

The Allen Consulting Group

## **A course development framework for migration agents**

**October 2010**

Report to the Office of the Migration Agents Registration Authority

## The Allen Consulting Group

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## Executive summary

### Introduction

The Office of the Migration Agents Registration Authority (Office of the MARA) engaged the Allen Consulting Group to develop a course development framework for migration agents that will satisfy legal and policy requirements. In making detailed findings and recommendations, the report includes:

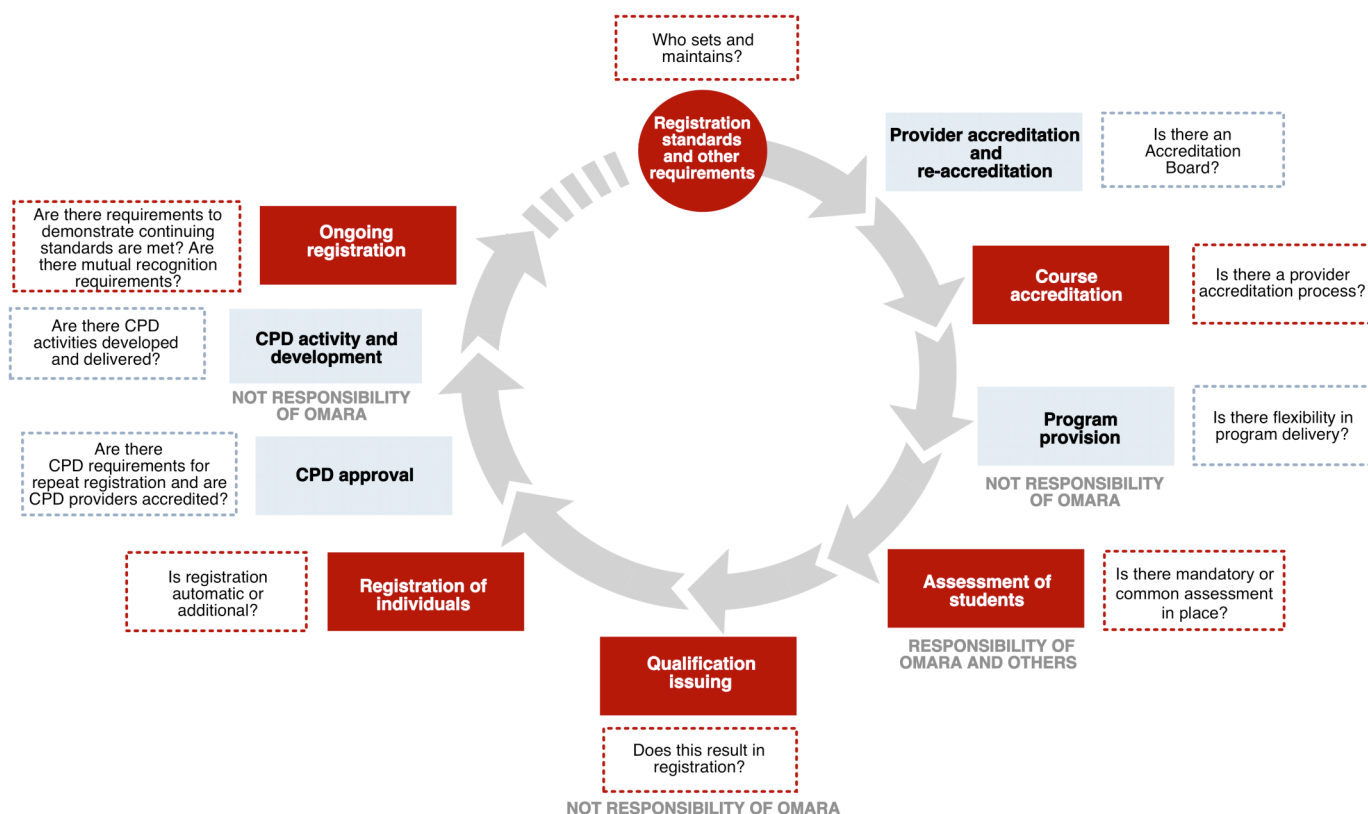
- the approach to the task;
- the findings of the comparison with other occupations and countries;
- key considerations in the project;
- stakeholder views;
- options;
- the preferred option;
- migration agent attributes and competencies;
- transition arrangements; and
- findings and recommendations.

The report provides a course development framework, consistent with the Office of the MARA's project brief. The purpose of the framework is to establish the rationale for ensuring that migration agents are equipped with the required entry-level knowledge and competency needed to perform their role and be registered by the Office of the MARA. Ongoing competency through continuing professional development is only dealt with indirectly, as this is subject to a separate review. Therefore, this report could equally be entitled a framework for entry level registration of migration agents.

### Framework for analysis

Our conceptual approach is represented by the professional registration scheme diagram below. The diagram provides a structured basis for understanding and developing any professional registration scheme, including the relationship between: the regulatory framework; education and training requirements; and quality assurance in the delivery and assessment of those requirements.

## PROFESSIONAL REGISTRATION SCHEME ELEMENTS



1) Steps in red are within the scope of this review.

2) Steps that are not currently the responsibility of the Office of the MARA, or where responsibility is shared with others, are noted.

3) CPD: continuing professional development.

Source: The Allen Consulting Group

## Key considerations

The following factors have been considered in undertaking the analysis:

- the judgement and experience of those undertaking the review related to professional registration schemes;
- good and emerging practice related to each element of the professional registration scheme diagram;
- the current position of the migration agents professional registration scheme relative to good and emerging practice;
- the Australian Qualifications Framework (AQF) definitions for various qualification levels, including those of the current prescribed course and potential alternative levels at which the prescribed course could be set;
- the extent to which the current system is efficient and effective, based on stakeholder views and complaints, as the scale of current problems should be taken into account in considering the proportionality of the regulatory response;
- the characteristics of the profession, and its capacity to absorb or respond to any recommended enhancements; and

- feedback from the Office of the MARA and its Advisory Board.

Each of the above considerations is detailed in the report.

### **Scope and approach**

For non legal practitioner migration agents, the prescribed entry level course is a graduate certificate. The 2007-08 Review of Statutory Self-Regulation of the Migration Advice Profession (Hodges 2008) recommended that the course be set at the graduate diploma level.

This review has adopted a first principles approach. Hence, the underpinning principles and objectives of the migration agents' registration scheme are considered, as a basis for assessing the current arrangements and forming recommendations.

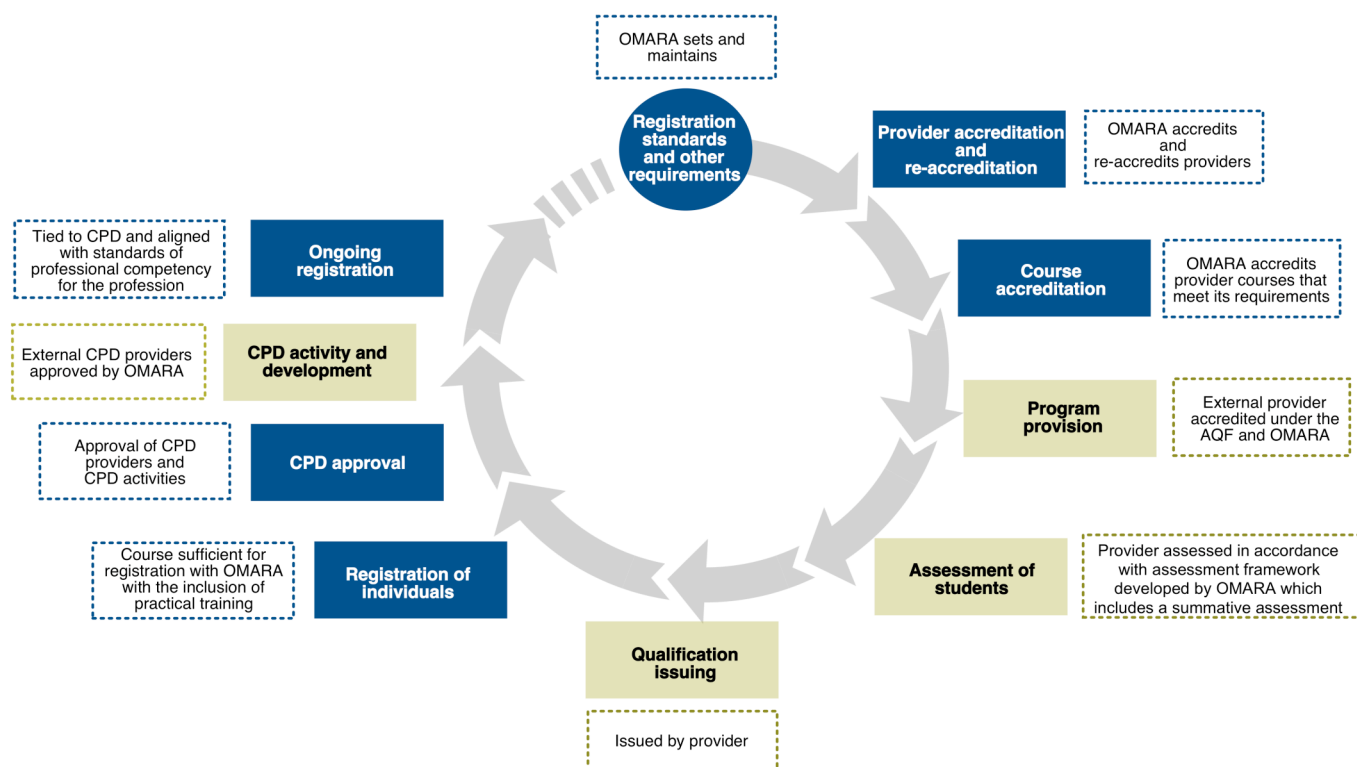
This approach does lead to the review making findings regarding the appropriate minimum qualification level, but it consciously does not consider the qualification level as a starting point. To do so would be to overlook the manner in which courses are accredited under the AQF.

### **Options and findings**

The figure below provides an overview of the preferred option for each element of the registration scheme within the scope of the review. Taken together, this represents a recommended new framework for registration — and for course development.



## PREFERRED FRAMEWORK FOR REGISTRATION AND COURSE DEVELOPMENT



The preferred course development framework, shown in the diagram above, requires transition arrangements from current practices for some elements. These arrangements are summarised below (further detail on transition arrangements is provided in Chapter 9).

### *Competency standards for registration and other requirements*

In our view new competency standards for registration need to be developed for the migration agent profession. These should then underpin courses and assessment requirements for the learning outcomes. Chapter 8 has suggested competencies and attributes for this purpose.

### *Provider accreditation, re-accreditation and course accreditation*

In the short term, the Office of the MARA should proceed with current arrangements but improve the existing graduate certificate course. Areas for improvement include incorporating a work placement / supervised practice requirement, reworking the listed competencies, ensure that the course is providing adequate technical knowledge of visas.

Beyond the short term, the Office of the MARA should accredit providers and courses that have met the Office of the MARA guidelines for the provision of a course designed to provide migration agents with entry level knowledge and competency.

If the existing regulatory framework is in place, this would then be the ‘prescribed course’. Over time, the prescribing of a course may not be considered necessary, and the Office of the MARA could transition to a course and provider accreditation model, although this would require legislative amendment.

### *Registration of individuals*

In the short term, the course will continue to be sufficient for registration, but the course will be more comprehensive and include more practical training. This will mainly be achieved through the assessment framework that will have a significant weighting towards summative assessment in order to meet the course requirements and simulated practice. Over time, the Office of the MARA could introduce tiered registration, under which course completion would lead to provisional registration. However, given the structure of the industry it is unlikely that this could be completely reliant on supervised professional practice — it would also need to recognise other forms of practical training.

### **Findings**

Based on our analysis the review’s major findings are that:

- The Office of the MARA currently lacks a clear and integrated framework to assess the knowledge and ability requirements of migration agents for the purposes of initial and ongoing registration of agents.
- The Office of the MARA’s role in that framework should focus on its statutory roles in terms of protecting the public interest and not areas beyond its expertise. This role should not become confused with the broader development of the migration agent profession (which is the responsibility of professional and industry bodies, employers and individual agents).
- The Office of the MARA does not have specific competency standards for registration of individuals as migration agents. The awareness of the competency standards developed in 2005 is low, which suggests they are not being used as the basis for either the outline or content of the current course — or for the assessment of competency outcomes.
- The current prescribed course has the following weaknesses for the Office of the MARA’s requirements:
  - the learning outcomes are not assessable for registration purposes and some are inappropriately worded; and
  - some areas of migration agent competency appear to be underrepresented.
- Many other areas of professional registration operate under models with the following features, and there is wide acceptance that these features reflect good practice:
  - competency standards for registration requiring relevant knowledge skills and attributes are set by the regulatory or professional body;
  - the process for developing competency standards for registration is transparent and awareness of the standards across the profession is high;
  - courses and providers are accredited by the relevant regulatory or professional body and often under the requirements of the AQF; and

- AQF qualifications are used as evidence that registration standards have been achieved (although in some instances supervised practice/additional experience is required prior to full registration).
- Other countries have different registration models for the equivalent of migration agents: in the United Kingdom and New Zealand, requirements for registration are based on specific minimum competencies, Canada has the equivalent of a prescribed course but this is combined with an entrance examination.
- The requirements for initial and ongoing registration should be distinct from courses leading to AQF qualifications that will enable learners to meet those requirements. At minimum, courses must meet the Office of the MARA competency standards for registration, but may include other areas of skills and knowledge, which are not subject to the standards. This may mean that courses leading to registration result in different qualifications.
- In our view the Office of the MARA should set the competency standards for registration and accredit courses delivered by accredited providers which are based on the standards. It is the role of others (self accrediting institutions or state registration bodies) to determine the appropriate qualification level (graduate certificate, graduate diploma etc.) of each course. Although it is legitimate for the Office of the MARA to stipulate that the qualification should, at a minimum, be at the graduate certificate level, there is no case to justify the Office of the MARA intervening to reframe the graduate certificate as a graduate diploma. In setting a minimum, providers may also offer qualifications at higher levels, such as graduate diploma and masters, as long as the Office of the MARA registration requirements are met.
- The review does not consider that the Office of the MARA should stipulate a graduate diploma as a minimum because:
  - the case for the knowledge requirement being at an ‘advanced’ level as distinct from ‘specialised’ has not been made;
  - mandating a minimum graduate diploma requirement would not be a well targeted way of resolving the issues identified and would impose a significant additional cost and time burden; and
  - although there is low awareness of the current standards, the review has been advised that the process of making those standards and developing the current course by the former MARA resulted in a graduate certificate level qualification. It is premature to stipulate a different qualification level before the process of making new competency standards for registration has been undertaken.
- Furthermore, there is not a case to justify the Office of the MARA intervening to reframe the graduate certificate as an advanced diploma, or another VET qualification. Legal knowledge and concepts are a major focus of the knowledge requirements, such requirements are delivered through higher education providers, and therefore the course resides more comfortably as a higher education qualification rather than a VET qualification. However, in a competency based approach, in the event that a VET qualification is accredited (for example, by an employer of migration agents), the Office of the MARA could accredit and recognise this course and provider.

- Achievement of the Office of the MARA's competency standards for registration should require acquisition of required knowledge and demonstrated application in the workplace or simulated workplaces across all required standards.
- It is open to professional bodies and universities to collaborate in course development and delivery and in areas such as assessment moderation, noting that in other areas professional and industry bodies have opted to become accredited education and training providers under the AQF. However, in exercising its statutory roles, the Office of the MARA should not confer an advantage on any individual body or bodies.
- Standards should be applied consistently across areas of professional practice including in the community and not for profit sectors.

## Recommendations

### Framework

*Registration requirements set out in the Migration Act 1958 (and expanded on in the Office of the MARA Policy and Procedures Manual at paragraph 3.5.3.2.2) requires the Office to 'have the knowledge and ability to fill the position' for the purposes of initial and ongoing registration of Migration Agents and its statutory functions. The following recommendations provide a framework that gives effect to the policies and guidelines.*

*It is recommended that the Office of the MARA:*

- *as a model, endorses migration agent competency standards and assessment requirements which define the roles of migration agents, the standards at which those roles are required to be performed for the purposes of registration and the means by which the standards should be assessed;*
- *use the competency standards for registration as the basis for recognition of prior learning (or competencies) for mutual recognition with New Zealand and other countries as it considers appropriate;*
- *accredits proposed courses including assessment requirements and accredits providers for the purpose of the Office of the MARA's responsibility to provide a basis for the Minister's requirement to prescribe a course;*
- *requires courses and providers to also be accredited and registered under the requirements of the AQF, and for courses leading to registration by the Office of the MARA to be accredited at Higher Education Graduate Certificate level as a minimum (providers are able to offer courses at higher levels if they choose as long as the Office of the MARA registration requirements are met);*
- *recognises the qualifications issued by the Office of the MARA accredited providers as meeting the knowledge and ability requirements of initial registration;*

- *in circumstances where it reasonably believes that competence may not have been acquired for the purposes of initial registration or that agents may not 'have the knowledge and ability to fill the position' the Office of the MARA reserves the right to independently assess prospective migration agents against the standards for the purposes of initial registration and registered migration agents for the purposes of continuing registration;*
- *closely cooperates with higher education regulatory bodies (for non self accrediting institutions) and universities (for self accreditation) in undertaking its course and provider accreditation functions;*
- *endorses continuing professional development programs and activities that are directly linked to the Office of the MARA competency standards for registration;*
- *through its website, provides regular advice to providers, to students and registered agents on changes to the standards and interpretations of competency standards for registration to assist in preparing students for registration and to guide registered agents on changing competency standards for registration; and*
- *resources the implementation and operation of the framework on a fee for service basis through an application fee for providers and course accreditation, and an annual fee to maintain course and provider accreditation, noting that this requires legislative amendment.*

#### **Draft competency standards for registration**

- *It is recommended that the Office of the MARA endorse the draft standards in Chapter 8, for consultation and further development prior to formal endorsement.*
- *It is recommended that the final competency standards for registration are published on the Office of the MARA website and that transparency be a feature of both the development and use of the standards.*

#### **Transition**

*It is recommended that the Office of the MARA adopt the following transition strategy to the new framework:*

- *review the Office of the MARA's capacity to implement the new framework;*
- *brief key stakeholders on the revised arrangements;*
- *invite universities and non-self accrediting higher education institutions (including prospective institutions such as firms and professional bodies) to submit course and provider accreditation proposals;*
- *review the Office of the MARA Policy and Procedures Manual to give effect to the new framework under existing legislation; and assess the benefits of legislative amendment to reflect the framework in the Migration Act 1958;*

- *establish course and provider accreditation panels to make recommendations to the Office of the MARA. The panels will comprise persons with expertise in the work of migration agents and a detailed understanding of the Office of the MARA registration process and persons with expertise in delivery and assessment of higher education courses. Higher education quality assurance bodies (where relevant) should be invited to participate in the panels to streamline AQF and the Office of the MARA accreditation processes; and*
- *while undertaking the transition in the short term, the Office of the MARA should proceed with current arrangements but improve the existing graduate certificate course. Areas for improvement include incorporating a work placement / supervised practice requirement and ensure that the course is providing adequate technical knowledge.*

# Part 1

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## *Introduction and current arrangements*

## Chapter 1

# Purpose of this review

*This chapter describes the scope of this review and the approach taken.*

### 1.1 Introduction

The Office of the MARA engaged the Allen Consulting Group to develop a course development framework for migration agents that will satisfy legal and policy requirements. The Office of the MARA is a discrete office attached to the Department of Immigration and Citizenship (DIAC). It is functionally autonomous and operates independent of DIAC's visa approval function.

