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Review of Handling Client Monies by Agents

Office of the Migration Agents Registration Authority

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Contents

1. Executive Summary

1.1 Introduction and Scope

The Office of the Migration Agents Registration Authority (Office of the MARA) intends to put in place measures to increase the financial protection of consumers of migration advice services through better regulation of agent's handling of client monies. Under the *Migration Agents Code of Conduct (*the Code*)* a Registered Migration Agent (RMA) has specific responsibilities in relation to bank accounts and the handling of monies held on behalf of clients. There are some 4000 RMAs currently operating across Australia and overseas.

The Office of the MARA has commissioned this review to assist in:

► identifying the key risks and process weaknesses for agent handling of client monies so that controls can be strengthened where necessary;

► advising on any opportunities for improving the content, strategy and design of Continuing Professional Development (CPD) activities on this topic;

► developing a Client's Account Toolkit (the Toolkit) and information sheets to support agents handling of client monies; and

► developing an assurance framework and implementation plan to provide ongoing assurance over the handling of client monies.

A selection of local RMAs were invited to a series of three workshops held in Sydney during June 2011 to discuss the issues relating to the development of the Toolkit. All RMAs attending the workshop advised that they were keen to see more guidance on client money handling and provided positive and practical input to our analysis and conclusions.

1.2 Key Outcomes

Overall, we consider that the Office of the MARA needs to strengthen components of its control framework used to monitor and influence RMAs behaviour in complying with the financial obligations under the Code. From our assessment of risk, examination of client complaints and previous Office of the MARA audit results, including a sample of training packages and discussions with selected RMAs, it is clear that some agents continue to be challenged in meeting their obligations.

The agents consulted at the workshops agreed that it was timely to reinforce the messages about the importance of handling client monies, and this was best achieved through the provision of more targeted guidance material from the Office of the MARA.

The development of the Toolkit, information sheets and associated strategies form the key outcome of this review. Our approach and conclusions in terms of the individual review scope elements are summarised below.

Risk and control assessment

Based on our assessment of key risks and controls, we have identified a number of key client money handling practices (referred to as core client money controls) that should to be performed by agents in meeting their obligations to clients under the Code. These core controls are closely based on the *learning outcomes* previously published by the Office of the MARA, and form the key principles underpinning the design of the Toolkit and Guidance Material provided separately to this report, including the assessment of training packages and the development of options for an assurance framework (provided at **Appendices A to F**).

We have also provided additional context around record keeping and supervision to guide users of the Toolkit.

The RMAs consulted agreed that these controls constitute a minimum standard for handling client monies. They also agreed that these controls provide an effective focus to assisting their understanding of client money handling practices, and form a practical framework in which to target monitoring and guidance going forward.

Adequacy of training packages

RMAs are required to complete mandatory CPD activities in four areas. These are:

- ► Account management

- ► Business management

- ► Ethics and professional practice

- ► File management

Our assessment of a sample of approved training packages identified issues in coverage, content and design.

We have recommended that the Office of the MARA consider improvements to the development and delivery of CPD training packages. The recommended improvements encompass content, design and the approval processes adopted within the Office of the MARA.

RMA Toolkit

The Toolkit provided as a separate document has been developed after an analysis of the risks and controls around RMA handling of client monies, conducting workshops with selected RMAs, reviewing prior year Office of the MARA audit results, as well as analysing the adequacy of training packages for the accounts management module of the CPD activity.

The Toolkit is intended to be a practical resource for RMAs and to guide them in understanding the mandatory requirements of the Code. The Toolkit achieves this aim by illustrating the **Core Client Money Controls** identified during the review, and reinforced through the **Information Sheets** (provided as a separate document). These information sheets illustrate the requirements of the Code through practical examples, templates and process maps.

The Toolkit also allows RMAs to assess themselves on how compliant they are with the Code by using the **Self Assessment Checklist** provided. The use of the checklist provides a valuable link between the assurance framework, components of this report, and the use of the toolkit as discussed below.

Assurance Framework

We have provided an assurance framework and an implementation plan as part of this report (refer **Appendix E**).

The assurance framework aims to provide a basis for targeting the Office of the MARA's available resources to provide an appropriate level of assurance and cost. The assurance framework is intended to be flexible and to become integrated with other 'issue management' activities.

Although the assurance framework is explicitly based on client money handling issues, it is our view that a broader approach would have benefits to the Office of MARA. We have reached this view because:

- ► In our experience, non-compliance in money handling is likely to be part of broader compliance issues.

- ► A more holistic approach will provide better economies of scale for the operation of an assurance framework. Particularly, as there are over 4000 RMAs operating across Australia and who are engaging with the Office of the MARA and Department of Immigration and Citizenship (DIAC) on a regular basis.

- ► The specific need for financial assurance can more effectively be put into the broader context of risks faced by the Office of the MARA.

The selected framework is based on the principles of 'risk-tiering', which involves the implementation of a risk classification system, where assurance and support activities can be better *targeted* to the relevant compliance issue.

In implementing the model, the Office of the MARA will need to consider:

- ► the nature of assurance;

- ► its appetite for risk;

- ► the range of information which it already collects;

- ► the type and frequency of engagement opportunities with RMAs, and with DIAC as a whole; and

- ► the costs and resourcing impacts on both the Office of the MARA and the RMAs themselves.

1.3   Summary of Recommendations

Number	Recommendation
1	That the Office of the MARA should adopt the Core Money Handling Controls as the key focus for monitoring agents handling of client monies, and the basis for developing and delivering CPD packages to assist agents in meeting their obligations to clients.
2	The Office of the MARA should confirm that: a. CPD providers use simple, easy to understand non-legal terminology when preparing and presenting training packages to participants; b. CPD providers use, or develop, training packages approved by the Office of the MARA; and c. CPD providers use our approved minimum table of contents page to guide the development of the training packages.
3	The office of the MARA should continue strengthening its CPD approval process to confirm training packages sufficiently address all of the published learning outcomes.

4	The Office of the MARA should finalise and circulate the Toolkit and Information Sheets to RMAs for their information and feedback.

5	The Office of the MARA should:
	
	   a. implement an assurance framework based on the principles of risk-tiering where key risks are classified into categories of priority;
	
	   b. the classification system should be used to model pre-existing data and information on RMAs;
	
	   c. the outcome of this modelling should be used to determine the type and approach to assurance appropriate to the circumstances, including consideration of the likely resource constraints and the risk exposures involved; and
	
	   d. consider the legal, technological and information gathering aspects required to support a more risk-tiered assurance model.

