



Migration Institute  
of Australia

15 March 2013

Regulator Engagement with Small Business  
Productivity Commission  
PO Box 1428  
Canberra City ACT 2601

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Dear Sir / Madam,

Thank you for the opportunity to provide a submission to the *Regulator Engagement with Small Business* Issues Paper. Please find attached a submission from the Migration Institute of Australia (MIA).

The MIA is the peak body for migration advice professionals, representing more than 2000 Registered Migration Agents (RMAs) across Australia and overseas. More than half of MIA Members work as sole practitioners and employ no support staff, and the vast majority work for organisations with fewer than 20 employees. The MIA has a great interest in regulatory burden faced by migration agents and would appreciate the opportunity to contribute to future consultations regarding this Issues Paper.

Yours sincerely,

Maurene Horder  
Chief Executive Officer  
The Migration Institute of Australia

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## **Declaration of Interest and Historical Perspective**

The Migration Institute of Australia (MIA) formerly served in a regulatory role on behalf of the migration advice profession, and was well positioned at that time to make decisions and determinations due to its close knowledge and links with the interests of the profession. That linkage was severed in 2009.

## **Current Regulatory regime for migration agents**

From 1 July 2009, the Office of the Migration Agents Registration Authority (MARA) was given the responsibility of the regulation of migration agents under Part 3 of the *Migration Act 1958*. The MARA operates as a discrete office within the Department of Immigration and Citizenship (DIAC).

The law requires that migration agents operating in Australia be registered with the MARA. The MARA sets registration requirements for registered migration agents (RMAs) and has established a Code of Conduct that details the professional and ethical standards for RMAs.

A high proportion of migration agents operate in a structure that could be classified as a small business. According to MARA, approximately 76.5 percent of migration agents operate in a business as the only Registered Migration Agent (RMA).<sup>1</sup> According to the 2013 MIA Member Survey, more than 95 percent of MIA Members work in a practice with fewer than 10 RMAs.

The MIA submits that the MARA is hampered by an excessively prescriptive and onerous regulatory framework that does not recognise best practice internal structures of effective migration advice firms, does not reflect a deep understanding of migration advice professionals' business needs, and can adversely affect a migration agents' ability to practice. It is noted that that the MARA's current senior regulatory officers have demonstrated a commendable willingness to explore these and related issues.

Examples of some of the difficulties that the current regulatory regime places on RMAs are provided below.

### **A. High costs of registration and repeat registration**

The cost of initial registration as a RMA with the MARA is \$1760 (\$160 for non-commercial or not for profit agents). The cost of annual repeat registrations is \$1595 (\$105). These fees are much higher than fees for other professions such as Solicitors and Accountants.<sup>2</sup> The high fees of registration or repeat registration apply an onerous burden on RMAs, in addition to significant expenses that many RMAs already incur in setting up their business and education to become a RMA.

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<sup>1</sup> The Office of the Migration Agents Registration Authority (MARA) Annual Report 2010-11 at 13.

<sup>2</sup> For example, for certified practising accountants it can cost up to approximately \$640 per year to obtain a licence, and for solicitors the cost of a practising certificate can be up to approximately \$550.

In the MIA's view, these direct regulatory compliance costs can be best mitigated via a simple reduction in application fees. The MIA submits that a reduction in registration fees for RMAs would not have an adverse effect on the regulatory functions of MARA or its operations, especially as it is operating at a significant surplus.<sup>3</sup> Additionally, in 2009, the Commonwealth Government received a dividend of more than \$4.2 million that represented accumulated registration fees from RMAs.<sup>4</sup>

In addition, the MARA could significantly reduce the burden of compliance costs on RMAs by altering the repeat registration requirements. If, for instance, senior and experienced agents with no record of regulatory complaints or sanctions were not required to apply for repeat registration annually, it would simultaneously reduce their compliance cost and provide a significant incentive to maintain high standards.

The Institute operates a tiered membership scheme that provides a pathway to Associate Fellow and Fellow of the MIA (AFMIA™ and FMIA™) accreditation for Members with five years and ten years professional experience, respectively, a clean record, and a demonstration of competency, amongst other requirements.

These agents, in the MIA's view, have a proven record of providing high level migration advice, complying with best business practices, and should not require the same level of scrutiny. If no sanctions have been imposed on them, such RMAs should be exempt from significant or frequent financial regulatory burden of annual repeat registration costs (an alternative could instead to impose a renewal requirement every 3 years).