As required by the project brief, this report includes consideration of:

- attributes and competencies that a registered migration agent should have on initial application for registration;
- possible qualifications that provide those performance and knowledge requirements and attributes leading to competency standards for the profession;
- possible frameworks for the administration and management of those qualifications taking into account the Office of the MARA's role and the need for strong governance arrangements and consistency in standards; and
- a strategy for implementation that deals with transitional issues (which could include pathways for upgrading qualifications, incorporation of supervised practice and access for the non commercial sector).

#### **What is a course development framework?**

In the context of this project, a course development framework establishes the rationale for ensuring that migration agents are equipped with the required entry-level knowledge and competency in order to perform their role in order to be registered by the Office of the MARA. Ongoing competency through continuing professional development is only dealt with indirectly, as this is subject to a separate review.

#### **Definitions**

The following terms are used in this report and are defined below.

- *Competency standards for registration*: refers to the roles and functions a competent person needs to be able to perform, as distinct from what qualifications they need to hold, in order to meet the requirements for registration. When the term 'competency standards' is used in isolation, this relates to a more general discussion of the use of such standards.
- *Units of competency*: the first subdivision of overall competency, which reflect the major functions undertaken by professional migration agents



- *Performance and knowledge requirements:* these are the elements of each unit of competency, which describe in more detail what migration agents are required to do, and which are at a level of detail that can be assessed. Knowledge requirements are described as learning outcomes under the current prescribed course.
- *Underpinning knowledge:* is the knowledge that a migration agent requires in order to competently perform their role. This is expressed as being required across the client cycle because a migration agent will draw on this knowledge throughout their interactions with each client.
- *Attributes:* are personal characteristics and abilities that an agent will require in order to competently perform their role. The attributes are expressed as being required across the client cycle because a migration agent should demonstrate these attributes throughout their interactions with each client. Graduate attributes describe attributes specifically developed through the migration agent higher education course.

### **Our approach**

This review involved four key pieces of analysis:

- comparative analysis of education and course requirements in similar countries and occupations;
- consideration of the competencies and learning outcomes required by migration agents;
- consideration of the adequacy of the current arrangements; and
- development of a framework for course development and implementation strategy (this point largely being a product of the analysis).

This was undertaken based on desktop review and stakeholder consultation. The desktop review focused on education attainment and related registration requirements for similar professions and comparable countries and the required competencies for migration agents in Australia.

## **1.2 Report outline**

The subsequent chapters of this report are as follows.

- *Chapter 2* details the current arrangements for migration agents in Australia.
- *Chapter 3* describes key considerations of this review.
- *Chapter 4* summarises key stakeholder views.
- *Chapter 5* compares the arrangements in place for other occupations (Appendix A provides further detail).
- *Chapter 6* compares licensing and regulatory arrangements for migration agents, in comparable countries (Appendix B provides further detail).
- *Chapter 7* describes and assesses a number of options for the key elements of a course development framework for migration agents in Australia, and outlines a preferred option.

- *Chapter 8* outlines migration agent attributes and competency standards.
- *Chapter 9* outlines proposed transition arrangements for the Office of the MARA in moving towards the preferred option.
- *Chapter 10* provides the findings and recommendations of this report.
- *Appendices A - F* provide further detail of the occupational and international comparison, stakeholders consulted and the AQF.

## Chapter 2

# Current arrangements

*This chapter describes current arrangements, explains the role and profile of migration agents, the regulatory framework, the rationale for regulating migration agents and the existing registration requirements, with a focus on the knowledge requirements*

### 2.1 Migration agents

Migration agents act as market intermediaries, assisting prospective migrants (of all categories) to obtain visa documentation so they can stay in Australia, whether on a temporary or permanent basis. They are intermediaries in the sense that they act on behalf of individuals in their dealings with DIAC. The Office of the MARA reports that as of 31 March 2010 there were 4,476 registered migration agents.

The work undertaken by migration agents requires a working knowledge of the *Migration Act 1958* and other relevant statutes. It also requires high standards of ethical conduct, as migration agents often deal with people who have limited understanding of migration processes and rules.

The current regulations pertaining to the required credentials for becoming a registered migration agent in Australia set out that those who need to register as a migration agent with the Office of the MARA are those who:

- provide immigration assistance; or
- ask for or receive a fee or reward for communicating with the department or the Minister on behalf of a client; or
- ask for or receive a fee or reward for assisting with a ministerial intervention request.

#### **Migration agent profile**

Table 2.1 shows the number of migration agents registered with the Office of the MARA as at 31 March 2010, as well as the proportion of migration agents with legal and non-legal qualifications.

Table 2.1

**NUMBER OF REGISTERED MIGRATION AGENTS**

	January – March 2010	Percentage
Agents with no legal qualifications	3241	72
Agents with legal practising certificates	1167	26
Agents with legal qualifications (but no practising certificate)	68	2
Agents operating on a commercial basis	4239	95
Agents operating on a non-commercial basis	237	5
<b>Total number of registered migration agents</b>	<b>4476</b>	

Source: DIAC 2010, Migration Agent Activity Report January-March 2010.

***Use of migration agents by visa class***

Migration agents lodge a significant proportion of visa applications. The use of migration agents varies significantly across visa categories, as shown in Table 2.2.

Table 2.2

**VISA APPLICATIONS LODGED BY REGISTERED MIGRATION AGENTS**

Visa class	Applications using a migration agent	Total applications	Percentage
Family	2,015	8,886	23
Employer sponsored	7,249	12,520	58
General skilled	7,707	17,411	44
Business skills	753	901	84
Student	9,255	65,897	14
Visitor	1,084	69,242	2
Bridging	1,719	11,550	15
Refugee/protection	2,439	3,814	64
Returning resident	244	17,620	1
Temporary resident	14,418	35,895	40

Source: DIAC 2010, Migration Agent Activity Report January-March 2010.

## **2.2 Industry characteristics**

Compared with other professional services, the migration agent industry is characterised by:

- a high number of sole practitioners; and
- a high rate of turnover, meaning there is both a significant rate of departure from the industry and a significant number of new entrants.

These observations are based on consistent advice from stakeholders consulted and observations of the 2007-08 Review of Self-Regulation of the Migration Advice Profession Discussion Paper (DIAC 2007).

### ***Sole practitioners***

The large proportion of sole practitioners may reflect that many migration agents specialise in a specific area of practice, and have access to other sources of income apart from that generated through migration agent services. The specialisation may relate to a particular visa category (student, business, humanitarian) or to working with a community from a particular country of origin.

### ***Short periods of registration***

As noted in the 2007-08 Review of Self-Regulation of the Migration Advice Profession Final Report (DIAC 2008) the majority of registered migration agents have been registered for a short period of time. The Office of the MARA has advised that 44 per cent of current migration agents have been registered for less than three years. Around one in seven migration agents have been registered for over ten years.

There may be several factors contributing to migration agents deregistering after a relatively short period of time:

- general dissatisfaction or lack of suitability to the role;
- isolation, particularly for sole practitioners, which may contribute to low levels of individual efficacy; and
- the objective in becoming a migration agent has been fulfilled, in which case the agent did not intend to remain in the profession long term. For example, this may occur because an agent became registered to assist community members in obtaining a visa.

### ***New entrants***

The number of migration agents has increased in recent years from approximately 3,800 to around 4,500 at present. Consequently, although a high proportion of agents do not remain in the profession for a long period of time, there is still a net increase in the total number of registered agents. This is reflected in the enrolment levels for the Graduate Certificate in Australian Migration Law and Practice. It is understood that approximately 500 individuals complete the graduate certificate each year.

### **2.3 Mutual recognition for immigration advisers from New Zealand**

Under the *Trans-Tasman Mutual Recognition Act* (1997) all Australian jurisdictions and New Zealand have agreed to recognise professional registration. Consequently a registered Australian migration agent is automatically entitled to practice in New Zealand and vice versa for a New Zealand agent. The management of mutual recognition obligations requires careful consideration because New Zealand has introduced a tiered registration scheme, and competence as a migration agent requires knowledge of the regulatory framework and legislation specific to the applicant's desired destination country. The recommended model will assist in providing a framework that is better suited to dealing with mutual recognition compared with the current arrangement.

### **2.4 Current regulatory framework**

To be registered, an agent must demonstrate they have satisfied the entry requirements set out in the Act. The Act states that a person who does not register with the Office of the MARA cannot lawfully undertake any of the aforementioned actions, and are subject to penalty if they do.

Under current arrangements, in order for a person to be granted registration as a migration agent, the Office of the MARA must be satisfied that:

- the person is fit and proper (includes various requirements, including a national police check and having knowledge of migration procedure);
- has demonstrated English language competence to a satisfactory level;
- has completed the prescribed course and passed the prescribed exam or holds a current legal practicing certificate; and
- holds professional indemnity insurance.

There are also ongoing continuing professional development requirements.

The requirements of the fit and proper person check, the English language requirement or the professional indemnity requirement are not subject to this review.

#### **Code of Conduct**

The Code of Conduct for migration agents sets out the professional and ethical standards expected of migration agents. The code is at Schedule 2 of Regulation 8 of the Migration Agents Regulations 1998.

As the Code of Conduct states, a registered migration agent has the overriding duty to act at all times in the lawful interests of their client. The code sets out various other requirements in detail.

## Box 2.1

**CODE OF CONDUCT**

- Part 1: introduction
- Part 2: standards of professional conduct
- Part 3: obligations to clients
- Part 4: relations between registered migration agents
- Part 5: fees and charges
- Part 6: record keeping and management
- Part 7: financial duties
- Part 8: duties of registered migration agents to employees
- Part 9: complaints
- Part 10: termination of services
- Part 11: client awareness of the code

Source: Migration Agents Regulations 1998 Schedule 2

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***Roles and responsibilities***

DIAC includes a migration agent policy section, whose role is to provide policy advice and develop regulatory amendments pertaining to migration agents.

The role and functions of the Office of the MARA are set out in s316 of the Act. The key objectives of the Office of the MARA are to ensure that:

- only suitable persons are registered as migration agents, and unsuitable persons are refused registration or re-registration;
- registered agents maintain appropriate knowledge to enable them to provide accurate advice to consumers;
- all complaints about the services of registered, or formerly registered migration agents are appropriately addressed;
- the Office of the MARA works collaboratively with the department and other bodies such as prosecuting or regulatory authorities to address the activities of agents outside its mandate; and
- consumers understand their rights and agents understand their obligations under the regulatory framework.

The Office of the MARA also has an Advisory Board, appointed by the Minister for Immigration and Citizenship. The Advisory Board is independent of DIAC and the migration advice profession and the Chair of the Board reports directly to the Minister. The Board provides advice to the Office of the MARA CEO in relation to:

- office procedures, policies and strategies;
- the setting of organisational directions, priorities and plans; and
- emerging issues within the sector of relevance to the regulation of migration agents.

As the Office of the MARA Policy and Procedures Manual (2010) explains, the functions and powers of the Office of the MARA under Part 3 of the Act are the Minister's functions and powers. The Minister has delegated these to officers in the Office of the MARA, which is the administrative body that undertakes the Office's functions. The Office of the MARA staff making decisions under the Act and Regulations must comply with the legislative requirements specified in the Instrument of Delegation.

There are three professional bodies for migration agents in Australia: the Migration Institute of Australia (MIA), the Migration Alliance and the Law Council of Australia (LCA) (and within that the Immigration Lawyers Association of Australasia). Each has a distinct role, focus and scope of services offered.

## **2.5 Why migration agents are regulated**

Although this review is focused on entry level migration agent competency for the purposes of registration, it is important to establish the underlying principles that provide a basis for regulating the profession.

Governments intervene in markets when some form of market failure is present. The principal characteristic leading to market failure in the market for immigration advice is information asymmetry.

Information asymmetry exists wherever a consumer does not have complete information about the attributes or quality of the service they are buying. As well as having incomplete information, they also have less information than the seller.

The major causes of information asymmetry in relation to migration agent services are that:

- consumers are often 'one time' participants in the market;
- consumers are from countries other than Australia and therefore often have limited familiarity with Australian migration law and visa processes; and
- related to this, consumers may have limited English language proficiency and may be highly anxious about obtaining a visa.

Migration agents often work for vulnerable clients who could be exploited by unscrupulous agents. Also, an error in a visa application or a related process can have potentially serious consequences.

Regulation of the profession is intended to protect consumers by overcoming information asymmetry experienced by people who require migration advice. Consumers can have confidence that a registered agent will be ethical and competent.

As well as protecting consumers, regulating migration agents should produce competent migration agents, which may save DIAC time and costs in processing visa applications.



### ***Approaches to demonstrating knowledge and competency***

In the context of a regulated occupation, there are different models for demonstrating knowledge and competency. Regimes can be more or less prescriptive about requirements and can take different approaches to ensuring that these requirements have been met.

There is a range of models across the tertiary education sectors in relation to the interface between professional and occupational registration and accredited courses under the AQF.

- In the vocational education and training (VET) sector, most nationally recognised qualifications are drawn from National Training Packages and linked to units of competence. In many areas these units now directly align with regulators' requirements and regulators are directly involved in their development.
- In higher education the process is often even more complex as universities are self accrediting institutions and the current course accreditation process for non self accrediting higher education institutions is essentially state based, although moving to a national model under the Tertiary Education Quality and Standards Agency (TEQSA). Some professional bodies are themselves higher education providers under this system.

An overview of the different approaches to demonstrating competency within these regimes in terms of the roles of regulatory bodies is detailed below (these approaches and other variations are outlined further in the detailed consideration of options in Chapter 7):

- prescribed course requirement — where content and assessment is largely dictated by the regulator;
- accredited provider arrangement — through a regulator or professional body, where the provider is periodically required to demonstrate that they are meeting specified content and standard requirements;
- qualifications in a particular discipline — however the regulatory body does not specify particular content requirements for this qualification. This may be supported by an additional assessment for registration purposes;
- professional examination or other assessment — set by the regulatory body, with or without a specific course or qualification requirement; and
- industry or regulator competency standards — with flexibility in how the standards are met, which can include formal education or work experience.

## **2.6 Current course content**

Section 289A of the Act establishes that registration as a migration agent requires the Office of the MARA to be satisfied that the applicant 'has completed a prescribed course within the prescribed period and has passed a prescribed exam within the prescribed period; or holds the prescribed qualifications'.

Section 5 of the Migration Agents Regulations 1998 state that the prescribed course and prescribed exam are specified by the Minister in an instrument in writing; and the prescribed period is 12 months. A current legal practising certificate is prescribed, meaning that this is sufficient for registration of itself.

The current instrument commenced from 1 October 2006 and specifies the common assessment items of the Graduate Certificate in Australian Migration Law and Practice at the four current providers, as a prescribed exam for the purposes of the regulations.

Four Australian universities offer the graduate certificate under agreement with the MIA. The course outline specifies the following course structure. The subject descriptions below are paraphrased from the Australian National University (ANU) course for the purposes of providing a typical example. The descriptions provided by the other providers may vary slightly.

- **Australian migration law** — introduces the Australian legal system with a focus on the legal structure for the regulation of migration; studies the context of migration regulation with an emphasis on history; and examines the role of migration agents, the philosophy of their profession and the profession's Code of Conduct.
- **Australia's visa system** — examines the fundamentals of Australia's visa system: the vital rules for making a valid visa application: the procedures for decision making the general requirements for most visas and criteria for obtaining visas.
- **Visa compliance, cancellation and review** — develops skills in identifying the requirements and procedures for responding to the regulatory framework. It covers compliance, sanctions for breaches, refusal of visas merits and judicial review of decisions and ministerial discretion.
- **Applied migration law** — focuses on the practical skills needed by migration agents to conduct an effective and successful migration practice. These skills include information retrieval, research, consultancy, advocacy, communication and personal and professional development.

The four providers of the existing course are the Australian National University, Griffith University, Murdoch University and Victoria University. The course usually takes six months full-time or twelve months part-time to complete.

## Chapter 3

# Key considerations

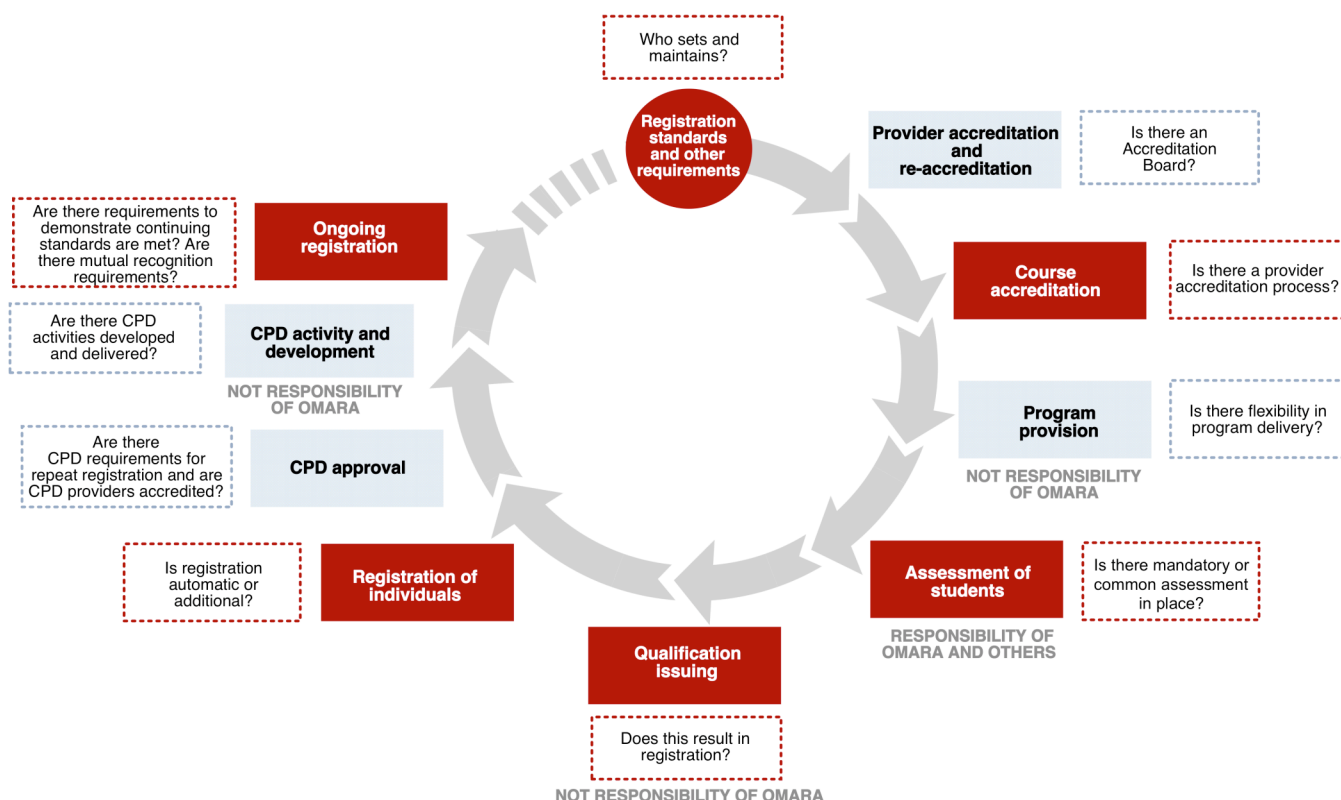
*This chapter describes the key considerations of the review, which have informed the development and assessment of options. The key considerations include current good practice in professional registration schemes, the AQF and complaints data.*

### 3.1 Professional registration scheme elements

Figure 3.1 shows the elements of a professional registration scheme, with specific references to the current arrangements for the migration agent's registration scheme. Throughout the report these elements are referred to and recommendations are made which relate to the Office of the MARA's current and possible responsibilities under the course development framework and overall regulatory framework. Elements highlighted in red are within the scope of this review. Each step is the responsibility of the Office of the MARA unless otherwise indicated.