2. Detailed Conclusions

2.1 Risk and Control Analysis

We have identified the key risks and controls over an agent's handling of client monies through:

► an examination and documentation of key processes including: RMA responsibilities under the Code and applicable legislation; and the oversight arrangements in place for the Office of the MARA;

► an examination of a selection of complaints regarding agents handling of client monies;

► an examination of prior audit results from Office of the MARA's examination of agents, including RMAs who have failed client account registration checks; and

► discussions with the Office of the MARA and a RMA workshop held in Sydney in June 2011 to identify emerging risks and to validate practical steps to improve agent's handling of client monies.

Our analysis has confirmed the importance of the Office of the MARA's published learning outcomes in improving agent's client money handling compliance and performance. As a result of insights from our workshop with selected RMAs we have distilled those learning outcomes into six core controls (**Core Client Money Handling Controls**) where stricter controls can be, and should be, applied.

There are a number of components to our risk and control analyses that are provided by way of appendices to this report as described below:

Appendix A displays the broad **Risk Universe** that can impact on an agent's handling of client monies.

Appendix B summarises the **key risks and controls** over the handling of client monies. These risks have been weighted using DIAC's Risk Framework, as well as, showing the linkages with the Core Client Money Handling Controls.

Appendix C shows the linkage between the twelve learning outcomes published by the Office of the MARA, the areas where agents are facing challenges in complying with the client money handling requirements, and the Core Client Money Handling Controls where stricter controls need to be applied to assist agents in meeting their obligations under the Code.

Appendix D illustrates a minimum table of contents which should be used by CPD providers as a guide to the development of their training packages. This will aid CPD providers in developing training packages that sufficiently address all of the published learning outcomes.

Appendix E contains the Assurance Framework and Implementation Steps and **Appendix F** contains the team, qualifications and conflict of interest resolution process.

Overall, we consider that emphasis on these Core Client Money Handling Controls is necessary to improve agents understanding of their obligations and should provide a more consistent framework in which to communicate requirements, approve training, and monitor compliance. The use of the checklist provided in the Toolkit also forms an important link in supporting compliance.

Recommendation 1

Recommendation 1

The Office of the MARA should adopt the Core Client Money Handling Controls as the key focus for monitoring agent's handling of client monies, and as the basis for developing competencies to assist agents in meeting their obligations to clients.

3. Training package assessment

3.1 Continuous Professional Development (CPD)

The Office of the MARA requires RMAs to complete CPD activities in order to maintain their registration. These activities are currently delivered through a number of CPD providers that include a range of Registered Training Organisations, including Australian universities.

The Office of the MARA has four mandatory CPD activities. These are:

► Account Management

► Business Management

► Ethics and Professional Practice

► File Management

The scope of the review included an assessment of training packages which covered Accounts Management. Five examples of training packages were provided by the Office of the MARA for our assessment. The training packages were reviewed to assess any gaps and inconsistencies in the training package content and design, and to identify areas for improvement in these packages in addressing key risks. The twelve key learning outcomes published by the Office of the MARA have been used as the basis for assessing the effectiveness of training packages within the sample provided. This is on the assumption that CPD packages would have been developed to address those learning outcomes.

3.2 CPD Training Analysis Summary

Training package content

Our analysis conducted on the training packages shows that only two of the five training packages sampled address all the mandatory learning outcomes. Two training packages did not address nine of the twelve learning outcomes and one training package did not address four of the twelve learning outcomes.

A tabular summary of the strengths and weaknesses of the sampled training packages is provided in the table below.

Identified Strengths and Weaknesses of Sampled CPD packages

Learning Outcome Number	Learning Outcome	Training Example 1	Training Example 2	Training Example 3	Training Example 4	Training Example 5
		Strengths (✓) Weaknesses (✗)				
1	The package teaches RMAs how to provide an estimate of fees, charges and disbursements likely to be incurred by a client that are reasonable in the circumstances of their case	✓	✓	✓	✓	✗
2.1	The package teaches RMAs the requirements for issuing a written contract to the client	✓	✓	✗	✓	✗
2.2	The package teaches RMAs the requirements for issuing a statement of services to the client	✓	✓	✓	✓	✗
3	The package teaches RMAs how to calculate costs in accordance with law and any agreement between the agent and client	✓	✓	✗	✓	✗
4	The package teaches RMAS how monies received from or on behalf of a client are to be dealt with as required by law and good practice	✓	✓	✓	✗	✓
5	The package teaches RMAs that the law requires that money must be deposited where appropriate in a clients' account or operating account and how the deposit is recorded as required by law and good practice	✓	✓	✓	✗	✓
6	The package teaches RMAs how to issue receipts and invoices as required by law and good practice	✓	✓	✓	✗	✗
7	The package teaches RMAs the differences between the use of an operating account and a clients' account as required by law and good practice	✓	✓	✓	✗	✗
8	The package teaches RMAs when withdrawal of funds from the clients' account for disbursements for third party services for a particular client is permitted	✓	✓	✗	✗	✗
9	The package teaches RMAs the requirements to give the client notice of each amount paid on their behalf	✓	✓	✓	✗	✗
10	The package teaches RMAs the implications of offering a 'no win, no fee' service	✓	✓	✓	✗	✗
11	The package teaches RMAs the requirement to register for GST in accordance with relevant Australian taxation law	✓	✓	✗	✗	✓
12	The package teaches RMAs how to keep basic financial records, using specialised accounting software or spreadsheets	✓	✓	✓	✗	✓

The training packages analysed comprised of one CPD workshop, one distance learning CPD module, one CPD Private Study module and two other CPD activity packages. While the format and structure of each training package is expected to be different we noted a significant variance in the content and format of these packages that reduces the effectiveness of these packages as a whole. For example, some emphasise requirements at a theoretical or at a principle level, while others are presented at a more detailed operational level without achieving the right balance in targeting the key risks and required learning outcomes. The impact of the design of these packages on the content is assessed in more detail in the section below.

Design improvement

An analysis of the sample of training packages was also performed to assess a number of design requirements including:

► did the training list relevant legislative requirements?

► did the training include relevant templates and/or examples of documents?

► did the training include case studies?

► did the training include exercises, questions and checklists?

► did the training use simple, non-legal terminology?

The table below summarises our assessment of design related issues and identified opportunities for improvement.

Attributes	Training 1	Training 2	Training 3	Training 4	Training 5
	Strengths (✓) Weaknesses (✖)				
Does the training list relevant legislative requirements	✓	✓	✓	✓	✓
Does the training use simple, non-legal terminology	✓	✓	✓	✓	✖
Does the training include relevant templates and/or examples of documents	✓	✓	✓	✖	✖
Does the training include case studies	✖	✖	✓	✖	✓
Does the training include exercises, questions and checklists	✓	✖	✖	✓	✓

We found a number of gaps in the design of the training packages assessed. A summary of the issues we noted are as follows:

► one training package was focussed at lawyers and the terminology used was complex and not easy to understand;

► two training packages did not include relevant templates or examples such as fee estimates, tax invoices and receipts;

► three training packages did not include case studies; and

► two training packages did not include practice questions and exercises for RMAs to assess their understanding.

