protection

Several participants said that migration advice incorporates knowledge of Australian migration law, DIAC policy and the migration process. Some lawyers maintain that the best migration advice draws upon an interpretation of the law to protect applicants from overzealous policy interpretation by DIAC. DIAC officials, on the other hand, maintain that the real value of retaining a migration agent is in their knowledge of the immigration process.

Senior practitioners have a clear view of the role of migration agents and advisers. But, they say, this role may not be widely understood within the profession and among the migrant community. According to them, good advice:

- Is tailored to the client’s needs and situation;
- Is thorough and provides the client with everything s/he needs to know about the law, policy and procedures;
- Does not go beyond the adviser’s area of expertise and when necessary includes a referral to a more qualified professional in the relevant area;
- Gives the client options but does not direct the decision;
- Is timely;
- Assists the client through the process, including filling out forms when necessary;
- Includes a check that every application is complete and decision-ready;
- Ensures the application addresses and meets the visa criteria or includes submissions on why it does not; and
- Is free of conflicts and is clear about what would happen in the event of a conflict of interest surfacing.

*I think good advice gives people options; talks about what their options are; explains to them why their options are such as they are. If they have more than one option, goes through with them what are the pros and cons of each option. Covering a range of things, including practical things; the time that it’s going to take over and above this option; all the costs that are involved with this option over and above that option; access to work rights, if that’s an issue; access to Medicare. Those sort of practical things that impact on a person’s decision. I think that’s good advice, it’s*

*thorough. It explains the law, it explains departmental policy and procedures and it helps that person arrive at the preferable decision for them. [Educator]*

*do. They're economic refugees and they want to stay here, any way that they can, and the agent is doing what the client is asking them to do. [Advocate]*

On the other hand, bad advice:

- Provides only one option (which may be the one the agent is most comfortable with);
- Results in an "unmeritorious application on behalf of an unmeritorious applicant" either as a result of incompetence, pressure to deliver against unrealistic and unreasonable client expectations or an agent's unscrupulous desire to inflate the fee;
- Results in an application whose sole purpose is to stretch out the time that a person may remain in Australia as a way of appeasing an unreasonable client or of misleading a client; or
- Results in an application which is incomplete or incorrect.

There will be a natural pressure on agents to stretch out the application or to appeal the process even when the agent is certain there is no chance of success. As noted above, this presents a moral quandary for agents who rely on their ethics to guide them. But what is morally right can be a difficult sell when you are dealing with desperate people. The fact that some people go shopping for agents is a sign that there are ethical agents who are prepared to take a stand – oftentimes in the client's interest but against their wishes.

One of the obligations of being a professional is that sometimes you need to deliver bad news. Another is that you need to put the client's long-term best interest ahead of your economic interest, even when that goes against the client's wishes. Just because an agent says 'no' does not mean it is bad advice; frequently it is just the opposite.

*I think because it's commercially driven in an area where people are often quite desperate to do anything they can to stay. We're dealing with people who've often paid an enormous amount of money to get here on the expectation that they'll be able to remain here, or we're dealing with people who've been here unlawfully for a while. [Advocate]*

*If the client's been told that, "No, you can't apply for this visa, you should apply for this one," and they're not happy with that because they want to apply for this one. It's not bad advice if the information they're given is correct and they're just not happy with it. [Department]*

*I would say that you have people who pass fairly low entry level threshold requirements, practising in an industry which I think is characterised by vulnerable participants, who are willing to pay anything to get the outcome that they are after. You get private practitioners whose bread and butter is based on making promises of delivering this outcome that people want to purchase. So I think you need sound knowledge and you need professional integrity, the most basic requirements in an industry where your consumer base is characterised by high levels of vulnerability. [Community]*

*It's also difficult for an agent, particularly small agents, who are attempting to run a business, to push away the opportunity of business. Because what they're in fact doing is saying, "Yes there may be a hope for you, we'll go down this path", and it makes income. It's an income stream. Is that ethically correct? No. If an agent assesses someone to have no chance, then they should advise them that there is no chance. [Advocate]*

*I have met a couple of people in which they've been told, "I don't think we're going to get this through" and the client has gone to see different agents and different agents say, "Yeah I'll do it for you". So I've heard that. But at least somewhere along the line they've been told. And of course people want to hold on to hope. They hear what they want to hear and all that other stuff. It's a very difficult area. But that's what I've come across. [Community]*

*The problem also is that people will come to the agent, and the agent will say, you know they're here on a tourist visa, the agent will say, "Well, you've got no family, you've got no skills, apply to be a refugee and then you can stay here", and people are given a false expectation. I have to confess that it's not just all the agent's fault, because that's what people want to*

Perversely, giving 'bad advice' can be good for business.

*To tell you the truth, in some ways being a bad migration agent is actually – how do I say it? It's actually a good commercial thing because you can get – if you know the loopholes, you can get people through quickly, then the word of mouth spreads, "Go to that guy, because he knows how to get you through." And your business actually expands as a result. Whereas if you are somebody complying – you know, crossing all the Ts and dotting all the Is and you are really up to date, then you are probably going to take longer and you are going to perhaps charge more, so you are not going to be the one that [gets the result they want at the price they want]. So the commercial driver almost works in reverse. [Department]*

#### 4.4

**Stakeholders report that there is tremendous variability in the quality of advice available, even among registered agents; although the highest quality advice seems to be available both for a fee and for free**

Market forces are able to effectively regulate the profession in the big end of town. Despite a lack of general consumer awareness about what constitutes quality advice, business visa clients (often corporate HR departments) do know good advice from bad and won't pay for a substandard service. Unfortunately, the invisible hand of the market can only reach so far.

*This business predominantly does business related activities. So we provide the training for our staff members. Systems where people are not let loose on clients until we are satisfied they are able to provide consistent advice; access to other professionals in the business, so the adequacy, the currency of what they are providing has always been tested. [Educator]*

*I don't think [the market is working in some cases]. I think there's a good section of the market that people are responsible and do the right thing but I think there's also a section within the market that take advantage of their clients. They are only interested in the profit factor and making money, whether that be just to fill out a form and see the back of the client or even to try and take them for whatever they can. [Parliamentarian]*

Participants repeatedly said that the 'profit motive' is what taints commercial migration advice. If the profit motive wasn't there, exploitation would disappear, according to them. Consequently, the community sector reportedly provides a high quality of advice when it is sufficiently funded to do so.

*The non-profit sector is generally not where the problems lie. Generally, there's a very high level of competence in the non-profit sector and, indeed, added to that a high level of competence and/or ethical conduct. There is no profit margin and that matters. But there's also a very strong dedication in the non-profit sector to providing assistance; a commitment to getting it right. Now, it's not to say that that commitment doesn't exist in the private sector; it does, but I think far more unevenly. [Community]*

*Because there's trust and credibility in MRCs, there's that "they are for you, the MRC is for you". There's no vested interest. At the end of the day, we are all here just to help our communities. There's a lot of credibility with MRC. So when [pro bono migration agents] are placed and we provide advice through MRC, it means – we are watchful to know what is happening, who is providing what advice, what kinds of it and we want the best and we will get good people at the MRC. We are careful, we are watchful and we don't get anybody – you know what I mean. We get RMAs who have got good credibility, good track records. [Community]*

Information is the best form of consumer protection. However, several participants remarked that clear information about agents is difficult to come by. As migration becomes more complex, more specialised expertise is required. However, the MARA website still takes a 'one size fits all approach' and doesn't list credentials or specialist qualifications, making selecting an appropriate agent a process of trial and error.