Figure 3.1

#### PROFESSIONAL REGISTRATION SCHEME ELEMENTS



- 1) Steps highlighted in red are within the scope of this review.
  - 2) Steps that are not currently the responsibility of the Office of the MARA, or where responsibility is shared with others, are noted.
  - 3) CPD: continuing professional development.
- Source: The Allen Consulting Group

Each element of the professional registration scheme is described in further detail below.

- *Registration standards and other requirements*: this refers to the setting of standards of competency or other requirements that state what roles and functions a competent person needs to be able to perform, as distinct from what qualifications they need to hold.
- *Provider accreditation and re-accreditation*: this refers to the accreditation of course providers by the regulator or professional body. A provider may be formally accredited based on specified criteria being met or the regulator may recognise qualifications from any Australian higher education provider and/or registered training organisation (RTO).
- *Course accreditation*: the accrediting body may apply varying levels of prescription in terms of the course content to be provided.
- *Program provision*: one or more providers may be involved and they may be higher education institutions, RTOs or the industry body (which may also be an RTO). Provision may be in person or online or both.
- *Assessment of students*: this refers to the setting of assessment and the actual conduct of assessment itself. Assessment may be set exclusively by course providers or with the involvement of the regulator and/or industry representatives. Under common assessment, the providers agree on the assessment instrument and assessment results are subject to moderation. It is also possible that students may be subject to further assessment for registration purposes (two steps along).
- *Qualification issuing*: this is the responsibility of the course provider. This may or may not lead to automatic professional registration, as discussed in the next step.
- *Registration of individuals*: this is the responsibility of the regulator, following consideration of an application for registration, which must demonstrate that all registration requirements have been met. The awarding of a qualification may be sufficient to demonstrate that knowledge requirements have been met as part of the registration process. There may be a further knowledge requirement, such as an industry administered entrance examination or supervised practice.
- *Continuing professional development (approval)*: refers to the approval of CPD providers and courses. This may or may not be a distinct requirement, depending on the scheme.
- *Continuing professional development (activity and development)*: The actual activity of delivering and developing those courses.
- *Ongoing registration*: this relates to the ongoing registration of professionals, subject to continuing to meet the professional standards.

Across different regulatory schemes the institution or regulators might undertake certain functions. In higher education, provider and course accreditation can be closely linked.

### 3.2 Good and emerging practice

As a basis for developing options for the Office of the MARA in the oversight of migration agents, the Allen Consulting Group's view of good and emerging practice at each stage in the professional registration diagram is outlined below.

This overview of good practice is primarily informed by the project team's experience in undertaking analysis and providing advice on professional registration and occupational licensing schemes, combined with references to relevant literature. Competency standards are mainly evident in the VET sector, and are often resisted by higher education providers. However, in most areas of professional provision by higher education institutions, external bodies accredit providers and the courses they offer, and there is a strong relationship between course outcomes and professional requirements. The occupations compared in this review (Chapter 5) have also contributed to this understanding, although they were chosen to show a cross section of approaches, not because they necessarily all represent the preferred model outlined in this report. It is also important that competence is defined broadly; encompassing knowledge, skills, the application of skills in a range of contexts as well as generic skills or attributes which are essential to effective professional practice.

- *Registration standards and other requirements:* Emerging practice and in our view good practice is for competency standards to provide the basis for other elements of the professional registration scheme. Consequently, the standards themselves are distinct from the requirement to complete a particular course or meet other professional requirements. There are in turn different ways of demonstrating that required competency standards have been met. Standards are preferred as they provide a clear set of criteria related to the roles and functions required.
- *Provider accreditation and re-accreditation:* Good practice is for the accrediting body to be satisfied that the provider has demonstrated capability to deliver the learning outcomes of the course to an agreed standard. Periodic review and performance monitoring should accompany this. The accrediting body can then be satisfied that providers are achieving the standard expected.
- *Course accreditation:* Good practice is for the accrediting body to be satisfied that through provider accreditation and agreed standards, the course will meet the regulator's requirements, although course outcomes may well exceed these requirements. Under such an arrangement it is not necessary for the content of the course to be prescribed in detail. However, this does present a dilemma for regulators, in that the less prescribed the course detail, the less control the regulator has over the number of course offerings and content. This risk can be managed through consultative mechanisms or audit arrangements.
- *Program provision:* It is generally considered desirable to allow the provider some flexibility in determining how the course is provided, within an agreed framework that relates clearly to the competency standards. This means that graduates will have knowledge related directly to the required competencies, while providers are able to use their expertise and professional judgement in the delivery of the course. Good practice is for the course provision and professional registration to be undertaken by separate organisations to avoid a potential or actual conflict of interest.

- *Assessment of students*: Although it is considered good practice to allow the providers to conduct assessment within the course accreditation framework, this needs to be carefully monitored to ensure a reasonable level of consistency. Assessment should be grounded in the competency standards: so the regulator can be satisfied that the course meets knowledge requirements required for registration. The assessment framework should be designed appropriately so that satisfying the requirements of the course gives the regulator confidence in reaching this conclusion.
- *Qualification issuing*: As this is a matter for the institution it is a matter for them to ensure that qualifications are issued when all requirements have been met.
- *Registration of individuals*: Good practice is for supervised practice to feature as part of the competency requirements. This may be part of a tiered registration process, in which a person may be granted provisional registration for an agreed period during which they work under supervision.
- *Continuing professional development*: For both the approval of CPD (if required) and ongoing delivery, good practice is for this to be tied directly to ongoing demonstration of competency, based on the professional standards.
- *Ongoing registration*: good practice is for renewal of registration to recognise CPD and accumulation of experience, which may be reflected in some form of professional recognition or tiered registration.

### **Competency standards**

Heywood et al (1992) provide a basis for good practice in the development of competency standards for professions. In their research paper, which remains a seminal guide, they define competency standards as follows.

**Competency standards** — are concerned with competent performance in the workplace. In that context, the term competency is defined as ‘the ability to perform the activities within an occupation or function to the standard expected in employment’.

Heywood, Gonczi and Hager 1992

While this definition reflects an ideal, in reality competency standards do not have to be work place based — and can form the basis of knowledge standards for a profession, aiding in the effective registration of competent professionals. This is particularly relevant where there may be structural issues in the industry that prevent competency standards being entirely grounded in workplace practice.

This evolved approach is further exemplified in *competency standards for entry level lawyers* (Australasian Professional Legal Education Council (APLEC) 2000) and the Office of the Immigration Services Commissioner (United Kingdom) *Code of Standards* and *Commissioner’s Rules* — detailing competency standards for the profession (detailed in Appendix C). Both these documents seek to describe the observable performance required of entry level lawyers or immigration advisers at the point of admission to practice or registration, respectively.

As the APLEC describes, competency standards are designed, where possible, to allow:

- competence in one relevant area to be acquired in the course of acquiring competence in another relevant area; and
- education and training to be delivered in flexible and innovative ways, where this is desirable.

Whilst competency standards propose minimum requirements for, in this case, entry level migration agents, they are not intended to discourage wider or more detailed training in the profession.

### **3.3 Australian Qualification Framework**

Qualification levels are determined and structured based on the AQF. Qualification levels set out in the AQF may be issued by the higher education sector, the VET sector and through senior secondary schools. The AQF is relevant to this review because any prescribed course needs to be accredited based on this framework, as described below.

In the higher education sector, universities are self-accrediting institutions. This allows them to develop and issue qualifications themselves under the AQF guidelines.

Higher education qualifications can also be developed and issued by non-self accrediting higher education institutions — at present state higher education accreditation bodies accredit these qualifications, although these functions are likely to transfer to TEQSA. The courses must be compliant with the AQF and are governed by the National Protocols for Higher Education Approval Processes, which provide that a state accredited course must be equivalent to that of a similar course offered by a university.

In circumstances where there is a formal proposal to change the prescribed course from a higher graduate certificate to a higher graduate diploma, the proposal will need to be assessed either through university accreditation processes or state accreditation processes (in the event that the course is offered by a non self accrediting institution).

In the VET sector, qualifications are derived from national training packages based on national competency standards or state accredited courses. Training Packages are the responsibility of Industry Skills Councils.

In both the higher education and VET sectors, courses may also have to meet the requirements of professional or occupational regulators or professional associations. This is achieved either through participation in the course development and approval process or through a separate approval process (although this is not part of the AQF).

Three qualification levels considered to be of particular relevance to this review for benchmarking purposes are advanced diploma, graduate certificate and graduate diploma.



Most of the requirements for a graduate certificate and graduate diploma are the same, except that the graduate certificate refers to *specialised* knowledge whereas the graduate diploma refers to *advanced* knowledge. The respective knowledge requirements are as follows:

- *advanced diploma* — specialised technical and theoretical knowledge with depth;
- *graduate certificate* — specialised knowledge within a systematic and coherent body of knowledge; and
- *graduate diploma* — advanced knowledge within a systematic and coherent body of knowledge.

Consequently, this distinction between advanced and specialised knowledge is a key consideration in determining the level of a proposed course. Further information about the AQF is provided at Appendix F.

### 3.4 Complaints

In considering how the current arrangements might be improved, it is important to have a sense of the extent to which the current arrangements are deficient. This assists in ensuring that any changes are proportionate to the problem(s) at hand. Analysis of complaints against migration agents can provide an indication of the extent to which there is dissatisfaction with migration agent performance.

In this three-month period, the Office of the MARA received 121 complaints against migration agents. As Table 3.1 shows, more than half of all complaints recorded in the period January to March 2010 were related to standards of professional conduct.

Table 3.1

#### ANALYSIS OF COMPLAINTS – BREACHES OF THE CODE OF CONDUCT

Relevant part of the Code of Conduct	Percentage of complaints
Part 2 – Standards of professional conduct	55
Part 3 – Obligations to client	1
Part 5 – Fees and charges	4
Part 8 – Duties of agents to employees	14
Part 10 – Termination of services	7
Parts 6,7 and 9 - Other	19

Source: DIAC Migration Agent Activity Report: January-March 2010.

Table 3.2, below, provides a breakdown of the standards of professional conduct complaints.



Table 3.2

**BREACHES OF PART 2 – STANDARDS OF PROFESSIONAL CONDUCT**

Standards or professional conduct - breaches	Percentage of complaints
Competence	52
False/misleading advertising	2
Follow client's instructions/keep client informed	10
Integrity	17
Misleading about prospects of success	2
Submit application without documentation	6
Other	11

Source: DIAC Migration Agent Activity Report: January-March 2010.

The overall picture is that complaints about agent competence comprise the largest single category, representing about 28 per cent of total complaints (half of the complaints related to standards of professional conduct were about competency). Overall, it appears that there is a reasonable degree of concern about agent competency.

# Part 2

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## *Analysis*

## Chapter 4

# Stakeholder views

*This chapter summarises the views of stakeholders consulted, regarding the strengths and limitations of current arrangements.*

### 4.1 Summary of stakeholder views

This section provides a summary of stakeholder views from consultation undertaken as part of this review. The strengths and issues of current arrangements are identified. While the consultations undertaken for this review are not intended to provide a comprehensive survey of the profession, the discussions did identify a high level of convergence about key issues that require attention. There was greater divergence about the most appropriate response to address the issues.

#### **Strengths of current arrangements**

The migration agent profession has been regulated in statute for a relatively short period of time (although self regulation was in place for approximately ten years). In that context, stakeholders contrasted the existence of a prescribed course with the previous arrangements, which were viewed as inadequate. Stakeholders consulted consider that the strengths of the current arrangements include the presence of a prescribed course as a means for establishing minimum entry requirements to the profession.

Stakeholders generally view the role of the Office of the MARA as being clear and support the revised arrangements in which the Office of the MARA is clearly distinct from the MIA.

Although not a strength per se, there was a general sense from stakeholders that — although imperfect — there is a lack of evidence that the current arrangements are generally producing poor outcomes for consumers. However an assessment of the course outcomes across a range of graduates and employers is beyond the scope of this review. The greater area of harm to consumers appears to be a result of unregistered agent conduct, which is also beyond the scope of this review.

#### **Issues with current arrangements**

##### **Knowledge requirements for registration**

There is general agreement that the graduate certificate does not of itself prepare fully competent migration agents and, furthermore, it is unrealistic to expect it to. Despite this, the current framework allows a person to practice as a migration agent without needing to further demonstrate competency beyond holding the qualification.

Despite this concern, it was not seen that this issue is best addressed by moving to having a graduate diploma level qualification as the minimum entry requirement. The issue of competence and how it is achieved and assessed exists regardless of course level. Most stakeholders would prefer to reconsider the current arrangements.

### *Practical requirements*

There is widespread support for a form of supervised practice and/or practical training being a requirement of registration. While the difficulty of providing this given the high proportion of sole practitioners is widely accepted, several approaches were suggested to overcome this (described further in Chapter 7). Briefly, they include simulated practice, supervised practice with provisional registration, improved and ongoing access to CPD with a practical focus and mentoring arrangements.

Larger employers of migration agents have developed internal training programs and supervision arrangements for new agents. While these arrangements are desirable in terms of personal and professional development, these employers also view them as a commercial necessity. In contrast, an agent setting up practice, as a sole practitioner would not be exposed to structured workplace learning in this way. They would depend heavily on advice from their fellow migration agents and CPD to provide them with assistance. They would also be more likely to ask questions of DIAC, which may not reflect well if DIAC considers these questions inappropriate or betraying a lack of basic knowledge on the part of the agent.

### *Course content*

Stakeholders identified the following specific issues with content of the graduate certificate.

- The component of the course on migration law includes contextual information on administrative and constitutional law. It was argued that this time would be better spent focussing on migration law.
- There are different views on the relative importance of detailed content knowledge pertaining to the Act. One argument is that the course should focus in depth on relevant details of the Act. An alternative view is that as an entry level educational qualification the course should provide basic familiarity with the Act, but more importantly, it should equip graduates with the ability to find and interpret relevant sections of the Act.
- Learning outcomes related to running a migration agent business may not be relevant for a migration agent who is employed in a firm that provides infrastructure for running a business. An alternative would be to focus any course specifically on knowledge requirements common to all migration agents.
- There is a view that the course does not spend sufficient time on visa classes, given that this is main area of technical knowledge required of a migration agent.
- Some stakeholders are concerned about the prevalence of on-line delivery as this does not lend itself to a practical understanding of the role of a migration agent. Related to this, although the course ostensibly has a practical component, this is viewed as only occurring sporadically and of being inadequate.

### *Legal practitioners*

There is general agreement that the framework should be such that the regulator can be satisfied that legal practitioners are competent to perform the role of a migration agent. However, there are mixed views on whether the current arrangements provide for this or not. There was little support for requiring practising lawyers to undertake the entire graduate certificate course, but there was support for a system that formally recognises demonstrated competency by considering prior learning, experience and professional development. The current framework does not lend itself to this in the way that a system based on professional competency standards would.

There is a view that migration agents should have similar supervised practice requirements to those of lawyers. Furthermore, legal practitioners generally consider that a certified legal practitioner already meets the standard of a competent migration agent.

### *Not for profit sector*

There is widespread support that not for profit providers must meet the same competency requirements as commercial providers. Stakeholders consider that agents from this sector should be exempted from a registration fees and should receive financial support to undertake any prescribed course or other competency requirements.

In the view of a long standing community legal centre, there is a general under-supply of non fee paying agents. In its view, completion of the graduate certificate is a barrier to individuals who wish to work in a volunteer capacity. Options that could address this, and related considerations are outlined below.

- Providing scholarships or rebates to individuals from the volunteer sector undertaking the course, although it is difficult to ensure that these graduates remain in the not for profit sector after completing the course.
- The Office MARA recognising CPD or work experience of volunteer workers, which would be possible in a competency based approach to registration. Under such an arrangement, the Office of the MARA would need to be satisfied that these individuals had adequate general migration knowledge. It would not be desirable for registration purposes to separately recognise knowledge of refugee and humanitarian visa classes from other classes.

### *MIA views*

The MIA is a peak industry body — about half of registered agents are members of the MIA — and the MIA until recently acted as the Migration Agent Registration Authority (now the Office of the MARA). The MIA remains closely involved in the administration of the graduate certificate with the four course providers. Consequently, the role of the MIA will need to be carefully considered in transition arrangements to a revised model.

The MIA advised that in its view ‘progressing and improving the entry-level standards of the profession ... cannot be accomplished with a qualification any less than a Graduate Diploma’. It further advised that ‘a cooperative approach involving the leaders of the profession and the educational providers ... is best led by the MIA, which has the expertise, experience and professional involvement’ that makes it suited to this role.

## **4.2 Stakeholder views: implications for the Office of the MARA**

There are a number of important implications arising from the stakeholder views summarised above.

- The underlying cause of many of the issues is the lack of awareness of an agreed set of competency standards (or similar) for migration agents. A set of competency standards was established in 2005, but the awareness of these standards is low. (Indeed, the existence of the standards was not identified by any stakeholder in the initial phases of the review.) There is greater awareness of the requirements of the graduate certificate.
- There is no consistent agreement between stakeholders about the competency standards required for registration. Although these can be inferred from the current course graduate attributes and learning outcomes, the current course framework has some limitations, which are described further in Chapter 8.
- Stakeholders are open to options other than changing the course to a graduate diploma, meaning that the Office of the MARA can legitimately consider alternatives and expect to gain stakeholder support if the change process is well managed. Alternatives include: a fundamental re-assessment of the structure and content of the current course in terms of registration requirements; removing the prescribed course requirement and replacing this with a competency standard approach; or retaining the prescribed course model but opening this to other courses (see Chapter 7 for detailed options).
- In considering roles and responsibilities in the course development framework, a general philosophy that should be applied is that each organisation should focus on its area of expertise.

## Chapter 5

# Occupational comparison

*This chapter provides an overview and analysis of regulation and other requirements of occupations comparable to migration agents.*

### 5.1 Overview

This chapter provides a comparison of occupations that are similar to the role and regulation of migration agents. Occupations were chosen because they possess any one or more of the following characteristics:

- operate as a market intermediary facilitating transactions between buyer and seller, including representing clients who otherwise have limited knowledge of the system in which the agent has expertise;
- work in a regulated profession whereby certain requirements must be met in order to practice, including minimum education standards; and
- the role involves detailed legal knowledge, which is likely to relate primarily to a particular statute or area of law.

The description and analysis provided is for the purpose of comparison. The occupations were not selected because they are thought to represent good practice in all elements of their arrangements. However, they may include features of good practice or interesting points of similarity or difference compared to the arrangements for migration agents.

A range of occupations were chosen for review: conveyancers, education agents, customs broker, stockbroker, general practitioner, dentists, insolvency practitioner estate agents, lawyers and electricians. Table 5.1 compares key points of interest in selected occupations, with more detail provided in Appendix A on each of the occupations considered by the review.

