



SUBMISSION

Inquiry into the efficacy of regulation of Australian migration agents – Supplementary submission



Migration Institute of Australia

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This supplementary submission to the Joint Standing Committee on Migration's (JSCM) Inquiry into the Efficacy of the Regulation of Australian Migration Agents has been made at the request of Committee member, the Shadow Minister for Immigration and Border Protection, Shayne Neumann MP.

The Migration Institute of Australia ('the MIA') thanks Shadow Minister Neumann for his request to provide further information to the Committee on the effects of the 1 January 2018 deregulation of Continuing Professional Development (CPD) provision for registered migration agents.

At the public hearing before the JCSM in Sydney on 16 July 2018, Mr Neumann asked questions of the MIA on the impact of this deregulation on the quality of CPD provision and consequently on the level of advice provided to vulnerable migrant consumers. The Shadow Minister shared his concerns on the dilution of quality in the deregulated market, following his similar observations in the Continuing Legal Education offerings to the legal profession.

This submission is informed by MIA Members perspectives and opinions collected through their participation in surveys, focus groups, member meetings and other forms of regular contact with the MIA.

The MIA would also like to take the opportunity presented by Mr Neumann's request to further clarify statements made during the public hearing.

If you require any further information or wish to discuss the content of this submission, please feel free to contact the MIA by telephone on [REDACTED] or by email at [REDACTED]

[REDACTED]

Leanne Stevens
Acting National President
Migration Institute of Australia

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Deregulation of Continuing Professional Development for the migration profession

In 2014, an Independent Review of the Office of the Migration Agents Registration Authority (OMARA) was conducted by Dr Christopher Kendall. The terms of reference included review of the performance of the OMARA as the industry regulator, its organisational capability and challenges, and the quality and effectiveness of its internal controls and governance. Dr Kendall made twenty four recommendations in the final report of his review.

Central to this supplementary submission was *Recommendation 10*:

‘The Inquiry recommends the creation of a more open and competitive market-based framework for the provision of CPD. In such a framework, the role of the OMARA will be significantly reduced and generally restricted to:

- determining the eligibility of a firm or organisation to provide CPD services – noting that, beyond having to meet defined criteria, the type and number of service providers that can operate should be determined by the market;*
- setting the requirements for registered agents to complete CPD learnings in core competency areas, noting that this should be structured to allow greater flexibility and variance in the learning offered; and*
- monitoring compliance by registered agents with CPD requirements, preferably as part of the re-registration process for migration agents.’¹*

In making this recommendation, Dr Kendall assumed this deregulation would provide only positive benefits, failing to recognise the potential for consumers of these products and migration advice in general, to be adversely impacted.

Crucially, in recommending the deregulation of the CPD market, Dr Kendall assumed that approved CPD providers would adhere to the requirements of their approval and that the system would self regulate. However, as a result of the ‘de-supervision’ of the CPD sector that has occurred in tandem with its deregulation, adherence to the provider standards would appear to be being exploited with impunity by some providers.

¹ 2014, Independent Review of the Office of the Migration Agents Registration Authority, Kendall C, pp 29-30, <https://www.homeaffairs.gov.au/ReportsandPublications/Documents/reviews-and-inquiries/omara-review.pdf>

This has occurred in part because *Recommendation 10* concentrates on the monitoring compliance role served by the OMARA on the **consumers** of CPD provision, registered migration agents, with little attention to the compliance of CPD providers.

Changes to Continuing Professional Development – 1 January 2018

Legislative Instrument IMMI 17/047 implemented the new CPD system for registered migration agents on 1 January 2018². This instrument removed the requirement for approval of individual CPD activities, in favour of approval of CPD providers alone.

The instrument ostensibly introduced stringent categorisation of CPD provision, dividing activity formats into Category A and Category B activities. Registered migration agents are required to undertake ten CPD points annually from their second re-registration onwards. A minimum of five of these points must be Category A points and a single mandatory point must be undertaken annually in either an ethics or the Code of Conduct topic.

The OMARA, in its 2014 evidence to the Kendall Review, noted that:

‘...there is significant variability in the quality and relevance of activities that are submitted for consideration by the OMARA ... a significant proportion of activities require revision, often substantial, to meet the minimum standard for approval as an activity.’