While we understand that this was aimed at legal practitioners, a number of RMA's attending the workshops that had a legal background, emphasised the importance of delivering the 'client money handling' messages in plain English, with common templates and useful examples from an accounting perspective. In the Toolkit, we have included examples of a fee estimate, an invoice/receipt and a statement of services. Additional guidance has also been provided over records management and supervision.

Recommendation 2

The Office of the MARA should confirm that:

    a.   CPD providers use simple, easy to understand non-legal terminology when preparing and presenting training packages to participants;

    b.   CPD providers include sufficient examples, templates such as fee estimates, invoices and case studies in their training packages; and

    c.   CPD providers use the recommended minimum table of contents page to guide the development of the training packages.

3.3   Approval of training packages

Feedback provided from RMAs during the workshop reinforced that significant improvement to existing training strategies and packages is required to more effectively assist them in meeting their client money handling obligations under the Code.

Currently, approved CPD providers are required to make an application to the Office of the MARA for approval of training packages. These applications provide details of the person or organisation presenting, facilitating or preparing the training, the topics covered and the learning outcomes to be achieved. We observed two key issues with respect to training packages that impact on Office of the MARA strategy:

► training packages which do not address all the mandatory learning outcomes for accounts management have been approved by the Office of the MARA as CPD activities for accruing CPD points; and

► approved CPD activities which do not address all the mandatory learning outcomes will foster inconsistent development of RMA professionalism and increase the risk of non compliance.

From discussion with the Office of the MARA management we note that the training program reviewed does not necessarily reflect all of the improvements subsequently made to the criteria contained in that program.

Recommendation 3

The office of the MARA should continue strengthening its CPD approval process to confirm training packages sufficiently address all of the published learning outcomes.

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4. Toolkit and Information Sheets

4.1 RMA Toolkit

The RMA Toolkit provided as a separate document has been developed after an analysis of the risks and controls around RMA client money handling, conducting workshops with RMAs, reviewing prior year the Office of the MARA audit results as well as analysing the adequacy of training packages for the accounts management module of the CPD activity.

The Toolkit is intended to be a practical resource for RMAs and guide them in understanding the mandatory requirements of the Code. The Toolkit achieves this aim by illustrating the **Core Client Money Controls** identified during the review, and reinforced through the **Information Sheets** also provided as a separate document. These information sheets illustrate the requirements of the Code through practical examples, templates and process maps. The Toolkit also allows RMAs to assess themselves on how compliant they are with the Code by using the **Self Assessment Checklist** provided.

RMA Workshops

Three workshops were conducted with selected RMAs in Sydney during June 2011 to test and validate our assumptions in developing the toolkit. All RMAs attending considered that the Toolkit and related content would provide a useful reference point to improve their understanding of the importance of handling client money. They were keen to see a simple, step-by-step explanation of the client money handling and accounts management requirements and agreed that the Core Client Money Controls would provide a more practical focus to managing these issues going forward.

Recommendation 4

The Office of the MARA should finalise and circulate the Toolkit and Information Sheets to RMAs for their information and feedback.

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5. Assurance Framework

5.1 Assurance Framework Options

To continue to protect the interests of RMAs as well as consumers, the Office of the MARA is looking to implement an effective assurance framework to complement its role in monitoring RMA compliance. The review scope therefore, included a requirement to develop an assurance framework including the identification of options for implementation by the Office of the MARA.

We have identified possible assurance framework options after consideration of the following:

► The Office of the MARA's general powers in relation to obtaining information and monitoring compliance with the Code;

► the key risks of breaching the Code and subsequent issues that are inherent to the handling of client monies; and

► the different risk profiles of RMAs identified as part of this review together with the indicative costs and benefits of each approach.

We have provided two tables as part of this assurance framework analysis, the first table is a summary of the approaches and the second table provides a list of the advantages and disadvantages and the likely resource implications associated with each option. The risks associated with RMAs also result from the particular RMA's business operating model and the scale and maturity of their operations. These issues are considered in more detail in sections 5.2 to 5.5 below. **These options are focused at providing assurance over agents handling of client monies.**

Summary of possible approaches

Approach	Requirements	Applicable to	Frequency	Core client money controls	Level of assurance	Cost to Office of the MARA	Cost to RMA	Expertise required by the Office of the MARA
Statutory declarations	RMA submits a statutory declaration stating compliance with the Code of Conduct and Migration Act requirements	All RMAs with a low to high risk profile	At the time of renewal of registration	1 to 6	Low	Low	Low	Low
Certified copies of bank statements	RMA submits certified copies of client and operating account to demonstrate two different bank accounts have been established	All RMAs with a low to high risk profile	At the time of renewal of registration	1,2	Low	Low	Low	Low
Office of the MARA requests bank confirmations	Office of the MARA requests bank confirmation regarding the existence of both client and operating accounts from financial institutions	RMAs with medium to high risk profiles	During the course of the year - on a needs basis	1,2	Medium	Low	Nil - low	Low
Office of the MARA requests audited financial statements	Office of the MARA requests RMA to provide copy of audited financial statements to verify record keeping and maintenance of bank accounts	RMAs with a high risk profiles	At the time of renewal of registration	1 to 6	Medium	Low	High	Medium
Office of the MARA requests and audits client files	Office of the MARA informs RMAs of intention to audit files and requests client files to be mailed to be audited	RMAs with medium to high risk profiles	During the course of the year - on a needs basis	1 to 6	Medium	Medium	Medium	High
Office of the MARA conducts field visits/audits	Office of the MARA informs RMAs of intention to audit premises and requests further information during the course of the field visit	RMAs with medium to high risk profiles	During the course of the year - on a needs basis	1 to 6	High	High	Medium	High

Assurance framework advantages and disadvantages

Approach	Core client money controls	Applicable to	Frequency	Advantages	Disadvantages
RMA submits a declaration stating compliance with all respects of the Code, this can be included in the registration renewal process	1 to 6	All RMAs with a low to high risk profile	At time of renewal	► Cost effective for RMAs ► Such declarations are relatively easy to provide and may not greatly increase the workload of the Office of the MARA staff or the RMA ► Can be used for accountability when conducting further audit procedures	► Low level of assurance that RMAs are actually complying with the Code The Office of the MARA will receive approximately 4500 declarations annually
RMA submits certified copies of client bank account and operating expense accounts to the Office of the MARA	1,2	All RMAs with a low to high risk profile	At the time of renewal of registration	► Cost effective for RMAs ► Certified copies of bank statements are easy to provide by RMAs ► Allows the Office of the MARA to verify that RMAs are maintaining two separate bank accounts and whether interest is being earned by the client account ► Can be used for accountability when conducting further audit procedures	► Bank accounts may only be opened for cosmetic reasons rather than to comply with the principles of the Code ► The Office of the MARA will receive a high number of bank statements which it will have to verify, file and store ► Administrative burden on current staff