*If they just go blindly into a migration agent's office without having done any advance research on the Internet, they wouldn't know the difference. [Department]*

*There's not enough information available for people to make an informed choice about who they see. For example, there are various competencies within the profession. Through the law society, people can become accredited immigration law specialists.*

*You have people who are lawyers, who have been practising law for some time, and you have people who have entered the migration profession by doing nothing more than a two/three-week course and sitting a multiple choice exam, or who came to the profession before that time or people who are now sitting the graduate diploma course, which is six months, 12 months. So you have got a huge range of competencies within the profession. But the Migration Agent Registration Authority register doesn't distinguish between migration agents. So when you do a search, if you want to find an accredited specialist, you can't do that on the MARA website. People need to know all the different other areas that they can go to, other search engines that they can look at, to find out what people's competencies are. It's not consumer friendly. [Community]*

#### 4.5

**Regulation has been divided. While the MARA has been responsible for regulating Registered Migration Agents, DIAC has been responsible for monitoring unregistered and illegal practice. Unfortunately, there is little evidence to suggest that DIAC has been any more successful than the MARA**

While Registered Migration Agents are disproportionately impacted by the negative influence of unregistered agents in Australia and criminal elements overseas, they can hardly be held solely responsible. While the MARA, under management of the MIA for the past ten years, has struggled to regulate registered agents onshore, there is little evidence to suggest that DIAC has been any more successful in pursuing unscrupulous and illegal operators offshore or at home. While stakeholders noted that exploitation occurs in both the regulated profession and the unregulated industry, they were unable to discern with any precision in which area exploitation was more common or growing more quickly.

*There needs to be more solid data and tracking on migration agents, we need details of malpractice. The worst examples are the black market agents, unregistered ones, and this is DIAC's role. DIAC has not done well to own its responsibility in this area. [Parliamentarian]*

For DIAC, there are two issues at play. If unregistered agents are allowed to practice in Australia, it fails in its responsibility to protect Australian consumers. If it fails to block unscrupulous overseas operators from using our migration system to turn a profit, it risks devaluing Australian immigration.

*Because if you are unregulated, by definition, then you are outside the scope of any system or means of censure. Apart from anything else, the regulation system, it's a consumer protection issue, isn't it? That's what it is about. So you have got no consumer protection mechanism offshore. That means that if you are in a country where there are a bunch of dodgy operators and that has an impact on the reputation of that industry and that country, it has a potentially knock-on effect on the reputation of immigration to Australia. [Educator]*

If one way to rid the system of unscrupulous operators is to block their applications, the question some naturally ask is, 'Why isn't it done more often?' Some universities report having taken action on their own. Others say DIAC is now stepping up monitoring and enforcement.

*Are students well-served by educational agents offshore? We don't really know. We have heard of some dodgy agents offshore. Our uni has blacklisted some. We deal only with the head office of education agents in countries such as China. Remember, a lot depends on the student's reason for coming to Australia. [Educator]*

*There are some agents that DIAC won't use in some countries – won't accept applications from. It's the only way DIAC's been able to ensure the quality control on visa compliance. Agents soon become known if they provide documentation that's fraudulent or suspicious in any way. [Educator]*

#### 4.6

### Some aspects of Australia's migration system are perceived to be vulnerable to abuse making effective regulation extremely difficult

#### 'Authorised recipient'

Reportedly, unscrupulous unregistered agents pose as 'authorised recipients' to circumvent regulation. These individuals are able to deceive their clients because the applicant may not understand the distinction between appointment as an agent and appointment as an 'authorised recipient'; at the moment the same form is used to appoint both. Once appointed as the 'authorised recipient' the unregistered agent is in control; all correspondence now passes between the agent and DIAC and the client is left out of the communications loop. It is up to the agent to inform the applicant of everything they need to do and when to do it. If they don't, the applicant could be in the dark up until 'the last painful moment' with little recourse for appeal. However, DIAC officials did say that it is currently within their powers to copy in an applicant where they believe there is a need to do so.

*So if an agent is not registered, we can't stop them. Anybody can act on someone's behalf if they have got the authority with migration. I don't know what the answer is. But they do cause problems quite often because they promote what we class as fraudulent applications. [Department]*

*A key problem is that DIAC requires all communication to be between the Department and the agent. The consumer is in the dark until the end and may not understand the implication of what they are signing, so the individual won't know whether they got good advice until the last painful moment. [Parliamentarian]*

*We can do it now. I mean, an officer could do it now. We could – there doesn't have to be a rule in place. There's scope for us to do it now. We can write a letter to an agent and CC a client in on every piece of correspondence that we do. Officers do do it if they have concerns, if they've got a concern about whether the messages are getting through and I know the*

*Migration Act has changed recently to allow us to send information direct to a client if we think they're being represented overseas by an unscrupulous agent. There's nothing to stop us now writing and CC'ing our client. [Department]*

*Another problem is undeclared agents. They don't put themselves on the record at all – not on the forms, not in the files. We've seen clients who come in and say "My migration agent met me at Flinders Street Station to have a conference." So there is absolutely no recourse. And sometimes the client won't admit there was 'help'. So then you don't know what other factors there are, compounding the problem. But still there's no mention of professional assistance. [Community]*

#### Special skilled visa categories

While DIAC is responsible for administering Australia's immigration system, DEEWR monitors labour force requirements and produces the MODL list of preferred occupational classes. Many stakeholders criticised this list for leaving Australian immigration open to abuse. By favouring semi-skilled trades like hairdressers and chefs, a large loophole was opened to thousands of prospective migrants. Several stakeholders said that it beggars belief that Australia would need so many foreign-trained hairdressers and chefs.

*DEEWR have created the MODL list as a short cut into Australian migration and have created an opportunity for crime to thrive in non-skilled roles such as cooks, chefs, hairdressers, project managers, program administrators and office managers. Do you know that you can work in a three person family company in China and qualify as an office manager? [Department]*

*Why do we need so many hairdressers and chefs? Australia should be a lot choosier but as it is there are people who take advantage of the system. [Assessor]*

*Again, this is where you find the unscrupulous, unregistered agents working in those areas where 90 per cent of their applications may be cooks or hairdressers or high risk occupations. [Department]*

*When you look at Iran, every female in Iran does a hairdressing course as part of their high school curriculum. Yes, that's right. So any female in Iran who wants to migrate with the family, "Look, I am a hairdresser. There's my diploma, there is my high school certificate. I've been working at such and such a place." When [our inspectors] go there, very seldom do they find them on site. Go to the salon, "No, she's gone away, she's sick." Never present. Very seldom present. [Department]*

A stakeholder from DEEWR defended the MODL list from criticism:

*I mean, if you look at the skilled occupation list, it includes a couple hundred occupations. 170 or something of them – maybe more – that have 60 point occupations. Cooks and hairdressers are just two of those. There's another 170-odd, 180/200-odd occupations on the same list that require the exact same assessment process, require the same training – and yield the same points for migration. So you can't tell me that there's any favouritism by the government at all. That's just not the case. [Department]*

### State-based Vocational Training

Of course, if you don't already have your qualification as a hairdresser or a chef, it is possible to come to Australia to get it. According to stakeholders and media reports, this provision has been regularly exploited by unscrupulous education providers who operate vocational training schools. Because these vocational courses often last less than six months, the students enrolling in them are euphemistically called 'package holiday' visa applicants.