Table 5.1

**OCCUPATION COMPARISON**

Occupation	Regulator	Act	Conditions for registration – qualification?	Qualification sufficient to demonstrate competency for registration?	If No, what is required* for registration?	Number of registration levels or types
<b>Migration Agent</b>	The Office of the Migration Agent Registration Authority	Migration Act 1958	Graduate Certificate in Migration Law and Practice, or current legal practicing certificate	Yes	-	1
<b>Customs Broker</b>	Australian Customs Service	Customs Act 1901	11 unit prescribed course, accredited at Certificate IV level or equivalent	No	Obtain a pass mark (70 per cent) in the National Examination	1
<b>Electrician</b>	State and Territory licensing authorities (under national licensing requirements)	Electricity (Licensing) Regulations 1991 (WA)	Australian Recognised Trade Certificate	No	Capstone Assessment	Varies
<b>Lawyer</b>	Legal Services Board (VIC) (with some responsibilities delegated to professional associations)	Legal Profession Act 2004 (VIC)	For example: Bachelor of Laws (VIC)	No	Supervised practice	2
<b>Estate agent</b>	Business Licensing Authority (VIC)	Estate Agents Act 1980 and Estate Agents Regulations (Education) 2004* (VIC)	For example: Certificate IV in Property (Real Estate Agency Practice) (VIC)	No	Supervised practice (VIC)	2
<b>Conveyancer</b>	Business Licensing Authority (VIC)	Conveyancers Act 2006 (VIC), Conveyancer's Regulations 2008 (VIC)*	For example: Diploma of Financial Services (Conveyancing) and Certified Practising Conveyancer program (VIC)	No	Supervised practice (VIC)	1
<b>Dentist</b>	State and territory Dental Boards (current) Dental Board of Australia (as of 1 July 2010)	Health Practitioner Regulation National Law (from 1 July 2010)	For example: Bachelor of Dental Surgery (SA)	Yes		4

\* For the purposes of this comparison, the relevant Act is listed for Victoria only



## **5.2 Summary of similar occupational arrangements**

In terms of knowledge requirements, the regulation of conveyancers has similarities with the scheme used for migration agents. Conveyancers have dual streams of accreditation for lawyer and non-lawyer qualified professionals. Knowledge requirements, such as those in Victoria, include the completion of a relevant qualification for non-lawyers, undertaking the Certified Practising Conveyancer program, and at least 12 months experience in the field. Customs brokers are also subject to similar qualification requirements at the certificate IV level, and are required to obtain a brokers licence. The licence is awarded by a national committee, which also requires the candidate to pass a national examination held twice a year.

Real estate agents are also regulated on a state and territory basis. Using Victoria as an example, real estate agents have a minimum certificate IV requirement, as well as experience in the field and an Estate Agent Licence.

Dentists provide an interesting example of national based registration, previously uncommon in the health workforce, against specific competencies. Dentistry also provides an example for mutual recognition arrangements with New Zealand, with both regulatory bodies employing a collaborative approach to provider and course accreditation and standards to ensure quality in both countries.

Arrangements for education agents are in significant contrast to that of migration agents, whilst providing similar services, in that they are under no form of regulation or licensing.

Lawyers provide an example of employing competency standards for entry level applicants. These standards are achieved through the completion of a graduate diploma in legal practice (that will include requirements for simulated practice, work experience or similar) or through a period of supervised practice as an articulated clerk.

The following sections provide further detail on similar occupational arrangements, corresponding to elements of the professional registration scheme diagram. The focus of comparison and analysis is directed to stages of the professional registration scheme within the scope of the review and the responsibility of the Office of the MARA. Further detail on an occupation by occupation basis is provided at Appendix A.

### ***Registration standards and other requirements***

A number of professions compared based their registration requirements on competency standards. These professions included conveyancers, real estate agents dentists and lawyers.

For example dentistry has a number of standards (required from July 2010) for registration, distinct from the requirement to complete a particular course. These standards include:

- recency of practice — practitioners who have not practised dentistry in the previous five years need to satisfy the Australian Dental Board's recency of practice requirements; and

- scope of practice — dental practitioner must only perform those dental procedures for which they have been formally educated and training in programs of study approved by the board and in which they are competent.

*Competency standards for entry level lawyers* (APLEC 2002) set out competency standards for entry level lawyers at the point of admission to practice. The standards reflect the level of competency to be achieved following completion of an LLB or JD. At the point of admission, each applicant is expected to provide evidence that they have achieved the requisite competence in the sections of skills, practice areas and values. For example:

- skills include: problem solving, work management and business skills and lawyers skills;
- practice areas include: civil litigation practice, commercial and corporate practice and property law practice; and
- values include: ethics and professional responsibility.

Each applicant seeking admission to practise is required to provide evidence that the requisite competence required by the standards has been attained. This can be done by a practical legal training course, articles of clerkship, a bar admission course or a combination of more than one of them (APLEC 2002).

The arrangements show that competency standards provide a basis for different pathways to professional practice. The focus is on the standards rather than on a particular course. Course providers are guided by the standards in developing course content.

### ***Provider accreditation and re-accreditation***

In some cases the regulatory body will accredit the course provider (in addition to or opposed to the course). In other cases the regulatory body will directly accredit the course, where it is implicit that the provider is an RTO or higher education provider.

The Australian Dental Board accredits higher education providers as ‘an Australian Dental School’, whilst also accrediting the course to be delivered. In many areas of professional registration both courses and providers are accredited, sometimes as part of the same process in areas of new provision.

### ***Course accreditation***

In a number of cases the regulatory body undertook course accreditation. In some cases this involved varying levels of accreditation to allow for new courses being applying for accreditation.

For example, the Australian Dental Board accredits dentistry courses in higher education providers, in line with its national standards.

***Assessment of students***

In the case of these occupational comparisons, there is limited available information to conclude that common assessment, moderation or internal assessment by the course provider is more widely used than another. Good practice suggests that the course provider should assess students, although common assessment can provide an effective option for monitoring quality in the right regulatory arrangement, for example within a competency based regulatory arrangement.

***Qualification issuing***

The course provider issues qualifications for all occupations compared. As described below in further detail, in most of the occupations reviewed, issuing a qualification for an occupation of itself is not sufficient to meet the competency requirements for registration.

***Registration of individuals***

In all cases the registration of individuals involved not only issuing of a specific qualification, but additional requirements such as English language proficiency requirements or payment of a fee for registration. The requirement of practical experience in the chosen occupation was also common. A small number of occupations have education/knowledge requirements on top of the specified qualification, such as the stockbroker examination.

To take one example, registration as a real estate agent in Victoria requires the completion of a certificate IV qualification, a minimum of 12 months practical experience as an agent's representative and an Estate Agents Licence.

***Ongoing regulation and mutual recognition***

The mutual recognition arrangements in place for dentists are noteworthy. The dental boards for Australia and New Zealand share the responsibility for developing standards and course accreditation based on these standards, in both Australia and New Zealand. A joint board makes recommendations in regard to standards in both countries, to ensure quality is maintained when dental practitioners transfer between countries. There are also arrangements in place for both countries in regard to accrediting new courses, in accordance with standards.

## Chapter 6

# International comparison

*This chapter provides an overview and analysis of migration agent equivalent occupations in comparable countries, to that of arrangements in Australia.*

### 6.1 Overview

There are a number of other countries that use migration agents, advisers and consultants and have similar regulatory arrangements to that of migration agents in Australia. A comparison of similar arrangements is provided in this chapter for the United Kingdom, Canada, New Zealand and California, United States of America, whilst further detail is provided at Appendix B.

These countries have been compared to arrangements in Australia as they have a comparable level of economic development to Australia, face similar migration policy issues and have some form of regulation of this occupation.

Comparing international arrangements with those of Australia, allows for comparison to take place in relation to regulatory requirements, competencies and knowledge requirements of migration agents, as well as for possible improvements in Australia's regulation of migration agents to be identified.

The table below summarises the international arrangements for migration agent equivalent occupations.

Table 6.1

**INTERNATIONAL COMPARISON**

	<b>AUSTRALIA</b>	<b>UK</b>	<b>CANADA</b>	<b>NZ</b>	<b>CA, USA*</b>
<b>Title and role</b>	Migration agent	Immigration adviser	Immigration consultant	Immigration adviser	Immigration consultants
<b>Regulatory authority/arrangements</b>	The Office of the Migration Agent Registration Authority	Office of the Immigration Services Commissioner	Canadian Society of Immigration Consultants	Immigration Advisors Authority	-
<b>Act</b>	Migration Act 1958	Immigration and Asylum Act 1999	-	Immigration Advisers Licensing Act 2007	-
<b>Education requirements</b>	Graduate Certificate in Australian Migration Law and Practice or current legal practicing certificate	No specific qualification	Accredited program – Diploma or Certificate Pre-admission course	Relevant qualifications (no formal NZ immigration qualification available)	-
<b>Other requirements</b>	-	Codes and rules assessment or Registration with certain professional bodies (Law)	Canadian citizen, permanent resident or registered Indian status Membership exam	Satisfy the minimum standards of competence	Qualified Lawyers can also provide immigration advice and services
<b>English language requirements</b>	Competence in the English language	-	Language proficiency test	-	Provision of service contracts in English and clients language
<b>Maintaining competence</b>	Code of Conduct Continuing professional development, ethical and moral framework	Commissioner's Rules Code of Standards	Rules of Professional Conduct Mandatory errors and omissions insurance Proof of good character Disclosure of all business relationships to CSIC	Competency Standards Code of Conduct Continuing Professional Development	\$50,000 two year bond with the Secretary of State

Source: Allen Consulting Group

Note: \* California, USA

**6.2 Summary of arrangements internationally**

Regulation of migration agents is somewhat similar between Australia, Canada and New Zealand — with California employing minimalist regulatory arrangements. Australia, United Kingdom, Canada and New Zealand all have regulatory bodies in place to enforce the registration of migration agents. However, the educational requirements for registration enforced by these bodies vary somewhat.

Australia's arrangements are most similar to Canada. In order to register as a migration agent, the applicant must have completed a prescribed (Australia) or accredited (Canada) course, as deemed applicable by the regulatory body. However, Canadian arrangements also include a pre-admission course and membership exam, prior to registration as an immigration consultant. The Canadian regulatory society has adopted certain educational standards that must be fulfilled by each applicant in order to receive certification. These standards encompass the educational requirements that must be satisfied by the accredited educational institution — representing good practice. Most accredited courses in Canada are of the certificate level, with some courses delivered at the diploma level.

In the United Kingdom and New Zealand, however, requirements for registration are based on specific minimum competencies, rather than prescribed or accredited courses.<sup>1</sup> Both the United Kingdom and New Zealand have varying levels of qualifications, based on these competencies outlined by the regulatory body — each level of competency has different skill and knowledge requirements, allowing different levels of advice to be given to consumers by agents. Australia, the United Kingdom, Canada and New Zealand all use codes of conduct to guide good practice as a migration agent.

California uses a 'bond arrangement', lodged with the Secretary of State, over a two year period to help ensure the quality and ethical practice of immigration consultants. However, it appears lawyers are mainly used in California — and other parts of the US — to provide immigration advice.

The following sections provide more specific information corresponding to relevant elements of the professional registration scheme diagram.

### ***Registration standards and other requirements***

Both the United Kingdom and New Zealand use competency based standards for regulating immigration advisers, pertaining to varying levels of practice as an immigration adviser (levels 1-3), depending on an applicants relevant qualifications and experience.

As described above, Canada also bases the certification of immigration consultants on educational standards, encompassing educational requirements delivered by accredited education institutions.

Further detail on the competencies required in the United Kingdom and Canada is provided at Appendix B and Appendix C.

### ***Provider accreditation and re-accreditation***

In Canada a provider must be an education institution in order to apply for course accreditation for immigration consultants. The United Kingdom and New Zealand do not have specific courses for immigration advisers, and therefore do not accredit providers.

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<sup>1</sup> Registration of Immigration Advisers in New Zealand came into effect in May 2010.

**Course accreditation**

In Canada, the regulatory society accredits courses from education institutions, based on its education standards for immigration consultants (encompassing educational requirements). As mentioned, most institutions offer the course as a certificate level qualification; however others offer a diploma course.

As described previously, the United Kingdom and New Zealand do not have specific courses for immigration advisers, and therefore do not accredit courses.

**Assessment of students**

In Australia, common assessment is used and assessment results are subject to moderation. In Canada, providers conduct assessment within the course accreditation framework. Students are then subject to a full membership exam to ensure a reasonable level of consistency.

**Qualification issuing**

In Canada, qualification issuing is the responsibility of the course provider. Course providers conduct final assessments for students in line with the regulator's requirements, in order to be an accredited provider.

**Registration of individuals**

The United Kingdom, Canada and New Zealand all require additional knowledge requirements to be demonstrated by applicants, prior to becoming registered as an immigration adviser or immigration consultant (Canada).

In the United Kingdom, applicants must demonstrate their knowledge through the application process and by achieving 100 per cent on the *Code and Rules* assessment. As described previously, in Canada, applicants must complete a full membership exam following completion of an accredited course. In New Zealand, applicants must demonstrate their knowledge and experience in the field through several steps in the application process with the regulator.

All of these countries, including Australia, have additional registration requirements but they do not require further knowledge requirements to those described above — such as English language and proof of good character requirements.

In California, immigration consultants are required to lodge a \$50,000 two-year bond with the Secretary of State, as a form of registration. No additional knowledge requirements are prescribed.

# Part 3

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*The way forward*



## Chapter 7

# Options for consideration

*This chapter describes and assesses options for the key elements of a course development framework for migration agents in Australia, and outlines a preferred option.*

### 7.1 Options for consideration

The following options have been developed based on our professional judgement and drawing on:

- good and emerging practice for professional registration schemes (described in Section 3.2 and drawing on our experience and lessons from the occupational comparison undertaken by the review);
- comparison of regulatory arrangements for migration agents (and the like) in other jurisdictions (described in Chapter 6 and Appendix B); and
- input from stakeholders (described in Chapter 4).

The chapter sets out a number of options that were considered potentially viable and that are most frequently a part of professional registration schemes. Key considerations in the form of advantages and disadvantages related to each of the options are also described.

Options for consideration are outlined in relation to each of the professional registration scheme elements (Figure 3.1). While all are relevant, the most important elements and related options for the purposes of the course development framework are:

- *registration standards and other requirements* — this sets the approach to determining competency for the purposes of registration, then underpins the overall course development framework and specific options within that framework; and
- *registration of individuals* — this determines whether completion of a course is of itself sufficient to meet the competency standards needed for registration or if there are additional standards / requirements.

Options are generally not mutually exclusive. For example, to take the assessment of students, it would be possible to have common assessment items and moderated assessment. The preferred model reflects that for some elements of the scheme (Figure 3.1), more than one option is recommended.

The options are based on the Office of the MARA clarifying its roles in the relationship between the requirements for registration and the education and training process by which those requirements are achieved by individuals, rather than just looking at changes to the course development framework.

The Office of MARA has a statutory responsibility to ensure that a registered migration agent is competent. Competency standards were developed in 2005, but awareness of the standards among stakeholders is low.

Presently, the MIA works with the contracted providers in overseeing the prescribed course. The arrangement is unusual and leaves the Office of the MARA in a vulnerable position in the conduct of its statutory responsibilities. It is vulnerable because it is responsible for migration agent competency but it does not set the standards that determine competence.

Given the revised arrangements in the role of the Office of MARA, and these risks, in our view it is timely to establish revised standards. Consequently, the Office of the MARA should set the standards for registration and have control over the standards: although setting of the standards should be undertaken on a consultative basis.

The role of the Office of the MARA under the preferred option is described further at the conclusion of the chapter. Table 7.1 outlines the options considered for each element of the registration scheme.

Table 7.1

**SUMMARY OF OPTIONS FOR CONSIDERATION**

Professional registration scheme elements	Options for consideration including role of Office of the MARA
<b>Registration standards and other requirements</b>	Competency standards based Learning outcome based
<b>Provider accreditation and re-accreditation</b>	Accredit providers Do not accredit providers
<b>Course accreditation</b>	Accredit course Do not accredit course
<b>Program provision+</b>	AQF accredited providers AQF and Office of the MARA accredited providers (refer to provider accreditation)
<b>Assessment of students</b>	Common assessment items Moderated assessment Solely provider assessment Office of the MARA administered assessment
<b>Qualification issuing+</b>	Issued by provider
<b>Registration of individuals</b>	Course is sufficient for registration Additional requirements needed for registration
<b>CPD*</b>	Continuing professional development
<b>Ongoing registration*</b>	CPD based requirement

+ Not the Office of the MARA responsibility

\* Out of scope, included for completeness

### **Registration standards and other requirements**

#### **Option 1 — competency standards based approach**

A competency standards based approach would describe the functional skills that a prospective migration agent needs to demonstrate before being registered while retaining a strong focus on underpinning knowledge.

*Option 2 — learning outcomes based approach*

A learning outcomes based approach, would describe the broad outcomes including knowledge requirements that a prospective migration agent needs to acquire before being registered but are not written in terms of functional performance standards.

*Comment on the options*

The competency standards approach is more familiar to the VET sector, while the learning outcomes approach is more familiar to the higher education sector. In reality though, there are many examples when higher education courses must meet competencies set by professional bodies or regulators of professional occupations — for example The Competency Standards for Entry Level Lawyers set by the Australasian Professional Legal Education Committee. In this regard, it is useful to conceive of competency standards as the standards for registration. This reflects that the Office of the MARA, as the registering authority, would determine the standards incorporating performance *and* knowledge requirements.

The advantage of a competency standards based approach is that it gives the regulator confidence that a registered migration agent has the necessary performance related skills to perform their role, including that they possess underpinning knowledge. These practical skills are unlikely to be attained solely through a theoretical knowledge based course. They are acquired through application through practice experience: preferably in a workplace setting, alternatively in a simulated workplace setting. Critics of competency approaches argue that they can focus on procedural tasks and skills, do not sufficiently emphasise underpinning knowledge and do not recognise the broader personal and social purposes of tertiary education. Some also argue that significant workplace experience over a period of time is required before real competence can be developed and assessed.

The advantage of a learning outcomes based approach is that it is conducive to demonstrating that a prospective migration agent has acquired the core knowledge required. A further advantage is that learning outcomes can readily be achieved within an education course. The disadvantage is that a person who has achieved learning outcomes would not necessarily have achieved practice and experience outcomes. Consequently, the Office of the MARA would need to consider developing its own assessment requirements and administering these as the basis of registration in addition to the completion of the course.

The key issue in relation to these options is the role of the Office of the MARA in ensuring that registered agents have sufficient ‘knowledge and ability’ (or competence) to be registered. This argues strongly for an approach which:

- clearly specifies the required competencies which migration agents must have to be registered;
- are expressed standards required by the Office of the MARA;
- can be assessed in terms of both performance and knowledge; and
- are transparent and well known across the profession and to related stakeholders.

### ***Provider education and reaccreditation***

#### ***Option 1 — accredit providers***

The Office of the MARA may choose to accredit certain institutions as being providers of migration agent education that will be recognised for registration purposes in addition to their accreditation under the AQF. This could be done within the context of a prescribed course arrangement or without a prescribed course arrangement.

#### ***Option 2 — do not accredit providers***

The Office of the MARA could choose not to formally accredit providers but would rely on their accreditation under the AQF. Under such an arrangement, the Office of the MARA could publish guidelines for the providers of migration agent education, but not undertake a formal accreditation process. The Office of the MARA would in turn recognise any course provided by an Australian higher education provider. The non-accreditation of providers could co-exist with the accreditation of courses (see below).