Assurance framework advantages and disadvantages

Approach	Core client money controls	Applicable to	Frequency	Advantages	Disadvantages
The Office of the MARA requests bank confirmations based on the risk profile of RMAs	1,2	RMAs with a medium to high risk profile	During the course of the year – on a needs basis	► Bank confirmations allow the Office of the MARA to verify bank accounts do exist and that they are separate and whether interest is being earned on the client account ► They provide a higher level of assurance than statutory declarations ► Can be used for accountability purposes when conducting further audit procedures	► Time consuming as banks may take time to reply to confirmations ► Banks may not return all confirmations which may cast doubt over RMAs ► Banks will charge RMAs a fee ► Bank accounts may only be opened for cosmetic reasons rather than to comply with the principles of the Code
RMA provides audited financial statements to the Office of the MARA	1 to 6	RMAs with a high risk profile	At the time of renewal of registration	► Medium level of assurance to the Office of the MARA that separate bank accounts are maintained ► It will also provide assurance of the proper record keeping by RMAs	► Costly for RMAs to obtain especially for small operators ► All RMAs may not prepare financial statements per say as they have small operations ► Have to rely on the work of others

Assurance framework advantages and disadvantages

Approach	Core client money controls	Applicable to	Frequency	Advantages	Disadvantages
The Office of the MARA solicits and audits client files from RMAs	1 to 6	RMAs with a low to high risk profile	During the course of the year	▶ The Office of the MARA can audit files to assess whether RMAs are complying with requirements of the Code ▶ It is relatively easy for RMAs to provide client files to the Office of the MARA ▶ By reviewing the client file, the Office of the MARA can gain a greater level of assurance that RMAs are complying with the Code	▶ RMAs could fabricate documents to appear to be complying with the code ▶ Privacy, confidentiality of client information issues ▶ Obtaining relevant materials in the first instance for example, general ledger reports, electronic records may be a difficult and lengthy process

5.2 RMA Operating Models

The review found that handling of client monies largely depends on two factors: the RMA's business operating model and the scale and maturity of their operations. From insights drawn from our RMA workshops, these operating models tend towards the following types:

► RMAs who do not charge clients upfront but invoice clients on lodgement of their application. Under this model, the RMA uses its own business operating account to pay for expenses and disbursements on behalf of clients.

► RMAs who charge clients half the fee estimate in advance and the rest on lodgement of their application. Under this model, the RMA receives an advance payment from the client and may use this to process disbursements.

► RMAs who charge clients for an agreed block of work. Under this model, the RMA receives payment or transfers client monies to its operating account after issuing an invoice and a statement of services performed.

► RMAs who charge clients on a 'no win no fee' basis. Under this model, RMAs charge clients up-front, however, they are required to keep sufficient funds available in the event that the RMA is required to refund client monies. We understand that there were no RMAs attending the workshop who were operating on a 'no win no fee' basis.

5.3 Scale and Maturity of Operations

The scale and maturity of operations refers to factors such as:

► The length of time an RMA has been providing immigration services.

► The legal and business structure of the RMA (i.e. whether they operate as a sole trader, a company, a partnership; etc.).

► The background and qualifications of the RMA (i.e. whether they practice as an Australian Legal Practitioner or only as a migration agent or an accountant).

► The scale of operations (i.e. the number of visa applications they process, number of employees, etc.).

► The sophistication of the accounting system used by the RMA (i.e. whether they use a computerised accounting system or maintain manual paper records, or do they operate on an accruals or cash basis).

5.4 Determining a Preferred Assurance Framework Option

In determining a preferred assurance model it is useful to consider the options in terms of the nature of assurance, the Office of the MARA's appetite for risk, the range of information which it collects, the type and frequency of engagement opportunities with RMAs, and with DIAC as a whole, and the costs and resourcing impacts on both the Office of the MARA and RMAs themselves.

We believe that effective assurance is more likely to result from a combination of inspections of RMA records at RMA premises, as well as obtaining information from RMAs to satisfy any questions that the Office of the MARA may have over compliance. The problem is which RMAs to inspect of the approximately 4000 RMAs across Australia, and what information should be regularly provided.

The question of which RMAs to inspect is best arrived at through the implementation of a risk-tiered approach where the Office of the MARA determines a classification system of prioritising and ordering risks, so that its inspection efforts are more effectively aligned to

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'real' risks. This is based on the logic that some categories of risk would never justify the conduct of an inspection, while others will.

The question of 'what information to collect' should be based on what information DIAC and the Office of the MARA already collects in respect of the number and frequency of 'touch points' with RMAs. For example, the Office of the MARA conducts a re-registration process of individual RMAs on a twelve-month cycle, as well as approving new RMAs that wish to commence operations. There are also other feedback mechanisms, including complaints from clients and broader interactions with DIAC.

5.5 Arriving at an Assurance Model Solution

The assurance solution should provide the following benefits:

► focus resources where they will be most effective;

► increase consistency and accountability;

► able to target where most necessary;

► able to adjust the level of assurance with more confidence;

► able to fit within the established legal framework and achieve acceptable cost outcomes; and

► be integrated with other 'issue management' activities.

In determining the best approach for the Office of the MARA, we have found it necessary to include aspects that are somewhat beyond the scope of this review. This primarily relates to how assurance over client money handling issues are *integrated* with other compliance related issue management activities.

In our experience, non-compliance behaviour is unlikely to be restricted to money handling only, and is more likely to be part of a broader compliance issue. This also provides better economies of scale for the operation of an assurance framework. Particularly, as there are over 4000 RMAs operating across Australia and who are engaging with the Office of the MARA and DIAC on a regular basis.

The selected framework should therefore be based on the principles of 'risk-tiering'. This involves the implementation of a risk classification system where assurance and support activities can be better *targeted* to the relevant compliance issue.

A similar approach is used by the Australian Taxation Office. The ATO compliance model reflects the different attitudes towards compliance and the corresponding strategy that best responds to each attitude. The model supports and encourages the benefits of compliance through better targeting of risk and minimisation of costs to industry. The model is particularly useful in supporting compliance while deterring non-compliance. Less emphasis is placed on *preventive* related controls with more reliance on *disclosure* and *detection* to confirm the effectiveness of support and compliance strategies. The model requires a whole of agency approach to operate effectively.