*Your 'package holiday' visa applicants tend to be in New South Wales and Victoria. The Victorian Government was very big on becoming the international student hub and they allowed the VRQA, the registration qualifications mob, to just register anyone who came up with any kind of score. There was no quality assurance done. Often the schools didn't have kitchens, yet they were meant to be teaching cookery. So that's allowed this industry to thrive in those States for these unreputable or less reputable agents to – I mean, they are making a lot of money. It's poor registration. [Department]*

*They are recruited offshore. You know, people advertise, "If you come to Australia and learn how to cook, and become a permanent resident," so it's packaged. They apply through the offshore post. Most overseas students, particularly in your capitalist type countries, they all have degrees because that's where the education finishes. So because they already have a degree, they apply to come here to do a graduate diploma or whatever and predominantly they are accounting type subjects that they apply through. And as soon as they land onshore they never take up that course and they are diverted into these other colleges in the VETAB sector and they do cookery. It's India, China, Korea, Thailand. Mostly Asia pretty much have got the run of it. [Department]*

### Tertiary Education

Tertiary education has historically been a pathway of migration to Australia and its popularity continues unabated. According to some university-based stakeholders, the tertiary education sector has exploited in-bound fee-paying students to shore up funding. Unfortunately, according to some English language assessors, in their enthusiasm for new students, they have sacrificed the English language standards of our universities. As a result, several stakeholders said that new graduates, even after several years in Australia, are unemployable given their poor spoken English. The student is not well-served and Australia's reputation suffers as well, they said.

*Yeah, certainly [education agents are involved]. Without a doubt, because undertaking tertiary education in Australia is a way to get permanent residency here. [Advocate]*

*It all comes down to money [lack of funding for Australian universities]. The reputation and quality of Australian education is coming down. [Assessor]*

*It's a question of money. The unis will flex the English standard if they need to to keep the funding. [Assessor]*

*The pressure is on for these [educational] institutions to recruit students. The institutions want to see results. We often hear of cases offshore where agents would say "Oh, that university's up [on student numbers] and that one's down. We better try and put some in here. I believe it is a conflict of interest because they're not necessarily placing the students in the most appropriate institution for them. [Educator]*

## 5.0

### The transfer of responsibility for the MARA from the MIA to DIAC presents both opportunities and threats for the migration advice community

The transfer of responsibility for the MARA from the MIA to DIAC presents the migration advice community with numerous opportunities; opportunities to remove conflicts from the complaints process, to re-regulate the profession, to reinvest in the community sector, to reinvent the MIA and to relaunch the profession through sustained communication. The real opportunity is to spread the work of reform amongst those responsible for carrying it out.

The threat is that DIAC will fail to engage with other key players in the migration advice community to bring rogue elements offshore and illegal and unregistered operators onshore to heel.

#### 5.1

#### While many stakeholders accept and even support the transfer of the MARA from the MIA to DIAC, a majority believe an independent complaints body must be formed to avoid simply replacing 'one conflicted entity with another'

On balance, stakeholders supported the recommendation of the 2008 Review to return the MARA to DIAC stewardship (with a few exceptions). However, many people felt that a complaints handling body independent of both DIAC and the MIA needs to be established in order to restore trust and credibility to the regulation of the profession. In the eyes of many, not to do so would simply 'replace one conflicted entity with another.'

The perceived conflict of interest faced by the MARA under MIA contributed to deeply-held cynicism about the effectiveness of migration advice regulation. There is a danger that by simply passing the conflict from the MIA to DIAC, an opportunity to rehabilitate the reputation of the profession and the regulator will be lost. Ultimately, stakeholders said, it is about reinstating trust in the system.

*We do thorough investigations and we send it through to our agent liaison section who then send it through to the MARA and in my opinion and a lot of people's opinion nothing happens because these agents are still working. [Department]*

*Yes, absolutely. There should be a complaints body outside of the Department. [Parliamentarian]*

*There is an implied sense of looking after your own when you have to complain about the Department to the Department. [Parliamentarian]*

*I would certainly want to have a complaints mechanism to regulate and to monitor what is happening external to the agency or its mother body. I don't know whether it's an ombudsman responsibility, whether in fact the complaints should be directed to the ombudsman but the complaints mechanism can't go to DIAC if it is the body that is overseeing MARA in a formal way. I mean, that's contrary to any complaints mechanism anyway. [Community]*

*I do think that one of the problems is the conflict of interest in the structure, the regulatory structure. There's an inherent question on the integrity of that structure and that's something that the review of self-regulation was looking at and now the Minister is proposing to – that the functions of the MARA will fall within the Department of Immigration's powers. I think that's hugely concerning because it's replacing one conflict of interest with another. It's not addressing the conflict of interest issue; it's just replacing one conflicted entity with another. Until they sort out that structure, then the problems within the profession are not going to be adequately dealt with. [Community]*

*I think it's a disaster. I don't think the Government should be taking over the MARA. If their reason was a conflict of interest for the MIA to do it, why isn't it a conflict of interest with the Department of Immigration? I think the Department of Immigration could do, say, just registration and maybe monitoring of CPD, but as far as complaints go, it should go somewhere separate. It shouldn't be nestled within the Department of Immigration. If they don't want to set up a whole new statutory agency, they should go to a separate statutory agency to deal with complaints. [Educator]*

*DIAC itself has increased the bad rep of RMAs and now its role is to crack down on them. DIAC has a real conflict of interest and plenty of history of politicisation in that area. If the government feels it has to crack down, like MIA/MARA did, there could be huge problems. [Educator]*

*The process can only be effective if people know they've been given wrong advice, that if they know that they can complain; if they know how they can complain; that there's evidence that their complaint will be treated seriously; that there's evidence that their complaint will be treated fairly; that there is an official time frame; that there's no suggestion within the industry in any shape or form that the process is in any way tainted by the profession itself in terms of how the profession manages the complaint process.* [Assessor]

Some say that migrants will never complain; in many countries, complaining goes against cultural norms. Others believe that how we handle complaints in this country sends important signals about our culture.

*Clients in the humanitarian area tell you about their dislike of a service by never coming back. They don't complain necessarily unless they're complaining to us because they're complaining to their own people because we'll have a worker that's of their own ethnicity, religion, they become close friends, they're part of the community. They'll complain to the community leader, they'll complain to their own people. They won't go back and complain to the migration agent.* [Community]

*Particularly where there are large cultural differences, students are too frightened to complain. They feel it would be detrimental to the process. So I don't think the complaints process is widely known among students and even if they knew it, they would be reluctant to speak up. Yet other institutions do hear complaints about students. We tell them they should take it up with their agent, but very often they're not prepared to do that.* [Educator]

Some legally-trained stakeholders said that they believe there is a widely-held perception that MARA regulation can be easily challenged at the Administrative Appeals Tribunal and so offenders operate with impunity.