#### *Dual regulation of lawyers*

In a previous submission to the Productivity Commission,<sup>5</sup> the MIA supported the position that the regulatory requirements on lawyer agents are onerous and excessive and therefore agreed with the Law Council of Australia submission that the repeat registration requirements for lawyer agents should immediately be streamlined to reduce compliance costs. Subject to further investigation, the MIA reiterates that the following suggested changes be considered:

- Permitting lawyer agents to produce their Legal Practicing Certificate (LPC) as evidence that they have complied with many of the requirements for annual registration would reduce the requirement for lawyer agents to complete the current 37 page form;
- Reducing registration fees in recognition of the fact that streamlined registration requirements for lawyer agents would reduce costs to MARA;
- The MIA believes that the Law Council's claim that lawyer agents receive proportionately fewer complaints and sanctions requires further examination but that should this be proved, lawyer agents

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<sup>3</sup> *Ibid* at 60.

<sup>4</sup> MARA Annual Report 2008-09 at 46.

<sup>5</sup> MIA Submission to the Productivity Commission on the Dual Regulation of Lawyer Migration Agents, 6 August 2010.

should receive a further reduction in their registration fees in recognition of the smaller proportion of MARA resources that go into handling lawyer agent-related complaints;

- The MIA believes that streamlined registration for lawyer agents would also reduce the impact of dual registration on the pro bono and legal assistance sectors;
- Further reducing the number of Continuing Professional Development (CPD) “points” that lawyer agents are required to earn would better complement their legal profession CPD scheme requirements;
- Harmonising the CPD sessions provided for lawyers and lawyer agents would help maximise the number of MARA CPD points that lawyer agents can earn in the course of satisfying their legal CPD requirements; and
- Removing the requirement for lawyer agents to operate a separate clients’ account for their migration work, as long as funds paid by migration clients are paid into a lawyer’s trust account, would further reduce imposts.

#### **B. Indirect Costs**

From 1 January 2014, all RMAs applying for repeat registration with a registration expiry date on or after 1 January 2014 will also be asked to provide evidence that they meet English language proficiency requirements or that they are exempt.<sup>6</sup> RMAs that will be exempt include those who:

- Hold a current LPC (restricted or unrestricted) issued by an Australian body authorised by law in an Australian state or territory, at the time of application;
- Were initially registered prior to 1 January 2004 and have been registered for periods totalling 10 years or more on either the date of the 2014 registration expiry, or the date of applying for repeat registration in 2014;
- Have previously demonstrated to MARA that they meet the Internal English Language Testing System (IELTS) or Test of English as a Foreign Language (TOEFL) score requirements as part of an application for registration; or
- Meet an “educational” exemption pathway.

These English language proficiency requirements are, in the MIA’s view, arduous, both in relation to the cost of sitting the test and in relation to the time and energy that has to be spent in preparing for the test. It is the position of the MIA that it should be assumed that RMAs are competent at a professional level in the English language, particularly since most of them have completed at least a Graduate Certificate in Migration Law and Practice and operate daily in a complex and detailed area of administrative law. In addition, more than 60 percent of MIA Members are first generation migrants themselves, and they speak more than 50 community languages. RMAs serve invaluable roles as de facto translators and interpreters and that ability should be a

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<sup>6</sup> The English language proficiency is at the level of an International English Language Testing System (IELTS) score of 7.0 with a minimum of 6.5 in each band, or of a Test of English as a Foreign Language (TOEFL) score of 100, with a minimum of 22 in each component.

counterweight against interrogations of their English abilities. The qualification to this position is in the situation where a RMA faces a complaint about their English language standard. The MIA submits that the lodgement of a complaint against RMA related to their English language standard should serve as a trigger of a review of their competency and a requirement of proof, rather than the current basis for the requirements.

### **C. Prescriptive Code of Conduct**

The Code of Conduct which RMAs must comply with can be excessively prescriptive for migration agents struggling with the pressures of managing a small business and has other problems inherent in it. In addition, the Code continues to be focussed on an individual, rather than a company or corporate structure, which causes problems for RMAs in small businesses, particularly in situations where the manager or senior staff member of a small business breaches the Code, rather than an individual.