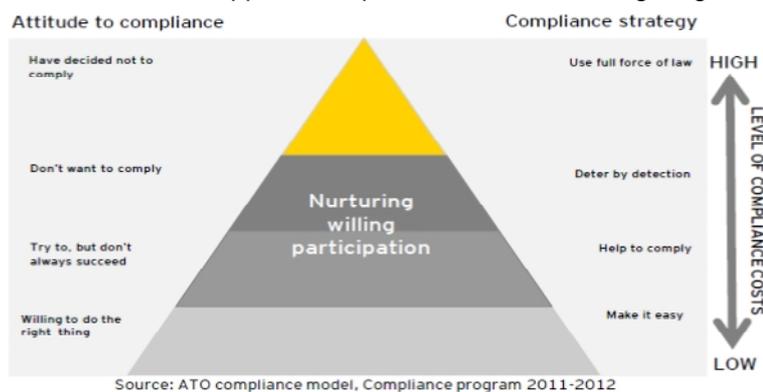A high level view of the ATO approach is provided in the following diagram.

Diagram 1 – ATO Compliance framework

As noted in Section 5.4 above, when implementing this type of model, the Office of the MARA will need to consider the nature of assurance, its appetite for risk, the range of information which it already collects, the type and frequency of engagement opportunities with RMAs, and with the Department of Immigration and Citizenship (DIAC) as a whole, and the costs and resourcing impacts on both the Office of the MARA and the RMAs themselves.

The recommended implementation steps would involve the following activities:

► establish a risk classification system;

► establish a risk profile;

► development of assurance and monitoring processes and associated procedures and instructions;

► conducting assurance activities using the risk tiered model as a 'targeting tool' for compliance and support activities; and

► continuous assessment of compliance treatment action and future monitoring status.

A typical risk-tiered approach would apply the following classification system:

Tier 1 – High Compliance Risk or of Strategic Importance – Significant impact on reputation of industry and the Office of the MARA, issues involving large numbers of clients and/or monies, significant compliance risk or high visibility.

Tier 2 – Significant Compliance Risk – Issues reflect areas of potential high non-compliance risk to the Office of the MARA or client group. Includes emerging issues, where the rules of engagement are established, but there is a need for further development, clarification, direction and guidance on the Office of the MARA's position.

Tier 3 – Low Compliance Risk or Specific Agent Risk – Issues that represent the highest compliance risk for a particular segment of the industry, agents or clients that require a unique treatment.

Balancing the risk exposure associated with agents' handling of client money, with the costs of management control, tend to indicate that these would mainly be classified as Tier 3, and hence a low risk (i.e. relative to Tier 1 and Tier 2 categories). This reinforces the position that an assurance solution should be integrated with other 'issue management' activities in order to maximise benefits and reduce costs.

We consider that the combination of existing registration, CPD and information gathering strategies are considered sufficient to inform an effective risk tiered approach. For example, effective assurance over money handling can be achieved through requesting copies of the checklist provided in the Toolkit (e.g. as part of the re-registration process) and comparing this information through consideration of relevant indicators of risk including:

► volume of services provided

► compliance with CPD requirements

► financial anomalies detected

► visa analysis

► external sources

► business model

► compliance history

► maturity in practice

The level of assurance (control) should be appropriate to the level of the risk. For example, where the level of non-compliance is high, the Office of the MARA's information requests and deterrent strategies should be more intense. Typical assurance activities would include:

► audit

► require explanation

► extended 'desk top review'

► self-assessment

The use of the checklist therefore becomes a key link in supporting compliance.

The Assurance Framework and Implementation Plan is provided at **Appendix E**.

5.6　Summary

The preferred assurance model depends heavily on the extent to which the Office of the MARA wishes to invest in analytical tools to facilitate risk modelling and selection of assurance pathways at a more holistic level. This is also dependent on available technology, the skills of staff and the quality of information and data collected by the Office of the MARA and DIAC.

Recommendation 5

The Office of the MARA should:

    a.   implement an assurance framework based on the principles of risk-tiering where key risks are classified into categories of priority;

    b.   the classification system should be used to model pre-existing data and information on RMAs;

    c.   the outcome of this modelling should be used to determine the type and approach to assurance appropriate to the circumstances, including consideration of the likely resource constraints and the risk exposures involved; and

Office of the Migration Agents Registration Authority
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Ernst & Young │ 20
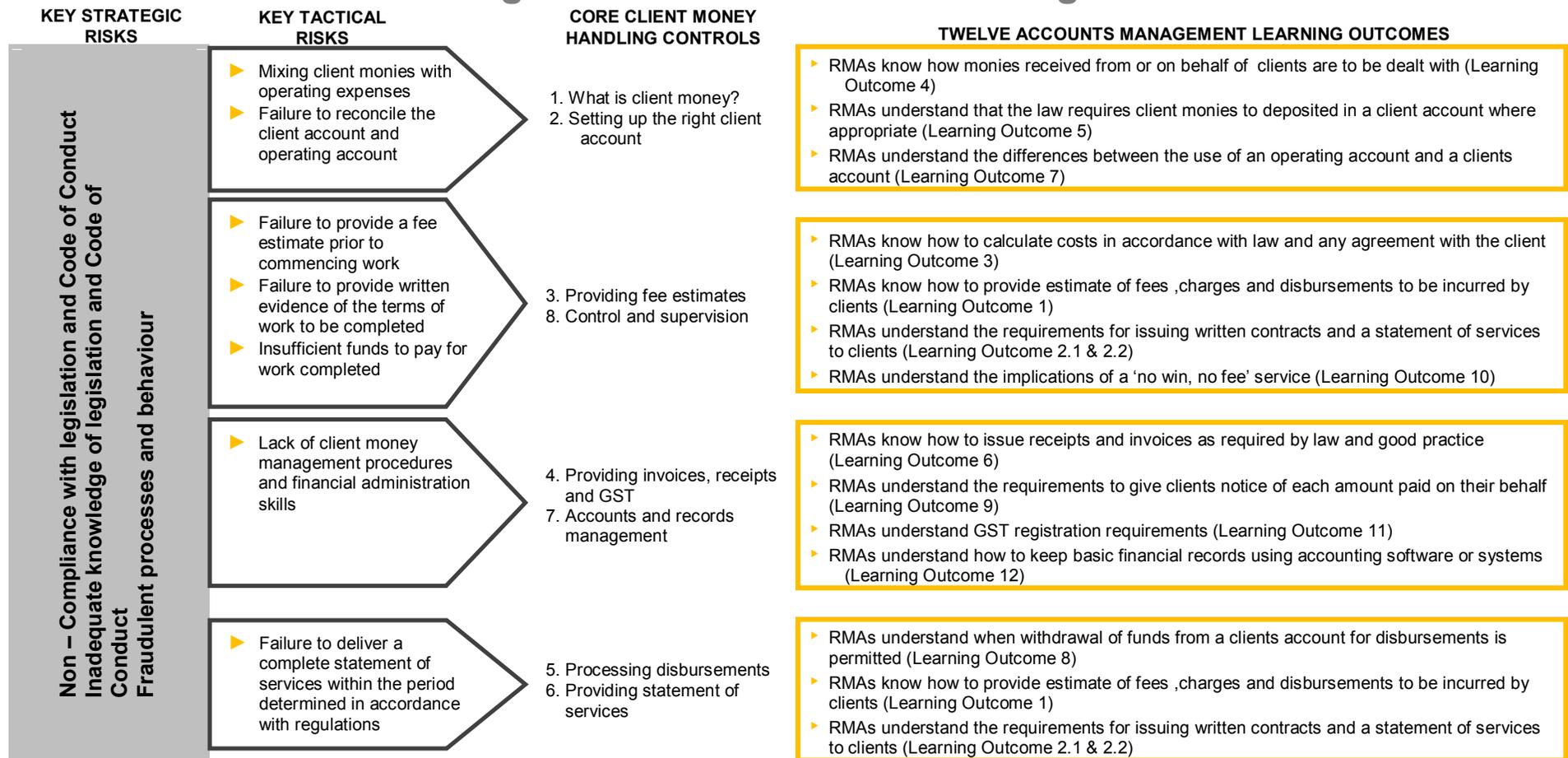
Recommendation 5