*The schedule that I have, we have lodged complaints and for the most part the response from MARA has been "there's nothing we can do. We're satisfied that the agent has not breached the Code of Conduct." Or on occasion that the agent has been disciplined and, in fact, has been de-registered. Therefore it is no longer within MARA's remit. It appears to me – and that's the huge gap, in my view, speaking personally.* [Court]

*So in the end they will lodge an appeal and the client will be advised to keep the appeal out as long as possible; they will continue advising people; eventually get up there and go before an AAT member who never dealt with any of these sort of cases before. "Oh, this poor person is going to lose his livelihood for one/two little mistakes. Give him a bit of a warning, a tap on the shoulder and put him back in the business."* [Parliamentarian]

Some said that MARA's lack of transparency about its processes and its reasons for 'no further action' and its reluctance to 'name and shame' caused stakeholders to lose faith in the regulatory regime.

*The other is the sort of disciplinary action. It may help MARA to have – and I say this without any direct criticism – but to have greater transparency about where disciplinary action is taken on any of its members for interested stakeholders, such as the court and others, the court's administration, to be kept up to date about that because it's an important part of the integrity and reputation, that we know something has happened.* [Court]

*And they will get into trouble and struck off and things like that but I couldn't say the last time I've heard of an onshore migration agent getting struck off. I know that the Department has put forward quite a few allegations and complaints after bringing their own investigations and it seems – the answer that we always get is that it's too difficult to do something about it.* [Department]

*My predecessor tried to get some concerns aired in the MIA newsletter but they never appeared, despite the fact that we are exhorted to contribute to that newsletter.* [Assessor]

## 5.2

### Stakeholders felt that the regulator should adopt some features of the regulatory regimes of other professions

Practice audits, particularly surprise audits, were suggested by numerous stakeholders. The present system whereby agents are given advance notice of inspection is seen as ineffectual.

There is strong stakeholder interest in using the occasion of the transfer of responsibility for the MARA to send a strong signal to the agent community, and the public, that unscrupulous or substandard practice will no longer be tolerated.

*Where I work, because it's a government Department, and also because we're under the legal profession, yeah we have surprise audits and they'll just say, "I want three files", and they just take our three files, or they've got a list and they've marked down the files they want, and you can't say, "Oh no, don't have that one, I'd rather you have this one". You can't do it. You have to give them what they ask for. [Advocate]*

*Is there some sort of annual review of agents? Once they get professional training, it's ongoing. They have to do that. But I don't know whether they get audited or they have to get reaccredited, what, every two years? Every two years or so and they should be able to – the department should be able to – MARA should be able to go into their office and do a random financial audit "why have you charged this particular client \$5,000?", and they have to justify spot-checks without warning. [Parliamentarian]*

*It is good to weed out those unethical, unscrupulous agents; it is good to be unrelenting and quite vigorous about that. But then there's the other idea that you could do random audits of migration agent offices. I don't think that's appropriate. Why should you be able to do that? Why should you be able to just turn up on somebody's doorstep and say, "I am from professional standards of MARA, we want to have a look at your office". Yes, it's appropriate for anybody to be given written notice, a suitable amount of time. There's no understanding what it's like, the pressures running around this, and not all agents are bad agents. Who would put up with that in any other profession? [Educator]*

## 5.3

### Some stakeholders believe that any new qualification standards need to be applied retrospectively, if the profession is to draw a line under its past and restore confidence in the competency of Registered Migration Agents

One stakeholder raised the precedent of the recent re-regulation of financial planners. In 2005, with more generous superannuation policies on the horizon, the government (through ASIC) felt that only by requiring all existing Certified Financial Planners to attend a short course and pass an exam, could they be certain that the industry was ready to advise Australians on these important investments.

This stakeholder was not alone in wishing for some decisive action to deal with not just new entrants but also existing practitioners. According to them, competent advisors would have no difficulty meeting the new standards. Those who struggle would be given the option to retrain or to exit the industry.

*I just think action needs to be taken on agents that we know are not particularly good that continue to operate year after year after year. You know, put hundreds of frivolous protection visa applications, costing the taxpayer millions and millions and millions of dollars and we know for a fact they are still operating with apparently no sanction. But that is entirely my personal view and without any sort of merit but it's just from an appearance point of view. So there's a real interest there to ensure that they weed out operators who are spoiling it for the rest. [Department]*

*The bottom line is ASIC didn't grandfather most [financial advisors] in [when it re-regulated that industry]. There was some grandfathering, there had to be some concessions, but particularly for those industries where the standards were fairly low – for example, insurance brokers and so on – ASIC didn't grant grandfathering. They had to go off and do courses and that met with enormous resistance and lobbying of government. But the bottom line is, as a matter of policy, there was no grandfathering because the standards were so low. So as a matter of policy, whilst this is the minimum requirement and you either have it or you don't, and you need to demonstrate through our satisfaction on knowledge, skills and experience that you have it. [Court]*

## 5.4

**There is a strong interest among DIAC officials to use data to enhance regulation**

Modern public administration thrives on data. One of the unique opportunities presented by the transfer of the MARA to DIAC is that DIAC the department will now potentially be able to share information relatively seamlessly with DIAC the regulator. The new generation of tech-savvy DIAC officials recognise the potential of using data to enhance the regulation of the migration advice profession and to increase the accountability of agents.

Some managers described in detail the amount of data the Department holds on each Registered Migration Agent. Theoretically, DIAC officials can easily find out how many 'decision-ready' applications have been filed, how many have succeeded, how many were refused for lack of merit or because they failed to satisfy the strict liability of some provisions.

*I would like to see agents become more accountable. But they can only become more accountable with quantitative data and I guess through that quantitative data we can make a qualitative assessment as well. But actually start with some quantitative data; the number of applications, number of approvals, a number of cancellations and basically be able at any stage to pull up an agent and actually see their immigration record and see their immigration history. Now, I haven't given this a lot of thought but I would say it would have to be the responsibility of somewhere within DIAC because a lot of the information would have to come from DIAC sources and DIAC systems which certainly wouldn't be available to people outside of DIAC. [Department]*

*Probably what needs to happen is strengthen up migration agents and their accountability for – one, the advice they provide and two, the results of their advice. Use a lot more individual auditing and monitoring. They need to be individually monitored – statistically – so we can see what types of visa they are involved in and the proportions of applications that have been successful. Then you could get a picture of the quality of the agents, in a way. Then in two years' time we could see how many visas have been cancelled which that agent applied for. [Department]*

Since the mid 1990s, public sector managers everywhere have been looking at how they can use incentives and disincentives to change behaviour; after all, inspection, enforcement and prosecution are all expensive and time consuming. In the migration advice profession, there are some promising applications for data generated incentives and disincentives.

At present, DIAC is trialling an incentive system overseas for the lodgement of student visas electronically. The idea is to recruit a cohort of trusted agents who agree to a form of regulation and inspection in return for access to the e-visa portal. Reportedly, the results of the trial have been positive to date. If successful, the model could be applied to all visa applications lodged by overseas agents.