#### ***Comment on the options***

The advantage of formal provider accreditation is that the Office of the MARA can set clear standards and monitor providers through the accreditation agreement. The disadvantage is that this can be an administratively demanding task, particularly if there are a large number of providers. However, the provider accreditation approach envisaged would be typical of that in place for other professions and would give the providers greater surety that the course would be accepted by the regulator.

The advantage of not formally accrediting providers is that the Office of the MARA would not be required to administer a provider accreditation scheme. The disadvantage is that the Office of the MARA would have to rely on the AQF accreditation processes as the sole basis of provider quality assurance while bearing the risk of registering individuals who may not be competent.

### ***Course accreditation***

#### ***Option 1 — accredit course***

The Office of the MARA may choose to accredit certain courses by evaluating courses against the competency standards and prescribing them under its powers. Under this approach more than one prescribed course might be available to students if universities and other providers chose to develop and offer them. This option is already available

#### ***Option 2 — do not accredit course***

The Office of the MARA could choose not to accredit the course. Obviously, this would represent a move away from the arrangement of a prescribed course. Under this option, the Office of the MARA could accredit providers, and having done this, leave them to develop and deliver the course.

### ***Comment on the options***

The advantage of course accreditation is that the Office of the MARA can directly influence and oversee course content. As with provider accreditation, the disadvantage is that this can require a significant administrative commitment — although if managed well this burden can be contained. As the option indicates, there is a continuum of approaches to course accreditation that vary in the extent of direction they apply to the course and the course provider. As with provider accreditation, the approach envisaged would be different to the current approach, although typical of that in place for a number of other professions.

### ***Program provision***

It would not be appropriate or viable for the Office of the MARA to deliver a course, as this would conflict with its current regulatory role and move it into an area beyond its expertise. Therefore, the only option considered viable is for the course to be provided by external AQF accredited providers. A subtle distinction is whether these providers would be both AQF accredited and the Office of the MARA accredited or just AQF accredited (this was described further in relation to provider accreditation). As explored in the other options, this is presently through a prescribed course arrangement with four higher education providers but there are varying approaches that may result in more or less providers under different arrangements.

### ***Assessment of students***

#### ***Option 1 — common assessment items***

This option involves the providers having certain items of common assessment. As is presently the case, all students undertaking the graduate certificate have certain common assessment items on which they are tested regardless of the institution they are attending.

#### ***Option 2 — moderated assessment***

A moderation process typically requires institutions to subject assessment outcomes to review by other providers so that assessment outcomes are as consistent as possible across providers, as occurs in the current arrangements.

#### ***Option 3 — solely provider assessment***

Having accredited providers and/or courses, the Office of the MARA could accept the assessment undertaken by the providers. This option may stand alone, may be combined with common assessment items, but not with moderated assessment. A further variation is that the Office of the MARA could specify the assessment framework (e.g., relative weighting and forms of formative and summative assessment) but leave the formulation and conduct of these assessment items to the providers.

#### ***Option 4 — MARA administered assessment***

If the Office of the MARA does not regard the qualification outcome as sufficient for the purposes of registration it would need to establish its own assessment criteria and assessment processes for the purposes of registration (in the same way as some of the medical colleges as outlined in Appendix A).

### *Comment on the options*

The advantage of common assessment items is that it introduces a level of commonality to assessment. This would give the Office of the MARA some assurance that all providers are preparing students for assessment in those areas. Also, comparison of common assessment results may give the Office an indication of provider effectiveness. The disadvantage of this approach is that it requires the Office of the MARA to be involved in coordinating the development of common assessment items. At a minimum, this is an administratively involved process, of more significant concern; it could draw the Office of the MARA into an area beyond its scope of expertise.

The relative advantages and disadvantages of moderated assessment are similar to those of common assessment. While it may provide a more equitable assessment outcome, it does require a high level of effort and cooperation between the providers. It is important to ensure that the benefits accruing from moderated assessment, are sufficient to justify this effort. Moderated assessment may draw the Office of the MARA into an area beyond its expertise, depending on the role that it plays in the process. Although moderated assessment is not considered a necessary part of the framework, if new providers are added and the total number of providers increases, the Office of the MARA may want to reconsider this issue.

The advantage of solely provider assessment is that it leaves assessment to the ‘experts’ in the form of the education providers. Consequently, the Office of the MARA does not need to involve itself in the assessment process. The disadvantage is that this may result in significant disparities in the approaches to assessment between providers. An approach where the Office of the MARA provides a framework for assessment, but then leaves assessment to the providers, could satisfy the Office of the MARA’s requirement for consistency, while absolving it from direct and detailed involvement in the assessment process.

The advantage of the Office of the MARA administered assessment is that it would give the Office greater certainty that its registration requirements were being met. The disadvantage is that it would require the Office of the MARA to establish a specialist function to undertake this role and would result in cost increases to either students (if they pay to sit the test) or the Office of the MARA or both. Both industry bodies and providers would probably resist the option. It is also highly dependent on the registration model adopted.

### *Qualification issuing*

Just as it is not appropriate for the Office of the MARA to deliver a course, it is not possible for it to issue a qualification. Therefore, options are not explored for qualification issuing beyond having course providers issue the qualifications.

### *Registration of individuals*

#### *Option 1 — course is sufficient for registration*

The Office of the MARA could view the course as being sufficient evidence of competency for the purposes of registration — as is currently the case<sup>2</sup>. In a system reflecting good practice, this would mean that:

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<sup>2</sup> There are other requirements for registration but these are not competency based with the possible exception of the English language requirement.

- the course includes both knowledge and practice requirements, so the Office of the MARA is satisfied both of the candidate's knowledge and their practical skills; and / or
- a tiered registration scheme is in place, so the course leads to provisional registration rather than full registration and during the period of provisional registration the agent must be supervised by a registered migration agent.

#### *Option 2 — additional requirements needed for registration*

The Office of the MARA could view the course as being a step towards registration or it could result in provisional registration. Completion of the course would satisfy knowledge requirements but not all practice requirements. To meet practice requirements, the individual would undertake supervised practice with a registered migration agent. There could be a parallel pathway for individuals unable to find a suitable placement, such as simulated practice. Once the practice requirements were also met, the person would be eligible for registration.

#### *Comments on the options*

The advantage of the course being sufficient for registration is that competency standards are contained within the course. This in turn avoids the need for migration agents to identify supervised practice opportunities, which may be limited given the large number of sole practitioners. This could result in a situation where many agents are 'stranded' on provisional registration and unable to achieve full registration.

The advantage of stipulating supervised practice, is that the Office of the MARA would have a high level of confidence that registered migration agents are competent in all facets of the profession. A further advantage, although it could take some time achieve and cause some upheaval, is that this could lead to a greater sense of professional community, and over time, greater industry consolidation. The disadvantage is that — as with tiered registration — it may not be practical to impose a requirement over and above the course due to the structure of the industry.

#### *Continuing professional development*

CPD is beyond the scope of this review. As stated in Chapter 3, good practice is for this to be tied directly to ongoing demonstration of competency, based on the competency standards.

#### *Ongoing registration*

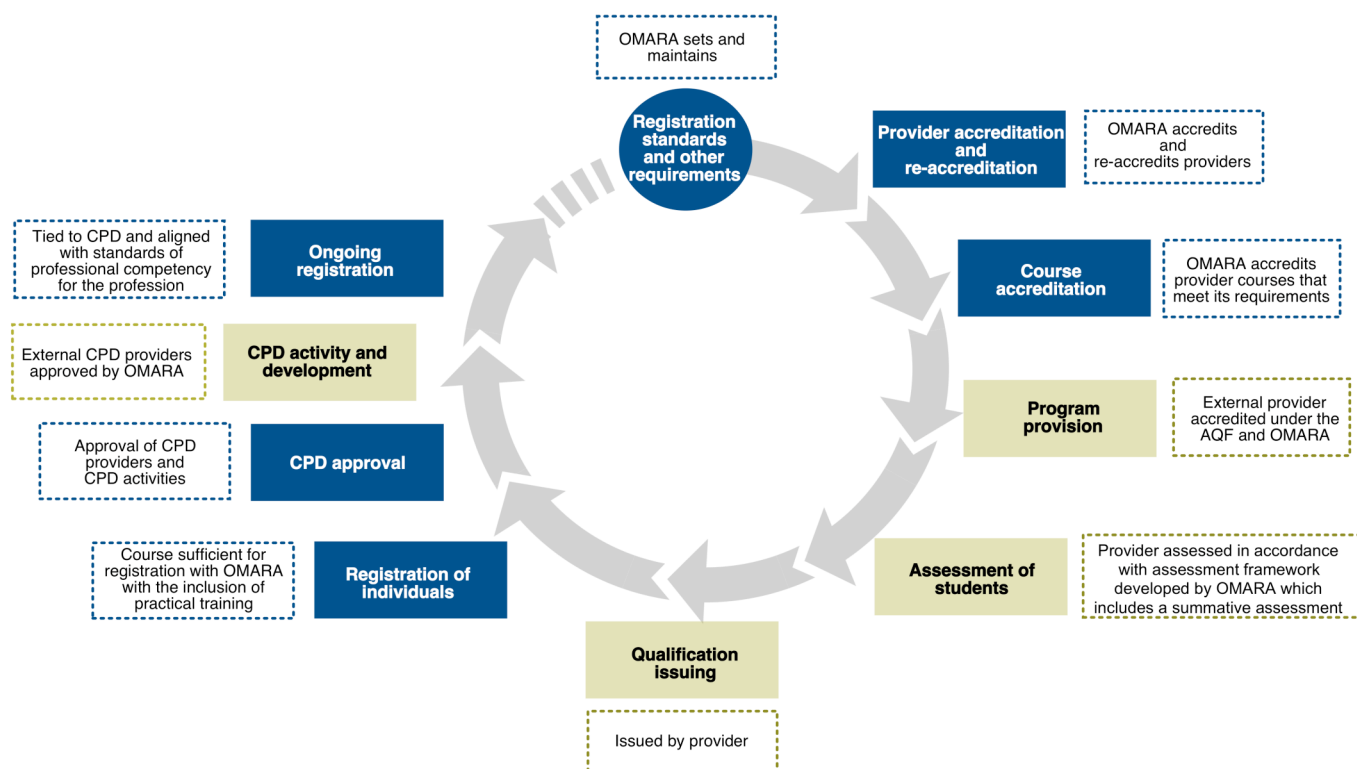
Ongoing registration is beyond the scope of this review. As stated in Chapter 3, good practice is for renewal of registration to recognise CPD and accumulation of experience, which may be reflected in some form of professional recognition or tiered registration.

### **7.2 Preferred option**

Figure 7.1 provides an overview of the preferred option for each element of the professional registration scheme diagram within the scope of the review. Taken together, this represents a recommended new framework for registration — and for course development. The preferred option should be considered in conjunction with the overall findings and recommendations of the review, the suggested attributes and competences and the advice regarding transition arrangements.



Figure 7.1

**PREFERRED FRAMEWORK FOR REGISTRATION AND COURSE DEVELOPMENT**

1) Steps highlighted in blue are the direct responsibility of OMARA.

2) CPD: continuing professional development.

Source: The Allen Consulting Group

Key features of the recommended approach include those described below, further detail on transition arrangements is provided in Chapter 9.

### *Competency standards for registration and other requirements*

In our view new competency standards need to be developed for the migration agent profession. These should then underpin courses and assessment requirements for the learning outcomes. Chapter 8 has suggested competencies and attributes for this purpose.

### *Provider accreditation, re-accreditation and course accreditation*

In the short term, the Office of the MARA should proceed with current arrangements but improve the existing graduate certificate course. Areas for improvement include incorporating a work placement / supervised practice requirement, reworking the listed competencies, ensure that the course is providing adequate technical knowledge of visas.

Beyond the short term, the Office of the MARA should accredit providers and courses that have met the Office of the MARA guidelines for the provision of a course designed to provide migration agents with entry level knowledge and competency.



If the existing regulatory framework is in place, this would then be the ‘prescribed course’ as per the existing regulatory framework. Over time, the prescribing of a course may not be considered necessary, and the Office of the MARA could transition to a course and provider accreditation model, although this would require legislative amendment.

### *Registration of individuals*

In the short term, the course will continue to be sufficient for meeting the competency requirement for registration, but the course will be more comprehensive and include more practical training. This will mainly be achieved through the assessment framework that will have a significant weighting towards summative assessment in order to meet the course requirements and simulated practice. Over time, the Office of the MARA could introduce tiered registration, under which course completion would lead to provisional registration. However, given the structure of the industry it is unlikely that this could be completely reliant on supervised professional practice — it would also need to recognise other forms of practical training.

## Chapter 8

# Migration agent attributes and competency standards for registration

*This chapter provides suggested migration agent attributes and competency standards, which once finalised by MARA in consultation with industry, should form the basis of migration agent registration and guide course content.*

### 8.1 Purpose of the attributes and competency standards

As identified in Chapter 3, good practice is for professional registration to be based on an agreed set of competency standards. The preferred option outlined in Chapter 7 emphasises the need for the Office of the MARA to develop new standards as the basis for registration. The competency standards also provide the basis for the Minister for Immigration to prescribe the course or courses. In the event that a course accreditation model replaces the currently legislated prescribed course model, the standards will provide a basis for course accreditation. Whether the course is prescribed or accredited, the providers will be required to satisfy the Office of the MARA that their course is producing individuals who are competent in the specified standards.

Although competency standards were developed in 2005, the awareness of these standards is low. The benefits of setting new standards and having a competency based approach to registration include the following.

- Provide a basis for agreeing common professional standards with the IAA in New Zealand for the purposes of mutual recognition.
- Allow the Office of the MARA flexibility in recognising competency that is proven in ways other than through the course, such as through work experience, the completion of relevant training programs and other relevant professional qualifications. A corollary benefit of this flexibility is that a significantly more costly minimum requirement is not imposed universally.
- Provide a basis for development of the migration agent profession, as it is recommended that the attributes and competency standards described here be used as a basis for consultation so that an agreed set of standards can be finalised.

While the competency standards for registration propose minimum requirements for a migration agent for the Office of the MARA's purposes, they are not intended to limit the scope of courses, professional development or the ongoing development of the profession. On the contrary, the standards will provide a basis upon which professional practice can be built.

### Terminology

The terms of reference in the form of the project brief issued by the Office of the MARA require the development of 'the attributes and competency standards that a registered migration agent should have on initial application for registration'.

As described in Chapter 3, competency standards is the description generally given for the purpose of identifying the personal characteristics that contribute to professional competency and specifying how those characteristics are reflected in competent performance (Heywood et. al. 1992).

On that basis, this chapter is concerned with an overall framework of competency standards for registration for entry level migration agents.

As shown in the framework, this is comprised of the following elements, each of which is described in further detail below:

- *competency standards for registration*: this refers to the roles and functions a competent person needs to be able to perform, as distinct from what qualifications they need to hold, in order to meet the requirements for registration with the Office of the MARA;
- *units of competency*: the first subdivision of overall competency, which reflect the major functions undertaken by professional migration agents;
- *performance and knowledge requirements*: these are the elements of each unit of competency, which describe in more detail what migration agents are required to do, and are at a level of detail that can be assessed;
- *underpinning knowledge*: is the knowledge that a migration agent requires in order to competently perform their role. This is expressed as being required across the client cycle because a migration agent will draw on this knowledge throughout their interactions with each client.
- *attributes*: are personal characteristics and abilities that an agent will require in order to competently perform their role. The attributes are expressed as being required across the client cycle because a migration agent should demonstrate these attributes throughout their interactions with each client.

Both the underpinning knowledge and attributes complement the performance and knowledge requirements: which are a subset of the units of competency.

## **8.2 Attributes and competency standards for registration**

The framework set out in Table 8.1 has been developed. Each element of the framework is described in further detail below.

Table 8.1

**ATTRIBUTES AND COMPETENCY STANDARDS FOR REGISTRATION**

COMPETENCY UNITS	PERFORMANCE AND KNOWLEDGE REQUIREMENTS	UNDERPINNING KNOWLEDGE	ATTRIBUTES
Commence services for client	<ul style="list-style-type: none"> <li>Advise clients of costs and services and provide statement of service</li> <li>Ensure client has access to and understands Code of Conduct</li> <li>Initiate client file</li> <li>Successfully identify the needs of clients</li> <li>Ensure clients provide full and accurate information to support application</li> <li>Identify and select relevant visa category/ies or other lawful immigration pathways</li> <li>Assess client's rights, obligations and advise on merits of application</li> </ul>	<ul style="list-style-type: none"> <li>Australian constitution and relevant legal framework</li> <li>Australia's migration system</li> <li>Migration Act 1958 and relevant treaty obligations</li> <li>Migration Regulations</li> <li>DIAC policies, guidelines and procedures</li> <li>Code of Conduct</li> <li>Visa subclasses and relevant schedule criterion</li> <li>MARA registration, CPD and re-registration requirements</li> <li>Tribunal hearing processes and requirements</li> <li>Skills in demand list</li> </ul>	<ul style="list-style-type: none"> <li>Consistent demonstration of ethical behaviour/ethical requirements</li> <li>Written and verbal English language proficiency to required standards</li> <li>Capacity to utilise information and communication technology, including relevant websites</li> <li>Capacity to monitor changes in legislation, guidelines, policies and procedures</li> <li>Capacity to navigate legislation, interpret policy and procedures</li> <li>Capacity to access specialist services – translation, legal</li> <li>Cross-cultural communication and interpersonal behaviours</li> <li>Capacity to meet required timelines</li> </ul>
Prepare and lodge submissions	<ul style="list-style-type: none"> <li>Identify, assemble and prepare relevant documentation</li> <li>Interpret and apply evidence to support application / submission</li> <li>Identify and access specialist advice where required</li> <li>Complete and lodge application in accordance with the law, policy, procedures and timeframes</li> </ul>		
Advising clients of progress and outcomes	<ul style="list-style-type: none"> <li>Monitor progress</li> <li>Monitor changes to relevant law or policy and advise client accordingly</li> <li>Provide supplementary information where required</li> <li>Evaluate outcome for subsequent action</li> <li>Advise client of outcome in an appropriate and timely manner</li> <li>Complete file for application process where successful</li> </ul>		
Prepare appeals and represent clients at hearings	<ul style="list-style-type: none"> <li>Advise client of appeal process and requirements</li> <li>Identify, interpret and apply relevant case precedents (and other legal principles)</li> <li>Prepare appeal / submission documentation</li> <li>Effectively represent clients at relevant review tribunals or to the Minister</li> <li>Complete client file and cease services appropriately</li> </ul>		
Work management and business skills	<ul style="list-style-type: none"> <li>Manage personal time</li> <li>Manage risk</li> <li>Manage client files and maintain accurate record of all client interactions</li> <li>Invoice clients accurately and appropriately</li> <li>Identify personal and professional development needs and plan learning program</li> <li>Maintain and use a professional library</li> </ul>		

NOTE: should be read in conjunction with the Code of Conduct for migration agents

### 8.3 Structure of the framework

The framework is based on a cycle of work that a migration agent undertakes for a client. The benefits of this approach are that:

- it provides a comprehensive description of the performance requirements of a migration agent; and
- it discourages repetition as most performance requirements are more likely to be prominent at a particular stage of work for a client.

In considering the framework, these important points should be recognised.