    d.   consider the legal, technological and information gathering aspects required to support a more risk-tiered assurance model.

Appendix A   Summary of Sources of Risks Relating to Client Money Handling

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Controls

Context	Risk	Risk Rating	Note
Compliance	Non Compliance with legislation and Code of Conduct	High	Core Client Money Handling Control 1 to 6
Operational	Failure to have an operating and client account	High	Core Client Money Handling Control 1 & 2
	Failure to label client account correctly	High	Core Client Money Handling Control 1 & 2
	Failure to provide a fee estimate prior to commencement of work	High	Core Client Money Handling Control 3
	Failure to deliver statement of services within the period worked out in accordance with regulations	High	Core Client Money Handling Control 6
	Failure to set out in statement of service list of all services and charges in respect to each service	High	Core Client Money Handling Control 6
	Failure to warn client of possible delays and likely costs in pursuing a particular course of action	Medium	Core Client Money Handling Control 3
	Failure to advise client of the method of payment of fees and charges including Departmental	Medium	Core Client Money Handling Control 3 & 5
	Failure to keep adequate records (up to 7 years)	Medium	Core Client Money Handling Control 4
	Failure to keep records and documents entitled to client confidential	Minor	
	Failure to maintain a copy of each client application	Minor	
	Failure to maintain copies of each written communication or file notes of any substantive or material communication between the client and the agent, the agent and any relevant statutory authority and the Department regarding the client	Minor	
	Failure to provide written evidence provided by the client of terms of work to be done	High	Core Client Money Handling Control 3
	Failure to provide written confirmation of terms and services to be rendered	High	Core Client Money Handling Control 3
	Poor client money managing practices allowed to continue (client account not established)	High	Core Client Money Handling Controls 1 to 6
Strategic	Unsatisfactory RMA client money management performance	High	Core Client Money Handling Controls 1 to 6
	Dissatisfied clients (unchanged behaviour by RMAs who failed registration checks)	Medium	
	Failure to address client feedback	Minor	
	Failure to address policy requirements around accounts management	Minor	
	Program objectives not achieved	Minor	
	Ineffective Office of the MARA oversight (e.g. Audit performance, helpdesk etc.)	Minor	
Financial	Unreasonably high fee charges	Medium	Core Client Money Handling Control 3
	Fraudulent processes and behaviour	High	Core Client Money Handling Control 1 to 6
	Failure to given written notice of a material change to estimated cost of providing a service	Medium	Core Client Money Handling Control 3
	Failure to hold, in the clients account, an amount of money paid by the client for an agreed block of work until the work had been completed and an invoice had been issue to the client for services rendered	High	Core Client Money Handling Control 2
	Failure to reconcile client account and operating account	High	Core Client Money Handling Control 2, 4 and 5
	Failure to minimise cost to client resulting in unnecessary costs to client	Medium	Core Client Money Handling Control 3
	Failure to notify of any outside expertise engaged for the client at an extra cost	Medium	Core Client Money Handling Control 3
	Insufficient funds available to cover amounts that the agent may become liable to pay under the 'no win, no fee' policy	High	Core Client Money Handling Control 3
	Not returning client funds	Medium	Core Client Money Handling Control 1 and 6
Training	Training ineffective	Minor	
	Inadequate knowledge of legislation and Code of Conduct	High	Core Client Money Handling Control 1 to 6

Control columns: Code of conduct · Books & Records · Storage Method · Record Retention · Audit Trail · Maintenance · Procedures around classifying and reporting · RMA monitoring and oversight including renewal of registration · Action to suspend certain agents · Implementation of procedures and advice from Code and compliance · Identification and recording of client feedback · Mechanisms to follow up and make adjustments based on feedback · Mechanisms to continuously improve performance and operations based on insights from action on RMAs · Information and knowledge maintained of RMAs of interest · Account management control framework · Continuing professional development protocols in place · Mechanisms to assess performance improvement contained in Office of the MARA business operating model · Range of improvement opportunities identified as part of the administration of the Office of the MARA · Budgets and estimates used to maintain resources to deliver Office of the MARA responsibilities

Legend

High	(red)
Medium	(orange)
Low	(yellow)

Appendix C   Arriving at the core client money handling controls and their linkage between the twelve learning outcomes