The OMARA at that time advised the Review of the risk of decline in the quality of a considerable portion of CPD activities, if it did not have a role in assessing and approving CPD activities at that time. Dr Kendall argued that this could be rectified by revising and strengthening the relevant guidelines as the existing policies lacked legislative and policy clarity. In the short time since the new CPD provider standards have been introduced, it would appear that the OMARA is in danger of being proved correct.

Under the previous system the OMARA approval of a CPD activity was subject to the following conditions:

- 1. Course materials are revised and updated before delivery of every event. Records of revisions and updates are to be retained and made available on request from the Authority. Revisions should cover, but are not limited to:*

² <https://www.legislation.gov.au/Details/F2017L01236/Download>

- *Currency – all material including statistics and legislative references must be current at the time of delivery.*
- *Accuracy – ensure material remains accurate at time of delivery.*
- *Code of Conduct - ensure best practice advice and opinion aligns with the Code of Conduct*
- *Referencing – all sources in activity materials must be referenced.*

2. The Authority receives evidence (reporting of CPD points) that the activity has been provided to registered migration agents within 12 months of the above approval date.

3. Participant numbers are limited to

4. Providers notify the Authority of upcoming CPD activity sessions through the 'Advertise a CPD session' function in your organisation's secure environment on the Authority's website

5. Successful completion of a CPD activity session is reported to the Authority within 14 calendar days of the session date.

6. On request, the Authority is provided access to any CPD session for the purposes of CPD activity evaluation.

7. The CPD Approved Provider Standard Conditions, as updated from time to time, continue to be adhered to by your organisation.

8. Advertising or promotion of organisations, goods or services is not to be incorporated into learning time³.

No such guidelines or instructions have been produced for current CPD activities. The OMARA is no longer able to impose these quality control provisions on the content of CPD offerings. The MIA believes the quality of CPD education has been severely diluted by the removal of this function of the OMARA. The legislative instrument IMMI 17/047 requires CPD activities to be designed to '... to improve the knowledge, skills and professionalism of registered migration agent participants in the CPD activity' but goes no further in defining the standards required to demonstrate that this has or will occur.

The new CPD provider standards lack definition and clarity surrounding the content and delivery of these activities. This is nowhere more obvious than in the

³ These approval conditions were included in each 'Approval of CPD activity' letter issued by OMARA before the current changes.

categorisation of offerings by some approved CPD providers. Below the differences between Category A and B activities are demonstrated. Category A activities are required to be *'interactive'* and award one point per hour of attendance. Category B activities, in contrast, do not have the interactive requirement and also award only one point for every one and a half hours of attendance.

Activities	Condition for conduct of activity	Points awarded per activity
<p><u>Category A:</u></p> <p>A workshop.</p>	<p>The workshop must be:</p> <p>(a) conducted in real time by a facilitator either face-to-face or online;</p> <p>(b) interactive; and</p> <p>(c) have a maximum of 30 participants.</p>	<p>1 point per hour of participation in the workshop</p>
<p><u>Category B:</u></p> <p>A conference, seminar or lecture.</p>	<p>The conference, seminar or lecture must be conducted in real time by a facilitator either face-to-face or online.</p>	<p>1 point per 1.5 hours of participation in the conference, seminar or lecture.</p>

Source: IMMI 17/047 – Part 2, Item 7(1)

Given that RMAs are required to undertake five Category A activities annually and that points for this category are awarded for shorter attendance, strong demand has been created for these activities. The CPD market has being flooded with 60 minute Category A offerings, many of which were previously presented as 90 minute sessions with little interactive content.

However, **without any definition** of what constitutes the *'interactive'* element of Category A activities in the legislative instrument or regulations, neither providers, RMAs or the OMARA have any current benchmark by which to determine whether an activity meets or does not meet this requirement. As such, there is no effective method for either consumers or the OMARA to differentiate Category A workshop content from that of Category B seminars.

The term *'workshop'* is also problematic in this context. Under the previous CPD provisions guidelines, workshops were required to be a minimum of 3 hours in duration and to include 80% (or around 144 minutes) small group interaction and discussion and 20% (or around 36 minutes) upfront teaching⁴. Without these previous restrictions, Category A workshops may now be as short as one hour in duration and if the previous workshop measures were applied, contain around 12

⁴ CPD Application Form Office of the OMARA, October 2011.

minutes of teaching content. The extent to which educative and interactive elements of a workshop could be successfully incorporated in that timeframe is debatable.

It would be a simple matter for the OMARA to incorporate the previous CPD approval conditions⁵ or similar conditions into a CPD policy document and create a solid benchmark and standard for the provision of CPD activities.

