

2002 – 2003

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**MIGRATION LEGISLATION AMENDMENT
(MIGRATION AGENTS INTEGRITY MEASURES) BILL 2003**

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Citizenship and Multicultural Affairs,
The Hon. Gary Hardgrave MP)

MIGRATION LEGISLATION AMENDMENT (MIGRATION AGENTS INTEGRITY MEASURES) BILL 2003

OUTLINE

1. This Bill implements various recommendations of the 2001-02 Review of Statutory Self-Regulation of the Migration Advice Industry (the Review) to strengthen and improve the regulation of migration agents.
2. These amendments are necessary to ensure that the Migration Agents Registration Authority (MARA) has adequate powers to protect consumers and that migration agents operate ethically, professionally and competently when assisting people to come to or stay in Australia.
3. The Bill also contains amendments viewed as necessary to ensure the effective implementation of the review recommendation.
4. The measures contained in the Bill to improve consumer protection are important because clients who use migration agents are often a particularly vulnerable group. Many are from non-English speaking backgrounds with limited experience of the Australian legal system, which makes it difficult to make informed decisions about the professional conduct of migration agents.
5. In broad terms, this Bill amends the *Migration Act 1958* (the Act) to:
 - clarify and strengthen requirements to be registered as a migration agent;
 - strengthen the offence provisions against providing unregistered immigration assistance;
 - clarify and strengthen the powers of the MARA and the Department of Immigration and Multicultural and Indigenous Affairs ('DIMIA' or 'Department') to investigate complaints against registered agents and allegations of unregistered practice respectively;
 - provide the MARA with new powers to sanction migration agents, particularly those agents who lodge a high number of vexatious, unfounded or incomplete applications;
 - provide for agents to be fined or prosecuted if they fail to declare their involvement in visa applications or review applications;
 - clarify and strengthen requirements for migration agents to produce documents and information to the MARA;

- ensure civil proceedings cannot be taken against people who refer information about unregistered or registered agents to DIMIA or the MARA respectively;
- facilitate the investigation of complaints by allowing information to be disclosed between the MARA, DIMIA, the Migration Review Tribunal (MRT) and the Refugees Review Tribunal (RRT);
- clarify when details about disciplinary action taken against a migration agent or former agent may be disclosed and to whom;
- allow the MARA to delegate its power and functions and establish committees; and
- make minor amendments of a technical or consequential nature necessary to ensure the effective implementation of the Review recommendations.

FINANCIAL IMPACT STATEMENT

1. The amendments contained in the Bill will have a minimal financial impact.

REGULATION IMPACT STATEMENTS

2001-02 Review of Statutory Self-regulation of the Migration Advice Industry

The following Regulation Impact Statement was approved by the Office of Regulatory Review in September 2002.

1 INTRODUCTION

1.1 Background

- 7.4.1 Following the Commonwealth government-commissioned review of the Migration Agents Registration Scheme (MARS) in 1996, the government decided that the migration advice industry should move towards self-regulation. In light of concerns regarding consumer protection and the competitive impacts of such a significant change, it was decided that this would be best achieved through a transitional two-year period of statutory self-regulation.
- 7.4.2 On 21 March 1998, Part 3 (Migration Agents and Immigration Assistance, s.275-s.333 of the *Migration Act 1958* (the Act) commenced, allowing statutory self-regulation for a period of two years until 21 March 2000. The Minister appointed the Migration Institute of Australia (MIA) as the Migration Agents Registration Authority (MARA) to act as the industry regulator. It was stipulated that a review of the industry would be undertaken within this transitional period.
- 7.4.3 The Department of Immigration and Multicultural Affairs (DIMA) undertook that review in 1999, again with the assistance of an external reference group. DIMA found that whilst 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.
- 7.4.4 This further review, the *2001-02 Review of Statutory Self-Regulation of the Migration Advice Industry* (the Review), has now been undertaken and has assessed the effectiveness of the current statutory self-regulation framework.
- 7.4.5 This Regulation Impact Statement (RIS) has been produced to assist the government in deciding on the most appropriate regulatory arrangements for the migration advice industry when the current legislation ceases in March 2003. It is based on the findings and the report of the Review, and has been prepared in accordance with *A Guide to Regulation*, a December 1998 publication of the Commonwealth Office of Regulation Review (ORR).

7.5 What is the problem being addressed?

- 7.5.1 The migration advice industry in Australia was largely unregulated until 1992, at which point government regulation was introduced by means of the establishment of MARS. This scheme was introduced in response to increasing consumer complaints concerning incompetent and unscrupulous agents operating in the industry. Since the implementation of industry regulation, only registered agents have been permitted by law to provide ‘immigration assistance’ as defined in the Act.
- 7.5.2 In June 1996, the Commonwealth government commissioned a review of MARS. This was the first regulatory arrangement to be reviewed by the Commonwealth as a party to the Competition Principles Agreement. Following the findings of this review, statutory self-regulation was introduced in 1998. The aim was to move the industry towards full (voluntary) self-regulation while maintaining the consumer protection elements of the government (i.e. statutory) regulation scheme.
- 7.5.3 A review was conducted in 1999 of the regulatory arrangements set up under the MARA. Like the current review it assessed the effectiveness of the statutory self-regulation framework and the capacity of the migration advice industry to move to full self-regulation. The 1999 *Review of Statutory Self-Regulation of the Migration Advice Industry* found that as statutory self-regulation had been in place for only a little over a year, the industry was not yet ready for voluntary self-regulation. The review recommended that the framework be continued for at least three years until March 2003 and be the subject of a further review within that time.
- 7.5.4 In assessing whether or not the migration advice industry will still need to be regulated after March 2003, the 2001-02 Review conducted by the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) also considered the advice provided in the ORR’s *A Guide to Regulation*. This Review found that the industry is not yet ready to move towards voluntary self-regulation. Further, it found that regulatory intervention is still necessary to alleviate a number of concerns, such as the:
- quality of service being provided by some agents;
 - level of professionalism within the industry;
 - level of client service standards offered by the MARA to their stakeholders;
 - need to continue the Commonwealth indemnity currently offered to MARA board members; and
 - continuing vulnerability of client groups using migration agents including those overseas.

7.6 Assess the risk

- 7.6.1 Complaints about the migration advice industry are a significant indicator of the level of consumer protection provided to clients of the migration advice industry, whether they concern practice by registered migration agents or unregistered operators. The

MARA is responsible for investigating complaints concerning the former and DIMIA is responsible for investigating complaints concerning the latter.

- 7.6.2 The Review found that the total number of complaints received against registered and unregistered agents showed only a slight decrease from 177 in 1999-2000 to 168 in 2000-2001. However, only 4.8 percent of agents in the industry were the subject of these complaints, of which 80-85 percent related to standards of professional conduct.
- 7.6.3 The Review reported that 24 cases of unregistered practice were reported to DIMIA in 2000-01, down from 38 in 1999-2000. Unregistered practice, which is illegal, continues to cast a shadow over the migration advice industry. DIMIA has taken a proactive role in the investigation of unregistered practice but it remains a difficult sector to monitor, due to its underground nature, the problem of evidentiary issues and spurious allegations. DIMIA understands the importance of eliminating unregistered practice and continues to place priority on investigations and prosecution of such practitioners. Unregistered practice continues to undermine the migration advice industry and creates the perception, albeit inaccurate, that the industry has large numbers of unscrupulous operators.
- 7.6.4 Incompetent and unethical practice can also impact substantially on individual consumers, the community and the government, notwithstanding that only a minority of agents are the subject of complaints. The current statutory underpinning of the industry provides strong tools in the form of administrative and criminal sanctions to regulate the industry. There is considerable risk that under a voluntary regulation scheme the MARA would not have the tools it needs to effectively modify the professional conduct of agents, or where appropriate, to remove them completely from the industry.
- 7.6.5 For example, unethical practice may include consumers being encouraged to apply for visas in circumstances when there is little or no evidence that they satisfy requirements. This has the effect of undermining the integrity of the government's migration and humanitarian programs. It increases DIMIA's workload through handling applications that are fraudulent or have little hope of success. This can lead to substantial administrative and legal costs for the government as well as administrative and judicial review bodies.

2 OBJECTIVES

2.1 What are the objectives of government action?

- 7.4.1 Prior to the introduction of regulation to the migration advice industry in 1992 there was a high level of consumer complaints against migration agents. The market was open to exploitation by some operators and it was perceived that clients of the industry were vulnerable and not adequately protected. Consumer vulnerability was seen largely as a function of the inability of consumers to inform themselves about the quality of the migration advice they were purchasing and thus to make an informed

choice of agent. Consequently, in introducing the *Migration Legislation Amendment (Migration Agents) Bill 1997* incorporating statutory self-regulation arrangements to Parliament, the Minister for Immigration and Multicultural Affairs stated that the objectives of the scheme were to:

- maintain and strengthen consumer protection; and
- contribute to the integrity of the migration and humanitarian programs by promoting an ethical and competent migration advice industry.

7.5 Is there a regulation/policy currently in place? Who administers it?

7.5.1 Statutory self-regulation of the migration advice industry commenced on 21 March 1998. The Minister for Immigration and Multicultural Affairs appointed the Migration Institute of Australia (MIA) as the Migration Agents Registration Authority (MARA) to undertake the role as industry regulator. The regulatory framework is contained in Part 3 of the *Migration Act 1958* (the Act), the Migration Agents Regulations 1998, the *Migration Agents Registration Renewal Charge Act* and the *Migration Agents Registration Application Charge Act 1997*. These set out the industry's Code of Conduct and Continuing Professional Development (CPD) requirements, and issues relating to matters such as business management, the setting of fees and sound knowledge and other requirements for entry to the profession.

7.5.2 As already outlined, this transitional arrangement was implemented as a step towards full self-regulation, hence the inclusion of a sunset clause which came into effect on 21 March 2000.

7.5.3 The shift from government regulation involved a fundamental change to the way the migration advice industry would be regulated. A rigorous and publicly defensible set of procedures needed to be developed and implemented in a short time frame. On 1 April 1998, regulations came into effect providing for:

- publication of notice of intention to apply for registration as a migration agent;
- prescribed qualifications for initial registration as a migration agent;
- CPD for migration agents;
- persons who may make complaints;
- publication of notice of cancellation or suspension of registration;
- a Code of Conduct for migration agents; and
- the gazettal of specified newspapers for the purpose of publication of notices of intention to apply for registration as a migration agent, notices of cancellation or suspension of registration, and gazettal of approved activities for CPD purposes.

7.5.4 Detailed policy and procedures including the relationship between the MARA and DIMIA are set out in a Deed of Agreement (the Deed). The Deed outlines the support to be provided by DIMIA to the MARA in areas such as legal advice and assistance with litigation. It also sets out the operating procedures for the MARA and their reporting requirements.

- 7.5.5 MARA's role under statutory self-regulation includes:
- assessing, approving or refusing new registrations and re-registrations;
 - monitoring the conduct of registered agents;
 - investigating complaints against registered agents, applying sanctions where appropriate; and
 - administering CPD requirements.
- 7.5.6 DIMIA has responsibility for investigating criminal allegations of offences under the Act, including unregistered practice. DIMIA may also investigate related allegations concerning other offences under the Act, such as people trafficking and presentation of false documents.
- 7.5.7 The current arrangements have been working effectively to date. The 2001-02 Review has highlighted that statutory self-regulation is continuing to achieve its objectives of improving consumer protection, competence and ethical standards in the migration advice industry.

3 OPTIONS

- 7.4 Three options were considered during the Review: a continuation of statutory self-regulation (co-regulation), a move to voluntary self-regulation, and a return to statutory (government) regulation.
- 7.5 Whilst the government is concerned that vulnerable consumers of the migration advice industry are suitably protected, the risks to the community are not sufficiently high or widespread as to warrant direct government regulation.
- 7.6 The efforts of the MIA/MARA as the industry association and regulator have brought about considerable improvements to the level of professionalism and consumer protection in the industry. Notwithstanding the acknowledged improvements, none of the submissions to the Review considered that the industry was ready for voluntary self-regulation.
- 7.7 Given the public interest in the government continuing to have some involvement in the regulation of the industry the continuation of statutory self-regulation was the option examined in more detail by the Review.

4 IMPACT ANALYSIS

4.1 Who is affected by the problem and who is likely to be affected by the solution?

- 4.1.1 Those involved in some way in the migration advice industry who are affected by its problems and possible solutions include migration agents, consumers of migration advice, a range of regulatory and review bodies, government and the community.

4.2 Migration agents – operating in small and medium/large business environments

7.4.1 As at 30 June 2002, a total of 2,773 registered migration agents operated within two sectors in the migration advice industry:

- the commercial ('for profit') sector – 2,503 migration agents (90.3 percent of all agents) operate in this sector, within which are two groups:
 - migration agents without legal qualifications, but who had to complete sound knowledge entry requirements. There are 1,899 such agents (58.5 percent of all agents); and
 - migration agents with legal qualifications. There are 874 such agents (31.5 percent of all agents).
- the non-commercial ('not for profit') sector – 270 migration agents currently operate in this sector (9.7 percent of all registered migration agents).

7.4.2 During the 2001-02 year, 703 new registration applications were received (634 commercial, 69 non-commercial) and 677 applicants became registered migration agents (605 commercial, 72 non-commercial). The average number of years of experience in the profession is only 3.3 years.

7.4.3 The Office of Small Business defines 'small business' as one employing fewer than 20 employees or where a person is self-employed running his or her business. The MARA has advised that between 90 and 95 percent of all registered agents are working in businesses employing fewer than twenty staff (about one half to two-thirds of whom may be agents). The remaining five to ten percent of agents are working in a very small number of businesses employing twenty or more staff, but the vast majority of these large businesses are community (not for profit) organisations.

4.3 Consumers

7.4.1 Consumers of migration advice would include visa applicants, review applicants and applicant sponsors or nominators. However, it is very difficult to get an accurate snapshot of the overall number and breakdown of types of consumers utilising migration agents. To date, DIMIA has not been able to provide statistical reports on the relationship between visa applicants and migration agents, but work is now being done to provide this link and to produce comprehensive statistical data on the use of migration agents. Evidence to date suggests that the usage of migration agents by applicants for business visa categories is high; however, the 'ability to pay' of people in this group does not render them invulnerable to exploitation.

4.4 Regulatory Bodies

7.4.1 As discussed at paragraph 2.2.1 above, in March 1998 the MIA was appointed as the MARA to be the industry regulator. The MARA has invested much energy in the migration advice industry to eliminate unscrupulous practice. The MARA has leased

premises and appointed staff, and has been operating successfully for the last four years. The MIA has shown a committed dedication to the industry as its peak body and there would be a substantial loss of expertise if it were to cease regulating the industry.

4.5 Government and Community

- 7.4.1 If changes were made to the regulatory framework, DIMIA could be affected by:
- increases to its processing workload if there were a reduction in the availability of competent and ethical advice provided externally;
 - a need to increase staff numbers to process a potentially larger number of incomplete applications, leading to a greater burden on the taxpayer;
 - a need for additional investigation of malpractice if fraudulent behaviour by agents increased; and
 - a lessening of its investigation responsibilities if unregistered practice were no longer an offence.

4.6 How will each proposed option affect existing regulations and the roles of existing regulatory authorities?

Voluntary self-regulation

- 7.4.1 After an analysis of the industry, the Review found that the migration advice industry would not be ready for full (i.e. voluntary) self-regulation at the expiry of the sunset clause on 21 March 2003. The reasons for this finding included that:
- the client base is vulnerable
 - Many clients lack English language skills and thus cannot access, or do not know how to readily access, information concerning the industry and administrative decision-making processes, or having accessed this information cannot understand it, and therefore it difficult to make informed decisions about the professionalism of migration agents;
 - the handling of complaints and the professionalism and integrity of the industry are critical to the credibility of the regulatory framework
 - A number of submissions expressed concern over the way in which the MARA handles complaints, the extent of their disciplinary powers and how they utilise these powers. It was clear that more work would need to be done to improve their image, if any move toward self-regulation could be considered;
 - the competence of some agents is of concern;

- The Review highlighted a number of serious concerns in relation to the level of knowledge and continuing education of migration agents; a large number (80-85 percent) of complaints relate to professional conduct. It is considered that before the industry can be ready to move towards voluntary self-regulation a number of fundamental changes need to be made in relation to an enhanced CPD regime and higher entry standards; and
- there are continuing concerns about customer service
 - The Review found that public accessibility to the MARA is critical to its credibility and, indirectly, to the continued health of the industry. There have been a number of complaints from migration agents and visa applicants who have found it difficult to contact a MARA officer on matters ranging from general enquiries to complaints:
 - . on the general inquiry number it is possible to leave a message and await a return call;
 - . on the information service line (for initial applicants), direct access to a MARA officer is only possible between 12.30pm and 2.30pm, for a fee of \$4.95 per minute. The average minimum call time is five minutes; thus an average minimum cost to a caller is \$25.00. More complex matters would take longer and thus be more costly;
 - . similarly, due to the way in which the Authority Secretariat is structured, the front desk is not staffed; and
 - . concerns were raised about the absence of the Authority's street address on both their letterhead and website.
- The accessibility of the Authority is inconsistent with contemporary customer service philosophies and practices in both public and private administration.
 - It is essential that the Authority improve its access and communication channels. The Review, in concluding that the industry is not yet ready to move to voluntary self-regulation, took into account that the Authority will need to take a more proactive role in the migration advice industry.

7.4.2 The Review concluded that if the industry were to move to voluntary self-regulation, the MIA should have sole responsibility for regulating the migration advice industry. Overall, the MIA is seen as representative of the migration advice industry. Some community organisations have suggested that because the MIA membership only accounts for just over a third of the industry, the MIA is not necessarily representative of it. In response, the MIA stated that the number of cases handled by individual migration agents varies considerably - some agents handle only one or two cases a year, while some larger practices may handle over a thousand a year. As its membership includes most of the larger practices, MIA members are likely to account for a much larger percent of all applications handled by migration agents.

Government Regulation

- 7.4.3 A return to government regulation of the industry was rejected on the grounds it offered no advantages over the current statutory self-regulation arrangements.

Statutory Self-Regulation

- 7.4.4 The Review then examined the existing co-regulatory arrangements. The recommendations resulting from this examination relate to the future of statutory self-regulation, sound knowledge, continuing professional development, discipline and ethics, and overseas practice.

7.5 Recommendations

Future of Statutory Self-Regulation

Recommendations 1 and 2

- 7.5.1 To provide ongoing consumer protection, statutory self-regulation should be extended and reviewed again at an appropriate juncture to determine whether the industry has improved to the extent that consumer protection and agent competence could be assured without a regulatory framework. The Review concluded that the MIA's position as regulator should be embedded more fundamentally in the legislation. To give effect to the sense of security the MIA has in its role as the regulator, it was decided that the current framework should no longer be subject to a sunset clause.
- 7.5.2 It was further recommended that the MIA and DIMIA should immediately commence consultations to identify specific milestones to be agreed between DIMIA and the MARA in the development of the industry and in the effectiveness of the MIA as the regulator. The Review considered that the industry should focus on achieving a number of key milestones and that a move to full self-regulation would be evaluated in light of these key milestones being achieved. They would relate to the MARA's effectiveness in its core roles of registration, CPD, complaints handling, discipline and industry monitoring and ensuring that consumers have the necessary information – e.g. on price and quality of services – to allow them to take decisions in their best interests. Key milestones should thus include a further significant decrease in complaints and a manifest increase in the level of satisfaction on the part of both clients of migration agents and of migration agents as clients of the MARA.
- 7.5.3 The Review has also recommended that to ensure that the MARA is fully representative of the migration advice industry, the MARA should be enabled to include community representatives or other non-MIA representatives in its decision-making processes in a manner to be agreed with DIMIA.

*Sound Knowledge and Entry Requirements**Recommendations 3 and 4*

- 7.5.4 Entry-level knowledge requirements are fundamental to maintaining acceptable standards of competence and professionalism within the industry. The Review has recognised that there is concern that the current sound knowledge course is not sufficiently rigorous or comprehensive. The current course involves only three to five days of training and does not provide sufficient of the necessary information to work in such a changing and complicated industry. This view is shared by many migration agents, members of the Migration Review and Refugee Review Tribunals and DIMIA officers. It was an issue that was raised in a significant proportion of the submissions.
- 7.5.5 To improve competence within the industry the Review has recommended that the current sound knowledge course and examination be lengthened and made more comprehensive, and that an alternative means of entry should be introduced whereby individuals could complete a period of supervised practice followed by an entrance examination. The Review also agreed that the prescribed qualification for sound knowledge purposes, for people with a law degree, should be a practising certificate.
- 7.5.6 The Review found that the current legislation does not make it clear that satisfactory completion of the sound knowledge course and examination or other relevant qualifications should be mandatory for initial registration. To rectify this the MARA should be given the power to refuse to register a person seeking initial registration unless they have sound knowledge of migration procedure or other relevant qualifications.
- 7.5.7 The Review recognised the need to maintain participation levels in the industry of non-commercial (i.e. 'not for profit') agents and also recognised the impact the cost of initial registration has on persons wishing to enter this sector. To provide some assistance to this sector, the Review recommended that bulk publishing be permitted of community organisation employees' details in the one newspaper notice where more than one employee of the organisation is making an initial registration application. The Office of Small Business suggested there was no reason why persons wishing to enter the commercial sector should not also be able to decrease their costs by bulk-publishing and that individual notification served no beneficial purpose to the migration advice industry or to consumers, to which the Review agreed. Accordingly it is recommended in the submission to be considered by Cabinet that those employees within a business or organisation (i.e. both the commercial and non-commercial sectors) who intend to register as migration agents, be permitted to advertise their intention together in the one newspaper notice.

Continuing Professional Development

Recommendations 5 to 10

- 7.5.8 Whilst the Review recognised that migration agents have little difficulty in completing the CPD requirement, the majority of complaints against agents in fact refer to competence. There is also anecdotal evidence from other parties that the knowledge of many migration agents is inadequate. To improve ongoing knowledge and competence within the industry across the full scope of immigration assistance, the Review has recommended that certain CPD activities be made mandatory in the first year of registration and periodically thereafter, and that the differentiation between ‘core’ and ‘elective’ activities be reassessed. The Review, recognising that migration agents operate in a statutory environment which is constantly changing, also recommended that amendments to portfolio legislation should be the subject of a mandatory assessable annual activity.
- 7.5.9 The recommendations support existing arrangements to reduce the burden of CPD activities on those migration agents who are also legal practitioners. Other recommendations enhance the MARA’s powers in relation to requiring agents to meet CPD requirements within an appropriate time-frame prior to lodging an application for re-registration (i.e. both repeat and late registration). This will require defining the requirements for all agents applying to register, whether at an initial stage, or whether making a repeat or late application.
- 7.5.10 The Review noted that currently the only measure of consumer satisfaction in the industry is via the level of complaints. It concluded that it was advisable to obtain a more objective understanding of the level of consumer satisfaction with the conduct of agents, through DIMIA and the MARA conducting regular client surveys.
- 7.5.11 Arising from recent litigation, the Review found that there was uncertainty about the MARA’s powers to apply a ‘fit and proper person’ test at the stage of renewal of a registration. It recommended that the MARA be given the power to apply a ‘fit and proper person’ test to applicants for re-registration. To further ensure that agents can be better prepared to meet these tests at the time of re-registration, it also recommended that the MARA adopt a proactive approach and develop an education strategy to better explain these requirements to agents.

Certified Migration Agent Scheme

Recommendation 11

- 7.5.12 Currently there is only one level of registered migration agent. In its submission, the MIA proposed a second, higher category of registered migration agent, the Certified Migration Agent (CMA). The introduction of such a category is designed to foster the pursuit of high professional standards and the attendant market advantages within the industry. Some of the contrary views argued that CMAs were unnecessary, would

not reward agents specialising in one area, would favour the large operators, may be confusing to clients and would not necessarily lead to better consumer protection.