- While many performance requirements will be more prominent at a particular stage of client engagement, they may occur throughout interactions with a client. To minimise repetition, the framework lists a performance standard alongside the unit of competency considered most relevant. This is appropriate, because the purpose of the framework is not to list every task that a migration agent could conceivably perform. Rather, it is to comprehensively describe the range of performance standards: *the main point is that a standard is listed*, not that it be listed alongside every unit of competency in which it could be performed.
- The units of competency and performance and knowledge requirements should capture all of the standards that a competent agent meets. Although based on a client cycle, this *should not be taken to mean that the framework assumes that all competency standards will be required for all clients*. Clearly, while an agent must be competent in representing a client before an immigration tribunal (as they are authorised to do so under the Act), this will not be necessary for all, or even most, clients.
- Although the first four units of competency listed are based on a client cycle, the final unit ‘work management and business skills’ runs across all phases of a migration agent’s work and client interactions. This can be seen as an underpinning unit of competency, and consequently it has similarities with the attributes that are required across all units. It has been listed as a competency in its own right to *recognise the importance of migration agents being competent in running of a migration agent practice*, given that such a high proportion of agents are sole practitioners.
- While the framework should be read in conjunction with the Code of Conduct, and in many areas the performance and knowledge requirements draw on the code, the documents should be seen as having a distinct purpose. The *framework is not attempting to summarise or re-package all elements of the code*, but it recognises that an ethical agent should at all times comply with the code and the underpinning knowledge requirements include the code.
- The framework is *presented as a starting point for further development*, which should involve extensive consultation with the profession and stakeholders. Chapter 9 considers transition arrangements.

The specific components of the framework are described further below.

## 8.4 Competency units

### *Commence services for the client*

The first competency unit reflects the beginning of the cycle of client interaction. The rationale for the performance and knowledge requirements listed is as follows:

- **Advise clients of costs and services and provide statement of service:** as stated in the code, before starting work for a client a migration agent must give the client an estimate of fees and the time likely to be taken in performing a service (Code of Conduct Part 5) in the form of a statement of service.
- **Ensure client has access to and understands the Code of Conduct:** the client is made aware of the code, thereby providing a link in practice between the code and the competency standards. The agent is to clearly identify and avoid potential conflict of interest situations and consistently demonstrate ethical behaviour.
- **Initiating client file:** the agent is to maintain accurate and comprehensive files and in initiating a file, the agent should comply with the record keeping and management requirements of the code (Part 6).
- **Successfully identify client needs:** the agent is to clearly establish the client's requirements so the agent can provide advice and services to meet those needs.
- **Ensure clients provide full and accurate information to support application:** the visa application must contain correct information, to minimise the risk of subsequent complications or delays related to the application.
- **Identify and select relevant visa category/ies or other lawful immigration pathways:** the best suited visa category or categories must be considered and chosen, to meet the client's needs and avoid problems that may arise in the future due to an inappropriate visa category being selected. The reference to other lawful immigration pathways is for completeness, as an agent may assist with a submission to the Minister for Immigration.
- **Assess client's rights, obligations and advise on merits of application:** both the rights of the client and their obligations are to be considered. An accurate assessment of the merits of the application is to be provided, including an indication of whether, in the agent's professional opinion, the application is expected to succeed.

### *Prepare and lodge submissions*

- **Identify, assemble and prepare relevant documentation:** an agent is to select and complete the appropriate documents, including the visa application, any other DIAC forms and documents required from the client to support the application.
- **Interpret and apply evidence to support application / submission:** an agent requires the ability to understand what supporting evidence is relevant and why it is relevant. This includes cross referencing this evidence on the application as needed.

- **Identify and access specialist advice where required:** an agent requires the ability to identify when specialist advice is needed — because the application has elements beyond the knowledge and experience of the agent — and how to obtain and use the advice. The advice is likely to be specialist immigration law advice but could be other forms of professional advice.
- **Complete and lodge application in accordance with the law, policy, procedures and timeframes:** an agent must finalise the completed application in a manner that accords with all of the requirements imposed on a migration agent.

#### *Advising clients of progress and outcomes*

- **Monitor progress:** the agent is required to monitor progress of the application, this may be done electronically for certain visa classes or by periodic follow up with DIAC at appropriate intervals for other visas.
- **Monitor changes to relevant law or policy and advise client accordingly:** agents need to be cognisant of changes in the policy environment, which may impact on their clients and take appropriate action as required.
- **Provide supplementary information where required:** an agent needs to provide additional information to the client relating to their application if and when such information comes to hand.
- **Evaluate outcome for subsequent action:** an agent is to consider how the application outcome may provide lessons for the agent in representing other clients.
- **Advise client of outcome in an appropriate and timely manner:** an agent needs to immediately inform the client of the outcome of their application.
- **Complete file for application process where successful:** in the event that the application is successful and the representation of the client concludes, appropriate steps should be taken to finalise the file (see work management and business skills for invoicing).

#### *Prepare appeals and represent clients at hearings*

- **Advise client of appeal process and requirements:** in the event of an appeal, the agent advises the client of the process and what will be required of the client throughout the process.
- **Identify, interpret and apply relevant case precedents (and other legal principles):** the agent must be able to look up relevant case law or other legal principles (such as those established by common law) to support an application or an appeal. Although this will be necessary in an appeal situation, it may also be required for other applications.
- **Prepare appeal / submission documentation:** the agent is to select and complete the appropriate documents, including the visa application, any other DIAC forms and documents required from the client to support the appeal or submission.

- **Effectively represent clients at relevant review tribunals or to the Minister:** if a migration agent appears to a tribunal or before the Minister or his representative, that they must serve the best interests of their client by representing them as effectively as possible.
- **Complete client file and cease services appropriately:** upon a determination being made, appropriate steps should be taken to finalise the file (see work management and business skills for invoicing).

### ***Work management and business skills***

- **Manage personal time:** reflects that an agent is required to use a diary or other system to record time limits or deadlines and to assist in planning work; to manage conflicting priorities as they arise and to use available time effectively both for the agent and the client.
- **Manage risk:** the agent is to conduct each matter in a way that minimises risk to the client, agent or firm arising from such issues as missed deadlines or failure to comply with the requirements of the law or policy. An agent must recognise the limits of their expertise and seek specialist advice as the circumstances require.
- **Maintain an accurate record of all client interactions:** the agent is to use a file management system to ensure that accurate records are maintained, including accurately recording all communications and attendances (see Part 6 of the Code of Conduct).
- **Invoice clients accurately and appropriately:** maintain accurate and appropriate accounts and where relevant a client's account (Part 7 Code of Conduct) until such time that the agent has completed the services that comprise the work for that client and an invoice has been issued to the client for the services. The invoice should reflect accurately the terms agreed with the client in accordance with the statement of service.
- **Identify personal and professional development needs and plan learning program:** an ongoing commitment to professional development is required to ensure that agents are maintaining and developing competency throughout their career.
- **Maintain and use a professional library:** the maintenance and use of a professional library is a requirement of registration and provides agents with the resources needed to fulfil many of the other performance and knowledge requirements. Two such library database products are known to exist: Legend and Nexis Lexis.

## **8.5 Assessment**

In registering a migration agent, the Office of the MARA needs to be satisfied that a migration agent can perform at the standard required. To achieve this, performance criteria and assessment is required. Performance criteria express what a competent migration agent would do in terms of observable results or behaviour. The Office of the MARA needs to be satisfied that the assessment of performance provides it with a sound basis for registration.



### **Assessment considerations**

Characteristics of the migration agent profession, such as the high proportion of sole practitioner agents and the significant level of turnover, have implications for assessment.

As the preferred option outlined in Chapter 7 describes, it is recommended that completing the prescribed course to a satisfactory standard be sufficient for registration. This is recommended because, while registration would ideally require a period of supervised practice, this is not considered practical at the present time.

Because completion of the course will lead to a migration agent being registered, and therefore considered competent to practice, the assessment of candidates undertaking the course is extremely important. Assessment needs to confirm that integration of theory (knowledge) and practice in an applied environment has been achieved. This will occur through a set of specific assessment tasks related to the performance and knowledge requirements in the standards.

The assessment requirements need to ensure that the Office of the MARA can be satisfied that the person is competent. Assessment needs to be sufficiently rigorous so as to place a high burden on the candidate to demonstrate competency across the range of performance and knowledge requirements. A significant summative component will be needed to achieve this. A possible model is the incorporation of capstone assessment, as described below.

Capstone assessment is a course in which students undergo a cumulative experience — the purpose of the course is to apply what has been learned in a course or to engage in an experience that summarises what has been learned as a result of successful enrolment in a program (Indiana State University n.d.). Capstone assessment can take the form of a final examination or a capstone project or both. While this co-exists with formative assessment, the purpose of the formative assessment is for students to demonstrate they are progressing adequately. However, only meeting a satisfactory standard in the summative capstone assessment is sufficient to meet the course requirements.

An example of capstone assessment as a precursor to meeting professional licensing requirements in Australia is trainee electricians. As the National Uniform Electrical Licensing Council (NUELAC) explains, ‘successful completion of the capstone assessment is one of the cornerstone requirements for the issue of an Electrician licence’.

Such an approach could be accommodated in the existing regulatory framework. At present, common assessment items are built into the prescribed course. The common assessment items could comprise the capstone assessment requirements.

## **8.6 Comparison of proposed framework with current prescribed course**

The current course does not provide the Office of the MARA with a clear basis for registration. Even if the issues identified below were resolved, this would not change this observation.

The proposed framework needs to provide a solid foundation for the Office of the MARA to register agents, and in so doing certify them as being at an entry level of competency.

Awareness of the competency standards developed in 2005 is low, which means that it is not clear whether they are used as the basis for the outline or content of the current course. The discussion below describes the limitations of the current course outline and compares the course content with the proposed competency standards.

### **Design**

Presently, 32 learning outcomes are described. Out of these, 25 listed learning outcomes cover only nine actual learning outcomes. Consequently there are in fact only 16 learning outcomes in the current course outline.

Further complicating the outline, the repeated learning outcomes are given different assessment weightings across the subjects. This in turn makes the design of assessment instruments relatively complicated.

### **Clarity**

In a robust framework, the learning outcomes would be assessable for registration purposes. The wording of some current learning outcomes is such that the Office of the MARA could not assess them, or they could be open to challenge in the event of a dispute, for example a migration agent could ‘discriminate between ethical and unethical operational practices’ but still act unethically.

### **Comparison with proposed competency standards**

#### ***Areas of competency and attributes that are under-represented in the course outline***

Compared with the draft competency standards, the current course has reasonably strong coverage of the first two units (*provide accurate and impartial advice to clients* and *prepare and lodge submissions*), but appears to have less coverage of the final two units (*advise clients of progress and outcomes* and *prepare appeals and represent clients at hearings*).

#### ***Underpinning knowledge and attributes that could be added to our draft attributes and competency standards***

The current course includes a learning outcome to *operate a professional migration business* and another to *identify personal and professional development needs and plan learning program*. These could be included as an attribute described as *work management and business skills* (as used in the competency standard for entry level lawyers).

The course includes a learning outcome regarding the history of immigration in Australia and its contribution to the philosophy of the migration agents’ profession. This could be included in underpinning knowledge in the suggested framework.

## Chapter 9

# Transition arrangements

*This chapter provides advice on the transition required to implement the recommendations*

### 9.1 Regulated requirement

Section 289A of the Act establishes that registration as a migration agent requires the Office of the MARA to be satisfied that the applicant ‘has completed a prescribed course within the prescribed period and has passed a prescribed exam within the prescribe period; or holds the prescribed qualifications’.

Section 5 of the Migration Agents Regulations 1998 states that the prescribed course and prescribed exam are specified by the Minister in an instrument in writing; the prescribed period is 12 months and a current legal practising certificate is prescribed.

The current instrument commenced from 1 October 2006 and specifies the common assessment items of the Graduate Certificate in Australian Migration Law and Practice at the four current providers, as a prescribed exam for the purposes of the regulations.

### 9.2 Overall objective

The overall objective of this advice on transition arrangements is to initially work within the current prescribed course model in a way that positions the Office of the MARA and the migration agent profession to transition to a provider and course accreditation model based on competency standards for registration. This enables improvements to be made soon, and also ensures that the profession is well placed to move to this model, acknowledging that this will require legislative amendment.

As the description of the preferred option in Chapter 7 states:

- In the short term, the Office of the MARA should proceed with current arrangements but improve the existing graduate certificate course. Areas for improvement include incorporating a work placement / supervised practice requirement, reworking the listed competencies, ensure that the course is providing adequate technical knowledge of visas.
- Beyond the short term, the Office of the MARA should accredit providers and courses that have met the Office of the MARA guidelines for the provision of a course designed to provide migration agents with entry level knowledge and competency.

While this discussion identifies the key steps and risk management considerations required for transition, it *does not represent a detailed transition plan*. If the recommendations of this report are accepted, the Office of the MARA will need to develop a detailed plan.

### **9.3 Priority steps**

It is recommended that the Office of the MARA adopt the following transition strategy to the new framework:

- review the Office of the MARA capacity to implement the new framework;
- brief key stakeholders on the revised arrangements;
- invite universities and non-self accrediting higher education institutions (including prospective institutions such as firms and professional bodies) to submit course and provider accreditation proposals; and
- establish course and provider accreditation panels to make recommendations to the Office of the MARA. The panels will comprise persons with expertise in the work of migration agents and a detailed understanding of the Office of the MARA registration process and persons with expertise in delivery and assessment of higher education courses. Higher education quality assurance bodies (where relevant) should be invited to participate in the panels to streamline AQF and the Office of the MARA accreditation processes.

### ***Consultation and development***

The suggested new competency standards for registration proposed in Chapter 8 should be viewed as an initial proposal for consultation. The development of competency standards for registration should be a consultative process involving the profession and stakeholders. The typical steps in the process are described below, noting that the sequence and exact mechanisms may vary depending on the specific industry conditions:

- decision to establish standards (subject to acceptance of the recommendations of this report);
- initial draft of competency standards (this report);
- establish expert panel(s);
- workshop with panels to refine draft competency standards;
- field testing or validation of draft competency standards involving practitioners;
- further workshop with panels;
- circulate proposed competency standards among stakeholders; and
- finalise standards.

The key elements of the process to be undertaken for migration agent competency standards for registration involve stakeholder consultation and the role of an expert panel.

### ***Stakeholder engagement***

While the Office of the MARA, as the body responsible for registering agents, has an appropriate role in driving the development of competency standards for registration, wider industry support is required if the benefits of the standards are to be realised. The expert panel alone will not provide a sufficient level of stakeholder engagement and this is not its primary purpose. Key stakeholders are migration agents, the representatives of migration agents (MIA and Migration Alliance, LCA), DIAC and the current course providers.

The process of stakeholder engagement involves these phases:

- communication of the intention to move towards a competency standards based approach;
- explanation of the benefits of this approach;
- the transition arrangements, including how the transition will work within the prescribed course model; and
- the proposed process for finalising the standards, including the formation of a technical committee and the opportunity for stakeholders to comment on the draft standards.

#### *Expert panel*

The expert panel should comprise approximately three migration agent practitioners of high standing and extensive experience. The panel should separately consider the draft competency standards for registration and, having each formed an independent view, come together and discuss the draft in order to develop an improved version. The Office of the MARA should provide the panel with information to assist it in carrying out its responsibilities.

#### *Involvement of the current course providers*

Although the competency standards for registration will inform course curricula they should not be viewed as a curriculum document. It is desirable to retain a clear distinction between course content and competency standards for registration.

Therefore, while a person who has been involved in delivery of the current course may be involved on the technical panel, the panel should have a clear understanding of the distinction between the standards and a curriculum.

### **9.4 Transition to a course accreditation model**

Transition to arrangements based on competency standards that are clearly used as providing the basis for registration will take some time and needs to be considered in the context of higher education providers planning course content.

There are three key transition phases.

- Phase 1: the Office of the MARA provides current course providers the option of continuing with the prescribed course or allowing universities to submit their proposed course for consideration against the standards.
- Phase 2: Move to the new arrangements, which will involve the Office of the MARA publicising new standards; setting the fees that providers will be required to pay for accreditation; and establishing the process to constitute the accreditation assessment panel.
- Phase 3: Having accredited course providers, the Office of the MARA moves into the accreditation management phase.

## **9.5 Risk management**

As with any change process, there are risks. The main risks identified are as follows. The Office of the MARA will need to develop a risk strategy, and in so doing may wish to include other risks that it identifies:

- the Office of the MARA has difficulty engendering support for a competency standards based approach among migration agent representatives;
- the standard setting process takes longer than hoped;
- loss of provider expertise, particularly if the current providers do not continue to provide the course;
- reduced control over quality standards in course provision; and
- the industry does not develop in such a way that allows for more supervised practice to be incorporated.

## Chapter 10

# Findings and recommendations

*This chapter describes the findings and recommendations of the review.*

### 10.1 Summary of key findings

Based on our analysis the review's major findings are that:

- The Office of the MARA currently lacks a clear and integrated framework to assess the knowledge and ability requirements of migration agents for the purposes of initial and ongoing registration of agents.
- The Office of the MARA's role in that framework should focus on its statutory roles in terms of protecting the public interest and not areas beyond its expertise. This role should not become confused with the broader development of the migration agent profession (which is the responsibility of professional and industry bodies, employers and individual agents).
- The Office of the MARA does not have specific competency standards for registration of individuals as migration agents. The awareness of the competency standards developed in 2005 is low, which means that it is not clear whether they are being used as the basis for either the outline or content of the current course — or for the assessment of competency outcomes.
- The current prescribed course has the following weaknesses for the Office of the MARA's requirements:
  - the learning outcomes are not assessable for registration purposes and some are inappropriately worded; and
  - some areas of migration agent competency appear to be underrepresented.
- Many other areas of professional registration operate under models with the following features, and there is wide acceptance that these features reflect good practice:
  - competency standards for registration requiring relevant knowledge skills and attributes are set by the regulatory or professional body;
  - the process for developing competency standards for registration is transparent and awareness of the standards across the profession is high;
  - courses and providers are accredited by the relevant regulatory or professional body and often under the requirements of the AQF; and
  - AQF qualifications are used as evidence that registration standards have been achieved (although in some instances supervised practice/additional experience is required prior to full registration).
- Other countries have different registration models for the equivalent of migration agents: in the United Kingdom and New Zealand, requirements for registration are based on specific minimum competencies, Canada has the equivalent of a prescribed course but this is combined with an entrance examination.

- The requirements for initial and ongoing registration should be distinct from courses leading to AQF qualifications that will enable learners to meet those requirements. At minimum, courses must meet the Office of the MARA competency standards for registration, but may include other areas of skills and knowledge, which are not subject to the standards. This may mean that courses leading to registration result in different qualifications.
- In our view the Office of the MARA should set the competency standards for registration and accredit courses delivered by accredited providers which are based on the standards. It is the role of others (self accrediting institutions or state registration bodies) to determine the appropriate qualification level (graduate certificate, graduate diploma etc.) of each course. Although it is legitimate for the Office of the MARA to stipulate that the qualification should, at a minimum, be at the graduate certificate level, there is no case to justify the Office of the MARA intervening to reframe the graduate certificate as a graduate diploma. In setting a minimum, providers may also offer qualifications at higher levels, such as graduate diploma and masters, as long as the Office of the MARA registration requirements are met.
- The review does not consider that the Office of the MARA should stipulate a graduate diploma as a minimum because:
  - the case for the knowledge requirement being at an ‘advanced’ level as distinct from ‘specialised’ has not been made;
  - mandating a minimum graduate diploma requirement would not be a well targeted way of resolving the issues identified and would impose a significant additional cost and time burden; and
  - although there is low awareness of the current standards, the review has been advised that the process of making those standards and developing the current course by the former MARA, resulted in a graduate certificate level qualification. It is premature to stipulate a different qualification level before the process of making new competency standards for registration has been undertaken.
- Furthermore, there is not a case to justify the Office of the MARA intervening to reframe the graduate certificate as an advanced diploma, or another VET qualification. Legal knowledge and concepts are a major focus of the knowledge requirements, such requirements are delivered through higher education providers, and therefore the course resides more comfortably as a higher education qualification rather than a VET qualification. However, in a competency based approach, in the event that a VET qualification is accredited (for example, by an employer of migration agents), the Office of the MARA could accredit and recognise this course and provider.
- Achievement of the Office of the MARA’s competency standards for registration should require acquisition of required knowledge and demonstrated application in the workplace or simulated workplaces across all required standards.