On 27 July 2018 a search of the OMARA website revealed the extent of this imbalance between Category A and Category B offerings within the sector⁶.

CPD Activity	Category	Number advertised
Workshops	A	342
Program of education	A	10
Seminars	B	10
Conferences	B	0

Advertised CPD activities by category

Of the 342 x Category A ‘workshops’ advertised, 49% were one hour workshops. The following table provides further breakdown of these statistics.

Length of workshop	Number advertised	Percentage of workshops
1 hour	167	49%
2 hour	90	26%
3 hour	55	16%
4 hour	1	0.2%
5 hour	7	2%
6 hour	3	0.9%
30 hour (PRP)	19	6%
	n = 342	

Advertised CPD activities by session length

Of further concern are educational suites allowing RMAs to attain ten CPD points in one day. Table 1 below illustrates the ten point day format employed by three CPD providers. While these days might be attractive to RMAs who attend CPD for compliance purposes only, it is difficult to understand how ten hours of CPD education, in one case incorporating ten different subjects with only one half-hour break, can result in genuine and satisfactory learning outcomes for CPD consumers. In some of these formats attendees’ attention is required for 4.5 to 5 hours without

⁵ Listed on pp 4-5 of this submission

⁶ All CPD activities are required to be advertised on the OMARA website.

breaks. This is not sound educational practice, with these formats aimed at registered migration agents who may have little interest in their professional development, wishing only to complete their ten points for re-registration in the shortest time and least expensive manner.

Provider	Time	Format
Provider A	8 am to 6 pm	2 x hour workshop 15 min break 2 x hour workshop 30 min break 2 x hour workshop 15 min break 3 x hour workshop (+ one private study module)
Provider B	8am to 6.30pm	3 x hour workshop 1.5 of 3 hour workshop 30 min break 1.5 of 3 hour workshop 3 x hour workshop 1 hour seminar
Provider C	8am to 6.30 pm	1 x hour workshop 1 x hour workshop 1 x hour workshop 1 x hour workshop 1 x hour workshop 30 min break 1 x hour workshop 1 x hour workshop 1 x hour workshop 1 x hour workshop 1 x hour workshop

Table 1: Examples of 10 point CPD day formats

Pricing, terms and conditions of CPD activities

The MIA recognises that price, per se, does not indicate quality and does not support OMARA control of CPD prices. While deregulation of CPD provision has undoubtedly led to lower cost CPD provision, the MIA does question how these lower prices have been achieved and at what cost to the migration advice consumer? Within this context, price may flag the need for scrutiny.

The MIA is also concerned about the seeming non-compliance of some providers with required consumer terms and conditions. As the first provider approved under the new regulations, the MIA was required to demonstrate that its terms and

conditions of business and refund policies provided a high standard of protection to consumers. Similar requirements do not seem to have been imposed on other approved CPD providers.

Table 2 below provides a comparison of the terms and conditions, including the current refund policies of three CPD providers including the MIA. In some instances the approved providers offer no refunds, and/or imposes other charges and additional administrative fees on RMAs who wish to reschedule or transfer between CPD courses. CPD consumers are initially attracted with low advertised prices for CPD activities, only to be loaded with other, at times seemingly unreasonable, fees and charges.

Table 2: Comparison terms, conditions and refund policies of three RMA CPD providers

Terms and conditions	MIA	Provider B	Provider C
Non attendance by RMA	Refund in compelling circumstances	No refund	No policy
Cancellation by provider	100% Refund or credit note	No policy	Refund
RMA cancellation at short notice	100% refund, transfer at no cost or credit note	Less than 48 hrs - No refund	Less than 72 hrs - No refund
RMA cancellation with longer notice	100% refund, transfer at no cost, refund or credit note	\$55 administrative fee	3 days or less no refund, 4-7 days 50% refund, over 7 days 100% refund
Rescheduling / transferring to another activity	No administrative fee	\$55-150 administrative fee	Less than 7 days - 25% of fee retained
Refund/credit for difference if transferring to lower priced CPD	Yes	No refund	No policy
Attendance without prior registration	No administrative fee	\$55 penalty fee	No policy
Priority reporting -12 hours	No administrative fee	\$20 per point	No policy
Priority reporting -24 hours	No administrative fee	\$15 per point	No administrative fee
Administration fee for phone, fax or email booking	No administrative fee	\$15 administrative fee	No policy

Given the discounting battle that has been waged in the CPD sector, the MIA expresses concern as to whether all CPD providers will be able to meet their consumer obligations. One specific concern, is the ability of CPD providers to honour the refund policies that are part of their CPD provider approval. The Vocational Education and Training (VET) sector provides ample illustration of what occurs when there is little oversight of training providers and attention to consumer protection. So severe were the predatory selling practices, poor quality training provision and lack of fiduciary compliance in that sector that the Government was forced to legislate to protect unsuspecting students. The VET sector experience amplifies the MIA's concerns over the current CPD industry situation.