- 7.5.13 The Review examined the registration practices of comparable industry groups and found that the legal and accountancy professions were prime examples where practitioners had an opportunity to obtain a higher level of registration. The creation of a high level practitioner can help to improve consumer protection standards by giving clients a high level of assurance, as well as imposing more onerous responsibilities on the professional who wishes to be recognised at this higher level. An important requirement was that a CMA would hold a specified level of professional indemnity insurance. The Review noted that protection of client interests, as well as those of agents, is desirable for the industry as a whole, not just for those seeking to be registered at a higher level.
- 7.5.14 The Review noted that the accountancy profession's CPA scheme is widely well regarded and has been a positive influence in improving professional accountancy standards. It also places a focus on consumer protection issues.
- 7.5.15 Whilst a CMA scheme is no guarantee of improved standards or better consumer protection the Review concluded that this was an option deserving of further investigation and recommended that the MIA/MARA and DIMIA should consult further on options for the possible development of a CMA scheme.
- 7.5.16 The Review also recommended exploring the feasibility of requiring migration agents, either as part of the CMA scheme or within the existing arrangements, to hold professional indemnity insurance at a specified minimum level, to better protect clients from professional negligence.

Discipline and Ethics

Recommendations 12 to 19

- 7.5.17 The ability of the MARA to discipline agents is crucial to the credibility and improvement of the migration advice industry. These recommendations provide the MARA with greater scope in relation to disciplining agents and strengthening the current arrangements. For example, the MARA will be given the power to increase the penalties for inactive agents who fail to comply with requests to provide or return client documents and information.
- 7.5.18 The existing sanction to caution migration agents will be strengthened to allow for conditions to be attached. The onus will then be on the migration agent to demonstrate that he or she has complied with the conditions before the cautionary sanction can be lifted. The MARA will be also be provided with strengthened powers to publish, on its *Register of Migration Agents* and elsewhere on its website, for a specified period, the names of all agents who have been sanctioned and the reasons for the sanction.

- 7.5.19 Some agents who have been sanctioned then inappropriately seek to stay within the industry using a variety of business structures or employment relationships. In order for the MARA to be able to pursue these unscrupulous agents the definition of ‘relationship by employment’ will be strengthened.
- 7.5.20 Vexatious applications have a considerable negative impact on the workloads of DIMIA and on the integrity of the migration and humanitarian programs. DIMIA, through enhancing its Integrated Client Service Environment (ICSE) system, and the MARA will together improve the monitoring of agents and develop a more effective means of sanctioning those agents who lodge high numbers of vexatious or incomplete applications.
- 7.5.21 The Code of Conduct will also be strengthened to require migration agents to provide their clients with detailed and clear information on the industry in general, on its regulation and the complaints handling mechanism and what they can expect from migration agents and the MARA.

Overseas Practice

Recommendation 20

- 7.5.22 The unscrupulous behaviour of some individuals operating offshore as migration agents, whether registered or not, continues to cloud the credibility of the migration advice industry. While DIMIA and the MARA promote the use of Australia-registered agents offshore, their ability to address offshore consumer protection issues generally and to address the conduct of unscrupulous agents offshore is severely limited, because so few offshore agents are registered under the current onshore scheme. The Review has recommended that the legislation be amended to extend registration to foreign nationals who wish to provide advice to visa applicants in relation to temporarily entering or permanently migrating to Australia. This would include a measure limiting the categories of people who can be appointed as representatives or agents of a visa applicant.

Decision-making, client services, MARA efficiency, fraud, unregistered practice, fees and the DIMIA-agent relationship

Recommendations 21 to 27

- 7.5.23 These recommendations cover a wide variety of topics such as decision-making, client services, efficiency of the MARA, fraud and unregistered practice and the relationship between migration agents and DIMIA. These recommendations include that MARA produce a client service charter, develop community education information, including about the average fees charged within the industry, review its public access arrangements and fully implement the recommendations of Ernst and Young’s September 2000 *Review of the Migration Agents Registration Authority*.

The Review also recommended that DIMIA give, where other priorities allow, a higher priority to investigating and facilitating convictions for unregistered practice and of migration agents engaged in fraudulent activities.

- 7.5.24 These recommendations are expected to result in better client service and improved efficiencies in the MARA's operations, and thus a more ethical and robust migration advice industry.

7.6 Identification of expected impacts of the review's proposed options as likely benefits and costs and effects on particular groups

- 7.6.1 Compliance costs vary between agents but are estimated to be around \$6,500 per annum per fee-charging re-registering agent currently. These costs include re-registration, CPD, maintenance of library and insurance. Compliance costs for persons wishing to enter the industry as fee-charging agents are around \$6,950 currently, and include entry costs (the cost of obtaining sound knowledge or other qualifications and passing the entry examination), advertising, initial registration and library). Non-commercial ('not for profit') agents' costs are lower as their registration fees are considerably less than their commercial ('for profit') counterparts. Given that the Review is recommending a continuation of the present arrangements, it is anticipated that these compliance costs will continue to apply, and at the same level, apart from any increases in the cost of e.g. CPD, insurance etc. that may be imposed by providers of these products in the future.
- 7.6.2 Whilst the impact of compliance costs – in any industry – is likely to be somewhat greater on small businesses than on larger businesses, and greatest on those who operate one-person businesses, this is largely due to the fact that the smaller a business, the fewer possible economies of scale are available to it. This is also true for the migration advice industry; where an agent works in a partnership or company with one or more other agents, economies of scale may operate to reduce each agent's costs. However, such cost-reducing opportunities in the migration advice industry are in reality limited to the sharing of a professional library and perhaps the costs of non-CPD and in-house training, and an agent working in a smaller business may not enjoy, to the same degree, the financial advantage accrued from these limited opportunities as an agent in a larger business. Overall, it is anticipated that the Review's recommendations will not increase the costs on small business to a significantly greater degree than on medium to large businesses, as virtually all of the costs apply to each agent, not to each business.
- 7.6.3 The Review in making a recommendation to allow bulk publishing for initial registration (refer to paragraph 4.7.7 above) provides the potential for further cost saving for both the commercial (fee-charging) and non-commercial (non-fee-charging) sectors of the industry. Together with members of the industry body, the Migration Industry Association, all non-fee-charging agents are also eligible for reductions in fees charged for training (e.g. for CPD activities) by the industry body.

7.6.4 Table 1 (following paragraph 4.9.3 below) summarises the costs and benefits of statutory self-regulation, and is based on a more detailed analysis provided in the report of the Review. The only sector significantly adversely affected by the charging arrangements under the current regime is the non-commercial ('not for profit') sector.

7.7 Identify the data sources and assumptions used in making these assessments

7.7.1 The information used in this table was gathered from the MARA Secretariat and the Board of the MARA.

7.7.2 To gather accurate data on the costs passed onto consumers by agents, a comprehensive survey would need to be conducted across all sectors of the migration advice industry. It is difficult to predict costs in relation to agents and their clients as they would vary greatly from agent to agent. Some agents have hundreds of clients while others may have only one or two. Their areas of speciality vary too, as does the degree of complexity in assisting with certain visa subclasses, which may be reflected in higher fees.

7.7.3 Statutory self-regulation provides the benefit of protection to consumers and to the community in relation to the integrity of the migration and humanitarian programs. DIMIA benefits from improved information to clients and assistance with processing. With the MARA paying DIMIA \$150,000 annually towards the costs associated with this environment, the cost to the taxpayers is minimal. The regulatory environment is stable with government regulation able to provide a check on the industry and ensure that the MIA is fulfilling its role as industry regulator.

Table 1: Summary of the impacts of the preferred statutory self-regulation option on consumers, business including small business and government

	Benefits		Costs	
	Description	Estimate (\$)	Description	Estimate (\$pa)
Consumers	Greater protection for consumers through mandatory registration, minimum training requirements and established complaints mechanisms.	Main financial benefit is protection from paying exorbitant fees: significantly higher than average fees of \$2,500 to \$4,000.	Costs of registration and ongoing compliance costs may be passed on to clients by registered agents.	If passed on these direct costs are estimated at \$8 to \$14 per client.
Business – including small business	<p>Industry codes provide framework for ethical practice.</p> <p>Improved public perception of the industry.</p> <p>Registered agents participate in development of industry policies.</p>	Not readily quantifiable.	<p>Up-front compliance costs for each person entering industry include qualifications, initial registration fee, advertising of intention to apply and library.</p> <p>Ongoing costs for each agent include registration fee, CPD, library and insurance.</p>	<p>\$6,950</p> <p>\$6,500</p>
Government	DIMIA establishes and oversees regulatory settings and takes action against unregistered agents.		Cost of the provision of policy advice and litigation.	<p><i>Costs to DIMA are estimated to vary between \$300,000 and \$500,000 pa.</i></p> <p>Of this, \$150,000 pa is recovered from the industry.</p>

5 CONSULTATION

7.4 Who are the main affected parties?

- 7.4.1 Affected parties include consumers, registered migration agents (an estimated 90-95 percent of whom work in a small business environment; refer paragraph 4.2.3 above), the MIA, some government departments and other regulatory, review and professional bodies.
- 7.4.2 The review process commenced with the development and dissemination by DIMIA of a Discussion Paper in September 2001. This Discussion Paper invited stakeholders to make submissions on the operation of the current arrangements and options for future industry regulation. The stakeholders included ethnic community organisations, peak bodies, the MIA, the MARA and statutory review bodies such as the Refugee Review Tribunal and Migration Review Tribunal (see [RIS: Attachment A](#) for a complete list of organisations invited to comment). The discussion paper was also posted on the DIMIA and the MARA websites.

7.5 What are the views of these parties?

- 7.5.1 Stakeholders were asked a number of questions on key issues raised in the Discussion Paper. Seventeen submissions were received from various sectors, migration agents and the general public (see [RIS: Attachment B](#) for a list of submissions received).
- 7.5.2 In relation to the issue of future regulation of the migration advice industry, the majority of submissions held the view that the industry should continue to operate in the same manner. The main reasons cited were that the MARA needs to:
- increase the level of professionalism in the industry;
 - increase consumer protection; and
 - improve ethical standards.
- 7.5.3 The MIA indicated that it was ready to assume the role as industry regulator but that the industry was not yet ready for self-regulation. The MIA argued for greater powers, such as responsibility for the gazettal of CPD courses. The MIA also requested that a greater emphasis be placed on the industry moving towards voluntary self-regulation, with itself as the industry regulator.
- 7.5.4 Submissions generally expressed support for the MARA's performance as the industry regulator. A majority of submissions commented on the need for greater consumer protection, greater transparency in the MARA's processes and greater access by the public to Secretariat staff. There was also considerable support for improving academic entrance requirements for entry into the industry and enhancing the CPD scheme.
- 7.5.5 The MIA in their submission suggested the concept of a higher level of registered migration agent or Certified Migration Agent (CMA). A number of submissions

raised concerns about this concept while others offered variations on it. The Review examined in considerable detail the registration regimes of comparable industry groups and concluded that there was merit in the MIA/MARA and DIMIA consulting further on options for a CMA scheme.

- 7.5.6 The issue of extending regulation to include overseas practice also raised concerns relating to the costs of such a scheme, the potential for limiting choice for clients and the potential for there to be an adverse impact on humanitarian and refugee visa applicants. Having considered the arguments supporting this proposition, the Review found sufficient grounds for this idea to be developed further.
- 7.5.7 Both the CMA concept and the regulation of overseas practice will be the subject of separate consultations with stakeholders.

6 CONCLUSION AND RECOMMENDED OPTION

7.4 The 2001-02 Review found that the migration advice industry is not ready for voluntary self-regulation in March 2003 in view of:

- the low rate of membership of the industry association, the MIA, and the lack of homogeneity in the industry, which would threaten the viability of voluntary regulation by any industry body;
- the vulnerability of consumers and the significant consumer protection and national interest issues; and
- concerns of the department and of consumers of existing levels of client service and client access to the MARA.

7.5 All submissions to the Review supported the continuation of statutory self-regulation on the basis of the need to curtail the impact on the industry of the activities of unscrupulous agents and the continuing need to raise professional standards. In view of these industry characteristics and the very real risks associated with introducing voluntary self-regulation prematurely, this RIS recommends that statutory self-regulation should be extended. In order to provide the MIA with more certainty and the necessary time to achieve the key measures towards self-regulation, the sunset clause will be removed.

7.6 The Deed of Agreement between the Minister and the MIA should be renegotiated to reflect the government's recommendations arising from the Review. The renegotiated Deed of Agreement should include key milestones relating to enhancements in the MARA's effectiveness in its core roles of registration, CPD, complaints handling, discipline, industry monitoring and consumer education. An ongoing review process will assess the industry's progress towards achieving the standards of consumer protection and agent competence necessary for voluntary self-regulation.

7 IMPLEMENTATION AND REVIEW

7.1 How will the preferred option be implemented?

- 7.4.1 The preferred option requires an extension of the current statutory framework, by removing the current sunset clause and instead developing key milestones to be achieved by the industry as a step towards its achieving self-regulation.
- 7.4.2 This Review recommended enhancements to the existing statutory self-regulation framework. This will require changes to the *Migration Act 1958*, to the Migration Agents Regulations 1998 and to the Deed of Agreement between the MIA and the Minister for Immigration and Multicultural and Indigenous Affairs.
- 7.4.3 The extension of the current arrangements will have no impact on other agencies.

7.2 Is the preferred option clear, consistent, comprehensible and accessible to users?

- 7.4.1 The proposed option is supported by all of the stakeholders who made submissions to the Review. This preferred option is clear, consistent and easily understood by consumers and agents.
- 7.4.2 The Review suggests targeting certain areas for the development of policies and procedures by the industry body, which will improve access to information for consumers, agents and others. This includes more transparent decision-making and more stringent education requirements for agents entering the industry.

7.3 What is the impact on business, including small business, and how will compliance and paper burden costs be minimised?

- 7.4.1 As stated previously the costs of compliance varies between agents. As discussed at paragraphs 4.8.1 and 4.8.2 above, there are ways in which agents, commercial or non-commercial, where two or more are working in the same business, can share resources (e.g. by sharing the holding and maintenance of a professional library) and thus minimise compliance costs. The proposal to allow 'bulk publishing' for persons intending to enter the industry (see paragraphs 4.7.7 and 4.8.3 above) also aims to reduce compliance costs for all agents, and is one which will be of particular interest and benefit to the smaller, non-commercial ('not for profit') sector as it will ease their financial burden and recognises the importance of this sector's continued participation in the industry.
- 7.4.2 Continued cross-accreditation by the MARA with legal professional bodies will ensure that the current CPD requirements do not overburden those migration agents who are also practising lawyers.
- 7.4.3 All agents must meet the 'fit and proper person' and 'person of integrity' tests at initial registration and again at the time of re-registration. Those who do not meet the

requirements run the risk of not having their initial or re-registration application approved and possibly losing their livelihood. Many agents also seek a review by the Administrative Appeals Tribunal or the Federal Court of any refusal by the MARA to register them. This can be expensive for all concerned. The aim of a proposed education campaign to be run by the MARA is to encourage agents to more responsibly manage their professional development. This will give agents the benefit of increased certainty, that the time and cost expended on meeting their sound knowledge and CPD requirements, will lead to a positive decision on their initial and re-registration application. The industry as a whole will also benefit from improved levels of knowledge and competence across all aspects of immigration assistance.

- 7.4.4 There are a number of recommendations made by the Review, which go to providing greater certainty about the MARA's powers relating to registration and sanctions. While the primary aim is to enhance consumer protection these recommendations have not been made without due consideration of the impact on a migration agent's business. For example, strengthening the provisions relating to a caution will provide the MARA with the capacity to intervene at an early stage to remedy an agent's conduct, while still allowing the agent to continue to practise.
- 7.4.5 Whilst the proposed regulation of offshore practice and examination of the feasibility of establishing a Certified Migration Agent scheme are key recommendations of the Review, they are currently at the conceptual stage only. Another RIS will not be required in respect of the regulation of offshore practice as practice by foreign nationals will not impact on small business in Australia. However, the CMA concept will need to be the subject of a separate RIS when it has been further developed.
- 7.4.6 The Review recommends exploring the feasibility of requiring migration agents to hold a specified minimum level of professional indemnity insurance cover, either within the current scheme or as part of the CMA scheme. Currently, there is no definitive information available on the number of migration agents who hold professional indemnity insurance, or the level of coverage purchased. It is estimated that of the 2,773 registered migration agents as at 30 June 2002, some 400 would hold professional indemnity insurance and a further 500 who are also legal practitioners are covered under their legal insurance. A more comprehensive examination of the impact on business would need to take place in conjunction with the feasibility study.
- 7.4 How will the effectiveness of the preferred option be assessed? How frequently? Is there a built-in provision to review or revoke the regulation after it has been in place for a certain length of time?**
- 7.4.1 The Review recommended that the existing regulatory framework be extended and reviewed again at an appropriate juncture and that the current framework should no longer be subject to a sunset clause.

- 7.4.2 A system of performance milestones set by DIMIA and agreed to by the co-regulator, the MARA, will be introduced. These performance indicators will address, among other matters, the development of the industry in relation to:
- competence and sound knowledge of migration agents;
 - MIA coverage and performance in a regulatory role;
 - client service and public access to the MARA;
 - agent discipline and ethics; and
 - appropriate protection for consumers.
- 7.4.3 The Minister will retain the right to conduct a further review at a time of his choosing to assess if statutory self-regulation is continuing to achieve its objectives.
- 7.4.4 Finally the Review proposed that the need for continued legislative underpinning should be considered in any future review of industry regulation. It was noted that despite significant gains in protection available to consumers, the nature of the migration advice industry and of visa application and other migration advice transactions, could mean that there would always be an argument for a strong regulatory framework. The Review recognises that it may be impossible for even a committed and capable industry body to effectively regulate the industry without some statutory support.

List of Organisations Invited to Comment on the Discussion Paper

ACCC
Australian Chamber of Commerce and Industry
Australian Council of Social Services
Australian Section of the International Commission of Jurists
Baulkham Hills/Holroyd/Parramatta Migrant Resource Centre
Commonwealth Director of Public Prosecutions
Deakin Australia
Department of the Treasury, Consumer Affairs Division
Each member of the Business Advisory Panel
ECC of Illawarra
ECC of Loddon Campaspe
ECC of Newcastle & Hunter Region
ECC of Northern Tasmania
ECC of Shepparton
ECC of Sunraysia
ECC of WA
ECC of Wagga Wagga
ECC/MRC Albury-Wodonga
Ethnic Communities Council of NSW
Ethnic Communities Council of Qld
Ethnic Communities Council of Victoria
Fairfield Migrant Resource Centre
Federation of Ethnic Community Councils
Immigration Advice and Rights Centre
Inner Western Region (Footscray) Migrant Resource Centre
Law Council of Australia
Law Society of NSW
Law Society of Victoria
Legal Aid Commission NSW
Legal Aid Western Australia
MC of ACT
MC of NT
MC of Tasmania
MCC of Gold Coast
MCC of Griffith
MCC of SA
MCC of Sunshine Coast
Migration Agents Registration Authority
Migration Institute of Australia
Migration Review Tribunal
MRC of Geelong
MRC of Gippsland

MRC of Townsville
Multicultural Access and Resource Service, Coffs Harbour
Multicultural Society, Northern Rivers
National Council of Churches in Australia
Refugee and Immigration Legal Centre
Refugee Council of Australia
Refugee Review Tribunal
Regional MRC of Ballarat
The Victorian Foundation for the Survivors of Torture
Transcultural Community Council, Lightning Ridge
UNHCR

List of Organisations and Individuals who made Submissions to the Review

ACOSS

Business Skills Section, DIMA

Commonwealth Director of Public Prosecutions

Geelong Migrant Resource Centre

Harvey Wade, Consumer

Immigration Rights and Advice Centre

John Gillespie, Migration Agent

Law Council of Australia

Law Society of New South Wales

Legal Aid Commission of New South Wales

Mervyn Rothstein, Lawyer and Migration Agent

Michael Hutchinson, DIMA

Migration Agents Registration Authority

Migration Institute of Australia

Paul Vilips, Migration Agent

Refugee Review Tribunal

Springvale Community Aid and Advice

Measures to Improve Professional Standards in the Migration Advice Industry

The following Regulation Impact Statement was approved by the Office of Regulatory Review in June 2003.

INTRODUCTION

Background

Current regulatory system

In Australia, subject to certain exemptions, only registered migration agents are permitted to provide 'immigration assistance', as defined in the *Migration Act 1958* (the Act), for a fee or reward.

The Migration Agents Registration Authority (MARA) regulates the conduct of these agents in accordance with the provisions of Part 3 of the Act.

The MARA's role under the current system of statutory self-regulation includes:

- assessing, approving or refusing new and repeat registration applications in accordance with entry requirements;
- monitoring the conduct of registered agents against the requirements of the migration agents Code of Conduct (the Code);
- investigating complaints against registered agents, applying sanctions where appropriate; and
- administering Continuing Professional Development (CPD) requirements.

The Government monitors the MARA's performance as the regulator of the migration advice industry and maintains the statutory framework within which the MARA operates.

The Deed of Agreement (the Deed) between the Commonwealth of Australia and the MIA formally defines the relationship between the Commonwealth and the MIA, acting in its capacity as the MARA. It outlines the support to be provided by DIMIA to the MARA in areas such as legal advice and assistance with litigation, as well as MARA's reporting requirements and performance targets.

The objectives of the regulatory scheme are to:

- maintain and strengthen consumer protection; and
- contribute to the integrity of the migration and humanitarian programs by promoting an ethical and competent migration advice industry.

Review of the industry and proposed changes to the regulatory framework

In 2001-02, a review of the migration advice industry was carried out. The subsequent report entitled *2001-2002 Review of Statutory Self-Regulation of the Migration Advice Industry* (Review), made twenty-seven recommendations for strengthening the industry.

This Review found that the industry was not yet ready to move towards complete self-regulation. It considered that regulatory intervention was still necessary to alleviate a number of concerns, such as:

- the quality of service being provided by some agents;
- the level of professionalism within the industry; and
- the continuing vulnerability of client groups.

Since that time, the Government and the MARA have been working cooperatively on implementing all twenty seven recommendations of the Review, the majority of which involve a significant amount of legislative changes. These changes, if passed by Parliament, will help improve agent competence, reduce unscrupulous behaviour by agents and protect the integrity of the migration program.

A Regulatory Impact Statement (RIS) was prepared in 2002 when the Government considered and endorsed the implementation of all the recommendations of the Review.

The *Migration Legislation Amendment (Migration Agents Integrity Measures) Bill 2003* (the Bill) is being prepared to be introduced into Parliament in Spring 2003. This Bill, if passed, will provide for the implementation of the majority of the Review recommendations.

It is expected that consequential changes to the *Migration Agents Regulations 1998* (the Regulations) will be made in March 2004.

PROBLEM

This RIS addresses proposed legislative changes to implement two significant Review recommendations – ie. Recommendations Three and Sixteen respectively.

As outlined below, the proposed changes aim to address two significant problem areas, within the industry, that were highlighted by the Review, ie. :

- the inadequate entry standards for the industry; and
- the submission of “vexatious” applications by unscrupulous migration agents.

Recommendation 3 (in part)

.. Only lawyers with a current practising certificate would be exempt from [current] initial entry requirements.

The MARA should be given the power to refuse to register a person seeking initial registration unless they have sound knowledge of migration procedure or other relevant qualifications.

Entry requirements are fundamental to maintaining acceptable standards of competence and professionalism within the migration advice industry. The Review specifically addressed the issue of whether the requirements for entry into the industry were sufficient.

