

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

PARLIAMENTARY INQUIRY SPOKEN QUESTION ON NOTICE

Joint Standing Committee on Migration

27 September 2023

QoN Number: 19

Subject: Data for complaints of misconduct of registered migration agents

Asked by: Maria Vamvakinou

Question:

Ms Winch: In terms of managing complaints, obviously we will receive complaints in respect of the suspected misconduct of registered agents, some of whom do have a presence in the offshore environment and may be located offshore. Certainly we will be able to consider and investigate those complaints as and when they arise.

CHAIR: Do you get many of those complaints? I'm just trying to get an understanding as to how serious this problem is. We're members of parliament and all sorts of things are brought to us, and migration agents are one big group of people that we often deal with. Do you get a lot of complaints? Is there a problem? I guess that's what I'm really asking.

Ms Winch: I can certainly answer with respect to whether we get a lot of them. I don't have the data in front of me to be able to say yea or nay in terms of the volume.

CHAIR: Can you get back to us on that?

Ms Winch: Yes, absolutely.

Answer:

In the last two financial years (01 July 2021 to 30 June 2023) the Office of the Migration Agents Registration Authority (OMARA) received 14 complaints about 10 registered migration agents (RMAs) who are located offshore. This financial year (as at 27 September 2023) OMARA received three complaints about three RMAs located offshore. Of these 17 complaints:

- 15 complaints were assessed/finalised as being less serious, that is mostly relating to poor advice.
- Two more serious complaints relate to allegations about facilitation of visa outcomes – one is finalised and one is currently under investigation.
- The complaints relate to 13 RMAs in 12 different countries. As such, there are no specific trends based on an RMA's location.

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PARLIAMENTARY INQUIRY SPOKEN QUESTION ON NOTICE

Joint Standing Committee on Migration

27 September 2023

QoN Number: 20

Subject: Data on inappropriate conduct from Legal Practitioners

Asked by: Maria Vamvakinou

Question:

CHAIR: Do you think that removing legal practitioners from OMARA's supervision has been beneficial? What sort of impact has it had? Are there any benefits?

Ms Winch: I can certainly speak to the extent of where we come across allegations of a legal practitioner engaging in inappropriate conduct. We facilitate the referral to the relevant state and territory body. We work quite closely in terms of saying, 'We suspect there may be some inappropriate conduct,' and refer that information across. I don't have any data or level of oversight at this stage to say what the volume looks like.

CHAIR: Okay. Is there any way of getting hold of that volume?

Ms Winch: I can certainly speak to the referrals that the OMARA may have made in terms of legal practitioners, but I caveat that by saying that we might not get referred allegations obviously, because that's not within our jurisdiction.

Answer:

On 22 March 2021, following the Migration Amendment (Regulation of Migration Agents) Act 2020 coming into effect, 1706 migration agents who also held unrestricted legal practicing certificates were removed from the Register of Migration Agents maintained by the Office of the Migration Agents Registration Authority (OMARA).

On 22 March 2021, the OMARA had **49** complaints on-hand about migration agents who were also legal practitioners. Since 22 March 2021, the OMARA has received **52** complaints about formerly registered agents who were also legal practitioners.

As the OMARA no longer had any jurisdiction over the conduct of legal practitioners from that date, the complainants were referred to the relevant State or Territory regulator for legal practitioners.

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PARLIAMENTARY INQUIRY SPOKEN QUESTION ON NOTICE

Joint Standing Committee on Migration

27 September 2023

QoN Number: 21

Subject: Reviews of OMARA

Asked by: Maria Vamvakinou

Question:

CHAIR: Sure. I guess the nub of a lot of this is protecting vulnerable migrants from exploitation or from those purporting to provide migration advice. What sorts of challenges do you face? Have there been enough inquiries into migration agents? Certainly I'm aware of a number of them.

Ms Cavanagh: Understood. To answer the first part of your question, when you look at the history of the OMARA you see that it has been subject to many reviews.

There's certainly a time line, which I'm sure we could provide to you on notice if you were interested, of a number of reviews and the adjustments those have resulted in to the OMARA over time.

Answer:

A timeline of the evolution of the regulatory framework is provided at [Attachment A](#).



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Chronology of Australian migration advice industry regulation