KEY STRATEGIC RISKS	KEY TACTICAL RISKS	CORE CLIENT MONEY HANDLING CONTROLS	TWELVE ACCOUNTS MANAGEMENT LEARNING OUTCOMES
Non – Compliance with legislation and Code of Conduct **Inadequate knowledge of legislation and Code of Conduct** **Fraudulent processes and behaviour**	▶ Mixing client monies with operating expenses ▶ Failure to reconcile the client account and operating account	1. What is client money? 2. Setting up the right client account	▶ RMAs know how monies received from or on behalf of clients are to be dealt with (Learning Outcome 4) ▶ RMAs understand that the law requires client monies to deposited in a client account where appropriate (Learning Outcome 5) ▶ RMAs understand the differences between the use of an operating account and a clients account (Learning Outcome 7)
	▶ Failure to provide a fee estimate prior to commencing work ▶ Failure to provide written evidence of the terms of work to be completed ▶ Insufficient funds to pay for work completed	3. Providing fee estimates 8. Control and supervision	▶ RMAs know how to calculate costs in accordance with law and any agreement with the client (Learning Outcome 3) ▶ RMAs know how to provide estimate of fees ,charges and disbursements to be incurred by clients (Learning Outcome 1) ▶ RMAs understand the requirements for issuing written contracts and a statement of services to clients (Learning Outcome 2.1 & 2.2) ▶ RMAs understand the implications of a 'no win, no fee' service (Learning Outcome 10)
	▶ Lack of client money management procedures and financial administration skills	4. Providing invoices, receipts and GST 7. Accounts and records management	▶ RMAs know how to issue receipts and invoices as required by law and good practice (Learning Outcome 6) ▶ RMAs understand the requirements to give clients notice of each amount paid on their behalf (Learning Outcome 9) ▶ RMAs understand GST registration requirements (Learning Outcome 11) ▶ RMAs understand how to keep basic financial records using accounting software or systems (Learning Outcome 12)
	▶ Failure to deliver a complete statement of services within the period determined in accordance with regulations	5. Processing disbursements 6. Providing statement of services	▶ RMAs understand when withdrawal of funds from a clients account for disbursements is permitted (Learning Outcome 8) ▶ RMAs know how to provide estimate of fees ,charges and disbursements to be incurred by clients (Learning Outcome 1) ▶ RMAs understand the requirements for issuing written contracts and a statement of services to clients (Learning Outcome 2.1 & 2.2)

Appendix D   Table of Contents

This table of contents below should be used by CPD providers as a guide to the development of their training packages. This will aid CPD providers in developing training packages that sufficiently address all of the published learning outcomes.

	Recommended Table of Contents
Topic 1	**What is client money?**
	Definition of client money
	How is client money different from operating money?
	What can client money be used for?
	What can client money not be used for?
	How is client money dealt with according to the Code?
Topic 2	**Setting up the right bank accounts**
	What is a client account?
	How is a client account different to an operating account?
	What are the characteristics of a client account?
Topic 3	**Providing fee estimates**
	Why should be provided a fee estimate be provided?
	How should a fee estimate be provided?
	When should a fee estimate be provided?
	What terms should be included in fee estimates?
Topic 4	**Providing receipts**
	What is a tax receipt?
	What terms and items must a tax receipt state?
	How to record receipts?
Topic 5	**Providing invoices**
	What is a tax invoice?
	What terms and items must a tax invoice state?
	How to record invoices?
Topic 6	**Goods and Services Tax (GST)**
	What are the registration requirements for GST?
	What services does GST apply to?
Topic 7	**Processing disbursements**
	What are the correct methods to process disbursements?
	When can withdrawals for disbursements from the client account be made?
Topic 8	**Providing a statement of services**
	What is a statement of services?
	When should a statement of services be provided?
	What should be included on a statement of services?
Topic 9	**Financial records**
	What records have to be maintained?
	How long do records have to be maintained for?
	What systems can be used to maintain records?
Topic 10	**Control and supervision**
	Review of work performed by staff
	Staff awareness of the Code of Conduct

Appendix E   Assurance Framework and Implementation Plan

A - Consider Solution Design Principles

The assurance solution should provide the following benefits:

- ► focus resources where they will be most effective
- ► increase consistency and accountability
- ► integrated with other 'issue management' activities
- ► able to target where most necessary
- ► able to adjust level of assurance with more confidence
- ► ability to fit within the established legal framework and achieve acceptable cost outcomes

B - Implementation Process

Step 1 - Establish a risk classification system

The risk classification system should include the following categories:

Tier 1 – High Strategic Importance
- ► Significant impact on the reputation of industry and Office of the MARA, issues involving large numbers of clients and/or monies, significant compliance risk or high visibility.

Tier 2 – Significant Compliance Risk
- ► Issues reflect areas of potential high non-compliance risk to Office of the MARA or client group. Includes emerging issues, where the rules of engagement are established, but there is a need for further development, clarification, direction and guidance on Office of the MARA's position.

Tier 3 – Specific Agent Risk
- ► Issues that represent the highest compliance risk for a particular segment of the industry, agents or clients that require a unique treatment.
- ► Ideally, this requires a holistic view of significant risks across all of Office of the MARA's businesses (e.g. an enterprise level view).

Step 2 - Establish a Risk profile

The risk profile is used to target assurance activities to levels of risk and control and is an ongoing process that captures and analyses information from normal business operations (e.g. existing client/RMA/ Office of the MARA/DIAC touch points). The risk profile should be based on the following:

- ► volume of services provided;
- ► compliance with CPD requirements;
- ► financial anomalies detected;
- ► visa analysis;
- ► information from external sources;
- ► business model;
- ► compliance history; and
- ► maturity in practice.

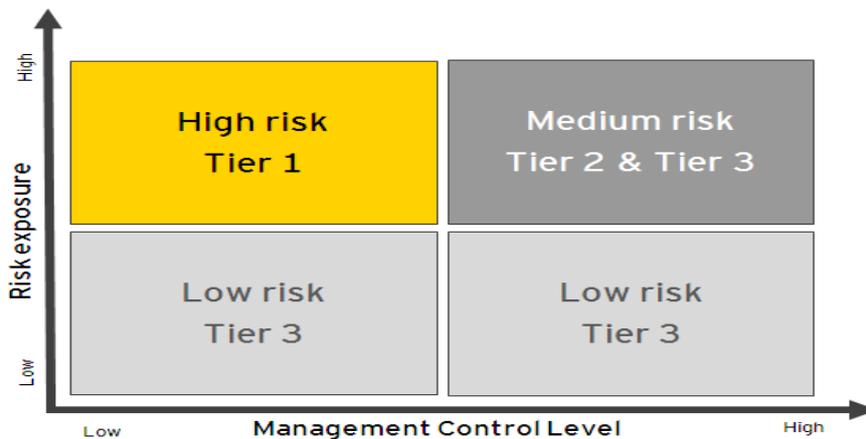Shown is a diagram of a typical risk targeting system.

Diagram 4- Risk exposure and management control matrix

This requires:

- ► identification of key risks and their priorities;
- ► interviews with Office of the MARA stakeholders;
- ► analysis of data;
- ► understanding of risk mitigation ownership;
- ► preparation of risk mitigation action plans;
- ► an established and repeatable process for monitoring and reporting mitigation status;
- ► a forum to gain efficiencies and leverage resources; and
- ► improving information capture and analysis from regular 'touch points'.

Step 3 - Develop assurance and monitoring processes and associated procedures and instructions.