The Review found that entry requirements should be strengthened in order to improve competence within the industry. Two particular problem areas were recognised.

The Review considered it inappropriate that:

- holding a law degree (which may have been obtained some years before) was considered sufficient to satisfy the MARA that an applicant is a fit and proper person to become a registered migration agent; and
 - In 2002-03, complaints were received about three hundred and ten agents (ten percent of all agents). Ninety-six of these (ie. thirty-one percent) related to the conduct of a legally qualified agents.
 - Of complaints against legally qualified agents, sixty-six related to the conduct of agents with a practising certificate (nine percent of such agents) and seven related to the conduct of agents admitted to practice (but who did not hold a practising certificate) (nine percent of such agents). However, it is notable that twenty-three complaints related to the conduct of agents holding only a law degree, which was seventeen percent of agents with only a law degree.
 - The MARA has advised that complaints often arise against agents who hold a law degree only as they do not have the necessary business skills to operate effectively within the industry.
- the Act does not clearly state that satisfactory completion of the sound knowledge course and examination, or other relevant qualifications, is mandatory for initial registration.
 - When considering whether an applicant for registration is fit and proper to become a registered migration agent, currently the MARA is only required to “take into account” whether the applicant has a qualification prescribed by the Regulations or a knowledge of migration procedure that the MARA considers to be sound (see s290(2)(b).

- Nor does the Act clearly define what the MARA should consider to be a “sound knowledge” in cases where an agent does not hold “prescribed qualifications”.

Recommendation 16

To support the integrity of the migration and humanitarian programs, improve the monitoring of agents and develop more effective means of sanctioning agents who lodge high numbers of vexatious, unfounded or incomplete applications.

The Review also directly addressed the issue of agents who readily assist clients to apply for visas for which they are clearly not eligible. It recognised that such behaviour abuses the migration and humanitarian programs and wastes DIMIA’s resources.

Further research has revealed the extent of this problem:

- The Department has analysed Protection visa application rates for the period 1/11/01 to 30/6/02.
 - Of the 8,677 primary applications lodged during this period, 2,222 were lodged by the applicant themselves and 6,455 (approximately seventy-four percent) were presented by five hundred and twenty two migration agents. Notably, three hundred and four of these agents had a refusal rate for their applications of ninety to one hundred percent, accounting for 3729 (approximately fifty-eight percent) of the 6,455 applications lodged by migration agents.
 - In total, forty-three percent of all Protection visa applications in the period were lodged by migration agents who had between a ninety and one hundred percent refusal rate. Their activities have a clear adverse impact on the humanitarian program.
- Of the three hundred and ten complaints received by the MARA in 2002-03, four percent of these related to an agent misleading a client about the prospects of success of their application and two percent concerned agents encouraging the lodgement of grossly unfounded applications. Clearly, few complaints are being made by the clients of such agents, as the applicant has gained valuable extra time in Australia.

The Review recognised that the current provisions in the Code relating to unfounded applications are simply insufficient to deal with such problems. The Code currently provides that an agent:

- should be frank and candid about prospects of success when assessing a client's request for assistance in preparing a case or making an application (Clause 2.6);
- should not hold out unsubstantiated or unjustified prospects of success, when asked by a client to give his or her opinion about the probability of a successful outcome for the client's application (Clause 2.7);

- must not engage in false or misleading advertising, including advertising in relation to guaranteeing the success of an application (Clause 2.10); and
- must not encourage the client to lodge an application under the Migration Act or the Migration Regulations which is vexatious or grossly unfounded (for example, an application [that] has no hope of success); and must advise the client that, in the agent's opinion, the application is vexatious or grossly unfounded; and if the client still wishes to lodge the application, the agent must obtain written acknowledgment from the client of that advice (Clause 2.17).

Under section 303(h) of the Act the MARA, using its discretionary powers, can then cancel or suspend the registration of an agent who breaches the Code, including through encouraging vexatious applications.

Whilst some action has been taken by the MARA against such agents, under these provisions, it is clear that they are inadequate to redress the lodging of vexatious applications. A stronger message needs to be sent to registered migration agents that they should not engage in “vexatious activity”.

OBJECTIVES

The broad aims of proposed legislative changes are to:

- raise standards of professionalism and skills in the migration advice industry;
- further protect vulnerable consumers from unscrupulous and unprofessional agents; and
- to effectively sanction agents making vexatious applications.

The purpose of this RIS is to discuss in more detail the impact of legislative changes to implement Recommendations Three and Sixteen of the Review. As policy approval has already been given, and a RIS was presented to the Government at the time of seeking that approval, the purpose of this RIS is not to present alternative options in relation to the two recommendations. It will however provide more detailed information about the benefits and disadvantages of implementing each recommendation for key stakeholders and the results of related consultations.

OPTIONS

Recommendation 3

The Government proposes to amend the Act to make it clear that satisfactory completion of the sound knowledge course and examination, or holding of other relevant qualifications, is *mandatory* for initial registration.

- The MARA will be given the power to refuse to register a person seeking initial registration unless they have sound knowledge of migration procedure, as evidenced by completing a sound knowledge course and examination, or by holding prescribed qualifications.
- Applicants will be required to possess a current legal practising certificate (or equivalent) in order to meet the prescribed qualification requirement.

Thus, applicants who possess a law degree, but do not hold a current practising certificate, will now be required to undertake a sound knowledge course and pass an entry examination in order to have their application for initial registration considered by the MARA.

- Applicants will be required to complete a prescribed course and the entry examination within twelve months, prior to submitting their application for registration.
 - A prescribed course will be one approved by the MARA and listed on its web site.
 - A prescribed exam will be the “Migration Advice Profession Knowledge Entry Examination”, as listed on the MARA’s web site.

Recommendation 16

The Government is proposing a new scheme to improve the monitoring of agents suspected of engaging in vexatious activity, and to more effectively sanction those agents. The outline of the scheme is as follows:

- “Vexatious activity” will be defined as activity by a registered migration agent, characterised by the lodgement of visa and review applications, whose refusal rate meets, or exceeds, a prescribed threshold.
 - There will be two refusal rate thresholds: ninety percent for Protection visa applications, and seventy five percent for all other visa classes.
 - The minimum period to be examined will be one hundred and eighty calendar days and the minimum number of applications lodged in this period before an agent’s refusal rate can be examined will be four applications of the same visa class.

- DIMIA will identify agents for sanctioning if their refusal rate for applications in a particular visa class (after review, where review is requested) is at, or above, a prescribed threshold.
 - DIMIA will analyse migration agent application data on departmental systems to identify these agents.
 - All applications made by registered migration agents providing immigration assistance under the Immigration Advice and Application Assistance Scheme will be exempt from the vexatious activity sanctioning scheme.
- DIMIA will issue notices to agents who meet the threshold, advising that they may be referred to the MARA for mandatory sanctioning.
 - The agent will have fourteen days (with provision for a fourteen day extension) in which to respond to the notice with any “relevant considerations”, which might lead DIMIA to decide not to make a referral to the MARA. These may include situations beyond an agent’s control, for example, a failure in their client’s ability to satisfy time-of-decision criteria despite satisfying time-of-application criteria.
- DIMIA will have the power to make a decision to refer the agent’s name to the MARA and reason(s) for the referral, if after it has considered the agent’s response, DIMIA reaches the conclusion that the agent meets the threshold for referral.
 - DIMIA will have the discretion not to refer agents to MARA when, for example, the broader circumstances indicate that malpractice is not involved or no profit motive is evident.
 - DIMIA will also have the power to recall and reconsider any of its referrals, if it is in the public interest to do so.
 - DIMIA will be required to notify the MARA of its decision to make a referral.
- The referral mechanism, if triggered, will lead to a mandatory suspension of registration for a year for a first occurrence and a mandatory cancellation of registration for five years for a subsequent occurrence.
 - The MARA will be required to make the appropriate mandatory decision as soon as possible or within seven days;
- The agent will have the right to appeal DIMIA’s referral decision to the AAT within 14 days of being given notice of the decision.
 - An agent appealing to the AAT will be permitted to seek a stay of the operation of DIMIA’s referral decision and the MARA’s subsequent mandatory decision. However, an agent who is granted a stay order will be required to be supervised by an experienced registered migration agent, whose professionalism is not in question and who agrees to undertake this role.

For the vexatious scheme to operate effectively, it will be necessary to ensure that agents do not evade the new sanctions by failing to declare their role as an agent. Consequently, legislative changes are also proposed to ensure that:

- agents declare their involvement with visa or review applications (ie. by completing the relevant forms or by letter); and
- disciplinary action can be taken against agents who fail to declare their role.
 - Mandatory sanctions, which will mirror the vexatious provisions, may apply.

ALTERNATIVE OPTIONS CONSIDERED

The Department also considered alternative thresholds for determining that an agent is engaging in vexatious activity. The advantages and disadvantages of these options in contrast to the proposed amendments are discussed on pages 13-15.

Alternative 1 – Set the vexatious activity threshold at a seventy-five percent failure rate

Alternative 1 proposed setting a single refusal threshold at seventy-five percent.

Alternative 2 – Set different vexatious application thresholds for Protection Visas

Under this proposal a range of refusal rate thresholds for Protection visa applications would be established, each rate aligned to the nationality of the applicant to reflect each country's differing circumstances.

Alternative 3 – Exclude Protection Visa applications from the scheme

This approach would entirely exclude Protection visa applications from the vexatious activity scheme.

IMPACT ANALYSIS

Those who may be affected by the proposed changes include migration agents, consumers of migration advice, a range of regulatory and review bodies, government and the community.

Migration agents

As at 30 June 2003, a total of 3,084 registered migration agents operated within two sectors in the migration advice industry:

- the commercial ('for profit') sector – 2,813 migration agents (91.2 percent)
- the non-commercial ('not for profit') sector – 271 migration (8.8 percent)

Of all migration agents:

- 2,132 (69.1 percent) do not have legal qualifications and had to complete sound knowledge entry requirements.
- 952 (30.9 percent) have legal qualifications, and of these:
 - 739 have a current practising certificate (24.0%);
 - 81 have admission to practice (but do not hold a practising certificate) (2.6%); and
 - 132 have a law degree only (4.3%).

The MARA has advised that between ninety and ninety-five percent of all registered agents are working in businesses employing fewer than twenty staff (about one half to two-thirds of whom may be agents).

The remaining five to ten percent of agents are working in a very small number of businesses employing twenty or more staff. The majority of these large businesses are community (not for profit) organisations.

Seventy-two percent of migration agents work in a business where they are the only person registered as an agent.

While analysis of vexatious activity is still in its early phases, it is anticipated that less than five percent of agents are likely to be affected by the proposed vexatious activity sanctions.

Consumers

Consumers of migration advice include visa applicants, cancellation review applicants, review applicants, sponsors and nominators.

The degree to which consumers employ migration agents varies. Whilst agents lodge about seventy-five percent of all Protection visa applications, they are less active with other visa class applications. For example, about twenty-five percent of 457 temporary employment visa applications (including nominations and sponsorships) are lodged by agents.

Given the large numbers of applications handled by some agents who appear to be engaged in vexatious activity, it is anticipated that some several thousands of applicants may be saved from being involved in such applications.

Migration Agents Registration Authority

The MARA is funded almost exclusively from the agent registration fees it collects.

The MARA will be required to make mandatory decisions in a short time-frame where agents are referred by DIMIA. Given the relatively small number of agents likely to be affected by the proposed new sanction powers, they are not expected to negatively affect the functions of the MARA.

Government

The work of unprofessional or unscrupulous migration agents directly impacts on the DIMIA, the Migration Review Tribunal (MRT) and the Refugee Review Tribunal (RRT). Changes to the regulatory framework may affect these bodies by:

- increasing their processing workloads if there is a reduction in the availability of competent and ethical advice provided externally;
- a need to increase staff numbers to process a potentially larger number of incomplete applications, leading to a greater burden on the taxpayer; or
- decreasing their processing workload if there were a reduction in the number of vexatious applications being lodged.

The Community

Community organisations and concerned individuals have strong views about the activities of unprofessional and unscrupulous migration agents. Such organisations and individuals have regularly criticised the Government for not forcing such migration agents to act professionally, or leave the industry.

ADVANTAGES AND DISADVANTAGES OF PROPOSED CHANGES

Recommendation 3

Benefits

If the proposed changes are implemented:

- consumers will be further protected from unprofessional conduct by registered migration agents;
 - Where agents have a poor knowledge of migration law and procedure, they can seriously disadvantage their clients by:
 - ◆ lodging applications out of time;
 - ◆ not advising their client of their review rights;
 - ◆ applying for a visa where they have no right to apply;
 - ◆ lodging an incomplete application which DIMIA may lawfully refuse to accept or refuse to grant the visa; or
 - ◆ making applications on their client's behalf which will lead them to be barred from making further applications.

The consumer may have paid the agent large sums of money to make these applications.

- the MARA will have clear legislative power to refuse to register an applicant for initial registration whose knowledge of migration procedure is not considered to be sound;
- consumers of migration advice will benefit from greater certainty that registered migration agents have a current knowledge of applicable laws.
 - Entry-level knowledge requirements are fundamental to maintaining acceptable standards of competence and professionalism within the industry.
 - This recommendation addresses serious concerns in relation to the level of knowledge of migration agents highlighted by the Review. In 2002-03, the MARA confirmed that the greatest number of complaints about professional conduct relate to competence (48%).
- the number of complaints against individuals who have entered the industry through the “prescribed qualifications” alternative to passing the sound knowledge exam, should be reduced.
 - This will enhance consumer protection from unskilled agents.

the resources expended by DIMIA, the MRT and RRT to respond to ill-prepared applications and questions arising from an agent’s poor knowledge of migration law and procedure should be reduced; and

- litigation arising due to a lack of legislative clarity in relation to unclear sound knowledge requirements should be reduced, as will related costs which are borne by DIMIA.

Costs

- If 2002-03 registration figures are used, costs of entering the profession will increase for about seven percent of intending migration agents, ie. those who have a law degree but do not hold a current practicing certificate. These people will have to complete a sound knowledge course and examination. These are the costs currently faced by the majority of migration agents.

It is estimated that the full costs attributable to the regulatory scheme for a migration agent without a law degree to operate their business are:

- Up-front compliance costs for each person entering industry including qualifications, initial registration fee, advertising of intention to apply and library: \$9,070
 - Ongoing costs for each agent including registration fee, Continuing Professional Development, library and insurance: \$6,600
- Any increase in registration costs for this small group of agents may be passed on to consumers. However, given that the migration advice industry is highly competitive and the subset of agents that are affected is quite small, it is likely that the degree to which costs will be passed on is comparatively small.

Recommendation 16

Benefits

Implementation of this recommendation as proposed will:

- reduce incompetent and unethical practice by migration agents;
 - Such conduct impacts substantially on individual consumers, the community and the government.
 - For example, consumers may be encouraged to apply for visas in circumstances when there is little or no evidence that they satisfy requirements. This has the effect of undermining the integrity of the government's migration and humanitarian programs and significantly increasing the workloads of DIMIA, the review tribunals and the Courts.
- overcome the limitations of the current provisions of the Code, relating to vexatious applications lodged by agents;
 - Under current provisions, unscrupulous agents can not be stopped from engaging in vexatious activity.
 - The very high application refusal rates of some agents indicate that a number of them continue to assist with the lodgement of vexatious applications, despite the current provisions of the Code and the possibility of sanctions being applied against them by the MARA.
- limit the extent to which unscrupulous agents can take financial advantage of vulnerable clients by encouraging them to make vexatious applications;
 - In DIMIA's view, many of these applications are instigated by agents and their associates, rather than their clients.
- strengthen the MARA's credibility as a regulator:
 - The ability of the MARA to discipline agents involved in such vexatious activity is crucial to its credibility and the improvement of the migration advice industry.
- ensure that the new sanctions will be imposed in a timely and effective manner;
 - DIMIA is best placed to identify such agents from its databases. It will be assessing and the referring those agents whose activities need to be sanctioned.
 - The use of an arbitrary, but clear, threshold will ensure that action is taken against such agents in a timely manner.
- address the activities of some agents lodging vexatious Protection visa applications, who may also be involved in the trafficking of women for prostitution and enabling those arriving in Australia on tourist visas to overstay their visa and obtain permission to work;

- provide an effective means to limit an agent's ability to continue to practise unprofessionally, after having been sanctioned; and
 - If the agent appeals a MARA sanction and obtains a stay order, the agent will only be able to practice while under supervision.
- oblige agents under law to declare their involvement in applications lodged with DIMIA/MRT/RRT/AAT on behalf of their clients.
 - Unless this is done, once legislation is introduced to define "vexatious activity", to provide that agents should not engage in such activity, and to penalise those who are found to have done so, agents will have an even greater incentive to avoid identifying themselves as having assisted with applications identified as being indicative of their vexatious activity;

By setting a different threshold refusal rate for Protection visa applications at ninety percent, the implementation of this recommendation will:

- clearly acknowledge Australia's ongoing international responsibility to provide protection for genuine refugees;
- better ensure that genuine Protection visa applicants can still avail themselves of an agent's services; and
 - The vast majority will have refusal rates well under the proposed threshold and thus will be able to continue to accept Protection visa applicants as clients without fear of sanction.
 - There is nothing to prevent a client from going elsewhere to receive immigration assistance if their chosen agent is not prepared to act for them, for fear of falling within the scope of the disciplinary sanctions. It is very unlikely that counter staff will face any increase in the number of unrepresented applicants seeking advice, or an increase in invalid applications.
- attract less criticism from refugee advocacy groups than setting different thresholds for Protection visa applicants by nationality (see Option 2).

Costs

- A referral indicating that an agent has engaged in vexatious activity and a subsequent MARA decision to sanction an agent will have a serious detrimental effect on the livelihood of that agent. For this reason, the proposed amendments ensure that:
 - the threshold rates are set much higher than the average failure rates in the Protection visa class and other visa classes, so that only agents demonstrating the most serious of vexatious activity will be affected;
 - an application will be considered to be vexatious only where all the review rights (if accessed) have been exhausted;

- DIMIA must comply with appropriate procedural fairness requirements in making a decision to refer an agent;
 - the agent may appeal to the AAT against DIMIA's referral decision and seek a stay order; and
 - DIMIA may reconsider its decision to refer an agent if it is in the public interest to do so.
- Some agents may monitor the outcomes of the applications they assist with in order to stay below the threshold.
 - There is a concern that this proposal may dissuade migration agents from legitimately making applications, which they are aware may be refused, in order to access ministerial intervention. These may be cases where there are genuinely compassionate reasons for granting the applicant permission to stay, even though they do not meet the exact visa criteria. However, the thresholds will allow some scope for such cases to be tested.
 - The additional monitoring of, and reporting on, the performance of agents against the new code of conduct will place additional demands on DIMIA's resources.
 - The proposal to discipline agents for unacceptably high refusal rates will require the Department to collect detailed and accurate information on the approval/refusal rate of agents by visa class. It will be essential that where a registered migration agent is authorised to act for a visa applicant their details are recorded against the relevant visa application details on ICSE. The ICSE system has recently been modified to make this process as efficient as possible for staff.
 - there may be an increase in litigation from migration agents appealing to the AAT against sanction decisions imposed by the MARA for engaging in vexatious activity.
 - The proposed options may have the effect of reducing the numbers of migration agents who are prepared to act for certain applicants, thus making it difficult for some applicants, particularly protection visa applicants, to obtain the assistance of migration agents in relation to their matters.
 - AGS has also advised that any such reduction could be held to amount to a fetter on the freedom to communicate about immigration matters. However, they believe that the proposed scheme would be held to be constitutionally valid, as any restriction on the freedom to communicate would be held to be appropriate and adapted to achieving legitimate ends as long as the percentage refusal rate is set relatively high – thereby capturing only those agents seeking to exploit the visa application system.
 - Setting a refusal rate threshold of ninety percent could be portrayed as insufficiently firm action by the Government against vexatious agents acting for Protection Visa applicants.

- As recently as 16 May 2003, the Shadow Minister for Citizenship and Multicultural Affairs Laurie Ferguson MP issued a Media Release criticising current legislation in relation to the sanctioning of agents who encourage clients to lodge vexatious applications. Mr Ferguson stated that the Opposition expects the MARA to “demonstrate a firm commitment to weed out the rip-off merchants and the bent operators.”

ADVANTAGES DISADVANTAGES OF ALTERNATIVE OPTIONS

Alternative 1 – Set the vexatious activity threshold at a seventy-five percent failure rate

This option was considered to have the following advantages.

- A seventy-five percent refusal rate threshold for all visa classes may be more likely to be perceived as more appropriate than a ninety percent threshold, as:
 - many may consider it to be just as unacceptable for a supposedly trained and knowledgeable agent to achieve visa grants for only twenty-five percent of their clients at most, let alone grants for only ten percent or less; and
 - a seventy-five percent refusal rate threshold would ensure consistency of treatment with all other visa classes and would uniformly apply the expectation for agents to deliver approval outcomes for at least twenty-five percent of their clients.
- The lower refusal threshold of seventy-five percent is more likely to ensure agents carefully consider the consequences of lodging vexatious applications.

And the following disadvantages:

- In the case of Protection visa applications, it is possible that a refusal rate threshold of seventy-five percent, after review, may be too low.
 - It may appear to be targeting agents who are not blatantly abusing the humanitarian program and result in too many agents being unwilling to assist those with genuine cases, making it more difficult for genuine Protection visa applicants to be assisted by an agent.
 - There are more agents with refusal rates of around seventy five percent than agents with rates of ninety percent, and so more agents may be reluctant to continue to accept Protection visa applicants as clients because of the increased likelihood of being sanctioned.
- There are greater difficulties in the Protection visa caseload for agents to be able to discern which persons have a genuine case whose applications are likely to result in a grant, and those whose applications are likely to result in a refusal, and accept clients accordingly.

- Considerable care is needed to deal sensitively with the greater number of agents providing pro-bono assistance in the Protection Visa caseload.
- A uniform refusal rate threshold for all visa classes may also be perceived by some as an unfair toughening by Government of its attitude towards asylum seekers, less clearly acknowledging Australia's ongoing international responsibility to provide protection for genuine refugees.
 - Given the vulnerability of some Protection visa applicants, this alternative proposal may attract more criticism from refugee advocacy groups than the proposed option.
 - Furthermore, it may result in little practical advantage, as the number of agents who may be liable for sanction would not be greatly increased by setting a lower refusal threshold of seventy-five percent for Protection visa applications, because the most abusive agents have high volumes of applications and extremely high refusal rates (ie. above ninety percent).
 - DIMIA may be portrayed as attempting to prevent vulnerable persons from being able to obtain assistance in seeking protection in Australia by raising a threat to the livelihood of agents wishing to act in this area.

As the disadvantages of Alternative 1 were considered to outweigh the advantages, it was not adopted.

Alternative 2 – Set different vexatious application thresholds for Protection Visas

This approach had certain advantages in that it:

- acknowledged that some Protection visa applicant countries have produced very high numbers of refugees in recent years while others have produced very low numbers.

And the following disadvantages:

- it is counter to Australia's non-discriminatory immigration policy and would almost certainly attract complaints from various ethnic and community groups that Australia discriminates against applicants of their own ethnicity or (former) citizenship; and
- the setting of different thresholds by country groupings would be complex and would require continual adjustment in response to changing conditions in those countries, and thus be very difficult to administer.

This option was not pursued further because it became apparent that it would be unworkable and unacceptable.

Alternative 3 – Exclude Protection Visa applications from the scheme

This approach would be open to strong criticism because:

- it is the Protection visa caseload which appears to be most open to exploitation by agents and includes some of the most vulnerable of DIMIA's applicants; and
- it would prevent the removal from the migration advice industry (the Industry) of a small group of unscrupulous agents who prey on the most vulnerable applicants.

This option was not pursued further because it would not be effective at reducing vexatious activity by agents.