*In the student visa world we have an e-visa system and a paper visa system and I know for a fact that the rate of fraud that's identifying in the caseload is lower in the e-visa system than in the paper system because you'd have to get vetted before you get access to use the e-visa system and if you get identified being a problematic person using the e-visa system your access is denied – because there's a quid pro quo there – you know you're going to get faster service by using an electronic visa system, if you maintain your access by reducing the level of fraud in your representation. [Department]*

Although it could be that data can be used to help monitor the performance of agents to advise them where additional training may be needed based on assessment of their recent record of performance.

*I think that continuing professional development needs need to be identified through software. I think you need to work with them and I think from the statistical analysis and things we can pick up whether an agent is continuously not succeeding and then basically they can be targeted and maybe say, "Look, we understand your approval rate for applications that you represent has hit whatever number, 60 per cent. We would like you to undertake more professional development in relation to this." Just off the top of my head. Then get them back to some sort of training. So if the big stick has to come out at a later time, which is de-registration, then attempts have been made by DIAC to re-skill, retrain, alert the agent that "we are keeping an eye on what is going on in your case load. And with the clients that you represent". [Department]*

While a number of DIAC officials brought up a 'gold card program' for agents who regularly lodge 'decision ready' applications or who have a high strike rate, there are also some complications with using data to reward good behaviour. First of all, an unintended consequence would be to put a chill on agents filing applications that may risk not being approved; indeed, it is some of these borderline cases that most benefit from an agent's advice. Secondly, if agents used their gold card status to promote themselves, they could incorrectly suggest that they were in some way 'better' than their colleagues. Historically, professions have prohibited comparative advertising in order to preserve the reputation of the single qualifying standard or licence.

Onshore data might be more effectively used to create disincentives. If agents were aware that the DIAC 'Integrity Unit' was collecting information on them, they might be less likely to cut corners or turn a blind eye to suspicious documentation.

*No. Well, I think that the – one of the parts of the Code of Conduct for migration agents is about not lodging vexatious applications and one way that we could determine that is by looking at the rate of refusal and that would simply be doing – that would simply be a matter of generating a report that would show all applications lodged by that person because we keep a record of all the lodgments, against all the number of cases that were finalised unfavourably and then just join the ratio out of it. [Department]*

*The Department knows who some of the dodgy players are, in terms of who's overseas. Doesn't matter whether it's the Department acting with MARA as it currently is, or the proposal that the Department takes over, it doesn't matter. There needs to be some interface between the regulating agency and the Department, in terms of receiving various documents. [Advocate]*

## 5.5

### Stakeholders strongly believe that enhanced transparency or stronger regulation of fees is essential to restoring trust in RMAs

As noted earlier, the area of fees was one of most acute concern among stakeholders. While a number of different suggestions were made about how the problem of fees can be brought under control, stakeholders were in agreement on two points: 1) the current average fees published on the MARA website are not sufficient to protect consumers; and 2) an alternative arrangement must be put in place.

*I think the charging is too loose. They really have the ability to charge whatever they think is reasonable and whatever clients are willing to pay. [Department]*

Some stakeholders entertained the idea of a regulated schedule of fees. However, it was also noted any schedule would also need to include a description of expected service levels for various fees. Others thought that a cap on what can be charged to lodge a particular class of visa might be the answer but others criticised it as a formula to drive all fees higher.

*Well, yeah, that's a thorny issue, that one. I think they have come close to getting a scale of fees by getting an average fee charge for specific visa subclasses on the MARA website, but I don't think it's an accurate reflection. I think people lie when they give that information, when they apply for re-registration, because they don't want to be seen as over-charging. I think that there should be some regulation around it, even though we live in a free market. But it's got to be realistic, taking into account the costs that are involved in running a business, because it is costly. [Educator]*

*I would like to know why some migration agents are charging more than others. So there needs to be regulation of fees. For very vulnerable migrant groups, more provision at community based migration agents at a set fee. [Parliamentarian]*

*It's probably making clearer to people what migration agents are obliged to do so that people have more of an understanding that, "Hang on a second, I shouldn't have been charged this much money." Yeah, what they're actually meant to have been doing for the client or not doing. [Department]*

*Cap it. Because I think I've seen on the website there is what you can expect to be charged from a migration agent and I've seen proof that they're not charging fees that low. [Department]*

Again, others felt that the legal profession has a good model to follow; agents should be required to provide a detailed estimate of fees prior to appointment.<sup>6</sup> Others suggested that full disclosure to DIAC of all fees paid might be an answer; they recalled a past practice where each application was accompanied by a sealed envelope containing a statement of fees charged.

Still others felt an independent complaints body with the power to review fees would be the best way to reign in exorbitant fees.

*I would like to know why are some migration agents charging more than others. So there needs to be regulation of fees. For very vulnerable migrant groups, more provision at community-based migration agents at a set fee. [Parliamentarian]*

*The big difference between lawyers and RMAs is the fees. Lawyers have regulatory review of fees but that doesn't apply to RMAs. [Community]*

## 5.6

### Stakeholders believe that exploitation has flourished because the community sector has not been sufficiently resourced to serve vulnerable applicants

Several advocates said that visa applicants are sent into the arms of unscrupulous operators because of an acute shortage of RMAs and immigration lawyers in the government-funded non-commercial sector. Many managers of migrant resource centres and community legal clinics reported that while their case loads were increasing, their funding had remained stagnant over a period of years meaning they are unable to meet the need. As a result, low income refugees and migrants are seeking help from fee-charging agents they can ill afford.

In addition, the stubborn refusal of funders to recognise the full spectrum of services provided through the sector mean that many MRCs and legal clinics have had to reduce the services they are able to offer clients.

*The Department of Immigration had itself recognised the fact that there was unscrupulous behaviour happening out there and in fact allowed free migration advice from Registered Migration Agents, and we have three of those in our organisation, through its settlement grants program. And what has happened in the last year of course is that's stopped that. Although we have three migration agents, we haven't been resourced enough to be able to carry on that job. [Community]*

*There have been countless senate reports that have said that the non-profit sector needs to be properly funded and it's not. If you are speaking to the Refugee, Immigration and Legal Centre in Victoria, the Refugee, Immigration and Legal Centre in Queensland, they will all tell you the same thing. Over the years our work has grown and our funding has stayed the same. So access to sound advice is difficult and at times impossible for people to get within the timeframe that they need it. [Community]*

*But there's an acute, unmet legal need. Acute. We estimate at the moment it's been persistent for many years, but roughly one in six people are able, who are what we call disadvantaged; that is, amongst other things, suffer from financial hardship and other factors, non-English speaking background, et cetera, but disadvantaged. One in six can access adequate assistance. [Community]*

*We need more community-based RMAs by a factor of 2-3. Migration needs to be taken more seriously, holistically and humanely and migration agents need to work with the whole migration and settlement system to support migrants appropriately. [Community]*

*Migration advice is usually to very vulnerable people and I personally have problems with it being offered for profit. An MRC, for example, wouldn't string anyone along. They have no reason for exploitation, for profit. If the rumours are true and there is exploitation of vulnerable people, then the solution would be to put it back in the hands of organisations that are competent, that are a point of entry for*

<sup>6</sup> Apparently these stakeholders are not aware of the requirement in the Code of Conduct for all RMAs to provide a detailed estimate of fees before beginning work on an application.