- It is open to professional bodies and universities to collaborate in course development and delivery and in areas such as assessment moderation, noting that in other areas professional and industry bodies have opted to become accredited education and training providers under the AQF. However, in exercising its statutory roles, the Office of the MARA should not confer an advantage on any individual body or bodies.
- Standards should be applied consistently across areas of professional practice including in the community and not for profit sectors.

## 10.2 Recommendations

### Framework

*Registration requirements set out in the Migration Act 1958 (and expanded on in the Office of the MARA Policy and Procedures Manual at paragraph 3.5.3.2.2) requires the Office to 'have the knowledge and ability to fill the position' for the purposes of initial and ongoing registration of Migration Agents and its statutory functions. The following recommendations provide a framework that gives effect to the policies and guidelines.*

*It is recommended that the Office of the MARA:*

- *as a model, endorses migration agent competency standards and assessment requirements which define the roles of migration agents, the standards at which those roles are required to be performed for the purposes of registration and the means by which the standards should be assessed;*
- *use the competency standards for registration as the basis for recognition of prior learning (or competencies) for mutual recognition with New Zealand and other countries as it considers appropriate;*
- *accredits proposed courses including assessment requirements and accredits providers for the purpose of the Office of the MARA's responsibility to provide a basis for the Minister's requirement to prescribe a course;*
- *requires courses and providers to also be accredited and registered under the requirements of the AQF, and for courses leading to registration by the Office of the MARA to be accredited at Higher Education Graduate Certificate level as a minimum (providers are able to offer courses at higher levels if they choose as long as the Office of the MARA registration requirements are met);*
- *recognises the qualifications issued by the Office of the MARA accredited providers as meeting the knowledge and ability requirements of initial registration;*
- *in circumstances where it reasonably believes that competence may not have been acquired for the purposes of initial registration or that agents may not 'have the knowledge and ability to fill the position' the Office of the MARA reserves the right to independently assess prospective migration agents against the standards for the purposes of initial registration and registered migration agents for the purposes of continuing registration;*
- *closely cooperates with higher education regulatory bodies (for non self accrediting institutions) and universities (for self accreditation) in undertaking its course and provider accreditation functions;*

- *endorses continuing professional development programs and activities that are directly linked to the Office of the MARA competency standards for registration;*
- *through its website, provides regular advice to providers, to students and registered agents on changes to the standards and interpretations of competency standards for registration to assist in preparing students for registration and to guide registered agents on changing competency standards for registration; and*
- *resources the implementation and operation of the framework on a fee for service basis through an application fee for providers and course accreditation, and an annual fee to maintain course and provider accreditation, noting that this requires legislative amendment.*

### **Draft competency standards for registration**

- *It is recommended that the Office of the MARA endorse the draft standards in Chapter 8, for consultation and further development prior to formal endorsement.*
- *It is recommended that the final competency standards for registration are published on the Office of the MARA website and that transparency be a feature of both the development and use of the standards.*

### **Transition**

*It is recommended that the Office of the MARA adopt the following transition strategy to the new framework:*

- *review the Office of the MARA's capacity to implement the new framework;*
- *brief key stakeholders on the revised arrangements;*
- *invite universities and non-self accrediting higher education institutions (including prospective institutions such as firms and professional bodies) to submit course and provider accreditation proposals;*
- *review the Office of the MARA Policy and Procedures Manual to give effect to the new framework under existing legislation; and assess the benefits of legislative amendment to reflect the framework in the Migration Act 1958;*
- *establish course and provider accreditation panels to make recommendations to the Office of the MARA. The panels will comprise persons with expertise in the work of migration agents and a detailed understanding of the Office of the MARA registration process and persons with expertise in delivery and assessment of higher education courses. Higher education quality assurance bodies (where relevant) should be invited to participate in the panels to streamline AQF and the Office of the MARA accreditation processes; and*
- *while undertaking the transition in the short term, the Office of the MARA should proceed with current arrangements but improve the existing graduate certificate course. Areas for improvement include incorporating a work placement / supervised practice requirement and ensure that the course is providing adequate technical knowledge.*

## *Appendix A*

# Occupational comparison

### **A.1 Education agents**

#### **Overview**

Education agents provide on and offshore advice to international students seeking to study in Australia. As many as one-third of all migration agents also serve as education agents (Horder 2007).

Education agents have been included in this comparison as they act as market intermediaries between international students and tertiary education institutions. Education agents also provide an interesting example of an occupation which has similarities to migration agents, but which is unregulated.

#### **Regulatory arrangements**

Currently education agents have no registration authority and no official professional body, apart from a voluntary registry (the Qualified Education Agent Counsellor Database, QEACD).

#### **Knowledge requirements**

Australian Education International (AEI) and DIAC, in collaboration with other relevant bodies, have developed an online Education Agent Training Course (EATC). This unit is an introduction to the legislation that regulates international education in Australia (Australian Education International, n.d).

### **A.2 Customs brokers**

#### **Overview**

Customs brokers provide assistance and advice on the customs clearance of imported or exported goods. A customs broker is a person who holds a broker's licence granted in accordance with Part Xi of the Customs Act 1901. Under the Act an owner of goods may appoint an agent, either an employee of the owner or a customs broker, to act on his or her behalf (Australian Customs Service 2007).

Customs brokers are a regulated profession and act as a market intermediary and have therefore been included in this comparison.

#### **Regulatory arrangements**

In Australia customs brokers are licensed by the Australian Customs Service and the majority are members of the Customs Brokers and Forwarders Council of Australia (CBFCA), the peak industry body representing these service providers.

#### **Knowledge requirements**

At present there are two approved courses that cover the learning required for customs brokers:

- specified units of a certificate IV course entitled *Australian and international trade facilitation*, provided by technical and further education (TAFE) institutions; and
- eleven competency standards, which will be available as part of a certificate IV course through TAFE or stand-alone competency standards through training providers (Australian Customs Service 2007).

In addition to the course, individuals seeking to become a licensed customs broker must demonstrate their operational competency by passing the national examination which is held twice per year (CBFCA n.d.).

It is possible to seek exemption from completing the approved course of study. Applicants seeking to do so may lodge an application for a licence together with evidence of the reasons for exemption from the approved course of study. Applicants seeking exemption must be able to demonstrate an extensive knowledge of all aspects of broker activity (Australian Customs Service 2007).

Before licensing is granted, documentary checks are conducted by customs. Once all documentary checks are completed, the application for licensing is referred to the National Customs Brokers Licensing Advisory Committee for approval (Australian Customs Service 2007).

### **A.3 Stockbroker**

#### **Overview**

Stockbrokers are professional agents who trade in financial securities. In order to trade in securities, stockbrokers must operate under an Australian Financial Services Licence (AFSL) (ASX Limited 2007).

Stockbrokers are included in this comparison due to the form of regulation of the profession, as well as their role as a market intermediary. Stockbrokers provide an example of a profession that does not have a prescribed course or prerequisite qualification, but instead has an industry set examination.

#### **Regulatory arrangements**

As a result of the Financial Services Reform Act 2001, providers of financial services in Australia are all drawn under one regulatory umbrella. Business must now operate under an AFSL regulated by the Australian Securities and Investments Commission, including financial planners and stockbrokers (Elliot May 2010).

Under the requirements of the 2001 Act, stockbrokers who are licensees are obliged to meet a large number of legal and regulatory requirements under the jurisdiction of the ASIC (Elliot May 2010).

#### **Knowledge requirements**

Educational requirements pertaining to stockbrokers are administered by ASIC. Regulation does not set out any specific educational requirements necessary for qualification for an AFSL (ASX Limited 2007). Rather, there is a professional service examination conducted by the industry body.

Also, a stockbroker holding an AFSL is responsible for notifying ASIC of educational qualifications and experience of any replacement officer or key person appointed to perform duties on behalf of the licensee with respect to its financial services business (ASIC 2010).

#### **A.4 Insolvency practitioner**

##### **Overview**

An insolvency practitioner includes a number of occupations such as a trustee in bankruptcy or liquidator. In Australia, insolvency practitioners are usually qualified accountants with experience in the administration of insolvencies (IPA 2004).

Practitioners are given extensive powers, including:

- to protect and preserve the assets of the insolvent from creditors pursuing their debts;
- compel individuals involved to answer and explain the circumstances of the insolvency;
- investigate and refer breaches of the law to appropriate authorities; and
- decide the claims of the various parties (IPA 2004).

Insolvency practitioners have been included in this comparison as their role as the profession is regulated and includes highly specific accounting knowledge. In some instances, practitioners also act as a market intermediary.

##### **Regulatory arrangements**

Registration of insolvency practitioners is controlled by ASIC and the Insolvency and Trustee Service Australia (ITSA).

ITSA is the government agency responsible for the administration and regulation of the personal insolvency system in Australia. Its purpose is to provide a personal insolvency system that minimises the impact of financial failure on the community, produces equitable outcomes for debtors and creditors and enjoys public confidence.

The requirements to become a trustee in bankruptcy or liquidator, are set by the regulators ITSA and ASIC, respectively.

##### **Knowledge requirements**

To register with ASIC as a liquidator an applicant must:

- be a member of an Australian accounting body (such as Chartered Accountants in Australia or Certified Practising Accountants Australia) listed in the regulations or an overseas accounting body, listed as part of the regulations;
- have a qualification that falls within the regulations from an Australian university or tertiary institution listed as part of the regulations; or
- have equivalent qualifications or experience, as set out as part of the regulations (ASIC 2005).

This registration process also includes a number of other requirements including being an Australian resident, having experience in winding up bodies corporate and being capable of performing the duties of a registered liquidator (ASIC 2005).

To become a registered trustee, with the ITSA, an applicant must lodge an application with the Inspector General in Bankruptcy. A committee including the Inspector-General, an officer of the Australian public service and a registered trustee (nominated by the Insolvency Practitioners Association — industry body), will consider the application and interview the applicant. The applicant may also be asked to sit an examination (ITSA 2008).

An applicant a qualification from an Australian university of either study in accountancy of not less than three years and the study of commercial law of not less than two years duration. Applicants also need to provide details of employment history and relevant experience in the insolvency field (ITSA 2008).

## **A.5 Estate agent**

### **Overview**

The real estate industry is regulated and includes several forms of regulation, including entry qualifications, registration requirements and business licensing. Regulation varies by state and territory, in this case we have used Victoria as an example.

Estate agents have been included in this comparison as the profession is regulated, agents act as a market intermediary and the role involves knowledge of relevant legislation, contracts and client interaction.

### **Regulatory arrangements**

The licensing regime for estate agents and employment of agents' representatives is set out in Part 3 of the *Estate Agents Act 1980* (the Act). Section 12 of the Act requires a person or corporation that acts as an estate agent or claims to be an estate agent to be licensed. Under Section 14, licences are restricted to those who address specific requirements.

To minimise the risk of fraud, licensing conditions prohibit certain persons from obtaining a licence. These include an insolvent under administration and persons recently convicted of certain offences.

The more relevant licensing criteria for this comparison relate to the training and experience requirements. These seek to ensure a minimal level of agent experience and training and thus alleviate instances of agent incompetence.

In this respect, applicants must satisfy two broad conditions in order to be eligible for a licence:

- they must currently or have recently held an estate agent's licence in Victoria, another Australian jurisdiction, New Zealand or other overseas country (and be able to demonstrate adequate knowledge of Victoria estate agency law); or
- they must have passed prescribed training courses and have been employed as an agent's representative during the previous three years for a period equivalent to one year full-time.

### **Knowledge requirements**

The *Estate Agents (Education) Regulations 2004* specifies a certificate IV training course, which must have been completed by an applicant in order to be eligible for employment as an agent's representative. The certificate course is a *Course in Property (Agent's Representatives)*, comprising 17 national competency standards.

Having completed the course, agents are required to undertake 12 months of supervised practice.

## **A.6 Conveyancer**

### **Overview**

A conveyancer is a person or company other than an Australian Legal Practitioner who carries on a conveyancing business. Conveyancers specialise in property law and have specific training and skills in all areas relating to the sale and purchase of real estate and related transactions. Specialist (or non lawyer) conveyancers are an accepted alternative to solicitors; although they must complete specific education requirements as well as a specialised program in order to receive professional and industry recognition that recognises them as a Certified Practising Conveyancer (CPC) (Australian Institute of Conveyancers 2010).

Conveyancers have been included in this comparison as their role involves detailed knowledge of a particular area of law, as well as being a regulated profession. Also, like migration agents, there are two pathways to entry, one for legal practitioners and one for non legal practitioners.

### **Regulatory arrangements**

Conveyancers are licensed and registered individually in each state and territory according to state legislation (excluding Queensland and the Australian Capital Territory, which do not have legislation permitting specialist conveyancers).

Victoria is used as an example in this case as it has recently reformed competency requirements for conveyancers.

In Victoria, Business Licensing Authority (BLA) Victoria is responsible for licensing and registering both companies and individuals carrying on a conveyancing business.

As of 1 July 2008, new laws came into effect requiring Victorian Conveyancers who are not Australian Legal Practitioners or Incorporated Legal Practices to be licensed with the BLA.

Between 1 July 2008 and 30 September 2008 transitional arrangements were in place. During this period two types of individual licences were available:

- an unrestricted/full licence where you have both the academic qualifications and conveyancing work experience; and
- a provisional licence, where you have not completed the required academic qualifications but have the relevant conveyancing business and/or work experience.

Following 1 October 2008 only unrestricted/full licences were available (BLA Victoria 2010).



### ***Knowledge requirements***

In order to become a Certified Practicing Conveyancer (CPC) in Victoria and achieve professional and industry-wide recognition, an applicant must:

- be licensed (unless a Conveyancer is an Australian Legal Practitioner or Incorporated Legal Practice);
- have the relevant academic qualifications and at least twelve months conveyancing experience to be eligible for a licence;
  - in Victoria, relevant qualifications include a Diploma of Financial Services (Conveyancing) ;
- undertake prescribed processes for carrying on conveyancing work including handling clients' money, managing a conveyancing business, disclosing information to clients and keeping records;
- abide by the rules of professional conduct for conveyancers; and
- undertake the CPC program, which encompasses:
  - required standards for professional training and qualifications; and
  - an ongoing professional development program.

## **A.7 General Practitioners (GP)**

### ***Overview***

General Practitioners (GPs) are often the first point of contact for the majority of people seeking health care, and provide primary medical care to individuals, families and communities around Australia. In 2008-09, there were approximately 25,700 accredited GPs providing primary care medical services (DoHA 2009).

GPs are included in this comparison due to the regulated nature of the profession. Of particular interest is that the specialist registration colleges are both the standard setting organisation as well as the training providers. Also, the health workforce is undergoing a significant process of reform regarding professional registration.

### ***Regulatory arrangements***

The registration and professional conduct of medical practitioners, including GPs, is regulated by specific legislation in each state and territory.

There are two colleges in Australia responsible for setting and arbitrating standards for the medical specialty of general practice. While they set standards, they are not the regulator, this role is performed by Medical Practitioner Boards.

- the Royal Australian College of General Practitioners (RACGP); and
- the Australian College of Rural and Remote Medicine (ACRRM).

Under national registration, GPs will be registered with the Australian Health Practitioner Regulation Agency.



### **Knowledge requirements**

In order to obtain vocational recognition as a GP under the *Health Insurance Act 1973*, registrars (trainees) must complete the Australian General Practice Training (AGPT) program either through the RACGP or ACRRM. The AGPT program is overseen and funded by General Practice Education and Training Limited (GPET), a wholly owned Commonwealth government body established in 2001.

This training is delivered through over twenty regional training providers (RTPs) across Australia, which promotes integration of general practice education and training. The RTPs deliver training towards two vocational endpoints recognised by Medicare Australia under the *Health Insurance Act 1973*: Fellowship of the Australian College of Rural and Remote Medicine and/or Fellowship of the Royal Australian College of General Practitioners. Rural RTPs also deliver training towards the RACGP's Fellowship in Advanced Rural General Practice (AGPT 2010).

## **A.8 Dentist**

### **Overview**

Dentistry is included in this comparison because it is a regulated profession. It has accredited education courses and minimum education standards. The Australian Dental Council's (regulatory body) relationship with the Dental Council of New Zealand also provides an example of effective mutual recognition arrangements, whilst maintaining quality in the profession, under the Trans-Tasman Mutual Recognition Act. Also, the profession has introduced national standards as the basis for registration and ongoing competency.

### **Regulatory requirements**

From 1 July 2010, the Dental Board of Australia took over the responsibility for the registration of dentists from state and territory dental boards. The Dental Board of Australia registration standards define the requirements that applicants, registrants or students need to meet to be registered. There are nine registration standards, which are published on the Dental Board of Australia website (<http://www.dentalboard.gov.au/Registration-Standards.aspx>).

The other regulatory body is the Australian Dental Council. It is responsible for the accreditation of dental and oral health education programs offered by Australian Dental Schools. Programs that meet ADC standards are granted accreditation. The purpose of accreditation is both to assure the quality of educational programs and to promote improvements in quality.

Under the Health Practitioner Regulation National Law Act 2009, there are four categories of dental practitioner registration: general, specialist, limited and non-practising. In addition, each state and territory has legislation to regulate the practice of dentistry.

### **Knowledge requirements**

The ADC website states that dentists trained in Australia must meet the entry requirements of one of the Australian institutions offering dental courses, and then complete the required full time academic training leading to a dental degree. If dentists wish to specialise they must complete extra study after having had clinical experience.

## *Appendix B*

# International comparison — analysis

## **B.1 United Kingdom — immigration advisers**

### ***Regulatory body***

In the United Kingdom, the Office of the Immigration Services Commissioner (OISC) is an independent, non-departmental public body set up under the *Immigration and Asylum Act 1999*. OISC's key responsibilities are:

- regulating immigration advisers;
- promoting good practice by setting standards;
- accepting and addressing complaints about anyone giving immigration advice;
- prosecuting those who operate outside of the law; and
- oversight of the regulation of those who give immigration advice and are regulated by one of the designated professional bodies (such as law societies).

### ***Immigration advisers***

Immigration advisers in the UK are either registered advisers or exempted advisers. Registered advisers charge a fee for immigration advice and the services they provide, while exempted advisers are organisations that do not charge a fee for immigration advice and the services they provide.

However, not all immigration advisers are regulated by the OISC. Members of certain professional bodies may give immigration advice without registering with the OISC such as a regulated solicitor, barrister or legal executive, or those exempted by Ministerial Order.