DATA SOURCES

Figures in this RIS have been taken from:

- 2001-02 Review of Statutory Self-Regulation of the Migration Advice Industry;
- 2001-02 Annual Report, the Migration Agents Registration Authority;
- 2002-03 Preliminary annual registration and complaints handling reports from the Migration Agents Registration Authority; and
- Data extracted from the ICSE system which records onshore visa applications, provided by Outcomes Reporting Section.

CONSULTATION

The review process commenced with the development and dissemination by DIMIA of a Discussion Paper in September 2001. This Discussion Paper invited stakeholders to make submissions on the operation of the current arrangements and options for future industry regulation. The stakeholders included ethnic community organisations, peak bodies, the MIA, the MARA and statutory review bodies such as the RRT and the MRT. The discussion paper was also posted on the DIMIA and the MARA web sites. DIMIA received submissions from the MIA, the MARA and a range of stakeholders and members of the public.

On 26 July 2002, the Review's External Reference Group, having formally endorsed the Review recommendations, presented the Minister with the report of the Review: the *2001-02 Review of Statutory Self-Regulation of the Migration Advice Industry*. On 25 September 2002, the Minister released this report.

Submissions generally expressed support for the MARA's performance as the industry regulator. A majority of submissions commented on the need for greater consumer protection and to increase the level of professionalism in the industry. There was also considerable support for improving academic entrance requirements for entry into the

industry. For this reason, the implementation of Recommendation Three has not raised any concerns during further policy development processes.

Views of members of Parliament

During the debate on 5 June 2002 of the Migration Legislation Amendment (Migration Agents) Bill 2002, members from both sides of Parliament expressed concern about unprofessional conduct of migration agents.

The Shadow Minister for Citizenship and Multicultural Affairs, Mr Laurie Ferguson, in a Media Statement issued on 25 September 2002, in response to the release that day of the Review, stated that he welcomed the Review recommendations and the strengthening of the regulation of the industry to protect consumers generally.

MARA

Ms Laurette Chao, in her capacity as the Chairman of the MARA, advised that the MARA had significant concerns about the proposed way of implementing Recommendation Sixteen.

Whilst the MARA supported the underlying intent of the proposal to lessen the flow of vexatious applications, it did not support the means chosen to achieve it for the following reasons:

- it was regarded as being a significant step backward from the measured progress towards industry self-regulation that the MARA understood underpinned Government policy leading towards eventual self-regulation;
 - the proposal provided no discretion to the MARA in “deciding” to sanction an agent referred by DIMIA, as DIMIA, not the MARA, would in fact be making all the relevant decisions in identifying agents and considering their responses.
- the scheme could curtail access to Ministerial intervention as agents become disinclined to assist with cases;
- the current provisions to sanction agents engaging in vexatious activity are adequate;
- the triggering formula (the prescribed threshold) was arbitrary;
- there needs to be greater clarity about the categories of visas which will trigger the sanction mechanism and the relevant time frames, and about what constitutes “vexatious, unfounded or incomplete” applications;
- the scheme places the burden of proof on the agent to argue ‘innocence’ against the mandatory sanctions being applied, and only limited considerations will be regarded as “relevant” to this defence; and

- elements of the proposal imply that the ethics and conduct of migration agents in general are to be characterised by the malfeasance of a few.

In addressing the MARA's views, the Department is of the view that:

- the lodgement of vexatious applications by registered migration agents is a serious matter requiring strong action. The clear finding of the Review was that the existing legislation dealing with vexatious applications was insufficient;
- unscrupulous migration agents are abusing the Ministerial intervention arrangements as a device to allow their clients further stay in Australia and are charging their clients significant sums for doing so. If the proposed sanctions cause agents to think more carefully before lodging abusive Ministerial intervention requests, this would be a good result;
- while it is agreed that the triggering formula is arbitrary, the threshold has been set very high. Most agents have success rates in excess of seventy five percent and therefore only the most unscrupulous agents will be affected by the proposed sanctions. Furthermore, the proposed arrangements, will give even those agents the chance to provide good reasons for their high failure rate to avoid sanction; and
- no discretion has been proposed for the MARA to take a decision because in the four and half years of the MARA's existence, its has used its sanction powers sparingly. The number of agents known to be lodging very high numbers of vexatious applications clearly requires a firmer approach.

In relation to the approved proposal to require agents to declare their role when assisting their clients to lodge an application, Ms Chao advised that the MARA had no in-principle concerns.

Attorney-General's Department

The Department has liaised closely with the AGD on the development of Recommendation 16.

CONCLUSION AND RECOMMENDED OPTIONS

Although the recommendation that agents who do not hold current practicing certificates be required to complete a sound knowledge course and examination will increase entry costs for a small group of agents, these are agents who are attracting a proportionately higher level of complaints than all other agents. It is clearly inappropriate that people who have obtained a law degree at some time in their past are considered to have a sound knowledge of migration law and procedure. The need to protect consumers from unprofessional and unqualified migration agents is paramount and it is therefore recommended that entry standards be raised as proposed in Recommendation Three.

Furthermore, it is important that the MARA be able to refuse registration to agents who have not demonstrated that they hold a sound knowledge, by either having a prescribed qualification or by having completed a sound knowledge course and examination. There should be no doubt about sound knowledge requirements at initial registration.

The Review found high levels of concern about the entry standards for migration agents and the unprofessional and unscrupulous actions of agents who lodge high numbers of vexatious applications.

If legislation to sanction agents lodging vexatious applications is not introduced, unscrupulous agents will continue, with impunity, to engage in vexatious activity, characterised by lodgement of an unacceptably high proportion of ultimately refused applications. Such activity is:

- used to prolong the stay of people who have no legitimate grounds for remaining in Australia;
- a useful mechanism for some agents with suspected criminal or prostitution links to prolong the stay of their clients; and
- used to obtain substantial fees, for lodging applications which they know will be refused, from unsuspecting clients.

The proposed mechanism for addressing vexatious activity is well balanced, in that it:

- considers the whole application process an agent may be involved in and thereby recognises that at review or ministerial intervention stage an application may be shown to be well founded;
- sets a higher threshold rate for Protection visa applications in recognition of Australia's commitment to assisting refugees;
- gives an agent natural justice and appeal rights and the ability to obtain a stay order to continue working under supervision.

It is therefore recommended that the proposed scheme to implement Recommendation 16 be introduced.

IMPLEMENTATION AND REVIEW

Implementing these two recommendations will require changes to both the Act and the Regulations.

The changes will not be retrospective. Those persons considering applying for registration as an agent will be advised of the changed entry requirements well in advance of the changes coming in to force by the MARA.

The Department and the MARA will also provide information to agents on the new sanctions for vexatious applications and the requirement to declare their interest, which are expected to come into force in March 2004 following required regulations amendments. DIMIA staff

have already been advised of the changes via information sessions, and these will also be offered to tribunal staff.

After the first year of operation of the vexatious applications scheme, there will be a Departmental review of the appropriateness of the thresholds and the general operation of the scheme.

The entire regulatory scheme will be reviewed again in 2008. This was agreed by the Government in February 2003, when the sunset clause on the operation of the MARA was removed.

It is expected that the 2008 review will look closely at the option of allowing the migration advice industry to become fully self regulating. The progress of the MARA in removing unscrupulous agents from the industry, raising professional competence and protecting consumers will be evaluated.

The performance of the MARA against performance measures in the Deed will be reviewed. If the Review finds that the MARA has performed well, the outcome would be that government involvement in regulation would cease and the sanctioning regime for vexatious application lodgement would be handled entirely by the MARA.

MIGRATION LEGISLATION AMENDMENT (MIGRATION AGENTS INTEGRITY MEASURES) BILL 2003

NOTES ON INDIVIDUAL CLAUSES

Clause 1 Short title

1. Clause 1 is a formal provision specifying the short title of the Bill.

Clause 2 Commencement

2. Sections 1 to 3 of the Bill will commence on the day it receives royal assent.
3. Schedule 1 to the Bill will commence on a day to be fixed by proclamation, or 6 months from the date that the Act receives royal assent, whichever occurs first.

Clause 3 Schedule(s)

4. The *Migration Act 1958* is amended or repealed as set out in Schedule 1 to the Bill.

SCHEDULE 1 – Amendments

Part 1 – Amendments

Migration Act 1958

Item 1 Section 275

1. This item inserts in section 275 a definition of “high visa refusal rate” in relation to a visa of a particular class.
2. It has the meaning given by new subsection 306AC(2), inserted by item 18 of this Schedule, which provides a method for determining whether a migration agent has a high visa refusal rate in relation to a visa of a particular class.

Item 2 Section 275 (definition of *registered agent*)

3. This is a minor amendment consequential to the insertion of a definition of “registered migration agent” by item 3 of this Schedule.

Item 3 Section 275

4. This item inserts a definition of “registered migration agent” in section 275 of the Act to mean an individual registered as a migration agent under section 286.
5. The purpose of this amendment is to clarify that the term “registered agent” in Part 3 of the Act is intended to refer to a person who is registered as a migration agent by the MARA. This item results in consequential amendments to the following sections to refer to “registered migration agents” rather than “migration agents”:

- subsection 280(1) – item 11;
- subsection 281(1) – item 20;
- subsection 281(2) – item 21;
- subsection 282(1) – item 23;
- subsection 282(2) – item 24;
- subsection 283(1) – item 26;
- subsection 283(2) – item 27;
- subsection 284(1) – item 28;
- subsection 285(1) – item 32;
- subsection 287(2) – item 36;
- section 290A – item 53;
- paragraph 292A(a) – item 58;
- subsection 299(1) – item 61;
- subsection 299(3) – item 62;
- paragraph 300(1)(a) – item 63;
- section 301 – item 65;
- subsection 302(1) – item 66;
- paragraph 303(a) – item 67;
- subsection 304(1) – item 70;

- paragraph 306B(a) – item 83;
- subparagraph 306B(a)(ii) – item 86;
- subparagraph 306B(b)(ii) – item 89;
- paragraph 306B(e) – item 96;
- paragraph 306D(1)(a) – item 102;
- paragraph 306E(1)(a) – item 107;
- subsection 306F(1) – item 111;
- paragraph 306K(1)(d) – item 120;
- subparagraph 306K(2)(a)(ii) – item 123;
- paragraph 306K(2)(d) – item 126;
- subsection 308(1) – item 127;
- subsection 308(3) – item 130;
- subsection 308(4) – item 131;
- subsection 311A(1) – item 135;
- subsection 311A(1) note – item 136;
- subsection 311D(1) – item 138;
- paragraph 311D(4)(b) – item 140;
- subsection 312(1) – item 144;
- subsection 313(1) – item 151;
- paragraph 313(3)(a) – item 153;
- subsection 314(2) – item 155;
- subsection 316(1) – item 156;
- subsection 316(1A) – item 157;
- subsection 316(1B) – item 158;
- section 318 – item 159;
- subsection 319(1) – item 160;
- subsection 319(2) – item 161;
- subsection 319(2) (note) – item 162;
- subsection 319(3) – item 163; and
- subsection 319(3)(note) – item 164.

Item 4 **Section 275 (definition of *registration application fee*)**

2. This item amends the definition of “registration application fee” in section 275 of the Act to ensure that “registration application fee” only means a charge imposed by section 4 of the *Migration Agents Registration Application Charge Act 1997* (the MARAC Act).

3. This amendment is necessary as a consequence of new Part 3 of the MARAC Act, proposed to be inserted by item 5 of Schedule 1 to the *Migration Agents Registration Application Charge Amendment Bill 1997* (the MARACA Bill), which provides for a charge to be imposed if a registered migration agent, who paid the non-commercial application fee for the agent’s current registration period, gives immigration assistance on a commercial basis at any time during that period (“registration status charge”).

Item 5 **Section 275**

4. This item inserts a definition of “registration status charge” in section 275 of the Act to mean a charge imposed by section 10 of the MARAC Act.

14. New subsection 278(2) provides that, for the purpose of Part 3 of the Act, the regulations may prescribe additional circumstances where an individual will be considered to be related by employment to another individual.

15. New subsection 278(2) provides a flexible mechanism to deal with additional circumstances where an applicant for registration as a migration agent is working closely with a person who is not a person of integrity.

16. New subsection 278(3) provides that, for the purposes of section 278, “employee” includes a person engaged as a consultant or as an independent contractor.

17. The effect of new subsection 278(3) is that an individual will be related by employment to another individual if he or she is engaged as a consultant or as an independent contractor of the other individual or of a corporation or partnership.

Item 11 Subsection 280(1)

18. This item makes a minor technical amendment to clarify that subsection 280(1) applies to a person who is registered as a migration agent by the MARA.

Item 12 Subsection 280(1)(penalty)

19. Subsection 280(1) provides that a person who is not a registered migration agent must not give immigration assistance, unless the person satisfies one of the exceptions under subsections 280(2) to (6).

20. This item amends subsection 280(1) of the Act to increase the penalty for contravening subsection 280(1) from 50 penalty units to 60 penalty units.

21. The penalty has been increased to deter commission and to protect consumers from receiving and paying for ill informed immigration assistance.

Item 13 At the end of subsection 280(1)

22. This item inserts a note at the end of subsection 280(1) of the Act to point out that paragraph 504(1)(ja), inserted by item 171 of this Schedule, provides that a person may pay a penalty as an alternative to prosecution.

Item 14 At the end of subsection 280(2)

Item 15 At the end of subsection 280(3)

Item 16 At the end of subsection 280(4)

23. These items insert a note at the end of these subsections to clarify that a defendant bears an evidential burden if he or she wishes to rely on any of the exemptions to giving immigration assistance whilst not registered as a migration agent. This is because current sections 280(2), (3), (4), (5) and (6) were always intended to operate as exceptions to, rather than elements of, the offence set out in subsection 280(1).

24. The same note is also inserted at the end of the following sections:

- subsections 280(5), (5A), (5B) and (5C) – item 17;
- subsection 280(6) – item 18;
- subsection 281(3) – item 22;
- subsections 284(2), (3) and (4) – items 29, 30 and 31; and
- subsections 285(2), (3) and (4) – items 33, 34 and 35.

2. In relation to all these sections a defendant is required to bear the onus of pointing to evidence that suggests a reasonable possibility that he or she is a person who falls within one of the exemptions to the offence of providing immigration assistance whilst unregistered. The reason for this is to avoid problems experienced by DIMIA in the past. For example, in relation to existing section 280(5), DIMIA has experienced significant difficulty obtaining evidence that a fee or reward has been received, particularly if it was not monetary in nature.

Item 17 Subsection 280(5)

3. This item repeals subsection 280(5) of the Act and substitutes new subsections 280(5), (5A), (5B) and (5C).

4. The general rule under existing subsection 280(1) is that a person who is not a registered migration agent must not give immigration assistance. New subsections 280(5), (5A), (5B) and (5C) detail further exceptions to this general rule.

5. New subsection 280(5) provides that an individual is not prevented from giving immigration assistance if the assistance is of a kind covered by new subsection 276(2A) and is not given for a fee or other reward.

6. New subsection 276(2A), inserted by item 6 of this Schedule, expands the definition of “immigration assistance” to include circumstances where a person uses his or her knowledge or experience in migration procedure to provide advice about and assist with requests for Ministerial intervention. This amendment will clarify that the MARA is able to regulate the conduct of registered migration agents in their provision of assistance with requests for Ministerial intervention and ensure that action can be taken against agents who consistently lodge such requests in situations where the Minister has no power to intervene.

7. The purpose of new subsection 280(5) is to ensure that any person (ie not only registered migration agents) may assist another person to make a request for the Minister to exercise his or her power under section 351, 391, 417, 454 or 501J of the Act, provided that the assistance is not given for a fee or other reward. This amendment will ensure that people who currently assist others with Ministerial intervention requests, such as community leaders, can continue to do so without being required to register as a migration agent.

8. New subsection 280(5A) provides that a close family member of a person is not prevented from giving immigration assistance to the person.

9. “Close family member” is defined in new subsection 280(7), contained in item 19 of this Schedule, to have the meaning given by the regulations.

10. New subsection (5B) provides that a person nominating a visa applicant for the purposes of the regulations is not prevented from giving immigration assistance to the applicant.

11. New subsection (5C) provides that a person sponsoring a visa applicant for the purposes of the regulations is not prevented from giving immigration assistance to the applicant.

12. For the reasons outlined in the explanation for items 14, 15 and 16 above, the notes at the end of new subsections 280(5), (5A), (5B) and (5C) point out that a defendant bears an evidential burden in relation to relying on further exemptions set out in those subsections.

Item 18 **At the end of subsection 280(6)**

13. For the reasons outlined in the explanation for items 14, 15 and 16 above, this item inserts a note at the end of subsection 280(6) to clarify that a defendant bears an evidential burden in relation to the matter in subsection 280(6).

14. Subsection 280(6) provides that section 280 does not prohibit an individual from giving immigration assistance in his or her capacity as a member of a diplomatic mission, consular post or an office of an international organisation.

Item 19 **Subsection 280(7)**

15. This item inserts a definition of “close family member” in subsection 280(7) of the Act, consequential to the insertion of new subsection 280(5A) by item 17 of this Schedule. This definition provides that “close family member” has the meaning given by the regulations.

16. It is envisaged that the regulations will define “close family member” to include family members such as spouse, parent, sibling or child. The current definition of “Member of a Family Unit” in the Migration Regulations 1994 was considered too wide to ensure that the exemptions to the unregistered practice provisions do not continue to be abused.

Item 20 **Subsection 281(1)**

Item 21 **Subsection 281(2)**

17. These items make minor technical amendments to clarify that the reference to “registered agent” in subsections 281(1) and (2) is intended to mean a person who is registered as a migration agent by the MARA.

Item 22 **At the end of subsection 281(3)**

18. For the reasons outlined in the explanation for items 14, 15 and 16 above, this item inserts a note at the end of subsection 281(3) of the Act to clarify that a defendant bears an evidential burden in relation to the matter in subsection 281(3).

19. The general rule under existing subsections 281(1) and (2) is that a person who is not a registered migration agent must not ask for or receive any fee or other reward for giving immigration assistance, or the giving of immigration assistance by another person who is not a registered migration agent. Subsection 281(3) provides exceptions to subsections 281(1) and (2).

Item 23 **Subsection 282(1)****Item 24** **Subsection 282(2)**

20. These items make minor technical amendments to clarify that the reference to “registered agent” in subsections 282(1) and (2) is intended to mean a person who is registered as a migration agent by the MARA.

Item 25 **At the end of subsection 282(4)**

21. This item inserts new paragraph 282(4)(e) at the end of subsection 282(4) of the Act.

22. The general rule under section 282 is that a person who is not a registered agent must not ask for or receive any fee or other reward for making immigration representations, or the making of immigration representations by another person who is not a registered agent.

23. New paragraph 282(4)(e) expands the definition of “immigration representations” in subsection 282(4) to include circumstances where a person makes representations to, or otherwise communicates with, the Minister, a member of the Minister’s staff, or the Department on behalf of a person who has made (or is proposing to make) a request for Ministerial intervention.

24. New paragraph 282(4)(e) is consequential to new subsection 276(2A) contained in item 6 of this Schedule, which amends the definition of immigration assistance to include the giving of advice about and assistance with requests for Ministerial intervention.

Item 26 **Subsection 283(1)****Item 27** **Subsection 283(2)****Item 28** **Subsection 284(1)**

25. These items make minor technical amendments to clarify that the reference to “registered agent” in the heading to section 283 and to subsections 283(1) and (2) and 284(1) is intended to mean a person who is registered as a migration agent by the MARA.

Item 29 **At the end of subsection 284(2)****Item 30** **At the end of subsection 284(3)****Item 31** **At the end of subsection 284(4)**

26. For the reasons outlined in the explanation for items 14, 15 and 16 above, these items insert notes at the end of subsections 284(2), (3) and (4) of the Act to clarify that a defendant bears an evidential burden in relation to the matters in subsections 284(2), (3) and (4).

27. The general rule under subsection 284(1) is that a person who is not a registered agent must not advertise that he or she gives immigration assistance. Subsections 284(2), (3) and (4) detail exceptions to this general rule.

Item 32 **Subsection 285(1)**

28. This item makes a minor technical amendment to subsection 285(1) to clarify that the reference to “registered agent” in subsection 285(1) is intended to mean a person who is registered as a migration agent by the MARA.

- Item 33** **At the end of subsection 285(2)**
Item 34 **At the end of subsection 285(3)**
Item 35 **At the end of subsection 285(4)**

29. For the reasons outlined in the explanation for items 14, 15 and 16 above, these items insert notes at the end of subsections 285(2), (3) and (4) of the Act to clarify that a defendant bears an evidential burden in relation to the matters in subsections 285(2), (3) and (4).

30. The general rule under section 285 is that a person must not directly or indirectly advertise that another person who is not a registered agent gives immigration assistance. Subsections 285(2), (3) and (4) provide exceptions to this general rule.

Item 36 **Subsection 287(2)**

31. This item makes a minor technical amendment to subsection 287(2) to clarify that the reference to “registered agent” in subsection 287(2) is intended to mean a person who is registered as a migration agent by the MARA.

Item 37 **At the end of subsection 287(2)**

32. This item inserts new paragraph 287(2)(i) at the end of subsection 287(2) of the Act.

33. Subsection 287(2) requires the Register of Migration Agents (the Register) to show certain information in respect of each registered migration agent. For example, the Register is to show a migration agent’s business address, telephone number and date of most recent registration.

34. New paragraph 287(2)(i) provides that the Register must also show particulars of any other prescribed matter.

35. It is envisaged that regulations made under new paragraph 287(2)(i) will require the Register to show information such as a migration agent’s facsimile number, postal address, website and email address (if applicable).

Item 38 **Paragraph 287(3)(b)**

36. This item repeals paragraph 287(3)(b) and substitutes new paragraph 287(3)(b).

37. In broad terms, subsection 287(3) requires the MARA to keep records of certain information.

38. New paragraph 287(3)(b) expands the MARA’s current duty to keep records to show particulars of any cancellation of a registration, to also require the MARA to keep records to show particulars of any suspension of a registered migration agent’s registration or any caution given to such an agent.

39. The MARA’s obligation to keep records is being expanded as a consequence of new subsection 287(5), inserted by item 39 of this Schedule, requiring the MARA to remove

details of disciplinary action taken against an agent from the Register. This is necessary so that the MARA always has a complete set of records regarding a migration agent.

Item 39 At the end of section 287

40. This item adds new subsections 287(5), (6) and (7) at the end of section 287 of the Act.

41. New subsection 287(5) provides that the MARA must remove the following details from the Register:

- particulars of any suspension of a registered migration agent’s registration;
- particulars of any caution given to such an agent.

2. New subsections 287(6) and (7) provide when MARA must remove disciplinary details from the Register.

3. New subsection 287(6) provides that MARA must remove the details within the period worked out in accordance with the regulations.

4. New subsection 287(7) provides that the regulations may prescribe different periods in relation to details about suspensions or cautions. This to provide flexibility to the MARA to reflect different levels of seriousness and to respond to particular problems in the industry. For example, the regulations may prescribe that details about a caution must remain on the Register for 1 year, whilst details about a suspension must remain on the Register for a period of 5 years.

Item 40 Section 288

5. This item repeals section 288 of the Act and substitutes new sections 288, 288A and 288B.

Section 288 Application for registration

6. Section 288 sets out the requirements for applying to the MARA for registration as a migration agent.

7. New subsection 288(1) provides that an individual may apply to MARA to be registered as a registered migration agent. New subsection 288(1) is similar to repealed subsection 288(1), however the reference to a “registered agent” is replaced with a reference to a “registered migration agent”.

8. New subsection 288(2) provides that an individual who makes an application for registration as a migration agent must satisfy 1 of 2 publishing options set out in new section 288A. However, an individual who has been registered at some time in the 12 months immediately before making the registration application is exempt from this requirement.