Date	Key milestone
	Registration with no monitoring
1948	The <i>Immigration Act 1948</i> provided that a person could become a 'registered agent' by satisfying certain fitness and character requirements.
1958	The <i>Migration Act 1958</i> (the Act) provided that a person who gave notice of their intention to practice as an immigration agent, and who received an acknowledgement of that notice, could practice unless the Minister established they were not fit and proper to continue ('negative licensing'). Penalty provisions for false advertising and overcharging for services were introduced. There was no specialist body to monitor or investigate registered agents.
1989	The <i>Migration Legislation Amendment Act 1989</i> amended the Migration Act and removed the requirement to provide notice of intention to practice as an immigration agent. It inserted penalty provisions directed at the activities of migration advisers. The Act required that agents not engage in false advertising, provide statements of accounts to clients and not misrepresent their relationship with the Government and the Department.
	Commonwealth regulation
September 1992 to March 1998	The Migration Agents Registration Scheme (the MARS) was established. The MARS included the Migration Agents' Registration Board administered by the Department of Immigration, Local Government and Ethnic Affairs; it was charged with regulating the migration advice sector. The scheme was introduced to address concerns about the lack of consumer protection in the industry.
	Review of the Migration Agents Registration Scheme
1997	A key finding of the review was that full regulation had achieved mixed results. The MARS had increased consumer protection levels, but its mechanisms for dealing with complaints were expensive, slow and unresponsive to consumer concerns.
	Self-regulation under Migration Institute of Australia (MIA)
March 1998 to July 2009	Following the 1997 review, the MIA assumed the role of the Migration Agents Registration Authority (MARA). The MIA acted as a regulator of the industry under a Deed of Arrangement with the Commonwealth, which represented statutory self-regulation.
	Review of statutory self-regulation of the migration advice industry
1999	The review found that while statutory self-regulation had achieved its objectives, the industry was not yet ready to move to full self-regulation. The review concluded that the current period of statutory self-regulation be extended for a further three years until 21 March 2003, with a further review to be conducted within that time.
	Review of statutory self-regulation of the migration advice industry 2001-02
2002	This review found that the industry is not yet ready to move towards voluntary self-regulation. Further, it found that regulatory intervention was still necessary to alleviate a number of concerns, including the quality of service and the level of professionalism within the industry.

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Date	Key milestone
2007-2008	<p><i>Hodges Review</i></p> <p>The review made 57 recommendations, including establishing an independent statutory body with greater powers to protect consumers, strengthening the regulatory framework and raising the entry requirements.</p>
July 2009 to June 2015	<p><i>Return to Commonwealth regulation</i></p> <p>The OMARA started operating as a discrete office attached to the Department of Immigration and Citizenship. This structure was a result of the Hodges Review.</p>
2009 - 2012	<p>The OMARA was led by two SES Band 1 officers: a Chief Executive Officer (CEO) with primary responsibility for external stakeholder relationships and leading the reform agenda and a Deputy CEO with a primary focus on the internal governance and practice. The office was established with 27 staff members. In July 2009 the then Minister appointed an Advisory Board to the OMARA to provide advice and guidance to the CEO. The Board met four times a year to discuss and to advise on pertinent regulatory matters.</p>
2012 - 2015	<p>In 2012 the OMARA consolidated to one CEO leading a team of four Directors (EL2) and 34 staff members. The CEO reported directly to the Secretary of the Department.</p>
2014	<p><i>Kendall Review</i></p> <p>The review examined 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. The Review made 24 recommendations, the majority of which were supported by the Government.</p>
July 2015 to present	<p><i>Regulation by the OMARA as part of the Department</i></p> <p>The OMARA started to progressively consolidate into the Department of Immigration and Border Protection, pursuant to a recommendation of the Kendall Review.</p>
2015 - present	<p>The OMARA relocated to the NSW Regional Office of the Department and consolidated to one EL2 Director, reporting to the NSW regional Director. The staffing footprint reducing over time to around 22 full time equivalent (FTE).</p>
2019	<p><i>Joint Standing Committee on Migration (JSCOM) Inquiry</i></p> <p>The JSCOM inquired into the efficacy of the regulation of Australian migration agents and made 10 recommendations. The Government has not yet provided its response to the inquiry.</p>
22 March 2021	<p><i>Removal of unrestricted legal practitioners from the OMARA scheme</i></p> <p>Unrestricted legal practitioners providing immigration assistance were removed from the OMARA regulatory scheme, to be solely regulated by relevant state and territory legal professional bodies. This change was introduced pursuant to a recommendation of the Kendall Review. Legal practitioners who hold a restricted practising certificate may choose to remain registered with the OMARA for a transitional period of two years, extendable by the OMARA to up to four years in reasonable circumstances.</p>
2020-21	<p><i>Migration Agents Instruments Review</i></p>

Date	Key milestone
	<p>In 2020, the Department commenced the Migration Agents Instruments Review (Instruments Review) which was triggered by the sunseting of four instruments covered by the <i>Legislation (Migration Agents Instruments) Sunset-altering Declaration 2019</i> (the Declaration). The instruments included in the Declaration deal with the governance of migration agents and are integral to the regulation of the migration advice industry. The Instruments Review was also required to consider any changes from recommendations one to four of the 2019 JSCoM Report of the inquiry into efficacy of current regulation of Australian migration and education agents', and was expanded in March 2021 to encompass the entire governing legislative framework, including Part 3 of the <i>Migration Act 1958</i>. The final report of the Instruments Review was submitted to the current government for consideration following the 2022 election.</p>
2023	<p><i>Nixon Review</i></p> <p>Following media reports in late 2022 alleging visa rorts and foreign worker exploitation, in January 2023 the Minister for Home Affairs appointed Ms Christine Nixon, AO, APM to undertake a rapid review into the exploitation of Australia's visa system (Nixon Review). The Nixon review considered the findings of previous and ongoing reviews and inquiries (including Parliamentary Inquiries) and regulatory approaches in relevant overseas jurisdictions, to identify recommendations or insights to address the issues identified.</p>