*migrants and which have no reason to look to the whole area for anything other than providing aid. [Community]*

A further argument for additional government funding is that the Community sector is often left to 'clean up the mess' left by commercial RMAs operating outside of their area of expertise.

*We often see clients who have gone to private migration agents. Our services are 100% pro bono. So people come to us either if their case was poorly prepared [by the private sector RMA] or they've just run out of money. So we may not come into contact with many private sector migration agents, but we do come into contact with the work done by a lot of migration agents. [Community]*

## 5.7

**There is a widely held view that the MIA operates as a trade association rather than a professional representative body and needs to attract a wider membership if it is going to effectively speak for the profession or work productively with government**

A healthy professional association is vital for any profession. Unfortunately, the MIA lacks credibility because it is seen as more of a trade association, dominated by commercial interests, than as a representative professional body. With just fifty percent of all RMAs as members, it has little claim to representing the entire profession. This, in turn, hobbles its ability to act as an effective advocate with government.

*Well, you see, I don't know how – you know, in the end it seemed to me you needed to have people who were from the reputable end, who were determined to clean up their own industry. If you get a few people from the non-reputable end who get onto the committees and start to determine the policies, you have got a problem. [Parliamentarian]*

*A lot of people don't want to be members of the MIA. I have benefits of membership, in terms that I get updates about the law which is very useful, but that's about all I use. I don't go to their seminars or functions. I find them to be not of relevance to me because I practise in a particular area, which most agents don't, refugee/humanitarian. So we tend to talk to each other, ourselves, but the MIA forums never meet our needs and are often taken up by others more interested in the commercial side.*

*And I just don't find they represent agents like me who are non-fee charging; I find they are doing more for those who are doing commercial work. It's not been a great benefit. [Educator]*

*I think the MIA is about commercial migration agents dealing in largely commercial legal aspects, and I think that it doesn't focus a lot of the time in the sort of law that I practice in in the immigration field, especially the refugee law. [Advocate]*

Some stakeholders see an opportunity to reinvent the MIA once it is free of its regulatory role. Some professions require membership in the professional association (or institute) as a condition of licensure and requiring every RMA to be a member of the MIA might be beneficial for the migration advice profession. The rationale is to make the association responsible for mediating the competing interests within the profession and to give it credibility in negotiations with government. The other rationale is to provide the MIA the financial stability it would need to take on additional responsibilities.

*Maybe with the MARA going off somewhere else, that gives the MIA an opportunity to become something that it is yet to become. A more potent lobbying force. I think that there's always got to be an ability to lobby effectively on behalf of the profession and I can suggest to you that over the 50 people you meet, ask them how effective have the MIA been as a lobbyist on behalf of its members? And I think most people would say "a little disappointing". I don't know that the Department ever took it that seriously. I don't know why. Did they feel that the MARA thing meant it was difficult for the MIA to complain? [Educator]*

## 5.8

**Stakeholders perceive that the MARA hasn't been effective at communicating about the profession or its role, leaving consumers uninformed and unprotected**

The migration advice profession is a small profession with a big image problem. Only through sustained communication will it be able to reconnect with its key stakeholders and rehabilitate its image.

*Migration agents are a defamed industry. They have a very bad name. I wouldn't like to be an agent, I'd be seen as a shifty guy. In part this is because of the past, when the industry was even less regulated than it is now, when every Tom, Dick and Harry could become an agent. It's also because some migration agents are actually providing bad advice and members of the public have been hit with this bad advice. Plus some people have been over-charged by them, or exorbitantly charged by them. Finally, their advice is self-serving. Some see people as potential clients and advise them, whether the person needs it or not and whether it falls within their area of expertise. [Media]*

*It's sad that the perceptions of migration agents have not improved at all over the last 10-20 years, despite the strides made. It's the way of the world – journos don't care or know about the distinction between registered and unregistered agents and so there's been a reasonably consistent negative portrayal of migration agents in the system. It's also rare to have a story about migration agents. It tends to be about migrants themselves. [Parliamentarian]*

Stakeholders perceive that the MARA under the management of the MIA hasn't been particularly effective at communicating the professional qualifications, training, CPD and ethical requirements of RMAs. Key information connectors, like journalists and Parliamentarians, are an important but neglected audience.

*One of the issues is a lack of understanding of the difference between information and advice [across a range of stakeholders]. There is a lack of awareness of the existence of migration agents and their role. The profession could raise its profile more. But it also needs to crack down on offshore agents and exploitation. [Parliamentarian]*

*The public wouldn't know. So, I guess I should. [Media]*

Many stakeholders were not aware of the size of the industry, the training and education required of RMAs, the complaints procedure or even the distinction between registered and unregistered agents. The practical impact of this is that stakeholders are not referring migrants to the most appropriate advice provider.

*The University holds up to six sessions each year for foreign students, providing information about Permanent Residency. These are presented by an immigration lawyer and DIAC officials. Students come with their friends and partners and the sessions are always at full capacity. But we are not aware of what MIA and MARA are doing. For example, maybe they should give us flyers to hand out at the sessions which refer students to registered agents and explain the registered/unregistered distinction? [Educator]*

*Also there needs to be more information provided, through MARA. MARA has to be part of the network; at least communicating with the key stakeholders. We haven't heard from you for a long time and we would like to hear from you. Why should we go into the thing and look up the website – you can be in touch with us a little bit more, you know, proactive. They need to be more proactive. They get some amount of funding, I know, and so they are accountable as well, at the end of the day. Isn't it? [Community]*

The failure to engage effectively with stakeholders has meant that some migrants turn to 'coffee shop advice.' In many ways, it is more informative than the Yellow Pages or the MARA or DIAC websites.

Misinformation flourishes in the absence of correct information, according to some participants. More needs to be done to educate key stakeholders or the same outdated perceptions of migration agents will continue. According to them, there is a case for greater liaison with community representatives who may be providing de facto migration advice/assistance with the best of intentions but with the wrong information.

*What my anecdotal evidence would tell me is that the leadership within emerging communities, and the powers that be within those emerging communities probably need to have a much stronger education done. As much as you will say, "You're not a migration agent, don't provide advice", you probably have to supply them with some information because their communities are putting huge amounts of pressure back on to them. As leaders they need to be seen to be saying something. [Community]*

# Appendix A – The Role of MP Electorate Assistants

## Using this Appendix

As noted in Section 2, a quantitative survey of MP electorate assistants was undertaken to complement the qualitative discussions with MPs, Senators and their advisors. This appendix combines findings from both the quantitative survey and the qualitative discussions. In general, the quantitative findings are discussed first and are followed by the qualitative comments to add depth and meaning to the results. Please note that the quantitative survey was conducted with the MP's electorate assistant with the greatest responsibility for migration matters. While almost two-thirds of all offices participated, the sample is too small for detailed analysis; instead it should be used to gauge the general direction of opinion within this knowledgeable and influential group.