This includes consideration of the established legal position and rules of engagement with RMAs (see Step 1), allocation of roles and responsibilities, identification of costs and resources (including capability).

Step 4 - Assess treatment action and future monitoring status.

A typical approach here is to classify into two groups: 1) "active" status and 2) "monitoring" status. Once an issue has been fully developed and a resolution strategy prepared, it should move from "active" to "monitoring" within the tiered framework. Generally, issues should not be reduced in priority unless Office of the MARA is confident that:

- ► all issues have been identified;
- ► issued guidance relative to the legal position;
- ► developed a resolution strategy; and
- ► determined that continued heightened level of oversight is no longer necessary.

Appendix F Team and Conflict of Interest resolution

Team

The Toolkit and Information Sheets have been prepared by Ernst & Young on behalf of the Office of MARA pursuant to a work order dated 4 April 2011.

A range of Ernst & Young Canberra-based staff have worked on the development of the material and a summary of their experience is outlined in the table below. Full CV of the Ernst & Young team were provided in the work order dated 4 April 2011.

Name and Level	Qualification and Experience
Peter Bell - Partner	Peter is a Partner in the Firm's Canberra Office and has a lead role in the delivery of internal audit and risk advisory services to key clients, including DIAC. Peter has over 20 years experience in providing risk advisory services to key clients including the Department of Immigration and Citizenship (DIAC).
Susan Ryan – Executive Director	Susan is an Executive Director in the Firm's Canberra Office, she has over 13 years experience in providing internal audit and risk advisory services to key clients including DIAC.
Walter hart – Associate Director	Walter is an Associate Director in the Firm's Canberra Office. Walter specialises in performance auditing, evaluation and management reviews for a number of clients including DIAC, the Department of Agriculture, Fisheries and Forestry and the Department of Finance and Deregulation.
Charles Anderson - Consultant	Charles joined Ernst & Young in February 2011. Since joining Ernst & Young in 2011, after successful completion of the Summer Vacationer program in 2010, Charles has gained experience with a range of government departments and agencies focussing on developing quality and risk assurance frameworks. Charles holds a Bachelor of Arts (Philosophy and International Relations), Australian National University and a Bachelor of Commerce (Finance), Australian National University.

Conflict of Interest Resolution

At the commencement of this assignment concerns were raised by Registered Migration Agents (RMAs) as to a potential conflict of interest in the conduct of the assignment.

We have included below an extract of the letter provided by Ernst & Young to Stephen Wood, Deputy Chief Executive Officer, on 16 May 2011 outing the resolution of the concerns.

EXTRACT OF LETTER ON CONFLICT OF INTEREST RESOLUTION

"I refer to your discussions with Walter Hart of Ernst & Young in respect of your concerns relating to issues raised by some Registered Migration Agents (RMAs) relating to a potential conflict of interest in the conduct of the subject review. Thank you for bringing these issues to our attention.

I understand that the concerns are from two perspectives and I have outlined our approach to mitigating the risks associated with these issues below.

The first perspective centres on a potential conflict of interest where Ernst & Young, having a business arm which acts as Registered Migration Agents, can have access to sensitive corporate and commercial information (for example, details of clients and fees) held by RMAs that are part of the review sample.

At Ernst & Young, independence is paramount to our profession's objectivity, in fact and appearance. We are each responsible for understanding and ensuring our own independence and the independence of Ernst & Young. We need to be free from interests that might be regarded as being incompatible with objectivity, integrity and impartiality in serving our clients, including the Office of the MARA.

Where there is a potential conflict, our policy is not to accept the engagement unless all relevant parties explicitly agree that there is no actual conflict. Because we understand the importance of conflict management we will also implement additional measures, including:

▸ the review team will sign formal confidentiality declarations prior to commencing any review fieldwork;

▸ the review team will be separated from Ernst & Young staff working on other assignments;

▸ central support functions (our Centre for Business Knowledge, or our Technical support) will be made aware of any conflict management requirements before these services are used;

▸ the engagement Partner (myself) will not discuss the assignment outside the review team;

▸ I will brief the review team on specific confidentiality requirements;

▸ access control over electronic files and information;

▸ access over physical files will be restricted and files will be kept in a separate secure environment;

▸ all review team members will be required to observe strict adherence to professional body ethical rules;

▸ I will provide positive reassurance at the conclusion of the assignment that all conflict of interest management procedures set out above have been observed; and

▸ relevant disclosure to Office of the MARA and Department of Immigration and Citizenship (DIAC) management.

The review requires Ernst & Young to:

▸ identify the key risks and controls over an agent's handling of client's funds;

▸ assess the adequacy and completeness of training and continuing professional development information provided to RMAs and provide advice on design improvements;

▸ develop a Client's Account Toolkit, including a self assessment checklist and information sheets to improve agent's handling of client funds; and

▸ develop an assurance framework and implementation plan to provide ongoing assurance over the handling of client monies and management of client's accounts.

Ernst & Young is established on the DIAC Internal Audit Services panel and has performed a number of management initiated reviews where similar issues have arisen. In performing these reviews we have always managed potential conflicts and acted confidentially, independently and objectively. In addition, the panel arrangements require assurances to DIAC about the management of this risk.

I am confident that we can meet the objectives of the review without accessing information on clients or fee details, other than at an aggregate or whole of business level (for example, size of RMA, number of clients served, and range of services provided) that is required to understand the appropriate design elements needed to improve cash handling practices and the development of associated guidance material.

Our signed confidentiality agreements are attached.

The second perspective centres on a concern from an agent that Ernst & Young were held to account over the collapse of Equitable Life in 2000. As you know, Ernst & Young is one of the largest professional service firms with some 140,000 people operating in most countries across the world. As such, Ernst & Young is likely to be involved in litigation or potential litigation as part of the risks of doing business at this scale. It is worth noting that this matter arose from different services, in another country and more than a decade ago. I do not believe it can be a basis for inference about our current services to DIAC.

I also understand that the matters relating to Equitable Life have been dealt with and any lessons learned from this experience have been embedded in our audit systems and procedures as appropriate. To the best of our knowledge, Ernst & Young is not involved in any litigation, petition, claim, action, judgement or decision which is likely to adversely affect the provision of the services to the Office of the MARA.

The involvement of myself, Susan Ryan and Walter Hart with planning, execution and supervision of our service procedures on this review confirms that you will receive the highest quality of service and outcomes you can rely on. All three of us have individually served DIAC since 1999 and have a deep appreciation of the values of the Department and of the Commonwealth more broadly. We consider ourselves fortunate to have assisted, and continue to assist the Department, in the delivery of the important services it provides to the Australian community and RMAs."

Ernst & Young

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