Impact of the quality of professional development on consumers of migration advice

The MIA contends that the deregulation of the CPD sector that has resulted in the de-supervision of CPD activities, combined with the apparent disregard for the provider guidelines by some providers, is rapidly accelerated to the point where the ongoing currency of knowledge held by a proportion of RMAs will be compromised.

The registration of migration agents and the requirement for ongoing CPD to maintain their professional knowledge of the constantly changing migration law and environment, was implemented to protect vulnerable consumers of migration advice. If the quality of provision is permitted to degenerate, the flow on for these consumers could be disastrous. The Department in its submission to the Committee has already flagged what it regards as an increase in breaches of the Code of Conduct, calling for more stringency in the system to protect consumers. Dr Kendall in his review also argued that the level of entry to the migration profession was too low and needed to be increased to increase RMA knowledge and better protect consumers. Given these assertions, how can this current reduction in quality of CPD and disregard for compliance be considered to provide sufficient protection to consumers of migration advice?

The MIA acknowledges that it may be unrealistic to return to the previous system, where every CPD activity was individually approved by the OMARA, as this would require legislative change and would take a considerable amount of time that the current situation can ill afford. As such, the MIA make the more pragmatic recommendations listed below in relation to the provision of CPD activities to registered migration agents and migration lawyers

Recommendation 1

The MIA recommends that the current approval process for CPD providers in *IMMI 17/047 CPD Activities, Approval of CPD Providers and CPD Provider Standards Instrument 2017* be maintained.

Recommendation 2

The MIA recommends that CPD course policy and guidelines be **urgently** developed by the OMARA, setting out the minimum requirements for each CPD category and each CPD format, to provide benchmark standards across CPD offerings.

Recommendation 3

The MIA recommends that the OMARA undertake an urgent review of all currently advertised CPD providers and all currently advertised Category A activities to determine if these comply with the legislative requirements of *IMMI 17/047 CPD Activities, Approval of CPD Providers and CPD Provider Standards Instrument 2017*

Recommendation 4

The MIA recommends that the OMARA be provided with sufficient resources to protect consumers by enabling regular and sufficient compliance monitoring of CPD providers and CPD course offerings.

Other Issues arising from the Public Hearing of the Joint standing Committee on Migration, 16 July 2018.

The MIA wishes to also clarify its response to a number of questions posed by members of the JCSM.

Registration of Education Agents

The MIA reiterates its opposition to the **registration** of education agents by the OMARA. The MIA strongly contends that the use of the term '**registration**' and the administration of such registration by the OMARA would only serve to further confuse consumers of migration advice.

At issue is not the lack of registration of education agents, but the *lack of enforcement* of the current regulatory requirements for education providers to adequately supervise the practices of their education agents.

Education agents are contractors of education providers and are already regulated under the Education Services for Overseas Student Act 2000 (ESOS Act) and the ESOS National Code of Practice for Providers of Education and Training to Overseas Students 2017,

The ESOS National Code at Part D provides comprehensive direction to education providers ...' to manage the activities of their education agents, ensuring providers use only reputable education agents. Intending students will benefit from the monitoring strategies of the provider and from the provider's ability to terminate agreements with education agents who engage in false or misleading recruitment practices'.⁷

The MIA asserts that sufficient legislative power to control the activities of education agents already exists under the ESOS Act. The Migration Act 1958 also provides sufficient authority to prosecute education agents who provide unregistered immigration assistance.

It is for these reasons that the MIA provided *Recommendation 20* in its original submission that education agents **not be registered**. However, this is not to infer that education agents should not be **regulated**, rather that the current regulation under the appropriate legislative authority, the ESOS Act, **be enforced**.