### A.1

#### Parliamentarians believe individuals should be able to access Australia's immigration system on their own but most still believe everyone can benefit from professional advice

Part of having an open and free society is providing unfettered access to immigration. As noted in Section 3, there is a strong belief that individuals wishing to make their home in this country should be able to navigate the system without advice. However, that is not to say that prospective migrants and their landed family members don't require information about Australia's immigration system and assistance in negotiating it. For this reason, Parliamentarians, including Members of the House of Representatives, Senators and their advisors, say they are willing to help.

94% of MP electoral assistants said that they are asked to provide assistance; 80% said that they do provide help when asked.

Qualitatively, most said that they were willing to assist where they could with referrals or letters of support. A few Parliamentarians said that they were reluctant to assist, either because 'there are no votes in it' or because they fear censure if they provide a reference for a prospective migrant who later proves ineligible or worse yet, criminal. The degree of assistance often depends on the extent to which they know the individual or their family. Some said that they limited their help to those who live within the boundaries of their electorate for no other reason than they will receive a more favourable hearing from DIAC if they have to refer them on.

*We will pursue some sort of action – review the case, write a letter of support, write a letter seeking clarification – for everyone who comes into this office. We're here regardless of what the issue is.*  
[Parliamentarian]

*I will speak to them. I will contact the Department and sort it out. I will make representations for them but I prefer that they live within the electorate I represent. If not, I will refer them on to their member. They will get a better hearing at DIAC.*  
[Parliamentarian]

Fig A.1a Percentage asked to assist

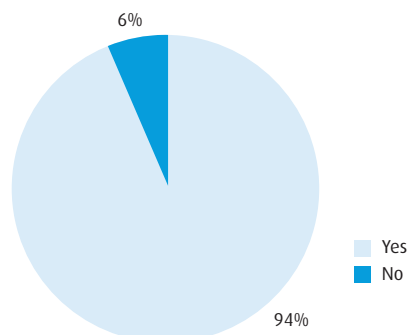
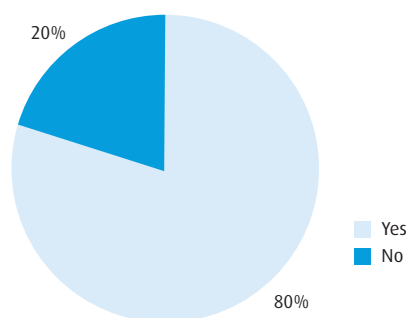
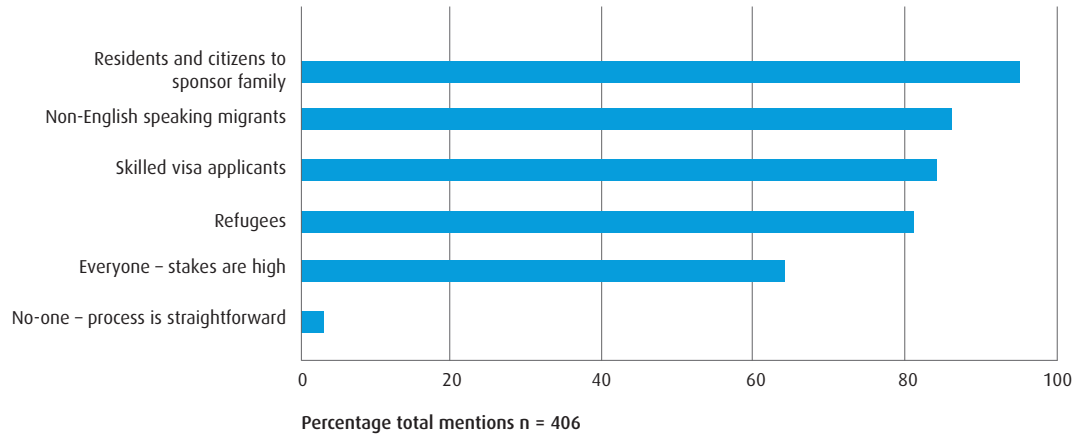


Fig A.1b Percentage prepared to provide assistance



**Fig A.1c Who requires MP assistance?**



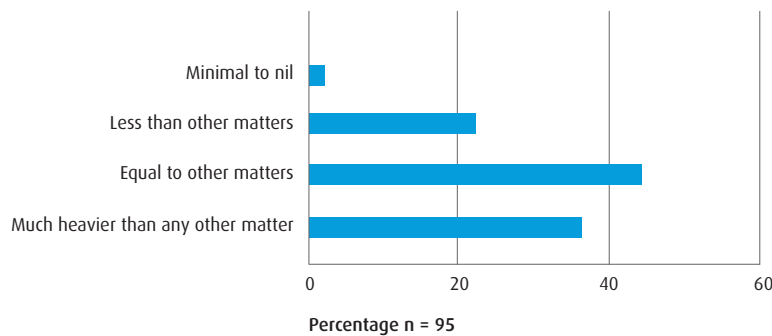
DIAC officials report that they do have a parliamentary liaison office which MPs can call to learn about the status of an application. While an MP enquiry may be able to speed up a decision, it is unlikely to affect the outcome.

*Most MP representations we get are when someone's son lives down the road from someone else who's really high up. They've got a contact so they phone the MP and the MP goes to us, "Why don't you follow this up," and we follow them up. We look at it as a priority. I think most of their representation is, "Let me see what strings I can pull as a Minister or an MP." And again, if we think that it's a dodgy application or that there are issues with it, we will say, "Yes, we will look at it and we will make a decision and if we need to say no to that visa applicant then we will." Really all the MPs do is get us sometimes to look at things a little bit quicker than without them. [Department]*

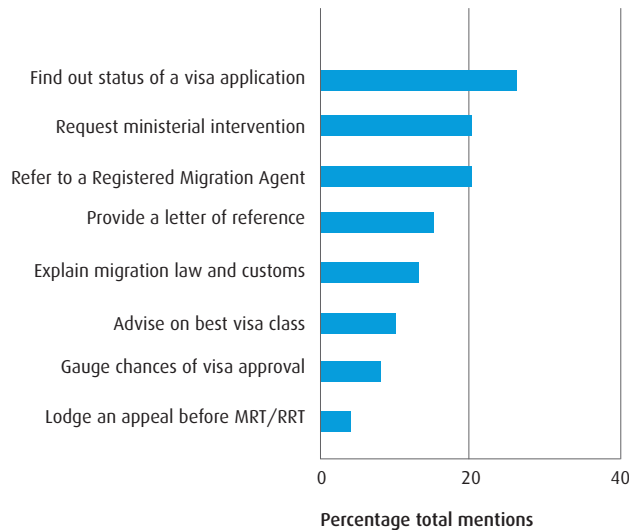
Although Parliamentarians as a group believe that Australia's immigration system should be simple enough for individuals to lodge their own applications, a large majority of respondents to the quantitative survey said that most classes of visa applicants do require assistance. Tellingly, more than 60% recommended that everyone seek advice on migration matters 'because the stakes are so high.' The fact that they believe applicants for family unification visas require the most help may either reflect their sense that this class of visa is the most difficult to secure or because it is the most common visa they are asked to assist with.