9. New subsection 288(3) provides that a registration application is to be in a form approved in writing by MARA and must contain such information relevant to the application as is required by the form.

10. New subsection 288(3) is similar to repealed subsection 288(2). However, the reference to “the approved form” in existing subsection 288(2) is replaced with a reference to “a form approved in writing by the Migration Agents Registration Authority”. This is because subsection 5(1) of the Act defines “approved form” to mean a form approved by the Minister in writing.

11. This item inserts a note at the end of new subsection 288(3) of the Act. The note refers to new section 288B, and points out that an applicant may be required to make a statutory declaration, or to answer questions, in relation to the application.

12. New subsection 288(4) provides that a registration application is taken to have been made on the day worked out in accordance with the regulations.

13. The purpose of new subsection 288(4) is to clarify when a registration application is made for the purposes of section 300 of the Act. Section 300 provides for automatic continuation of registration if a registered migration agent makes a registration application and pays the registration fee (if any) before the end of his or her current registration period and the MARA has not decided the application before the end of the current registration period.

14. New subsection 288(5) is similar to repealed subsection 288(4), and provides that the MARA must not consider a registration application unless the applicant has paid the registration application fee (if any) on the application.

15. New subsection 288(6) is similar to repealed subsection 288(5), and provides that if an applicant is required to satisfy 1 of the 2 publishing options set out in new subsections 288A(2) and (3), the MARA must not consider the application unless the applicant has:

- satisfied one of the publishing options; and
- given the MARA evidence of the publication concerned.

2. New subsection 288(7) allows an applicant to withdraw an application by giving notice in writing to the MARA. However, an applicant who withdraws his or her application will not be entitled to a refund of the registration application fee paid in relation to the application.

3. The purpose of new subsection 288(7) is to give an applicant the opportunity to remedy any defects in his or her application and prevent the operation of section 291, which provides that an applicant must not be registered if he or she has been refused registration as a migration agent within the 12 months before application. For example, new subsection 288(7) allows an applicant to withdraw his or her application in order to complete the continuing professional development points necessary for re-registration.

Section 288A Publishing requirement

4. New subsection 288A(1) provides that for the purposes of new subsection 288(2), the section sets out an individual’s 2 publishing options.

5. The first publishing option is set out in new subsection 288A(2), and requires an individual to publish in the prescribed way a notice stating his or her intention to apply for registration and stating that anyone may give MARA a written objection to his or her registration within a certain period.
6. New subsection 288A(3) introduces an alternative publishing option for individuals who are all employees of the same employer and who all intend to apply for registration. It allows an individual to publish the same information in a single notice, together with one or more other individuals.
7. The purpose of new section 288A is to provide a more cost-effective means of publishing a notice of intention to apply for registration for individuals who are employees of the same employer.

Section 288B Requiring applicants to make statutory declarations or to answer questions

8. New section 288B allows the MARA to require an applicant for registration as a migration agent, who is not currently registered as a migration agent, to provide certain information in relation to his or her application.
9. New paragraph 288B(1)(a) provides that the MARA may require an applicant to provide a statutory declaration in relation to information or documents provided by the applicant in relation to the application.
10. New paragraph 288B(1)(b) provides that MARA may require an applicant to appear before one or more individuals as specified by MARA, and to answer questions in relation to the application.
11. New subsection 288B(2) provides that if an applicant is required under this section to make a statutory declaration or to answer questions, the Authority must not further consider the application until the applicant does so.
12. The purpose of the new section is to improve consumer protection by enabling MARA to seek further information to determine whether an applicant for initial registration is a person of integrity and fit and proper to be registered.
13. New section 288B is similar to existing section 308, which enables the MARA to require registered migration agents to make statutory declarations, answer questions or provide the MARA with specified documents or records, regardless of whether the information or documents may tend to incriminate the agent.
14. New section 288B has been inserted to bring the initial registration process and requirements in line with the process and requirements for re-registration. The intended effect is to prevent unscrupulous agents from entering the industry from the outset, as opposed to later relying on the disciplinary process to remove unscrupulous agents.

Item 41 Subsection 289(1)

15. This item makes a minor technical amendment to subsection 289(1) consequential to

the insertion of new sections 289A and 290B by items 47 and 54 of this Schedule.

Item 42 Subsection 289(1) (note)

16. This item makes a minor technical amendment to the note under subsection 289(1) consequential to the amendment made by item 41 of this Schedule.

Item 43 Subsection 289(2)

17. This item makes a minor technical amendment to subsection 289(2).

Item 44 Subsection 289(3)

18. This item makes a minor technical amendment to subsection 289(3) of the Act consequential to the insertion of new subsection 288(2) and new section 288A contained in item 40 of this Schedule.

Item 45 Paragraph 289(3)(a)

19. This item makes a minor technical amendment to paragraph 289(3)(a) of the Act consequential to the insertion of new subsection 288(2) and new section 288A contained in item 40 of this Schedule.

Item 46 Paragraph 289(3)(b)

20. This item makes a minor technical amendment to paragraph 289(3)(b) consequential to the insertion of new sections 289A and 290B contained in items 47 and 54 of this Schedule.

Item 47 After section 289

21. This item inserts new section 289A after section 289 of the Act.

Section 289A Applicant must not be registered if does not satisfy registration requirements

22. New section 289A sets out requirements for registration as a migration agent for an applicant:

- who has never been registered; or
- who is applying to be registered more than 12 months after the end of his or her previous registration.

2. New section 289A provides that such an applicant must not be registered unless the MARA is satisfied that he or she:

- has completed a prescribed course within the prescribed period and has passed a prescribed exam within the prescribed period; or
- holds the prescribed qualifications.

2. New section 289A does not apply to an applicant who has been registered at some time in the 12 months before he or she makes the application.

Item 48 **Paragraph 290(2)(b)**

3. This item repeals paragraph 290(2)(b), consequential to the insertion of new section 289A by item 47 of this Schedule.

Item 49 **Paragraph 290(2)(f)**

4. Subsection 290(2) of the Act lists several factors that the MARA must take into account in considering whether it is satisfied that an applicant for registration is a not fit and proper person, or not a person of integrity.

5. This item amends paragraph 290(2)(f) to provide that the MARA must take into account any disciplinary action that is being taken, or has been taken, against the applicant that MARA considers relevant to his or her application.

6. The effect of this amendment is to expand existing paragraph 290(2)(f) to ensure that the MARA can take into account any disciplinary action that is being taken, or has been taken, against an applicant, not just disciplinary action taken by a professional association against the applicant. For example, this item ensures that the MARA may take into account any action taken by a regulatory body or any Ombudsman against an individual.

Item 50 **Paragraph 290(3)(d)**

7. Subsection 290(3) of the Act sets out certain matters that the MARA must take into account in considering whether it is satisfied that an individual to whom the applicant is related by employment is not a person of integrity.

8. This item amends paragraph 290(3)(d) to provide that the MARA must take into account any disciplinary action that is being taken, or has been taken, against an individual to whom the applicant is related by employment that the MARA considers relevant to his or her application.

9. The effect of this amendment is to expand existing paragraph 290(2)(f) to ensure that the MARA can take into account any disciplinary action that is being taken, or has been taken, against an individual to whom the applicant is related by employment, not just disciplinary action taken by a professional association against an individual to whom the applicant is related by employment. For example, this item ensures that the MARA may take into account any action taken by a regulatory body or any Ombudsman against. For example, this item ensures that the MARA may take into account any action taken by a regulatory body or any Ombudsman against an individual

Item 51 **At the end of section 290**

10. This item inserts new subsection 290(4) at the end of section 290 of the Act.

11. New subsection 290(4) puts it beyond doubt that section 290 applies to all applicants, not just first time applicants.

12. In other words, new subsection 290(4) clarifies that section 290 applies to an applicant:

- who is applying for registration for the first time;
- who is applying to be registered more than 12 months after the end of his or her previous registration; or
- who has been registered at some time in the 12 months before making the application.

Item 52 Section 290A

2. In broad terms, section 290A of the Act requires an applicant, who has been registered at some time in the 12 months before making the application for registration, to meet the requirements for continuing professional development prescribed in the regulations.

3. This item amends section 290A of the Act to clarify that such an applicant must meet the requirements for continuing professional development within a prescribed period.

4. It is envisaged that regulations will be made to require such applicants to meet their continuing professional development requirements within the 12 month period before making an application for registration (with a qualification that if an agent is applying before his or her registration ends, only the current registration period is to qualify). This will ensure that applicants for re-registration have knowledge of migration law and procedure that is current and up-to-date.

Item 53 Section 290A

5. This item makes a minor technical amendment to section 290A to clarify that the reference to “registered agents” in section 290A is intended to mean persons registered as a migration agent by the MARA.

Item 54 After section 290A

6. This item inserts new section 290B after section 290A of the Act.

Section 290B Applicant must not be registered if any unpaid registration status charge

7. New section 290B provides that an applicant must not be registered if any registration status charge payable by him or her remains unpaid after the time when it becomes due for payment.

8. A definition of “registration status charge” is inserted into section 275 of the Act by item 5 of this Schedule to mean to mean a charge imposed by section 10 of the MARAC Act.

9. New subsection 332A(1), inserted by item 168 of this Schedule, provides that registration status charge is due and payable at the time worked out in accordance with the regulations.

Item 55 **At the end of section 291**

10. This item inserts new subsection 291(2) at the end of section 291 of the Act.
11. Section 291 provides that an applicant must not be registered if he or she has been refused registration within 12 months before making the application for registration.
12. New subsection 291(2) puts it beyond doubt that section 291 applies to all applicants, not just first time applicants (see item 51).

Item 56 **Section 292**

13. This item makes a minor technical amendment to section 292 of the Act consequential to the insertion of new section 306AG contained in item 75 of this Schedule.
14. In broad terms, existing section 292 provides that an applicant must not be registered if his or her registration as a migration agent has been cancelled in the past 5 years.
15. The effect of this amendment is that an agent must not be registered if his or her registration has been cancelled under section 303 or under section 306AG within 5 years before the application.

Item 57 **Section 292A**

16. This item makes a minor technical amendment to section 292A of the Act consequential to the insertion of new subsection 311L(1) contained in item 142 of this Schedule.

Item 58 **Paragraph 292A(a)**

17. This item makes a minor technical amendment to paragraph 292A(a) to clarify that the reference to “registered agent” in paragraph 292A(a) is intended to mean a person who is registered as a migration agent by the MARA.

Item 59 **At the end of section 294**

18. This item inserts new subsection 294(2) at the end of section 294 of the Act.
19. New subsection 294(2) puts it beyond doubt that section 294 applies to all applicants, not just first time applicants (see item 51).

Item 60 **Subsection 299(1)**

20. This item makes a minor technical amendment to subsection 299(1) consequential to the insertion of new section 306AG contained in item 75 of this Schedule.
21. New section 306AG requires the MARA to make a mandatory decision in relation to an agent’s registration if the Minister refers a registered migration agent to the MARA for having a high visa refusal rate.

22. The effect of the amendment is that an agent's registration lasts for a period of 12 months, subject to sections 300, 302, 303 or new section 306AG.

Item 61 **Subsection 299(1)**
Item 62 **Subsection 299(3)**
Item 63 **Paragraph 300(1)(a)**

23. These items make minor technical amendments to subsections 299(1) and (3) and paragraph 300(1)(a) of the Act to clarify that a reference to "registered agent" in subsections 299(1) and (3) and paragraph 300(1)(a) is intended to mean a migration agent who is registered by the MARA.

Item 64 **Section 301**

24. This item makes a minor technical amendment to section 301 of the Act to replace the reference to "One month" with a reference to "At least 30 days".

Item 65 **Section 301**
Item 66 **Subsection 302(1)**

25. These items make minor technical amendments to section 301 and subsection 302(1) to clarify that a reference to "registered agent" in section 301 and subsection 302(1) is intended to mean a migration agent who is registered by the MARA.

Item 67 **Paragraph 303(a)**

26. This item makes a minor technical amendment to clarify that a reference to "registered agent" in paragraph 303(a) is intended to mean a person who is registered as a migration agent by the MARA.

27. The note at the end of this item replaces the existing heading to section 303 with new heading "Disciplining registered migration agents" because the existing heading only mentions the cancellation or suspension of registration. The new heading clarifies that section 303 also relates to the MARA's power to caution a migration agent.

Item 68 **Section 303 (note)**

28. This item repeals the note at the end of section 303 and inserts new note 1 and 2.

29. New note 1 makes it clear that the MARA is required to cancel or suspend a registered migration agent's registration in certain circumstances.

30. New note 2 points out that if the MARA is considering making a decision under section 303, it must invite the registered migration agent to make a submission under sections 309 and 310 of the Act.

Item 69 **At the end of section 303**

31. This item inserts new subsection 303(2) at the end of section 303 of the Act.

32. New subsection 303(2) enables the MARA to suspend a migration agent's registration if any registration status charge (see item 5) payable by the agent remains unpaid after the time when it becomes due for payment.

33. New section 290B, inserted by item 54 of this Schedule, provides that an applicant must not be registered if any registration status charge payable remains unpaid.

34. The purpose of this item is to ensure migration agents pay any registration charge payable under section 10 of the MARAC Act, proposed to be inserted by item 5 of Schedule 1 to the MARACA Bill.

Item 70 Subsection 304(1)

35. This item makes a minor technical amendment to clarify that a reference to "registered agent" in subsection 304(1) is intended to mean a person who is registered as a migration agent by the MARA.

Item 71 After section 304

36. This item inserts new section 304A after section 304 of the Act.

Section 304A Conditions for lifting cautions

37. New section 304A provides that the MARA may set one or more conditions for the lifting of a caution it gives to a registered migration agent. New section 304A is similar to existing paragraph 304(1)(b) of the Act, which deals with setting conditions for the lifting of a suspension.

38. For example, the MARA may set a condition that the caution is to apply for a certain period of time or that an agent is to complete a particular course before the caution may be lifted.

39. This item also inserts a note at the end of new section 304A to point out that particulars of cautions are shown on the Register under section 287.

Item 72 Sections 305 and 305A

40. This item repeals sections 305 and 305A and substitutes new sections 305 and 305A.

Section 305 Notice of disciplinary action

41. New section 305 is similar to new subsection 311B, inserted by item 137, which deals with notifying former agents about any discretionary decision made under section 311A to bar the agent from being a registered migration agent.

42. New subsection 305(1) provides that the MARA must give a registered migration agent written notice of a disciplinary decision made under section 303 to cancel or suspend the agent's registration or to caution the agent.

43. New subsections 305(2) and (3) provide that the notice must set out the reasons for the decision and that the decision takes effect at the time the agent is given written notice of the decision.

44. This item also inserts a note at the end of new section 305 to point out that new section 332H, inserted by item 170 of this Schedule, sets out the time at which a person is taken to have been given a notice by the MARA under Part 3 of the Act.

Section 305A Making disciplinary details publicly available

45. New section 305A provides when the MARA is required to publish details about discretionary disciplinary action taken under section 303 against a registered migration agent.

46. New section 305A is similar to new section 306AL contained in item 75 of this Schedule, which relates to the publication of mandatory disciplinary action taken against current registered migration agents. It is also similar to new sections 311C and 311P contained in items 137 and 142, which relate to former registered migration agents.

47. The purpose of publishing disciplinary details about a migration agent is to advise the community at large that the migration agent's registration has been cancelled or suspended, or the agent has been cautioned. Publication of disciplinary details also demonstrates the professional standards and conduct that is expected of migration agents.

48. In broad terms, new subsection 305A(1) sets out when the MARA may publish disciplinary details about a registered migration agent who does not apply for review of a disciplinary decision, and new subsection 305A(2) sets out when the MARA may publish disciplinary details about a registered migration agent who applies for review of a disciplinary decision.

49. New subsection 305A(2) provides that if, at the end of all proceedings (including any appeals) resulting from the review application, there is a decision to cancel or suspend the agent's registration or to caution the agent:

- the MARA must as soon as possible make available in the prescribed way a statement that sets out the final decision and specifies the grounds for the final decision; and
- the MARA may prepare a statement about the final decision and make it available to one or more groups of persons, or to one or more persons, in any way the MARA thinks fit.

2. The purpose of new section 305A is to clarify existing publication provisions under section 305 and 305A, and enable the MARA to publish a statement about a decision to cancel, suspend as well as caution an agent. Further, existing publication provisions only allow the MARA to publish a decision "if the decision stands" at the end of all appeal proceedings resulting from review of the decision. The purpose of the references to the "initial decision" and the "final decision" in new section 305A is to enable the MARA to also publish a statement about a decision of the AAT or a court if the MARA's decision is varied on review.

3. New subsection 305A(3) provides that a statement made under new section 305A

need not set out the findings on material questions of fact and need not refer to the evidence or other material on which those findings were based. New subsection 305A(3) is similar in effect to repealed subsection 305(4), which provided that section 25D of the *Acts Interpretation Act 1901* does not apply to a requirement to publish a statement setting out the decision and grounds for the decision.

4. New subsection 305A(4) provides protection from civil proceedings for a person who, in good faith, publishes a copy of, an extract from or a summary of a statement made under new section 305A. New subsection 305A(4) is similar to repealed subsection 305A(5), however, it does not provide protection from criminal proceedings.

Item 73 Before section 306

5. This item inserts new sections 305B and 305C before section 306 of the Act.

Section 305B Providing disciplinary details to clients

6. In broad terms, new section 305B allows the MARA or the Secretary to provide information about any disciplinary action that has been taken under section 303 of the Act against a migration agent to clients of the agent.

7. New subsection 305B(2) provides that new section 305B has effect despite new section 305A. In other words, the MARA and the Secretary are not required to wait for 28 days, or until the end of all review proceedings, before informing one or more clients of disciplinary action that has been taken against their agent.

8. New subsection 305B(3) provides that, for the purposes of new section 305B, “client” has the meaning given by section 306C (as amended by item 540 of this Schedule).

9. The purpose of new section 305B is to improve consumer protection by allowing the MARA and the Secretary to inform the client immediately of disciplinary action taken under section 303, even if the migration agent has applied for review of the MARA’s decision to take such action. the amendments allow clients to choose whether to appoint another agent to act for them whose ethics or competence has not been found lacking or to represent themselves

Section 305C Requiring registered migration agents to give information or documents

10. In broad terms, new section 305C allows the MARA to require registered migration agents to give information or documents if the MARA is considering refusing a registration application from a registered migration agent or making a decision under section 303 to cancel or suspend an agent’s registration or to caution an agent.

11. It is similar to new section 311EA, inserted by item 141 of this Schedule, which relates to former registered agents.

12. New subsection 305C(2) provides that the MARA may, by written notice, require a

migration agent to provide the MARA with prescribed information or prescribed documents. If the MARA gives such a written notice to an agent, the agent must provide the MARA with the documents or information within the specified period and in the specified manner.

13. The purpose of new subsection 305C(2) is to provide a flexible mechanism to deal with specific kinds of information or documents that may be required by the MARA. The main purpose of the new section 305C is to ensure that the clients of migration agents against whom the MARA is considering taking sanction action, or whose registration the MARA is considering refusing, are not disadvantaged when their agent becomes deregistered. The types of information that may be prescribed to ensure that such clients are not disadvantaged, includes lists of clients, clients files, ledgers or lists of money owing to clients.

14. New subsection 305C(3) provides that a period specified in a notice under new subsection 305C(2) must end at least 14 days after the notice was given.

15. This item inserts a note at the end of new subsection 305C(3) to point out that new section 332H, inserted by item 170 of this Schedule, sets out when the agent is taken to have been given the notice.

16. New subsections 305C(4) and (5) make it an offence of strict liability if a person is subject to a requirement under new section 305C and the person contravenes the requirement. The penalty applying to such an offence is 60 penalty units.

17. This has been made an offence of strict liability under new subsection 305C(5) to enable a penalty to be imposed without proof of fault. In the past some agents that the MARA has been concerned about have been uncooperative. It is very important that MARA receives documents and information that it requires from agents so that it can properly investigate agents and apply sanctions accordingly.

18. New subsection 305C(6) provides that a person is not excused from giving information or providing a document on the ground that the information or provision of the document may tend to incriminate the person.

19. New subsections 305C(6) is consistent with section 308(3) which provides that the MARA may require a registered migration agent to give information or provide documents and that an agent is not excused from providing such information on the ground that the information or documents may tend to incriminate the agent.

20. New subsection 305C(7) is also consistent with section 308(4) and provides that:

- any information or document provided in response to a requirement under new subsection 305C(2); and
- any information or thing (including any document) obtained as a direct or indirect result of information or a document provided in response to a requirement under subsection 305C(2);

is not admissible in evidence against the applicant in any criminal proceedings (except proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Act or the regulations).

2. New section 305C is broader than the MARA's power to require documents or records under existing paragraph 308(1)(c) because that power is limited to documents or records relevant to the agent's continued registration. New section 305C allows the MARA to require prescribed information or documents, which may include a list of the agent's clients. This will assist the MARA to protect the interests of a visa applicant. For example, if the MARA is considering sanctioning an agent it can request a list of clients for the affected agent. It can then work out which of those clients have applications before DIMIA which are at a critical stage (ie. are affected by deadlines) and ensure that their interests are not ignored because their agent is unable to practice for a limited or ongoing period.

3. New subsections 305C(6) and (7), are necessary to prevent a key purpose of the Bill, namely the protection of consumers, from being undermined. It would be unfortunate if an unscrupulous agent that the MARA was considering sanctioning could refuse to produce information and documents to the MARA on the basis that the production of such information would tend to incriminate the agent. New subsections 305C(6) and (7) protect the interests of a visa applicant and to ensure that the withholding of documents or information does not cause serious detriment to the applicant in the visa application process.

Item 74 **At the end of Division 3 of Part 3**

4. This item inserts new section 306AA at the end of Division 3 of Part 3 of the Act.

Section 306AA **Stay orders**

5. New section 306AA provides that if the AAT or a court orders a stay of a decision under section 303 to cancel or suspend a registered migration agent's registration, it is taken to be a condition of the order that the prescribed supervisory arrangements apply in relation to the agent during the period of the order.

6. New section 306AA has been inserted to protect clients if the AAT or a court grants an order staying the effect of a disciplinary decision. The intended effect of new section 305AA is to prevent migration agents from being able to continue to practise during the period of a stay order as though no decision had been made under section 303. Rather, agents who pose a potential professional risk to the community will only be able to continue to practise if they are supervised. A supervisor, who has no prior history of complaints or disciplinary action taken by the MARA, will need to be appointed and undertake certain responsibilities in relation to the sanctioned agent. For example, the supervisor will need to meet any new clients on at least one occasion and check any visa or review application before it is lodged.

Item 75 **After Division 3 of Part 3**

7. This item inserts new Division 3AA after Division 3 of Part 3 of the Act. New Division 3AA relates to disciplining registered migration agents who have a high visa refusal rate.

Division 3AA- Disciplining registered migration agents for engaging in vexatious activity

Subdivision A – Definitions

Section 306AB Definitions

8. New section 306AB inserts definitions of “mandatory decision” and “referral decision” for the purposes of new Division 3AA.
9. “Mandatory decision” is defined to mean a decision of the MARA under section 306AG.
10. “Referral decision” is defined to mean a decision of the Minister under section 306AC.