⁷ <https://internationaleducation.gov.au/Regulatory-Information/Education-Services-for-Overseas-Students-ESOS-Legislative-Framework/National-Code/nationalcodepartd/Pages/ExplanatoryguideD4.aspx>

The MIA does not support the proposal made by Mr Christopher Levingston during his appearance before the Committee, on behalf of the Migration Alliance, that education agents be regulated by OMARA and his calls to ...'call education agents migration agents and decouple the opaque.'⁸ Registered migration agents are required to undertake *post graduate* studies and probity checks to become registered to provide immigration assistance. Education agents *may* undertake an industry 'recommended', short, online course which provides information about the Australian education system and Australia as a study destination. To associate education agents with registered migration agents in this manner, would have the opposite effect of government attempts to improve the professional knowledge of registered migration agents through increased educational requirements and the strengthening of consumer protection provisions under the proposed new Code of Conduct for Registered Migration Agents.

The registration of education agents will provide no effective protection of consumers, particularly to those offshore, as explained by Mr Sayago Penaloza⁹, in his excellent summation of the system to the Committee at the Melbourne public hearings. Australian authorities are limited in enforcing protection mechanisms for education advice consumers outside Australia. These Australian regulatory authorities must enforce these protections where they are able, in this case by ensuring that the **education providers onshore** supervise and control their education agents effectively, as required under the ESOS Act and ESOS National Code. The MIA made **Recommendations 16, 18 and 19** in its previous submission to this end.

Registration or regulation of education agents by the OMARA will only create confusion, when the inherent responsibility for this regulation already exists with another government authority, Department of Education and Training. Of even more concern to the MIA, is that registration of education agents by OMARA would create a perception amongst consumers that 'registered' education agents are also registered to undertake the same duties as registered migration agents and further exacerbate the illegal provision of immigration assistance by education agents. Consumers are better served by the appropriate enforcement under the appropriate authority and legislation, than by the imposition of further red tape and further confusing overlap of jurisdiction.

⁸ Joint Standing Committee on Migration, Proof Committee Hansard, APH 16 July 2018, p 19.

⁹ Joint Standing Committee on Migration, Proof Committee Hansard, APH 23 July 2018, pp 2-4.

To be clear, the MIA makes these further recommendations on the regulation of education agents:

Recommendation 5

The MIA recommends that the regulation of education agents be enforced under the ESOS Act and ESOS National Code through the Department of Education and Training.

Recommendation 6

The MIA recommends that the education providers be required to effectively control and supervise their education agents under the ESOS Act and ESOS National Code by the Department of Education and Training.

Recommendation 7

The MIA recommends that the OMARA is not appointed the regulatory authority for education agents.

Supervised practice/mentoring

The MIA supports in principle the introduction of supervised practice, mentoring or 'internship' for newly registered migration agents. However, any such requirement must be, practical, affordable and not exploitative.

The MIA is concerned that consumers of migration advice are protected and newly registered migration agents are assisted in developing their professional skills. However, at this time the migration profession does not have sufficient capacity to absorb the large numbers currently entering the marketplace.

It is for this reason that the MIA has made **Recommendation 9** in its original submission to this Committee and based on the system in place in the United Kingdom that:

... that the OMARA investigate the feasibility of limiting the scope of practice of registered migration agents in their first year of practice to specific migration advice and assistance activities.¹⁰

¹⁰ MIA Submission to the JSCM – Efficacy of the regulation of Australian migration agents, May 2018, pp38-39.

Publication of average fee schedules by OMARA

Shadow Minister Neumann also questioned the MIA during the Committee's public hearing on the necessity to publish the average RMA fee schedule by OMARA. The MIA recommends that the publication of these figures continues as they provide strong consumer protection. This schedule gives potential migration clients, a benchmark against which to measure quoted fees. A fee that is dramatically outside this range would serve to alert consumers to potential rorting or illegal activities.

The MIA is cognisant of the impost on OMARA resources to compile these schedules and therefore suggests that a more focussed collection of the data occur. Previously, there was not sufficient refinement of the data. The previous categories of data did not align with common commercial practice eg there was no differentiation of the three services provided in Subclass 457 applications, the business sponsorship, the nomination and the visa application. The range and utility of the data could be improved with the assistance and input from commercially practising RMAs.

Recommendation 8

The MIA recommends that a schedule of average registered migration agent fees continue to be published by the OMARA for consumer protection.

Recommendation 9

The MIA recommends that the format of this average fees schedule be determined in consultation with commercially practising registered migration agents to ensure the development of an efficient and effective schedule.