Either because MPs are so willing to assist or because assistance is so sorely needed, many electorate assistants report that their migration workload is either equal to or greater than other policy areas they deal with. As a result, this group had a particularly close vantage point from which to view migration agents, their clients and the outcome of their advice.

**Fig A.1d Migration workload**



**Fig A.1e Sort of assistance required**



The most frequent form of assistance sought from MPs' offices is to find out the status of a visa application. As noted in Section 2 this could be due to poor communication between the clients and their migration agents. However, it could also simply be that applicants believe that posing the question might hasten the approval process; others may simply be desperate for an answer.

The second most frequent request is for assistance with ministerial intervention. It might be argued that this is the most appropriate form of assistance from a Member of Parliament, since the member, particularly a member of the governing party, may have direct access to the Minister to make a petition. Some more experienced Parliamentarians said that they felt that they were of most use either at the beginning of the process to refer someone along to a Registered Migration Agent, or at the end of the process when an applicant is seeking ministerial intervention. Indeed the steps in between often require migration advice and that is best administered by an RMA or an immigration lawyer. Some Parliamentarians rightly refuse to become involved where an agent or lawyer has already been appointed.

*We decline to get involved where there is an existing stream of advice unless there is something patently obviously wrong. [Parliamentarian]*

Some parliamentarians complain that desperate applicants land on their door. Some are dumped on MPs by agents wishing to pass the buck; others are victims of incompetent or unscrupulous agents. Unfortunately, at this stage, there is little the MP can do; they often lack sufficient knowledge to lodge a complaint against the agent at the MARA.

*Once the agent thinks that he's taken them as far as he can, he sort of says, "Sorry, can't help you any more. Go and see a Federal MP". And then it's a case of knowing they are going to be knocked back, "Oh, well, obviously your MP didn't work hard enough. They could have got you over the line". [Parliamentarian]*

*The biggest bugbear is that we do get a lot of people coming in for assistance but only after they have been through the initial stages. They have already been refused by the Department. In some cases they have already gone through some of the appeals process and, again, have been knocked back through the tribunals. In some cases they have already been to the Minister's office. You learn that they have paid thousands of dollars to immigration agents. [Parliamentarian]*

*I think also that most probably Members of Parliament – and staff – we have got a lot to answer for as well because we could refer a lot of these onto the authorities for an investigation. And I think MPs aren't fully aware of this avenue. But in saying that, in the ten years and four months that I have been a Member of Parliament, I think we have only referred one to the authorities, to MARA. Because you do find with the constituents that are coming into the office, they tend to be a bit frightened of that authority. And so they are not that forthcoming with the information. So we are reluctant to pass it on to them because we, ourselves have insufficient information.*  
[Parliamentarian]

However, some are concerned about the quality of assistance provided through other MPs' offices, even with the benefit of DIAC's parliamentary liaison office to assist.

*I worry about a lay stream of advice, albeit supported by a parliamentary liaison office in DIAC.*  
[Parliamentarian]

While some MP assistants said that they refer prospective applicants to migration agents or immigration lawyers, others said that either they don't know sufficient information about migration agents and their role or they believe they should simply provide the assistance themselves.

*One of the issues is a lack of understanding of the difference between information and advice [across a range of stakeholders]. There is a lack of awareness of the existence of migration agents and their role.*  
[Parliamentarian]

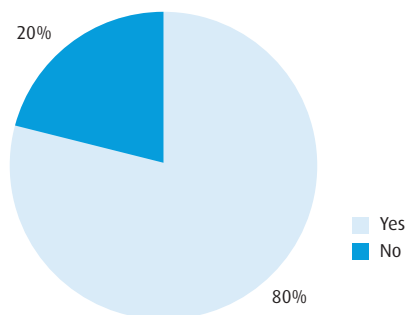
*No, we never, ever refer. I don't believe that a member of parliament should refer anyone to – whether it's a solicitor, barrister or even a migration agent. Look, the people who walk through our front door are the ones who have got a gripe or the ones that are not happy with what they are hearing from various Departments; or they are walking through that door for guidance. They go in and they go into the Department, the Department is quite good and they give them the forms. But there's no guidance to them. Some people, their English might be good but they are not very good at writing it. I don't think enough information is actually given to migrants, whether it's on the website or whether it's at that desk. What is needed is: "If you need any assistance for filling out this form, these are the places that you can go to".*  
[Parliamentarian]

## A.2

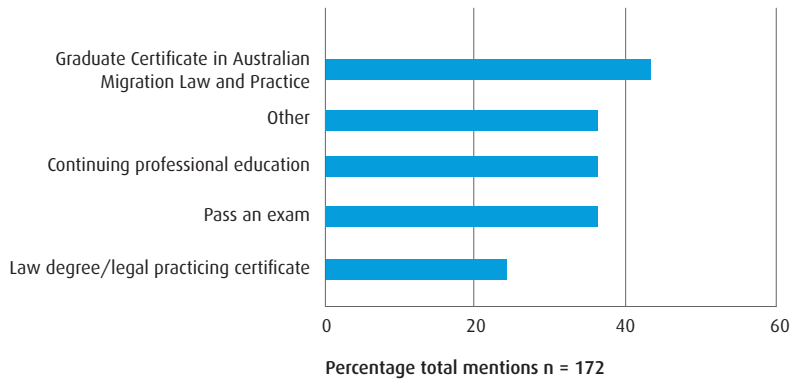
### While MP electorate assistants often feel that they are prepared to assist, awareness of RMAs and the MARA is low among this important stakeholder group

Eight out of ten electorate assistants believe that they have all the information that they require in order to assist applicants.

**Fig A.2a Feel prepared to assist**



**Fig A.2b Knowledge of RMA qualifications**

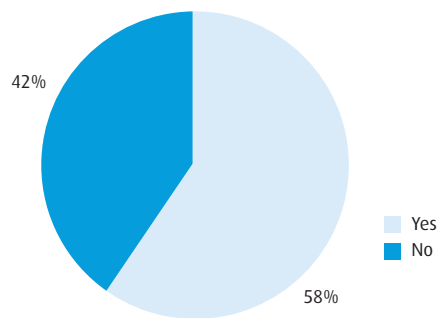


There was little awareness of the qualifications required to become a Registered Migration Agent and so there could be little appreciation for the quality of advice they can offer.

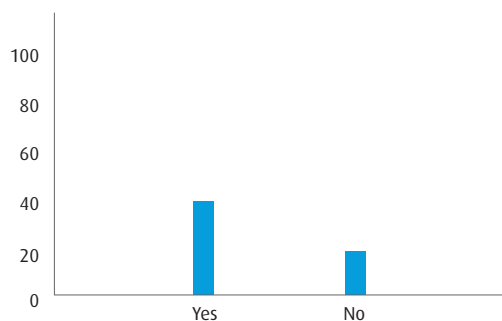
However, nearly six in ten said they would like additional training in migration matters if it were available.

Interestingly, the more respondents knew about the profession's Code of Conduct, the more interested they were in training. It appears to simply be a case of those who do know what they don't know are more receptive to additional training to help them in this area of their work.

**Fig A.2c Percentage would like training**



**Fig A.2d Would like training by awareness of Code of Conduct**











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