Subdivision B – Referral of registered migration agents for disciplinary action

Section 306AC Minister may refer registered migration agent for disciplinary action

11. New subsection 306AC(1) provides that the Minister has a discretion to refer a registered migration agent to the MARA for disciplinary action if the agent has a high visa refusal rate in relation to a visa of a particular class.
12. This item inserts three notes at the end of new subsection 306AC(1).
13. The first note points out that if the Minister is considering referring an agent to the MARA, the Minister must invite the agent to make a submission on the matter under new section 306AE and must consider any submission that is made.
14. The second note points out that if the Minister refers an agent to the MARA under this section, the MARA is under an obligation to discipline the agent under new section 306AG.
15. The third note points out that the Minister’s decision to refer is reviewable by the AAT under new section 306AJ.
16. New subsection 306AC(2) sets out a step by step method for working out whether an agent has a high visa refusal rate in relation to a visa of a particular class.
17. Step 1 is to work out the number of :
 - valid applications for a visa of a particular class; and
 - applications for review by a review authority of a decision to refuse to grant a visa of that class;

made during a period determined by the Minister in respect of which the agent has given immigration assistance to the applicants concerned.

2. An agent gives immigration assistance in the circumstances set out in section 276 of the Act.
3. The note at the end of step 1 points out that new subsections 305AC(3) and (4) provide for certain applications not to be counted.
4. Step 2 is to work out if the number at step 1 is equal to or greater than the number determined by the Minister under this Division. The number determined by the Minister for the purposes of step 2 is the minimum number of applications in respect of which the agent has given immigration assistance that is required before Division 3AA will apply. For example, an agent may be required to have given immigration assistance in relation to four applications before his or her visa refusal rate can be calculated.
5. If the number at step 1 is equal to or greater than the number determined by the Minister for the purposes of step 2, then step 3 is to work out, in respect of the applications covered by step 1, the number of decisions to refuse to grant a visa that are standing at the end of all the proceedings (including any appeals) resulting from such decisions.
6. In other words, step 3 is to work out how many of the applications referred to in step 1 resulted in a decision to refuse to grant a visa that is standing at the end of all proceedings. For example, if an agent gave immigration assistance in relation to 20 applications for a particular visa class, and 15 of those applications were refused and the decision was not overturned on appeal, the agent has a 75 percent refusal rate.
7. Step 4 provides that the agent has a high visa refusal rate in relation to a visa of that class once the number at step 3 expressed as a percentage of the number at step 1 is equal to or greater than the percentage determined by the Minister under this Division in relation to that class of visa.
8. It is envisaged that the percentage determined by the Minister for the purposes of Step 4 may vary between visa classes. For example, the percentage specified in relation to protection visas may be 90% whereas the percentage for all other visa applications may be 75%.
9. New subsection 305AC(3) provides that certain applications are not to be counted for the purposes of step 1 of the method statement. Specifically, if an agent:
 - gives immigration assistance to a person in respect of a valid application by the person for a visa of a particular class; and
 - later gives immigration assistance to the person in respect of an application for review by a review authority of a decision to refuse to grant that visa;

then the application for review is not to be counted for the purposes of step 1 of the method statement.

2. For example, a migration agent who assists a visa applicant with both his or her visa application and review application, in relation to a particular visa class, will only have the visa application counted in the number at step 1 of the method statement.
3. New subsection 305AC(4) provides that an application referred to in step 1 is not to

be counted if the agent gave the immigration assistance in a prescribed capacity. This enables certain applications to be exempt from Division 3AA. For example, the regulations may prescribe that registered migration agents providing immigration assistance in relation to applications under the Immigration Advice and Application Assistance Scheme are exempt from Division 3AA.

Section 306AD Ministerial determinations

4. New section 306AD provides that the Minister may, by writing, determine:
 - a period for the purposes of step 1 of the method statement in section 306AC (for example 6 months);
 - a number for the purposes of step 2 of the method statement in section 306AC (for example 4 applications); and
 - a percentage for a specified class of visa for the purposes of step 4 of the method statement in section 306AC (for example 90% for protection visas applications and 75% for all other visa applications).

2. New subsection 306AD(4) provides that a determination under new section 306AD is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Section 306AE Registered migration agent may make submissions

3. New section 306AE ensures that procedural fairness is accorded to a registered agent who may be subject to disciplinary action under new Division 3AA.

4. New subsection 306AE(1) provides that if the Minister is considering referring a registered migration agent to the MARA for disciplinary action, the Minister must give the agent a written notice:
 - stating that the Minister is considering making such a decision and the reasons for it; and
 - inviting the agent to make a written submission to the Minister within 14 days of the notice being given, giving reasons for the high visa refusal rate or in relation to any other matter the agent considers relevant.

2. New subsection 306AE(2) provides that before the end of the objection period, the agent may, by notice in writing, request an extension of that period.

3. New subsection 306AE(3) provides that the Minister must grant an extension of 14 days if the notice contains reasons for the request. This means that an agent may have a maximum of 28 days to make a written submission to the Minister.

4. New subsection 306AE(4) requires the Minister to consider any written submission received within the objection period (or that period as extended under new subsection 306AE(3)). Agents will be able to make submissions about why applications should not be counted as vexatious. In particular, where there has been a change in circumstances beyond the agent's control, the agent will be able to explain those circumstances. For example, where a client failed to meet the criteria at the time of decision for the grant of a visa despite having met the criteria at the time of application, the end of a repressive regime in a country

which had a high approval rate for protection visas where the application was lodged before the regime changed, or a change in the applicant's ability to meet the health criteria at the time of decision due to a deterioration in health.

Section 306AF Notice of referral decision

5. New subsection 306AF(1) provides that the Minister must give the MARA written notice of the referral decision by one of the methods specified in section 494B, and the notice must specify the grounds for the referral.

6. New subsection 306AF(2) requires the Minister to give the registered migration agent written notice of the decision to refer him or her to the MARA for disciplinary action.

7. New subsections 306AF(3) and (4) provide that the notice must set out reasons for the referral and be given to the agent on the same day that notice of the referral is given to the MARA.

Section 306AG Taking of disciplinary action

8. If the Minister refers a registered migration agent to the MARA, new subsection 306AG(1) requires the MARA to make a mandatory decision in relation to disciplining the agent.

9. New subsection 306AG(1) provides that the MARA must:

- in the case of a first referral – suspend the agent's registration for 12 months;
- in the case of any later referral – cancel the agent's registration.

2. New subsection 306AG(2) provides that the MARA must make its decision as soon as possible, however it must not make its decision any later than 7 days after receiving notice of the referral from the Minister.

3. The note at the end of new subsection 306AG(2) points out that the MARA is taken to have received notice of the referral in accordance with section 494C of the Act.

4. New subsection 306AG(3) requires the MARA to give the agent written notice of its decision.

5. New subsection 306AG(4) provides that the mandatory decision takes effect at the time the agent is given written notice of it. The note at the end of new subsection 306AG(4) points out that the agent is taken to have been given the notice in accordance with new section 332H.

6. New subsection 306AG(5) provides that new section 306AG is subject to new section 306AI, which allows the Minister to revoke a referral decision and direct the MARA to take further action, and new section 306AK, which allows the AAT or a court to make stay orders in relation to the mandatory decision.

Subdivision C – Revocation of mandatory decision

Section 306AH Minister may direct the Migration Agents Registration Authority to revoke mandatory decision

7. New subsection 306AH(1) provides that the Minister may direct the MARA to revoke a mandatory decision made in relation to a registered migration agent if the Minister thinks that it is appropriate to do so.
8. The purpose of this section is to avoid the effect of an agent being sanctioned under new section 306AG mistakenly. For example, if a mistake was made calculating whether an agent had a high visa refusal rate in relation to a visa of a particular class.
9. New subsection 306AH(3) provides that the Minister may, in the notice, also direct the MARA to take further specified action after it revokes the mandatory decision.
10. New subsection 306AH(4) provides that the Minister's power to direct the MARA to revoke a mandatory decision may only be exercised by the Minister personally.
11. New subsection 306AH(5) provides that the Minister does not have a duty to consider whether to exercise the power to direct the MARA to revoke a mandatory decision in any other circumstances. The purpose of this subsection is to avoid the Minister's decision not to revoke a mandatory decision, or not to consider making such a decision, being the subject of review.

Section 306AI Revocation of mandatory decision

12. In broad terms, new section 306AI describes the effect of the Minister directing the MARA to revoke a mandatory decision under section 306AH.
13. New subsections 306AI(1) and (2) provide that if the Minister directs the MARA to revoke a mandatory decision made in relation to a registered migration agent, the MARA must do so, as soon as possible, but not later than 7 days, after receiving notice of the Minister's direction.
14. New subsection 306AI(3) provides that the MARA must give the agent written notice of its decision.
15. New subsection 306AI(4) provides that if a mandatory decision is revoked under this section, it is taken to never have been made. The purpose of this section is to make it clear that any consequence of a mandatory decision, such as supervision or cancellation, will not have any effect.
16. New subsection 306AI(5) provides that if the Minister directs the MARA to take further action after it revokes the mandatory decision, it must take the action as soon as possible after the revocation.

Subdivision D – Review

Section 306AJ Review by the Administrative Appeals Tribunal

17. New section 306AJ provides that an application may be made to the AAT for review of a referral decision (see new section 306AB for definition of referral decision).

Section 306AK Effect of review of referral decision on the Migration Agents Registration Authority’s mandatory decision

18. Section 306AK sets out the effect of review of a referral decision on the MARA’s mandatory decision.

19. In broad terms, if an application is made for review of a referral decision, new section 306AK allows a Tribunal or court to make such orders (including stay orders) as it thinks fit in relation to the mandatory decision that was made as a result of the referral decision.

20. For reasons outlined in item 74 above in relation to new section 306AA, new subsection 306AK(3) provides that if the tribunal or a court orders a stay of a mandatory decision made in relation to a registered migration agent, it is taken to be a condition of the order that the prescribed supervisory requirements apply in relation to the agent during the period of the order.

21. New subsection 306AK(4) provides that new subsection 306AK(3) applies whether or not the stay order is made under this section. This will ensure that even if a tribunal or court makes a stay order pursuant to its powers under other legislation, it will still be a condition of the order that prescribed supervisory arrangements apply.

Subdivision E – Making disciplinary details available

Section 306AL Making disciplinary details publicly available

22. New section 306AL provides when the MARA is required to publish details about mandatory disciplinary action taken against a current registered migration agent for vexatious activity.

23. New section 306AL is similar to new section, 305A which provides when the MARA may publish details about discretionary disciplinary action taken under section 303 against a current registered migration agent. The purpose of new section 306AL is similar to the purpose of new section 305A (see item 72 of this Schedule).

24. In broad terms, new subsection 306AL(1) sets out when the MARA may publish disciplinary details about a registered migration agent who does not apply for review of a referral decision, and also sets out when the MARA may publish disciplinary details about a registered migration agent who applies for review of a referral decision.

25. New subsection 306AL(2) provides that if, at the end of all proceedings (including any appeals) resulting from the review application, there is a decision to cancel or suspend the agent’s registration:

- the MARA must as soon as possible make available in the prescribed way a statement that:
 - sets out the referral decision and specifies the grounds for the referral decision; and
 - sets out the final decision; and
- the MARA may prepare a statement about the referral decision and the final decision and make it available to one or more groups of persons, or to one or more persons, in any way the MARA thinks fit.

2. However, under paragraphs 287(2)(g) and (h) of the Act, the Register is required to show details of any suspension of an agent's registration, or of a caution given to an agent.

3. New subsection 306AL(4) provides protection from civil proceedings for a person who, in good faith, publishes a copy of, an extract from or a summary of a statement made under new section 306AL.

Section 306AM Providing disciplinary details to clients

4. In broad terms, new section 306AM allows the MARA or the Secretary to provide information about a mandatory decision that has been taken against a current registered migration agent to clients of the agent.

5. New section 306AM is similar to new section 305B, which relates to disciplinary action taken against migration agents under section 303. The purpose of new section 306AM is similar to the purpose of new section 305B (see item 73 of this Schedule).

6. New subsection 306AM(1) provides that if the MARA makes a mandatory decision in relation to a registered migration agent, the MARA or the Secretary may inform one or more of the clients of the agent about one or more of the following:

- the making of the mandatory decision;
- the making of the referral decision that has resulted in the making of the mandatory decision;
- whether or not the agent has applied for review of the referral decision; and
- the status of any such review.

2. New subsection 306AM(2) provides that new section 306AM has effect despite new section 306AL. In other words, the MARA and the Secretary are not required to wait for 28 days, or until the end of all review proceedings, before informing one or more clients of disciplinary action that has been taken against their agent.

Item 76 Division 3A of Part 3 (heading)

3. This item repeals the heading to Division 3A and substitutes the new heading "Division 3A – Documents relating to clients of inactive migration agents and deceased migration agents".

4. The purpose of these amendments is to clarify that Division 3A applies to inactive migration agents and deceased migration agents, but not to other types of agents such as education agents.

Item 77 **Paragraph 306A(a)**
Item 78 **Paragraph 306A(b)**

5. These items make minor technical amendments to paragraphs 306A(a) and (b) to clarify that references to an “inactive agent” and “deceased agent” are intended to mean an inactive migration agent or a deceased registered migration agent who was previously registered as a migration agent by the MARA.

Item 79 **Paragraph 306A(c)**

6. This item makes a minor technical amendment to paragraph 306A(c) consequential to amendments made by items 104, 108 and 112 of this Schedule. These items amend Division 3A to allow the MARA to request original documents from an inactive migration agent, or the legal personal representative of a deceased registered migration agent or deceased inactive migration agent.

Item 80 **Paragraph 306A(c)**
Item 81 **Paragraph 306A(c)**

7. These items make minor technical amendments to clarify that the reference to “inactive agent” and “deceased agent” in paragraph 306A(c) is intended to mean an inactive migration agent or a deceased registered migration agent who was previously registered as a migration agent by the MARA.

Item 82 **Paragraph 306A(d)**

8. This item makes a minor technical amendment to paragraph 306A(d) consequential to amendments made by items 104, 108 and 112 of this Schedule. These items amend Division 3A to allow the MARA to request original documents from an inactive migration agent, or the legal personal representative of a deceased registered migration agent or deceased inactive migration agent.

Item 83 **Paragraph 306B(a)**

9. This item makes a minor technical amendment to paragraph 306B(a) to clarify that the reference to “registered agent” in paragraph 306B(a) is intended to mean a person who is registered as a migration agent by the MARA.

10. The note at the end of this item amends the heading to section 306B by replacing the reference to “Inactive agents” with a reference to “Inactive migration agents” for the same reason.

Item 84 **Subparagraph 306B(a)(i)**
Item 85 **Subparagraph 306B(a)(ii)**

11. These items make minor technical amendments to subparagraphs 306B(a)(i) and (ii) to clarify that references to “inactive agent” are intended to mean an inactive migration agent who has previously been registered as a migration agent by the MARA.

Item 86 **Subparagraph 306B(a)(ii)**

12. This item makes a minor technical amendment to clarify that the reference to “registered agent” in subparagraph 306B(a)(ii) is intended to mean a migration agent who is registered by the MARA.

Item 87 **Subparagraph 306B(b)(i)**
Item 88 **Subparagraph 306B(b)(ii)**

13. These items make minor technical amendments to clarify that references to “inactive agent” in subparagraphs 306B(b)(i) and (ii) are intended to mean an inactive migration agent who has previously been registered as a migration agent by the MARA.

Item 89 **Subparagraph 306B(b)(ii)**

14. This item makes a minor technical amendment to clarify that the reference to “registered agent” in subparagraph 306B(b)(ii) is intended to mean a migration agent who is registered by the MARA.

Item 90 **Paragraph 306B(c)**

15. This item makes a minor technical amendment to paragraph 306B(c) consequential to the insertion of new section 306AG inserted by item 75 of this Schedule, which relates to mandatory disciplinary action taken against a current registered migration agent for vexatious activity.

16. The effect of the amendment is to clarify that, if the MARA cancels a person’s registration under section 303 or new section 306AG, the person becomes an inactive agent.

Item 91 **Subparagraph 306B(c)(i)**
Item 92 **Subparagraph 306B(c)(ii)**

17. These items make minor technical amendments to clarify that references to “inactive agent” in subparagraphs 306B(c)(i) and (ii) are intended to mean an inactive migration agent who has previously been registered as a migration agent by the MARA.

Item 93 **Paragraph 306B(d)**

18. This item makes a minor technical amendment to paragraph 306B(d) consequential to the insertion of new section 306AG inserted by item 75 to clarify that, if the MARA cancels a person’s registration under section 303 or new section 306AG, the person becomes an inactive agent.

Item 94 **Subparagraph 306B(d)(i)**
Item 95 **Subparagraph 306B(d)(ii)**

19. These items make minor technical amendments to subparagraphs 306B(d)(i) and (ii) to clarify that references to “inactive agent” are intended to mean an inactive migration agent who has previously been registered as a migration agent by the MARA.

Item 96 **Paragraph 306B(e)**

20. This item makes a minor technical amendment to paragraph 306B(e) to clarify that the reference to “registered agent” is intended to mean a migration agent who is, or has been, registered by the MARA.

Item 97 **Subparagraph 306B(e)(i)****Item 98** **Subparagraph 306B(e)(ii)**

21. These items make minor technical amendments to subparagraphs 306B(e)(i) and (ii) to clarify that references to “inactive agent” are intended to mean an inactive migration agent who has previously been registered as a migration agent by the MARA.

Item 99 **Section 306C**

22. This item repeals section 306C and substitutes new section 306C.

Section 306C **Clients**

23. New section 306C inserts a definition of “client” for the purposes of Division 3A of the Act and provides that, if a registered migration agent gave, or anticipated giving, immigration assistance to another person:

- the other person is a “client” of the registered migration agent; and
- if the agent dies, the person remains a “client” of the deceased registered migration agent; and
- if the agent becomes an inactive registered migration agent, the person remains a “client” of the agent; and
- if the agent becomes an inactive registered migration agent and dies, the person remains a “client” of the agent.

2. This amendment is consequential to new subsection 276(2A), which expands the definition of “immigration assistance” to include advice about and assistance with requests for Ministerial intervention (see item 6).

Item 100 **Subsection 306D(1)****Item 101** **Paragraph 306D(1)(a)**

3. This item makes minor technical amendments to subsection 306D(1) and paragraph 306D(1)(a) to clarify that references to “inactive agents” are intended to mean an inactive migration agent who has previously been registered as a migration agent by the MARA.

4. The note at the end of item 101 replaces the heading to section 306D with the heading “Power to obtain documents from inactive migration agent” for similar reasons.

Item 102 **Paragraph 306D(1)(a)**

5. This item makes a minor technical amendment to paragraph 306D(1)(a) to clarify that the reference to “registered agent” is intended to mean a migration agent who is, or has been, registered by the MARA.

Item 103 **Paragraph 306D(1)(b)**

6. This item makes a minor technical amendment to paragraph 306D(1)(b) to clarify that the reference to “inactive agent” is intended to mean an inactive migration agent who has previously been registered as a migration agent by the MARA.

Item 104 **Subsection 306D(2)**

7. This item repeals subsection 306D(2) and substitutes new subsection 306D(2) to allow the MARA to request original documents, as well as copies of client documents, from inactive migration agents.

8. New subsection 306D(2) is similar to new paragraphs 306E(2)(a) and (b) and new paragraphs 306F(2)(a) and (b) inserted by items 108 and 112 of this Schedule, which relate to requesting documents from the legal personal representative of a deceased inactive agent or a deceased registered migration agent.

9. Section 306D applies to an inactive migration agent who the MARA has reason to believe has documents that:

- are or were connected with the giving, or anticipated giving, of immigration assistance to a client; and
- relate to the affairs of the client.

2. New paragraph 306D(2)(a) is similar to existing subsection 306D(2). It allows the MARA to require an inactive migration agent to:

- make copies of any documents connected with the giving of immigration assistance to a client and which relate to the affairs of the client; and
- produce those copies to the MARA within the specified period and in the specified manner.

2. New paragraph 306D(2)(b) allows the MARA to require an inactive migration agent to produce to the MARA any documents that are owned by a client or that were provided to the registered migration agent by, or on behalf of, the client. That is, an inactive agent may be required to not only produce documents given to the agent by the client, but also documents that were provided by another person on the client’s behalf.

3. The purpose of new subsection 306D(2) is to ensure that the MARA can return documents to clients of inactive agents so that they are not unduly disadvantaged if an agent becomes inactive.

4. The note at the end of new subsection 306D(2) provides that an example of a document that is provided to a registered migration agent under subsection 306D(2) is a client’s passport.

Item 105 **At the end of section 306D**

5. This item inserts a note at the end of section 306D to point out that section 332H (inserted by item 170 of this Schedule) sets out when the inactive migration agent is taken to have been given a notice to produce documents under new subsection 306D(2).

Item 106 **Subsection 306E(1)**

6. This item makes a minor technical amendment to subsection 306E(1) to clarify that the reference to “inactive agent” is intended to mean an inactive migration agent who has previously been registered as a migration agent by the MARA.

7. This item also replaces the heading to section 306E with the new heading “Power to obtain documents from representative of deceased inactive migration agent”.

Item 107 **Paragraph 306E(1)(a)**

8. This item makes a minor technical amendment to subsection 306E(a) to clarify that the reference to “registered agent” is intended to mean a migration agent who is, or has been, registered by the MARA.

Item 108 **Paragraph 306E(2)(a) and (b)**

9. This item repeals paragraphs 306E(2)(a) and (b) and substitutes new paragraphs 306E(2)(a) and (b) to allow the MARA to request original documents, as well as copies of client documents, from the legal personal representative of a deceased inactive migration agent.

10. New paragraphs 306E(2)(a) and (b) are similar to new subsection 306D(2) and new paragraphs 306F(2)(a) and (b) inserted by items 104 and 112 of this Schedule. The paragraphs are inserted for the same purpose.

11. Section 306E applies to the legal personal representative of an inactive migration agent whom the MARA has reason to believe has documents that:

- are or were connected with the giving, or anticipated giving, of immigration assistance to a client; and
- relate to the affairs of the client.

2. New paragraph 306E(2)(a) is similar to existing subsection 306E(2). It allows the MARA to require the legal personal representative of an inactive migration agent to:

- make copies of any documents connected with the giving of immigration assistance to a client and which relate to the affairs of the client; and
- produce those copies to the MARA within the specified period and in the specified manner.

2. New paragraph 306E(2)(b) allows the MARA to require the legal personal representative of an inactive migration agent to produce to the MARA any documents that are owned by a client or that were provided to the registered migration agent by, or on behalf of, the client.

Item 109 **At the end of subsection 306E(2)**

3. This item inserts a note at the end of subsection 306E(2) to provide that an example of a document that may be provided to a registered migration agent under subsection 306E(2) is a client's passport.

Item 110 **At the end of section 306E**

4. This item inserts a note at the end of section 306E to point out that section 332H (inserted by item 170 of this Schedule) sets out when the legal personal representative of an inactive migration agent is taken to have been given a notice to produce documents under subsection 306E(2).

Item 111 **Subsection 306F(1)**

5. This item makes a minor technical amendment to subsection 306F(1) to clarify that the reference to "registered agent" is intended to mean a migration agent who is registered by the MARA.

6. This item also replaces the heading to section 306F with the new heading "Power to obtain documents from representative of deceased registered migration agent".

Item 112 **Paragraphs 306F(2)(a) and (b)**

7. This item repeals paragraphs 306F(2)(a) and (b) and substitutes new paragraphs 306F(2)(a) and (b) to allow the MARA to request original documents, as well as copies of client documents, from the legal personal representative of a deceased registered migration agent.

8. New paragraphs 306F(2)(a) and (b) are similar to new subsection 306D(2) and new paragraphs 306E(2)(a) and (b) inserted by items 104 and 108 of this Schedule. These sections were inserted for the same purpose (see item 104).

9. Section 306F applies to the legal personal representative of a registered migration agent whom the MARA has reason to believe has documents that:

- are or were connected with the giving, or anticipated giving, of immigration assistance to a client; and
- relate to the affairs of the client.