### ***Qualifications***

Candidates applying to become an immigration adviser must demonstrate to the OISC that they have the knowledge and skills to practise competently at the level at which they have applied. Applicants do not need any specific qualification to apply for registration. However, competence and fitness are thoroughly assessed prior to approval.

Applicants need to satisfy the OISC that they have in place the resources, management structures and procedures needed to provide the service in accordance with the Commissioner's Rules and Code of Standards. As part of the application process, applicants must achieve 100 per cent on the Codes and Rules Assessment (consisting of 10 questions).

An applicant proves they fulfil the Commissioner's Code of Standards and the Commissioner's Rules by providing information and documentation as part of the application process.

The Code of Standards encompasses the following provisions, further detail is provided in Appendix C:

- adviser behaviour;

- organisational standards; and
- running the organisation.

The Commissioner's rules relate to certain requirements for immigration advisers, including registration, management and professionalism.

### **Competence**

Competence refers to the skills and knowledge that each adviser must demonstrate in order to show that they are able to provide good quality advice and services.

The OISC measures competence in two ways: through the application process and through an audit process. First, applicants are required to submit a statement of competence in which they demonstrate they meet competence requirements in different ways, for example the number of years experience they have, professional development they may have undertaken (this will be the OISC's main focus in the case of more inexperienced advisers) and what access they have to updated information on changes in law and procedures. Secondly, applicants are expected to undergo a formal written competence assessment, Code and Rules Assessment, as detailed previously.

The OISC has divided immigration advice and services into three levels of activity depending on the complexity of the work involved. The competence requirements increase with the complexity of the work, and advisers can only work within a certain level if they fulfil the necessary knowledge, skills and aptitude requirements.

The three levels of immigration advice that the OISC uses are as follows:

- Level 1 - Initial advice;
- Level 2 – Casework; and
- Level 3 - Advocacy and representation.

## **B.2 Canada — immigration consultants**

### **Regulatory body**

The Canadian Society of Immigration Consultants (CSIC) is responsible for regulating the activities of immigration consultants. CSIC is an independent, federally incorporated not for profit body operating at arms length from the federal government. CSIC is also responsible for ensuring the education and competency testing of its members.

CSIC's mandate is to protect the consumers of immigration consulting services and ensure the competent and professional conduct of its members.

Certification through CSIC (enabling registration) is only available to candidates who have successfully completed an approved formal academic program and passed a rigorous application process. Certified immigration consultants must abide by a Code of Conduct and carry mandatory errors and omissions insurance. They are also subject to a formal complaint process.

### ***Immigration consultants***

There are several membership requirements that must be fulfilled prior to receiving CSIC certification

#### ***Qualifications***

Firstly, the status of the applicant must meet one of the following specifications:

- a Canadian citizen, as defined under the Citizenship Act; or
- a permanent resident, as defined under the Immigration and Refugee Protection Act; or
- a person registered as a status Indian as defined under the Canadian Indian Act.

Furthermore, the applicant must be a graduate from an accredited program, achieving a minimum overall average of 70 per cent, and provide the Society with a copy of the graduation certificate and the original transcript of marks sent by the Institution.

#### ***Application process***

In addition to qualification requirements, candidates are required to complete or undertake the application process, including.

- pre-admission course, which includes four modules; and
  - Practice Management;
  - Rules of Professional Conduct;
  - Client Account Rules; and
  - Advertising Guidelines.
- a language proficiency test and full membership exam (competency-based exam).

#### ***Educational standards***

CSIC has adopted certain educational standards that must be fulfilled by each applicant in order to receive CSIC certification. These standards encompass the educational requirements that must be satisfied by the accredited educational institution as well as successful completion of the full membership exam.

The streams of knowledge and skills covered by both the accredited programs and full membership exam includes:

- Immigration Law;
- Immigration Consulting Practice;
- Professionalism and Ethical Conduct;
- Business Management; and
- Communication Skills.

Further detail on accredited programs is provided in Appendix D.

### **B.3 New Zealand – immigration advisers**

#### ***Regulatory body***

Legislation was recently made in New Zealand to promote and protect the interests of people receiving immigration advice and to enhance the reputation of New Zealand as a migration destination. This law — the *Immigration Advisers Licensing Act 2007* — set up the Immigration Advisers Authority (IAA). The IAA is responsible for the regulation of the immigration advice industry, although they do not give immigration advice. They are operationally separate from Immigration New Zealand, although they regulate licensed immigration advisers on behalf on their behalf. The IAA's role is to administer the licensing regime, maintain a public register of licensed immigration advisers and help with the education and professional development of immigration advisers.

#### ***Immigration advisers***

Licensed immigration advisers have a responsibility to maintain professional standards by meeting the competency standards, adhering to the code of conduct and taking an active role in continuing professional development. One of the IAA's key functions is facilitating the education and professional development of immigration advisers. Under the Act, immigration advisers who breach the code of conduct can be sanctioned.

Immigration advisers can obtain three different licences, each of which differ in the level of required knowledge and performance.

- *Full licence* — granted when an immigration adviser has proven overall competence in all areas of immigration advice. An immigration adviser with a full licence can provide advice across the entire range of immigration matters.
- *Limited licence* — authorises immigration advisers to provide immigration advice, without supervision, in relation to specified matters only.
- *Provisional licence* — allows an immigration adviser to provide immigration advice, but only under the direct supervision of a fully licensed immigration adviser.

People who can provide immigration advice without a licence include: current members of the New Zealand Parliament, lawyers and people exempted by regulations.

#### ***Obtaining a licence***

A licence will be granted by the IAA if the candidates:

- are considered “fit” to be licensed;
- meet the Authority's minimum standards of competence;
- properly complete the application process and pay any fees in full; and
- are not prohibited from registration (prohibited people include undischarged bankrupts, those convicted of certain offences and recent immigration, refugee status or visa officers).

***Professional standards***

In order to be granted a full licence, candidates must satisfy the following minimum standards of competence:

- relevant qualifications, including (no formal New Zealand immigration qualification is available):
  - sufficient experience in the provision of immigration advice demonstrating that the person applying for a licence meets the competencies for the type of licence to be granted;
  - completion of the Graduate Certificate in Australian Migration Law and Practice, or other substantially similar tertiary degree, diploma, certificate or course of study; or
  - licensing or registration or other similar recognition with an overseas organisation that performs functions that correspond wholly or substantially to those performed by the Authority.
- demonstrate knowledge of the immigration advisers licensing scheme;
- apply knowledge of immigration law and policy to New Zealand;
- prepare, lodge and administer immigration applications, appeals, requests and claims;
- apply communication techniques to the immigration process in the English language;
- conduct business professionally, ethically and responsibly; and
- maintain skills and knowledge through participation in relevant professional development activities.

In addition, licensed immigration advisers must adhere to the Code of Conduct.

**B.4 California, United States of America**

In California, immigration consultants can be employed to provide non-legal advice to potential immigrants or visa applicants. Strict laws govern California's immigration consultants requiring them to:

- obtain a \$50,000 two-year bond and file this with the Secretary of State; and
- provide a state-prescribed service contract in English and in their clients language prior to the provision of services.

Only lawyers licensed to practice in state or federal courts can provide legal immigration advice to consumers. Only lawyers or representatives accredited by the immigration court can represent consumers in immigration court.

## *Appendix C*

# United Kingdom competency requirements for immigration advisers

### **C.1 Code of Standards**

The Code of Standards encompasses the following provisions:

- adviser behaviour, including:
  - confidentiality
  - conflict of interest; and
  - competence and training.
- organisational standards, including:
  - equality;
  - client care;
  - requirements for informing the client;
  - referral fees; and
  - complaints
- running the organisation, including:
  - management policies and structures;
  - people management;
  - fees and accounts; and
  - indemnity insurance.

### **C.2 OSIC competency requirements**

#### ***Level 1:***

*Knowledge:*

- sufficient knowledge of immigration and asylum law;
- general knowledge of immigration and asylum work and procedures, particularly in relation to illegal entrants and over stayers;
- knowledge of the types of evidence needed to support cases and how to obtain them; and
- awareness of the European Convention on Human Rights (ECHR) and the Human Rights Act 1998 (HRA).

*Skills and aptitudes:*

- the ability to draft letters and complete application forms clearly and accurately in English, using the correct terminology and enclosing the appropriate evidence;
- sufficient verbal communication and interpersonal skills;
- awareness of and a commitment to follow established good practice
- the ability to identify appropriate resources and use them effectively; and
- the ability to maintain clear, comprehensive, accurate and structured records.

**Level 2 (in addition to competencies required at level 1):***Knowledge:*

- detailed knowledge of immigration and nationality law;
- detailed knowledge of relevant rights of appeal, time limits and procedures up to and including the lodging of the appeal;
- detailed knowledge of the European Convention on Human Rights (ECHR), the Human Rights Act 1998 (HRA) and other relevant law; and
- detailed knowledge of the types of evidence needed to support appeals and applications outside the Immigration Rules;

*Skills and aptitudes:*

- interviewing and advising;
- drafting;
- analytical and advocacy skills; and
- record-keeping and file management.

**Level 3 (in addition to competencies required at levels 1 and levels 2):***Knowledge:*

- detailed knowledge of immigration, asylum and nationality law;
- detailed knowledge of relevant rights of appeal, time limits and procedures before the appeals tribunal;
- a sufficiently thorough knowledge of relevant case law and precedents;
- a sufficiently thorough knowledge of the types of evidence needed to support complex cases and appeals; and
- a sufficiently thorough knowledge of the European Convention on Human Rights (ECHR), the Human Rights Act 1998 (HRA), the Race Relations (Amendment) Act 2000 and other relevant international law relating to immigration and asylum cases.

*Skills and aptitudes:*

- interviewing and advising:



- the ability to explain clearly to the client in plain language the progress of their case, including the progress of any appeal, the outcome of the hearing, the implications for the client and the options open to them.
- drafting:
- the ability to draft in clear, written English, making use of case law and human rights legislation.
- analytical and advocacy skills; and
- record-keeping and case management (OSIC, 2010).

*Appendix D***Canadian accredited education programs for immigration consultants****D.1 Accredited programs**

Table D.1 outlines the institutions, course descriptions and requirements of each accredited program in Canada.

Table D.1

**ACCREDITED PROGRAMS**

<b>Institution</b>	<b>Course</b>	<b>Program overview</b>	<b>Course descriptions</b>
Ashton College	Immigration Consultant Diploma Program	<p>The program is designed to:</p> <ul style="list-style-type: none"> <li>• train students on the application of the principles of immigration law and policy, immigration classes and temporary status, Refugees and rules of professional conduct.</li> <li>• The program is structured into eight courses which will allow students to assess, to advise and to represent individuals, groups and entities in the immigration process by strategizing, preparing and presenting oral and written submissions and supporting documents, and advocating on behalf of clients with government bodies.</li> </ul>	<p>The program includes the following required courses:</p> <ul style="list-style-type: none"> <li>• Principles of immigration law and policy;</li> <li>• Economic classes;</li> <li>• Temporary residents;</li> <li>• Refugee classes;</li> <li>• Client representation;</li> <li>• Professional practice management;</li> <li>• Professional conduct and ethics; and</li> <li>• Immigration consulting research and application.</li> </ul>
Bow Valley College (in association with Seneca College)	Immigration Practitioner Certificate Program	<p>This program benefits consultants, paralegals, immigration practitioners, and others interested in entering this field to become highly knowledgeable about the practice of immigration to Canada. This is accomplished by sharing the expertise of the program's instructors, who are leaders in their fields, and the opportunities to gain from the experience of the other participants.</p>	<p>The program consists of six required courses, including:</p> <ul style="list-style-type: none"> <li>• Basic Principles of Immigration Law and Policy;</li> <li>• Skilled Workers;</li> <li>• Family Class, In-Canada Applications and Appeals;</li> <li>• Convention Refugees;</li> <li>• Temporary Status; and</li> <li>• Professional Practice Management.</li> </ul>
University of British Columbia	Certificate in Immigration: Laws, Policies and Procedures	<p>The program provides an opportunity for people interested in the field to learn more about the practice of immigration consulting in Canada. The goal of the program is to deliver a sound, in-depth educational experience that will provide qualified graduates the foundation on which to base their consultancy in this field.</p>	<p>The program consists of six required modules:</p> <ul style="list-style-type: none"> <li>• Introduction to immigration law, policy and history;</li> <li>• Temporary entry to Canada;</li> <li>• Economic classes;</li> <li>• Family classes, including appeals and enforcement;</li> <li>• Refugee protection; and</li> <li>• Practical skills.</li> </ul>
CSIC e-Academy	Online Immigration Consultant Certificate Program	<p>The program satisfies the education prerequisite to CSIC membership and is integral to providing the foundational knowledge and skills required of a practicing immigration consultant. This program is intended to be practical, relevant and analytical in its approach to immigration consulting. The lessons combine current immigration knowledge and research with cutting-edge, interactive media and social technology. Students work both independently and collectively to evaluate case studies, participate in focused discussions and, ultimately, develop and apply their professional judgment.</p>	<p>Required courses:</p> <ul style="list-style-type: none"> <li>• Introduction to Immigration Policy and Practice;</li> <li>• Economic Class;</li> <li>• Family Class;</li> <li>• Temporary Class;</li> <li>• Appeals, Admissibility Hearings and Detentions;</li> <li>• Refugee Class;</li> <li>• Business Ethics; and</li> <li>• Professional Prospectus.</li> </ul>
Humber College	Immigration Consultant Certificate Program	<p>The Immigration Consultant certificate program is an accredited certificate program of the CSIC. Ethics and sound practices are key components of this</p>	<p>The program consists of six compulsory courses:</p> <ul style="list-style-type: none"> <li>• Immigration and refugee law;</li> </ul>

Institution	Course	Program overview	Course descriptions
		certificate program. The Humber program will make students eligible to start the admission process into the CSIC, complete their preadmission course and write the entrance exams for final membership into the CSIC.	<ul style="list-style-type: none"> <li>• Business planning;</li> <li>• Immigration and refugee law procedures;</li> <li>• Professional conduct: authorised practice and ethics for immigration;</li> <li>• Legal research for immigration; and</li> <li>• Administrative tribunals.</li> </ul>

Source: CSIC, 2010

Consequently, in order to satisfy educational outcomes and meet the educational standards, candidates must be able to (following completion of a program and the exam):

- explain the philosophy and intent of Canada's current immigration policies;
- demonstrate knowledge of Canada's immigration system: law, policies and procedures;
- demonstrate the ability to apply the knowledge, understanding and skills required to give assistance to applicants at all stages of the application procedure;
- demonstrate the ability to apply the Code of Conduct and demonstrate the attitudes, values and ethical standards requisite for providing services as an Immigration Consultant;
- demonstrate a high level of interpersonal and communication skills in English or French;
- demonstrate the knowledge, skills and attitudes to manage client and office records in accordance with the law and good practice; and
- recognise the importance of a commitment to personal and professional development.

*Appendix E***Organisations consulted**

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**ORGANISATIONS CONSULTED**

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Department of Immigration and Citizenship
Migration Institute of Australia
Migration Alliance
Australian National University
Victoria University
Murdoch University
Griffith University
Deakin Prime (undertaking CPD review)
Fragomen Migration Lawyers
Hitchcock and Associates Migration Lawyers
Law Council of Australia
Refugee and Immigration Legal Centre

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## *Appendix F*

# Australian Qualifications Framework

### *Advanced Diploma*

An advanced diploma is a vocational education and training (VET) sector and higher education qualification. A person completing an advanced diploma will have the following competencies:

- demonstrate understanding of specialised knowledge with depth in some areas;
- analyse, diagnose, design and execute judgements across a broad range of technical or management functions;
- generate ideas through the analysis of information and concepts at an abstract level;
- demonstrate a command of wide-ranging, highly specialised technical, creative or conceptual skills;
- demonstrate accountability for personal outputs within broad parameters; and
- demonstrate accountability for personal and group outcomes with broad parameters.

Completion of an advanced diploma takes approximately one and a half to two years of full time study.

### *Graduate Certificate*

A graduate certificate is a higher education sector qualification. This is distinct from a vocational graduate certificate, which is a qualification in the VET sector. Graduate certificates offer continuing professional development and/or a pathway to further postgraduate study. Learning outcomes of a graduate certificate include:

- the acquisition and application of knowledge and skills in a new discipline or professional area; and
- may also involve the extension of knowledge and skills already gained in an undergraduate program or relevant prior work.

Completion of a graduate certificate takes approximately six months of full time study.

### *Graduate Diploma*

A graduate diploma is a higher education sector qualification. This is distinct from a vocational graduate diploma, which is a qualification in the VET sector. Graduate diplomas offer continuing professional development and/or a pathway to further postgraduate study, including research higher degrees.

Learning outcomes of a graduate diploma include:

- the acquisition and critical application of knowledge and skills in a new discipline or professional area which may also involve the extension of knowledge and skills already gained in an undergraduate program or relevant prior work; and

- further specialisation within a systematic and coherent body of knowledge.

Completion of a graduate diploma takes approximately one to two years of full time study.

### ***Proposed changes to the AQF framework***

The AQF is currently under review. The qualification level descriptors have been revised in draft form and are currently subject to consultation.

Under the proposed new arrangements a graduate certificate would have the same requirements as a vocational graduate certificate and a graduate diploma would have the same requirements as a vocational graduate diploma.

#### **SELECTED QUALIFICATION LEVELS UNDER THE DRAFT REVISED AQF**

	<b>Advanced Diploma</b>	<b>Graduate Certificate Vocational Graduate Certificate</b>	<b>Graduate Diploma Vocational Graduate Diploma</b>
<b>Purpose</b>	Breadth, depth and complexity involving analysis, diagnosis, design, planning, execution and evaluation across a broad range of technical and/or paraprofessional functions.	Breadth, depth and complexity of knowledge at a level of study including the acquisition and application of knowledge and skills in a new or existing discipline or professional area, which may involve extending knowledge or skills gained in an undergraduate program or relevant prior work or study.	Breadth, depth and complexity of knowledge at a level of study including the acquisition and critical application of knowledge and skills in a field of existing new or existing field or professional area, which may involve extending knowledge or skills gained in an undergraduate program or relevant prior work or study.
<b>Knowledge</b>	Specialised technical and theoretical knowledge with depth.	Specialised knowledge within a systematic and coherent body of knowledge.	Advanced knowledge within a systematic and coherent body of knowledge.
<b>Skills</b>	Command of wide-ranging, highly specialised technical, creative or conceptual skills to express ideas and perspectives.	Cognitive skills to critically review, analyse, consolidate and synthesise knowledge and identify and provide solutions to defined problems.  Communication skills to present to a range of audiences.	Cognitive skills to critically review, analyse, consolidate and synthesise knowledge and identify and provide solutions to defined problems.  Communication skills to present to a range of audiences.
<b>Application of knowledge and skills</b>	Application of knowledge and skills: in contexts subject to change; to apply a range of principles and techniques; judgement in planning, technical or management functions; accountability for personal outputs and personal and team outcomes within broad parameters.	Application of knowledge and skills to make significant high level independent judgements in a range of technical or management functions in varied specialised contexts.  Initiate, plan, implement and evaluate broad functions within varied specialised technical and/or creative contexts.	Application of knowledge and skills to make significant high level independent judgements in a range of technical or management functions in varied specialised contexts.  Initiate, plan, implement and evaluate broad functions within varied specialised technical and/or creative contexts.

Source: Strengthening the AQF: An architecture for Australia's qualifications, [www.aqf.edu.au](http://www.aqf.edu.au)

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