2. New paragraph 306F(2)(a) is similar to existing subsection 306F(2). It allows the MARA to require the legal personal representative of a deceased migration agent to make copies of documents and produce those copies to the MARA within the specified period and in the specified manner.

3. New paragraph 306F(2)(b) allows the MARA to require the legal personal representative of a registered migration agent to produce to the MARA any documents that are owned by a client or that were provided to the registered migration agent by, or on behalf of, the client.

Item 113 **At the end of subsection 306F(2)**

4. This item inserts as a note an example of a document to be returned to a client under subsection 306F(2).

Item 114 **At the end of section 306F**

5. This item inserts a note at the end of section 306E to point out that section 332H (inserted by item 170 of this Schedule) sets out when the legal personal representative of a registered migration agent is taken to have been given a notice to produce documents under subsection 306F(2).

Item 115 **Subsection 306H(1)(penalty)**

6. This item increases the penalty for failing to comply with a notice to produce documents under section 306D, 306E or 306F from 30 penalty units to 60 penalty units.

7. The penalty has been increased to deter commission of the offence and to reflect the seriousness of the offence. In the past, some agents or their legal representatives have refused to return documents to clients. To improve consumer protection the MARA needs to be able to ensure that client documents, including important original documents such as a client's passport or birth certificate, are returned to a client of an inactive, deceased registered migration agent or deceased inactive migration agent.

Item 116 **Section 306J**

8. This item repeals section 306J of the Act and substitutes new section 306J.

9. In broad terms, section 308 enables the MARA to require registered migration agents to make a statutory declaration, answer questions or provide the MARA with specified documents or records, regardless of whether the information may tend to incriminate the agent.

10. New section 306J reverses the existing provision in section 306J to make it consistent with section 308 by providing that an individual is not excused from producing a document under section 306D, 306E or 306F on the ground that production of the document might tend to incriminate the individual or expose the individual to a penalty.

11. Similarly, new subsection 306J(2) provides that any document or information produced under section 306D, 306E or 306F is not admissible in evidence against the individual in any criminal proceedings (except proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Act or the regulations).

12. New section 306J is necessary to prevent a key purpose of the Bill, namely the protection of consumers, from being undermined. It would be wrong if an unscrupulous agent could legitimately rely on the excuse in existing section 306J to refuse to produce documents or information to the MARA. New section 306J protects the interests of a visa applicant and ensures that the withholding of documents or information does not cause serious detriment to the applicant in the visa application process.

Item 117 **Paragraph 306K(1)(a)**

13. This item makes a minor technical amendment to paragraph 306K(1)(a) consequential to amendments made by items 104, 108 and 112 of this Schedule to allow the MARA to request original documents from an inactive migration agent, or the legal personal representative of a deceased registered migration agent or deceased inactive migration agent.

14. This item also amends the heading to section 306K to make it clear that the section relates to both copies and originals of client documents.

Item 118 **Paragraphs 306K(1)(a) and (b)**

15. This item makes a minor technical amendment to paragraphs 306K(1)(a) and (b) to clarify that the reference to “inactive agent” is intended to mean an inactive migration agent who has previously been registered as a migration agent by the MARA.

Item 119 **Paragraph 306K(1)(c)**

16. This item repeals paragraph 306K(1)(c) and substitutes new paragraph 306K(1)(c).

17. This amendment is consequential to amendments made by items 104, 108 and 112 of this Schedule.

18. In broad terms, new subsection 306K(1) requires the MARA to give copies or originals of client documents provided under section 306D to the client.

19. New subparagraph 306K(1)(c)(ii) provides that, if the client has, by written notice, nominated a person to receive such documents, the MARA may give copies or originals of client documents to that person instead.

Item 120 **Paragraph 306K(1)(d)**

20. This item makes a minor technical amendment to paragraph 306K(1)(d) to clarify that the reference to “registered agent” is intended to mean a migration agent who is registered by the MARA.

Item 121 **Paragraph 306K(2)(a)**

21. This item makes a minor technical amendment to paragraph 306K(2)(a) consequential to amendments made by items 104, 108 and 112 of this Schedule to allow the MARA to also request original client documents.

Item 122 **Subparagraph 306K(2)(a)(i)**

22. This item makes a minor technical amendment to subparagraph 306K(2)(a)(i) to clarify that the reference to “inactive agent” is intended to mean an inactive migration agent who has previously been registered as a migration agent by the MARA.

Item 123 **Subparagraph 306K(2)(a)(ii)**

23. This item makes a minor technical amendment to subparagraph 306K(2)(a)(ii) to clarify that the reference to “registered agent” is intended to mean a migration agent who is registered by the MARA.

Item 124 **Paragraph 306K(2)(c)**

24. This item makes a minor technical amendment to paragraph 306K(2)(c) to clarify that the reference to “deceased agent” is intended to mean a deceased registered migration agent who was registered as a migration agent by the MARA.

Item 125 **Paragraph 306K(2)(c)**

25. This item repeals paragraph 306K(2)(c) and substitutes new paragraph 306K(2)(c).

26. This amendment is consequential to amendments made by items 104, 108 and 112 of this Schedule.

27. In broad terms, subsection 306K(2) requires the MARA to give copies or originals of client documents provided under section 306E or 306F to the client.

28. New subparagraph 306K(2)(c)(ii) provides that, if the client has, by written notice, nominated a person to receive such documents, the MARA may give copies or originals of client documents to that person instead.

Item 126 **Paragraph 306K(2)(d)**

Item 127 **Subsection 308(1)**

29. These items make minor technical amendments to paragraph 306K(2)(d) and subsection 308(1) to clarify that references to “registered agent” are intended to mean a migration agent who is registered by the MARA.

30. Item 127 also amends the heading to section 308 to replace the reference to “registered agents” with a reference to “registered migration agents”.

Item 128 **Paragraph 308(1)(b)**

31. This item makes a minor amendment to paragraph 308(1)(b) to clarify that the MARA may require a registered migration agent to appear before one or more individuals specified by the authority and to answer questions.

Item 129 **Subsection 308(2)**

32. This item repeals subsection 308(2) and substitutes new subsections 308(2) and (2A) consequential to the amendment made by item 128 of this Schedule.

33. New subsections 308(2) and (2A) set out the procedure for recording questions and answers for the purpose of new paragraph 308(1)(b), which allows the MARA to require a registered migration agent to appear before one or more individuals and to answer questions

34. In broad terms the new subsections provide that if a registered migration agent is required to appear before someone to answer questions, a record of the questions and answers must be taken and given to the MARA.

Item 130 **Subsection 308(3)**
Item 131 **Subsection 308(4)**

35. These items make minor technical amendments to subsections 308(3) and (4) to clarify that references to “registered agent” are intended to mean a migration agent who is registered by the MARA.

Item 132 **Subsection 309(1)**

36. This item makes a minor technical amendment to subsection 309(1) to replace a reference to “the Board” with a reference to “it”. This amendment is necessary because there is no definition of “the Board” contained in the Act.

Item 133 **Subsection 309(2)**

37. This item makes a minor technical amendment to subsection 309(2) consequential to the insertion of new section 306AG by item 75 of this Schedule.

38. This item makes it clear that subsection 309(2) only applies to a discretionary decision to discipline an agent under section 303 of the Act and not to any decision to discipline an agent, such as under new section 306AG for vexatious activity.

Item 134 **Division 4A of Part 3 (heading)**

39. This item repeals the heading to Division 4A of Part 3 and substitutes new heading “Division 4A – Disciplining former registered migration agents”.

40. This amendment is to clarify that the reference to “former registered agent” in the heading to Division 4A is intended to mean a person who was formerly registered as a migration agent by the MARA.

41. This item also inserts a new subdivision heading into Division 4A of Part 3 of the Act. New subdivision A relates to complaints about the provision of immigration assistance by former registered migration agents.

Item 135 **Subsection 311A(1)**
Item 136 **Subsection 311A(1) (note)**

42. These items make minor technical amendments to subsection 311A(1), the note at the end of subsection 311A(1) and the heading to section 311A to clarify that a reference to “former registered agent” is intended to mean a person who was formerly registered as a migration agent by the MARA.

Item 137 **Sections 311B and 311C**

43. This item repeals sections 311B and 311C and substitutes new sections 311B and

311C.

Section 311B Notice of disciplinary decision

44. New subsection 311B(1) provides that the MARA must give a former registered migration agent written notice of a discretionary decision made under section 311A to bar the former agent from being a registered migration agent for a certain period. The new subsection is similar to new subsection 305(1) (see item 72).

45. New subsection 311B(2) provides that the notice must set out the reasons for the decision and the period that the former agent is barred from being a registered migration agent.

46. New subsection 311(3) provides that the decision takes effect at the time the former agent is given written notice of the decision.

47. New section 332H, inserted by item 170 of this Schedule, sets out the time at which a person is taken to have been given a notice by the MARA under Part 3 of the Act.

Section 311C Making disciplinary details publicly available

48. New section 311C provides when the MARA may publish details about discretionary disciplinary action taken to bar a former registered migration agent from being a registered agent.

49. New section 311C is similar to new sections 305A, 306AL and 311P contained in items 72, 75 and 142 of this Schedule. The purpose of these new sections are the same (see item 72).

50. In broad terms, new subsection 311C(1) sets out when the MARA may publish disciplinary details about a former registered migration agent who does not apply for review of a disciplinary decision, and new subsection 311C(2) sets out when the MARA may publish disciplinary details about a former registered migration agent who applies for review of a disciplinary decision.

51. New subsection 311C(2) provides that if, at the end of all proceedings (including any appeals) resulting from the review application, there is a decision to cancel or suspend the agent's registration or to caution the former agent:

- the MARA must as soon as possible make available in the prescribed way a statement that sets out the final decision and specifies the grounds for the final decision; and
- the MARA may prepare a statement about the final decision and make it available to one or more groups of persons, or to one or more persons, in any way the MARA thinks fit.

2. New subsection 311C(4) provides protection from civil proceedings for a person who, in good faith, publishes a copy of, an extract from or a summary of a statement made under new section 311C. New subsection 311C(4) is similar to repealed subsection 311C(5), however, it does not provide protection from criminal proceedings.

Item 138 **Subsection 311D(1)**

3. This item makes minor technical amendments to subsection 311D(1) and the heading to section 311D to clarify that a reference to “former registered agent” is intended to mean a person who was formerly registered as a migration agent by the MARA.

Item 139 **At the end of subsection 311D(1)**

4. This item inserts a note at the end of subsection 311D(1) to point out that section 332H sets out when the former agent is taken to have been given a notice under subsection 311D(1).

Item 140 **Paragraph 311D(4)(b)**

5. This item makes a minor technical amendment to paragraph 311D(4)(b) to clarify that a reference to “former registered agent” is intended to mean a person who was formerly registered as a migration agent by the MARA.

Item 141 **After section 311E**

6. This item inserts new section 311EA after section 311E of the Act.

Section 311EA **Requiring former registered migration agents to give information or documents**

7. In broad terms, new section 311EA allows the MARA to require former registered migration agents to give information or documents if the MARA is considering barring a former registered migration agent from being a registered migration agent for a certain period.

8. New section 311EA is similar to new section 305C, inserted by item 73 of this Schedule, which relates to current registered agents. The purpose of new section 311EA is similar to the purpose of new section 305C.

9. New subsection 311EA(2) provides that the MARA may, by written notice, require a former migration agent to provide the MARA with prescribed information or prescribed documents. If the MARA gives such a written notice to a former agent, the agent must provide the MARA with the documents or information within the specified period and in the specified manner.

10. New subsection 311EA(3) provides that a period specified in a notice under new subsection 311EA(2) must end at least 14 days after the notice was given.

11. This item inserts a note at the end of new subsection 311EA(3) to point out that new section 332H, inserted by item 170 of this Schedule, sets out when the agent is taken to have been given the notice.

12. New subsection 311EA(4) makes it an offence if a person is subject to a requirement

under new section 311EA and the person contravenes the requirement. The penalty applying to such an offence is 60 penalty units and it is an offence of strict liability for the reasons outlined in item 73 regarding new section 305C.

13. New subsection 311EA(6) provides that a person is not excused from giving information or providing a document on the ground that the information or provision of the document may tend to incriminate the person. The reason for this is outlined in item 73 in relation to new section 305C.

Item 142 At the end of Division 4A of Part 3

14. This item inserts new Subdivision B at the end of Division 4A of Part 3 of the Act. New Subdivision B relates to disciplining former registered migration agents who had a high visa refusal rate during the period of their registration.

15. New Subdivision B is similar to new Division 3AA, inserted by item 75 of this Schedule, however new Subdivision B relates to former registered migration agents.

16. New Subdivision B will ensure that agents cannot avoid disciplinary action for having a high visa refusal rate by simply deregistering and leaving the industry.

Subdivision B – Engaging in vexatious activity

Section 311G Definitions

17. New section 311G inserts definitions of “mandatory decision” and “referral decision” for the purposes of new Subdivision B of Division 4A.

18. “Mandatory decision” is defined to mean a decision of the MARA under section 311L (see below).

19. “Referral decision” is defined to mean a decision of the Minister under section 311H (see below).

Section 311H Minister may refer former registered migration agent for disciplinary action

20. New subsection 311H(1) provides that the Minister may refer a former registered migration agent to the MARA for disciplinary action if the agent has a high visa refusal rate in relation to a visa of a particular class during his or her period of registration.

21. This new subsection is similar to new subsection 306AC(1) (inserted by item 75 of this Schedule) which relates to current registered migration agents.

22. This item inserts three notes at the end of new subsection 311H(1).

23. The first note points out that if the Minister is considering referring a former agent to the MARA, the Minister must invite the former agent to make a submission on the matter under new section 311J and must consider any submission that is made.

24. The second note points out that if the Minister refers a former agent to the MARA under this section, the MARA must discipline the former agent under new section 311L.
25. The third note points out that the Minister's decision to refer is reviewable by the AAT under new section 311M.
26. In order to determine whether a former registered migration agent has a high visa refusal rate, it is necessary to refer to new subsection 306AC(2), inserted by item 75 of this Schedule.
27. New subsection 306AC(2) sets out a step by step method for working out whether an agent has a high visa refusal rate in relation to a visa of a particular class (see item 75).

Section 311J Former registered migration agent may make submissions

28. New section 311J ensures that procedural fairness is accorded to former agents who may be subject to a decision under new section 311L barring their re-entry into the industry for a certain period.
29. New section 311J is similar to new section 306AE (inserted by item 75 of this Schedule) which relates to current registered agents.
30. New subsection 311J(1) provides that if the Minister is considering referring a former registered migration agent to the MARA for disciplinary action, the Minister must give the former agent a written notice stating that the Minister proposes to make such a decision and the reasons for it and inviting the former agent to make a written submission to the Minister within 14 days after the notice is given (the objection period).
31. New subsection 311J(2) provides that before the end of the objection period, the former agent may, by notice in writing, request an extension of that period.
32. New subsection 311J(3) provides that the Minister must grant an extension of 14 days if the notice contains reasons for the request. This means that an agent may have a maximum of 28 days to make a written submission to the Minister.
33. New subsection 311J(4) requires the Minister to consider any written submission received within the objection period (or that period as extended under new subsection 311J(3)). For examples of the type of submissions that an agent may make, see item 75, in relation to section 306AE.

Section 311K Notice of referral decision

34. New subsection 311K(1) is similar to new section 306AF (inserted by item 75 of this Schedule, which relates to current registered migration agents) and provides that the Minister must give the MARA written notice of the decision to refer a former registered migration agent by one of the methods specified in section 494B, and the notice must specify the grounds for the referral.
35. New subsection 311K(2) requires the Minister to give the former registered migration agent written notice of the decision to refer him or her to the MARA for disciplinary action.

36. New subsections 311K(3) and (4) provide that the notice must be given to the former agent on the same day that notice of the referral is given to the MARA and set out the reasons for the referral.

Section 311L Taking of disciplinary action

37. If the Minister refers a former registered migration agent to the MARA, new subsection 311L requires the MARA to make a mandatory decision.

38. New subsection 311L(1) provides that the MARA must:

- if while the former agent was a registered migration agent, his or her registration was not suspended under new section 306AG– bar the former agent from being registered as a migration agent for 12 months starting on the day the MARA’s decision takes effect; or
- if while the former agent was a registered migration agent, his or her registration was suspended under new section 306AG– bar the former agent from being registered as a migration agent for 5 years starting on the day the MARA’s decision takes effect; or

2. New subsections 311L(2), (3) and (5) are similar to new subsections 306AG(2), (3) and (4). They provide that the MARA must make its decision as soon as possible but no later than 7 days after receiving notice of the referral and give the former agent written notice of its decision.

3. New subsection 311L(4) provides that the mandatory decision takes effect at the time the former agent is given written notice of it according to new section 332H.

4. New subsection 311L(5) provides that new section 311L is subject to new section 311N, which allows the AAT or a court to make orders in relation to the mandatory decision.

Section 311M Review by the Administrative Appeals Tribunal

5. New section 311M provides that an application may be made by a former registered migration agent to the AAT for review of a referral decision.

6. New section 311M is similar to new section 306AJ, which relates to current registered migration agents.

Section 311N Effect of review of referral decision on the Migration Agents Registration Authority’s mandatory decision

7. Section 311N sets out the effect of review of a referral decision on the MARA’s mandatory decision in relation to a former registered agent.

8. New subsections 311N(1) and (2) are similar to sections 306AK(1) and (2) which relate to current registered agents. These subsections have been included for the same purpose.

9. In broad terms, if an application is made for review of a referral decision, new section 311N allows a Tribunal or court to make such orders (including stay orders) as it thinks fit in relation to the mandatory decision that was made as a result of the referral decision.

10. However, new subsection 311N(2) provides that the Tribunal or a court cannot make an order binding the MARA unless the MARA has been accorded procedural fairness in relation to the making of the order. The reasons for this are outlined in relation to new section 306AK, inserted by item 75 of this Schedule.

Section 311P Making disciplinary details publicly available

11. New section 311P provides when the MARA is required to publish details about mandatory disciplinary action taken against a former registered migration agent for vexatious activity.

12. New section 311P is similar to new sections 305A, 306AL and 311C contained in items 72, 75 and 137 of this Schedule). The purpose of these new sections are the same (see item 72).

13. In broad terms, new subsection 311P(1) sets out when the MARA may publish disciplinary details about a former registered migration agent who does not apply for review of a referral decision, and new subsection 311P(2) sets out when the MARA may publish disciplinary details about a former registered migration agent who applies for review of a referral decision.

14. New subsection 311P(2) provides that if, at the end of all proceedings (including any appeals) resulting from the review application, there is a decision to bar the former agent from being registered as a migration agent for a certain period:

- the MARA must as soon as possible make available in the prescribed way a statement that:
 - sets out the referral decision and specifies the grounds for the referral decision; and
 - sets out the final decision; and
- the MARA may prepare a statement about the referral decision and the final decision and make it available to one or more groups of persons, or to one or more persons, in any way the MARA thinks fit.

2. New subsection 311P(4) provides protection from civil proceedings for a person who, in good faith, publishes a copy of, an extract from or a summary of a statement made under new section 311P.

Item 143 **Division 5 of Part 3 (heading)**

3. This item repeals the heading to Division 5 of Part 3 of the Act and substitutes new heading “Division 5 – Obligations of registered migration agents”. This amendment is to clarify that Division 5 applies to registered migration agents, but not to other types of agents such as education agents.

Division 5 – Obligations of registered migration agents**Item 144** **Subsection 312(1)**

4. This item makes a minor technical amendment to subsection 312(1) to clarify that the reference to “registered agent” is intended to mean a migration agent who is registered by the MARA.

Item 145 **Subsection 312(1)**

5. This item makes a minor technical amendment to subsection 312(1) of the Act to replace “as soon as is reasonably possible” with “in writing within 14 days”.

6. Section 312 of the Act requires a registered migration agent to notify the MARA “as soon as is reasonably possible” of certain events, for example, if the agent becomes bankrupt or is convicted of an offence.

7. The purpose of this amendment is to provide a fixed period within which a migration agent is required to notify the MARA of the events listed in section 312. This amendment also provides that a migration agent must notify the MARA in writing.

Item 146 **After paragraph 312(1)(e)**

8. This item inserts new paragraph 312(1)(ea) after paragraph 312(1)(e) of the Act consequential to new section 10 of the MARAC Act (see item 5 of this Schedule).

9. Section 312 of the Act requires a registered migration agent to notify the MARA of certain events, for example, if the agent becomes bankrupt or is convicted of an offence. The penalty for failing to comply with a requirement under section 312 is 100 penalty units.

10. New paragraph 312(1)(ea) requires an agent, who is registered on a non-commercial basis, to also notify the MARA if he or she gives immigration assistance on a commercial basis.

Item 147 **After paragraph 312(1)(f)**

11. This item inserts new paragraph 312(1)(fa) after paragraph 312(1)(e) of the Act.

12. New paragraph 312(1)(fa) requires a migration agent to also notify the MARA if he or she becomes a member of a partnership and will give immigration assistance in that capacity.

13. The purpose of new paragraph 312(1)(fa) is to prevent former registered migration

agents, who have had their registration cancelled or suspended, from continuing to operate in the migration advice industry through association with registered migration agents.

Item 148 **At the end of section 312**

14. This item inserts new subsection 312(3) at the end of section 312 of the Act consequential to new paragraph 312(1)(ea) contained in item 146 of this Schedule.

15. New paragraph 312(1)(ea) requires an agent, who is registered on a non-commercial basis, to notify the MARA if he or she gives immigration assistance on a commercial basis.

16. New subsection 312(3) provides that the day on which an agent begins to give immigration assistance on a commercial basis is to be worked out in accordance with the *Migration Agents Registration Application Charge Regulations 1998* (the MARAC Regulations) (see item 5).

Item 149 **After section 312**

17. This item inserts new section 312A after section 312 of the Act.

Section 312A **Notification of giving of immigration assistance to visa applicants**

18. In broad terms, new section 312A requires a registered migration agent to notify the Department if he or she gives immigration assistance to a visa applicant in relation to the visa application.

19. This new section is similar to new section 312B which relates to requiring an agent to notify the relevant review tribunal if the agent gives immigration assistance in relation to a review application.

20. The purpose of new sections 312A and 312B is to enable the Department to calculate an agent's visa refusal rates under new Division 3AA (contained in item 75 of this Schedule).

21. New subsection 312A(1) provides that a migration agent must notify the Department in accordance with the regulations and within the period worked out in accordance with the regulations. It is envisaged that the regulations will prescribe that a migration agent must notify the Department in writing by either completing the relevant form or the appropriate sections of a visa application form, or by writing a letter.

22. New subsections 312A(2) and (3) make it an offence of strict liability if a person contravenes the requirements of new section 312A. The penalty applying to such an offence is 60 penalty units.

23. The offence is one of strict liability to enable a penalty to be imposed for conduct without proof of fault. This is necessary because it could be very difficult for DIMIA to prove an agent's involvement if they chose to conceal it. One of the primary reasons of the Bill is to ensure that unscrupulous agents are sanctioned. This provision and corresponding penalty is necessary to enable this to occur.

Section 312B Notification of giving of immigration assistance to review applicants

24. In broad terms, new section 312B requires a registered migration agent to notify the review authority concerned if he or she gives immigration assistance to a person in respect of a review application made by the person.

423. This section is similar to new section 312A, which relates to requiring an agent to notify DIMIA if the agent gives immigration assistance in relation to a visa application. It was inserted for the same purpose.

424. “Review authority” is defined by section 275 of the Act to mean the MRT or RRT.

425. New subsection 312B(1) provides that a migration agent must notify the review authority in accordance with the regulations and within the period worked out in accordance with the regulations.

426. New subsections 312B(2) and (3) make it an offence of strict liability if a person contravenes the requirements of new section 312B. The penalty applying to such an offence is 60 penalty units.

427. The offence is one of strict liability for reasons outlined above in relation to new section 312A.

Item 150 Subsection 313(1A)

428. This item repeals subsection 313(1A) of the Act.

429. In general terms, section 313 currently requires a migration agent to give a statement of services if the agent gives immigration assistance to a visa applicant, cancellation review applicant, or sponsor or nominator of a visa applicant.

430. The effect of repealing subsection 313(1A) is to widen section 313 to require a migration agent to give a statement of services to any person to whom he or she gives immigration assistance.

431. This amendment is consequential to new subsection 276(2A), inserted by item 6 of this Schedule, which expands the definition of “immigration assistance” to include advice about and assistance with requests for Ministerial intervention.

Item 151 Subsection 313(1)

432. This item makes a minor technical amendment to subsection 313(1) to clarify that the reference to “registered agent” is intended to mean a migration agent who is registered by the MARA.

Item 152 Subsection 313(1)

433. This item makes a minor technical amendment to subsection 313(1) to replace the reference to “an assisted person” with a reference to “another person (the *assisted person*)”. This amendment is consequential to item 150, which repeals subsection 313(1A).

Item 153 Paragraph 313(3)(a)

434. This item makes a minor technical amendment to paragraph 313(3)(a) to clarify that the reference to “registered agent” is intended to mean a migration agent who is registered by the MARA.

Item 154 Paragraph 313(3)(c)

435. This item amends paragraph 313(3)(c) of the Act to replace the reference to “28 days after a final decision is made about the visa application, cancellation review application, nomination or sponsorship that the immigration assistance related to” with a reference to “the period worked out in accordance with the regulations”.

436. This amendment is consequential to new subsection 276(2A), which expands the definition of “immigration assistance” to include advice about and assistance with requests for Ministerial intervention (see item 6).

Item 155	Subsection 314(2)
Item 156	Subsection 316(1)
Item 157	Subsection 316(1A)
Item 158	Subsection 316(1B)
Item 159	Section 318
Item 160	Subsection 319(1)
Item 161	Subsection 319(2)
Item 162	Subsection 319(2) (note)
Item 163	Subsection 319(3)
Item 164	Subsection 319(3) (note)

437. These items make minor technical amendments to sections 314, 316, 318 and 319 of the Act to clarify that a reference to “registered agent” is intended to mean a migration agent who is registered by the MARA.

Item 165 After section 319

438. This item inserts new section 319A after section 319 of the Act.

Section 319A Institute may delegate powers and functions

439. New section 319A enables the Migration Institute of Australia (MIA) to delegate its powers and functions under Part 3 of the Act.

440. New subsection 319A(1) provides that the MIA may, by writing, delegate any or all of its functions or powers under Part 3 to:

- a committee of MIA;
- an officer of MIA; or
- an employee of MIA.

424. New subsection 319A(2) provides that in performing a delegated function or exercising a delegated power, a delegate must comply with any written directions given by MIA.

425. New subsection 319A(3) provides that a function or power delegated to a committee may only be performed or exercised by a majority of the members of the committee.

426. The note at the end of this item amends the heading to section 320 to replace the reference to “Delegation of” with a reference to “Minister may delegate”.

427. The purpose of new section 319 is to enable the MARA to carry out its functions and powers under the Act efficiently and effectively. The amendment will allow the MARA to authorise officers to take routine decisions and recommend a course of action to the MARA board in respect of more complex decisions.

Item 166 After section 321

428. This item inserts new section 321A after section 321 of the Act.

Section 321A Disclosure of personal information by the Migration Agents Registration Authority

429. New section 321A allows the MARA to disclose personal information about a registered migration agent or an inactive migration agent to the Department, an authorised officer or a review authority in certain circumstances.

430. “Authorised officer” is defined by subsection 5(1) of the Act to mean an officer authorised in writing by the Minister or the Secretary for the purposes of that provision. In practice, an authorised officer may be employees of the Department, including officers responsible for assessing whether an agent has a high visa refusal rate.

431. “Review authority” is defined by section 275 of the Act to mean the MRT or RRT.

432. New subsection 321A(3) provides that the regulations may prescribe circumstances in which the Secretary, an authorised officer, the MRT or RRT may use or disclose personal information disclosed under new subsection 321A(1).

433. For example, the Department may use information disclosed by the MARA when considering whether to make a complaint to the MARA about an agent or for reporting purposes.

434. New subsection 321A(4) provides that “inactive migration agent” has the meaning given by section 306B of the Act, and “personal information” has the same meaning as in the *Privacy Act 1988*.

435. Currently, the Act contains limited powers in section 321 for DIMIA to disclose

personal information to the MARA for the purpose of facilitating or expediting the exercise of the powers, or performance of the functions of the MARA.

436. The main purpose of new section 321A is to enable investigations against registered migration agents and other persons to be carried out effectively and to ensure unscrupulous agents are sanctioned accordingly.

Item 167 **Division 6A of Part 3 (heading)**

437. This item repeals the heading to Division 6A of Part 3 of the Act and substitutes new heading “Division 6A – Registration application fees and registration status charges”.

438. This amendment is consequential to new section 10 of the MARAC Act, proposed to be inserted by item 5 of Schedule 1 to the MARACA Bill (see item 5).

Item 168 **Section 332A**

439. This item repeals section 332A and substitutes new section 332A.

Section 332A **Collection of registration status charge**

440. New subsection 332A(1) provides that registration status charge is due and payable at the time worked out in accordance with a written determination made by the MARA.

441. A definition of “registration status charge” is inserted into section 275 of the Act by item 5 of this Schedule to mean to mean a charge imposed by section 10 of the MARAC Act.

442. New subsection 332A(2) provides that a determination made under new subsection 332A(1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

443. New subsection 332A(3) provides that the MARA may, on behalf of the Commonwealth, recover any registration status charge that has become due for payment, as a debt due to the Commonwealth.

Item 169 **After subsection 332B(1)**

444. This item inserts new subsection 332B(1A) after subsection 332B(1) of the Act.

445. New subsection 332B(1A) provides that there is payable to MIA out of the Consolidated Revenue Fund an amount equal to the sum of registration status charges collected (including amounts recovered under section 332A) while an instrument under section 315 appointing the MIA is in force.

Item 170 **At the end of Part 3**

446. This item inserts new Division 7 at the end of Part 3 of the Act.

Division 7 – Other things

Section 332C Removing disciplinary details – registered migration agents

447. New section 332C provides that the MARA must remove details of disciplinary action that has been taken against migration agents that is made available by electronic means within a certain period.

448. The purpose of this new section is to balance the publication requirements under new sections 305A, 306AL, 311C and 311P. It is also intended to be consistent with subsection 287(5), which relates to removing details placed on the Register.

449. New subsection 332C(1) provides that the MARA must remove:

- any statement relating to the cancellation or suspension of a registered migration agent’s registration; and
- any statement about the cautioning of an agent.

424. New subsections 332C(2) and (3) provide that the MARA must remove the disciplinary details within the period worked out in accordance with the regulations and that the regulations may prescribe different periods in relation to details about cancellations, suspensions or cautions.

425. For example, the regulations may prescribe that information about caution decisions may remain on the MARA website for a maximum period of 12 months after the caution is lifted or the agent’s current registration expires, whilst details about a suspension decision may remain on the website for up to 5 years after the decision was made. As another example, the regulations may prescribe that details about a cancellation decision may remain on the website for up to 10 years after the decision was made.

Section 332D Removing disciplinary details – former registered migration agents

426. New section 332D relates to the removal of details about disciplinary action that has been taken against former registered migration agents.

427. New section 332D is similar to new section 332C, which relates to current registered migration agents.

428. New subsection 332D(1) provides that the MARA must remove any statement that is made available under new section 311C or 311P by electronic means.

429. New subsection 332D(2) provides that the MARA must remove the statement within 28 days after the period worked out in accordance with the regulations.

430. For example, the regulations may prescribe that information about a decision to bar an agent from being registered may remain on the MARA website for a period not exceeding 10 years.

Section 332E Protection from civil proceedings

431. In broad terms, new section 332E provides protection from civil proceedings for certain persons in relation to the making of a complaint about a registered migration agent or a person who is acting as a registered migration agent, or the investigation of such a complaint.

432. New subsection 332E(1) provides protection for a person who makes a complaint about a registered migration agent. New subsection 332E(1) provides that no action or other proceeding for damages lies against a person in respect of loss, damage or injury of any kind suffered by another person because of any of the following acts done in good faith:

- the making of a complaint to the MARA in relation to the provision of immigration assistance by a registered migration agent;
- the making of a statement to, or the giving of a document or information to, the MARA in connection with the investigation of such a complaint.

424. New subsection 332E(2) provides similar protection for a person who makes a complaint about a person who is giving immigration assistance while not a registered migration agent.

425. New subsection 332E(3) provides protection for the MIA, or an officer or employee of the MIA, in relation to carrying out the MARA's functions and powers under Part 3 of the Act. New subsection 332E(3) provides that the MIA, or an officer or employee of the MIA, is not liable to an action or other proceeding for damages for or in relation to any of the following acts done in good faith:

- the performance or purported performance of any function conferred on the MARA under Part 3; or
- the exercise or purported exercise of any power conferred on the MARA under Part 3.

424. New subsection 332E(4) provides protection for the Commonwealth, the Minister or any other person in relation to carrying out any function or power conferred on the Minister under Part 3 of the Act.

425. The purpose of new section 332E is to ensure that all parties, especially consumers, but also MARA staff and board members and Departmental officers, are protected from civil proceedings, providing that they are acting in good faith. It will remove any concern that persons who make complaints to the MARA or the Department may have legal action taken against them, which will encourage such persons to make a complaint about a migration agent who is acting in an unprofessional manner.

Section 332F Disclosure of personal information by the Secretary

426. New section 332F allows the Secretary of the Department to disclose personal information about a registered migration agent or an inactive migration agent to a review authority in certain circumstances.

427. This new section is similar to new sections 321A and 332G, and was inserted for a similar purpose.

428. “Review authority” is defined by section 275 of the Act to mean the MRT or RRT.

429. New subsection 332F(3) provides that the regulations may prescribe circumstances in which the MRT or RRT may use or disclose personal information disclosed under new subsection 332F(1). That is when the review authority may make a subsequent disclosure of personal information. For example, the MRT or RRT may refer information relating to a complaint against an agent directly to the MARA.

430. New subsection 332F(4) provides that “inactive migration agent” has the meaning given by section 306B of the Act, and “personal information” has the same meaning as in the *Privacy Act 1988*.

Section 332G Disclosure of personal information by a review authority

431. New section 332G allows a review authority to disclose personal information about a registered migration agent or an inactive migration agent to the Secretary or an authorised officer in certain circumstances.

432. This new section is similar to new sections 321A and 332F and was inserted for a similar purpose.

433. “Authorised officer” is defined by subsection 5(1) of the Act to mean an officer authorised in writing by the Minister or the Secretary for the purposes of that provision.

434. “Review authority” is defined by section 275 of the Act to mean the MRT or RRT.

435. New subsection 332G(3) provides that the regulations may prescribe circumstances in which the Secretary or an authorised officer may subsequently use or disclose personal information disclosed under new subsection 332G(1). For example, it may be necessary for DIMIA to refer information it has received from the MARA or a review authority to another professional body for appropriate action, such as the relevant Law Society or the Psychologists Registration Board, or to a legal ombudsman.

436. New subsection 332G(4) provides that a review authority must notify the Department if an agent notifies the review authority that he or she has given immigration assistance in respect of a review application. The purpose of requiring a review authority to notify the Department in these circumstances is to effectively implement new Division 3AA and new Subdivision B of Division 4A (contained in items 75 and 142 of this Schedule), which relate to an agent or former agent who has a high visa refusal rate.

437. New section 312B, inserted by item 149 of this Schedule, requires a registered migration agent to notify the review authority concerned if he or she gives immigration assistance to a person in respect of a review application made by the person.

438. New subsection 332G(5) provides that “inactive migration agent” has the meaning given by section 306B of the Act, and “personal information” has the same meaning as in the *Privacy Act 1988*.

Section 332H Giving of notices under this Part

439. New section 332H sets out the methods by which the MARA must give a notice to a person under Part 3 of the Act and when the person will be taken to have been given the notice.

440. Subclause 332H(1) contains a table setting out the giving of notices under Part 3. Each method of giving a notice specified in column 1 of the table is taken to have been given at the time specified in column 2 of the table.

441. The effect of item 1 of the table is that if a notice is handed to the recipient, the notice will take effect at the time it is handed to the recipient.

442. The effect of item 2 of the table is that if the notice is handed to another person who:

- is at the last residential or business address provided to the MARA for the purposes of receiving notices; and
- appears to live or work there; and
- appears to be at least 16 years old;

then the notice will take effect at the time it is handed to that person.

424. The effect of item 3 of the table is that if the notice is dated and dispatched within 3 working days by prepaid post or by other prepaid means to:

- the last address for service provided to the MARA by the recipient for the purposes of receiving notices; or
- the last residential or business address provided to the MARA by the recipient for the purposes of receiving notices;

then, the notice will take effect 7 working days after the date of the notice (if dispatched from a place in Australia to an address in Australia) or 21 days after the date of the notice in any other case.

424. The effect of item 4 of the table is that if the notice is transmitted by fax, e-mail or other electronic means to the last fax number, e-mail address or other electronic address provided to the MARA by the recipient for the purposes of receiving notices, then the notice will take effect at the end of the day on which the notice is transmitted.

425. New subsection 332H(2) provides that new section 332H has effect despite any provision in the *Electronic Transactions Act 1999*.

Item 171 After paragraph 504(1)(j)

426. This item inserts new paragraph 504(1)(ja) after paragraph 504(1)(j) of the Act.

427. New paragraph 504(1)(ja) introduces an administrative penalty as an alternative to prosecution for an offence committed against subsection 280(1). New paragraph 504(1)(ja) provides that regulations may be made to enable a person who is alleged to have committed

an offence against subsection 280(1) to pay to the Commonwealth, as an alternative to prosecution, a penalty of 12 penalty units.

428. Subsection 280(1) provides that a person who is not a registered migration agent must not give immigration assistance unless the person satisfies one of the exceptions under subsections 280(2) to (6). The penalty for contravening subsection 280(1) is 60 penalty units (as amended by item 12 of this Schedule).

429. The purpose of the administrative penalty is to allow an immediate penalty to be imposed for relatively minor contraventions of subsection 280(1). In addition, a person who has previously been served with an infringement notice may be subject to a heavier penalty if he or she commits a subsequent offence against subsection 280(1).

Part 2 – Application and transitional provisions

Item 172 Application – relation by employment

430. This provision makes it clear that the amendments to section 278 (contained in items 9 and 10 of this Schedule) apply in relation to the consideration of registration applications made after the commencement of those items, regardless of whether the engagements as a consultant or as an independent contractor occurred before or after that commencement.

431. For example, if a registration application is considered after the commencement of items 9 and 10, and the applicant for registration is engaged as a consultant of another person who is not a person of integrity, then the MARA may decide that the applicant should not be registered, whether or not he or she was engaged as a consultant before or after commencement of those items.

Item 173 Application – infringement notices

432. This provision makes it clear that new paragraph 504(1)(ja), inserted by item 171 of this Schedule, applies to all offences, whether alleged to have been committed before or after items 13 and 171 commence, provided that no penalty has been imposed at the time of commencement.

433. The effect of this provision is that if a person is alleged to have committed an offence against subsection 280(1), either before or after commencement of items 13 and 171, then an administrative penalty may be imposed on that person as an alternative to criminal prosecution.

Item 174 Application – removal of disciplinary details

434. This item provides that the MARA must remove disciplinary details from the Register in accordance with new subsections 287(5), (6) and (7), inserted by item 39 of this Schedule, whether or not the details were entered on the Register before or after the commencement of item 39.

435. For example, if particulars of a caution given to an agent was entered on the Register before commencement of item 39, the MARA must remove the particulars of the caution from the Register in accordance with new subsections 287(5), (6) and (7).

Item 175 **Transitional – removal of disciplinary details**

436. This item requires the MARA to remove particulars of a caution or a suspension from the Register within 28 days of commencement of this item if:

- the particulars of the caution have been on the Register for at least 12 months before the commencement of this item; or
- the particulars of the suspension of a migration agent’s registration have been on the Register for at least 5 years before the commencement of this item.

424. For example, if particulars of a caution and suspension were entered on the Register 2 years prior to the commencement of this item, then the MARA must remove the particulars of the caution within 28 days of commencement of this item, but need not remove details of the suspension.

425. This item ensures a consistent approach to removing disciplinary details from the Register, whether or not the details were entered on the Register before or after commencement of new subsections 287(5), (6) and (7).

Item 176 **Application – withdrawal of applications**

426. This item provides that new subsection 288(7), inserted by item 40 of this Schedule, applies in relation to registration applications made either before or after the commencement of item 40.

427. The effect of this item is that an applicant for registration may withdraw his or her application for registration by giving notice in writing to the MARA, whether or not the applicant lodged the application before or after commencement of item 40.

Item 177 **Application – statutory declarations and answering of questions**

428. This item provides that new section 288B, inserted by item 40 of this Schedule, only applies in relation to registration applications made after the commencement of that item.

429. The effect of this item is that the MARA may only require an applicant, to whom new section 288B applies, to make a statutory declaration or answer questions in relation to his or her application if the application was made after the commencement of item 40.

Item 178 **Application – registration requirements**

430. This item provides that the amendments made by items 47 and 48 apply in relation to registration applications made after the commencement of those items, regardless of whether the previous registration occurred before or after that commencement.

431. The effect of this item is that an applicant who is entering or re-entering the industry (ie he or she has never been registered, or is applying to be registered more than 12 months after the end of his or her previous registration), is only required to meet the new registration

requirements under new section 289A if the registration application is made after the commencement of items 47 and 48.

Item 179 Application – disciplinary action

432. This item provides that the amendments made by items 49 and 50 apply in relation to the consideration of registration applications made either before or after the commencement of those items, regardless of whether the disciplinary action occurred before or after that commencement.

433. The effect of this item is that irrespective of when the disciplinary action occurred or the application was made (as opposed to when it was considered), the amendments apply provided the application is considered after commencement. As a result the MARA may take into account *any* disciplinary action that is being taken, or has been taken, against an applicant (or a person to whom the applicant is related by employment) in considering an application for registration after commencement of items 49 and 50. In contrast when considering an application for registration prior to commencement of those items, the MARA may only take into account disciplinary action that *a professional association* is taking, or has taken against the applicant, or a person to whom the applicant is related by employment.

Item 180 Application - cautions

434. This item provides that new section 304A, inserted by item 71 of this Schedule, only applies in relation to cautions given after the commencement of that item.

435. The effect of this item is that the MARA may only set one or more conditions for the lifting of a caution in relation to a caution given to an agent after commencement of item 71.

Item 181 Application – disciplinary decisions

436. This item provides that the amendments made by new sections 305, 305A, 306AA, 311B and 311C, inserted by items 72, 74 and 137, apply in relation to decisions made after commencement of those items.

437. The effect of this item is that the publication of a suspension or cancellation decision, or a decision to bar a former agent from being registered, made prior to commencement of those items must be in accordance with existing sections 305, 305A, 311B and 311C.

438. In addition, the condition that prescribed supervisory requirements apply to a stay order given by the AAT or a court in relation to a disciplinary decision will only apply to decisions made by the MARA after the commencement of item 74.

Item 182 Application – informing clients about disciplinary decisions

439. This item provides that new section 305B, inserted by item 73, applies in relation to decisions made either before or after the commencement of that item. This is in contrast to sections 305 and 305A, which only apply to decisions made after commencement.

440. The effect of this item is that the MARA or the Secretary may inform one or more

clients of an agent about a disciplinary decision taken against the agent that was made either before or after commencement of item 73.

Item 183 Application – high visa refusal rates

441. This item provides that new Division 3AA and new Subdivision B of Division 4A, inserted by items 75 and 142, apply in relation to applications for visas, or applications for review, made after the commencement of those items.

442. The effect of this item is that, for the purpose of the proposed provisions in relation to an agent or a former agent who has a high visa refusal rate, the visa refusal rate will be calculated on the basis of visa applications or review applications made after commencement of items 75 and 142.

Item 184 Application – production of documents

443. This item provides that the amendments made by items 104, 108, 109, 112, 113, 116, 117, 119, 121 and 125 apply in relation to documents created either before or after the commencement of those items.

444. The effect of this item is that the new provisions inserted by this Schedule relating to the production of any documents owned by a client or provided to an agent by a client, apply whether or not the document was created before or after the commencement of those items. For example, the new provisions will apply to a passport or birth certificate that was created before the commencement of the provisions.

Item 185 Application – failure to comply with a notice

445. This item provides that the amendments made by items 115 and 116 of this Schedule apply in relation to notices given after the commencement of those items.

446. The effect of this item is that the increased penalty for failing to comply with a notice given under section 306D, 306E or 306F only applies to a notice given after the commencement of item 115.

447. In addition, new section 306J, which provides that an individual will not be excused from producing a document under section 306D, 306E or 306F on the ground of self-incrimination, will only apply to a notice to produce documents given after the commencement of item 116.

Item 186 Application – notification obligations

448. This item provides that the amendment to subsection 312(1), made by item 145 of this Schedule, only applies in relation to events occurring after the commencement of that item.

449. The effect of this item is that, if an agent is required to notify the MARA of certain events listed in section 312, such as if the agent becomes bankrupt or is convicted of an offence, the agent is only required to notify the MARA in writing and within 14 days, if the event occurs after the commencement of item 145. If the event occurs before the

commencement of item 145, the agent is required to notify the MARA as soon as is reasonably possible.

Item 187 Application – notification of giving of immigration assistance

450. This item provides that new subsections 312A and 312B, inserted by item 149 of this Schedule, only apply in relation to applications for visas, or applications for review, made after the commencement of that item.

451. The effect of this item is that a migration agent is only required to notify DIMIA or the relevant review tribunal, in accordance with the regulations, if the agent gives immigration assistance in relation to a visa application or review application made after the commencement of item 149.

Item 188 Application – disclosure of personal information

452. This item provides that new section 321A, inserted by item 166 of this Schedule, applies in relation to information obtained either before or after the commencement of that item. This means that the MARA may disclose personal information about a migration agent to the Secretary, an authorised officer, the MRT or RRT, in accordance with the regulations, whether or not the information was obtained before or after commencement of item 166.

453. This item also provides that new sections 332F and 332G, inserted by item 170 of this Schedule, apply in relation to information obtained either before or after the commencement of that item. This means that personal information about migration agents may be disclosed between DIMIA and the MRT or RRT, whether or not the information was obtained before or after commencement of item 170.

Item 189 Application – removal of disciplinary details

454. This item provides that new sections 332C and 332D, inserted by item 170 of this Schedule, apply in relation to details made available by electronic means either before or after the commencement of that item.

455. The effect of this item is that the MARA must remove, in accordance with the regulations, any statement made available electronically about a disciplinary decision taken against an agent or a former agent, whether or not the statement was made available before or after the commencement of item 170.

Item 190 Application – protection from civil proceedings

456. This item provides that new section 332E, inserted by item 170 of this Schedule, only applies in relation to acts done after the commencement of that item.

457. The effect of this item is that a person will only be protected from civil proceedings, in the circumstances set out in new section 332E, in relation to the making or a complaint, or an investigation of a complaint, done after the commencement of item 170.

458. For example, a person who makes, or investigates, a complaint before the

commencement of item 170 will not receive the protection from civil proceedings in new section 332E.

Item 191 Application – giving of notices

459. This item provides that new section 332H, inserted by item 170 of this Schedule, applies in relation to notices given after the commencement of that item.

460. For example, if the MARA gives a notice to a person by fax after the commencement of item 170, the person will be taken to have received the notice at the end of the day the notice is transmitted.