

Office of the MARA

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**Report**  
**Complaints Handling Review**

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## Scope

The consultants were asked to review the Office of the MARA Complaints-handling process with a view to:

- identifying and analysing best practice in complaints handling;
- developing appropriate strategies to improve complaints handling performance;
- assessing the level of resources and the competencies required to effectively manage complaints;
- identifying appropriate training and support needs for staff handling complaints; and
- providing recommendations for best practice complaints handling.

## Context

The Office of the MARA is a young organisation, albeit the antecedent organisations and the sector/profession have a considerably longer history.

1. The complaints-handling function has been completely re-staffed since its establishment under the Office of the MARA.
2. Complaints processes and team structures have been re-established, revised procedures have been implemented.

3. Recent recruitment effort has brought the staff complement in complaints close to full strength and added legal skills to the team.
4. The new organisation has been focusing on finalising the more complex and aged cases whilst ensuring the new complaints are actioned. While the number of complaints received has relatively stayed the same (averaging 500 complaints per year) complaints received from consumers have increased (the 2010/11 Annual Report reveals a 15.6% increase in complaints received direct from an individual or on behalf of an individual).
5. To address the workload, staff have been diverted from proactive policy and Integrity work.
6. There is evidence of this concerted effort beginning to make headway, with average age of cases beginning to drop – albeit still well outside the Office's (and other regulator) standards.
7. The complaints-handling processes under the Office of the MARA have now reached a level of stability and consistency that enables a fresh perspective to be brought to a review.

We found an organisation that is a professional conduct regulator, that is not yet able to exercise its full regulatory role, principally because it is overwhelmed with reacting to externally-driven complaints-handling work.

This complaints workload is diminishing the MARA's public effectiveness through long complaint resolution times, disproportionate effort for 'light-touch' outcomes and the inability to apply resources to proactive non-complaints regulatory activity.

We found that its complaint-handling processes are sound, are improving, and are capable of further incremental improvement, however these improvements will not, in our view, reduce workload to a sustainable level.

Having now established and bedded down its operations, the Office of the MARA must commence the next steps in its evolution. These steps need to include substantive changes to its current mix of policy, approach and stakeholder expectation.

From an organisational view, the imperatives are to:

- Improve regulatory response timeliness sufficient to improve complainant outcomes, be credible in the market and maximise regulatory leverage and cost/effectiveness.
- Reduce complaints effort to a point where around 20-25% of resources can be applied to proactive regulatory activity such as outreach/ Integrity/ intelligence/programmatic work/campaigns.
- Restore the ability for the MARA's to control its own priorities and manage resourcing through future increases and fluctuations in complaints workload (sustainability).

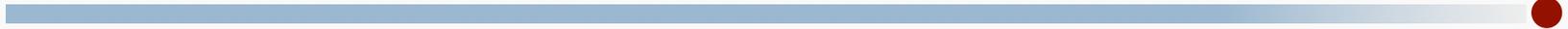
Our recommendations for the **short to medium term** are to:

1. Articulate and embed a MARA regulatory risk model
  - providing the capacity to prioritise – on a risk basis - application of regulatory resources between different regulatory approaches
2. Further develop the response to 'consumer-redress' complaints (complaints that are primarily disputes about service, fees, etc)
  - Recognise more matters as appropriate for early resolution rather than investigation
  - Developing approaches that will more often deliver negotiated, timely outcomes for consumers
3. Streamline the approach to less serious professional conduct matters
  - By applying the risk model and using less formal and more summary ways of dealing with low seriousness matters
4. Sharpen the approach to more serious matters
  - By applying the risk model to prioritise serious and complex matters and innovating in the process of decision-making
5. Re-activate the Section's Integrity (pro-active, programmatic) work using the complaints database as a key source of intelligence
  - By applying the risk model to identify monitoring targets (agents who pose regulatory risk or issues worthy of programmatic focus).

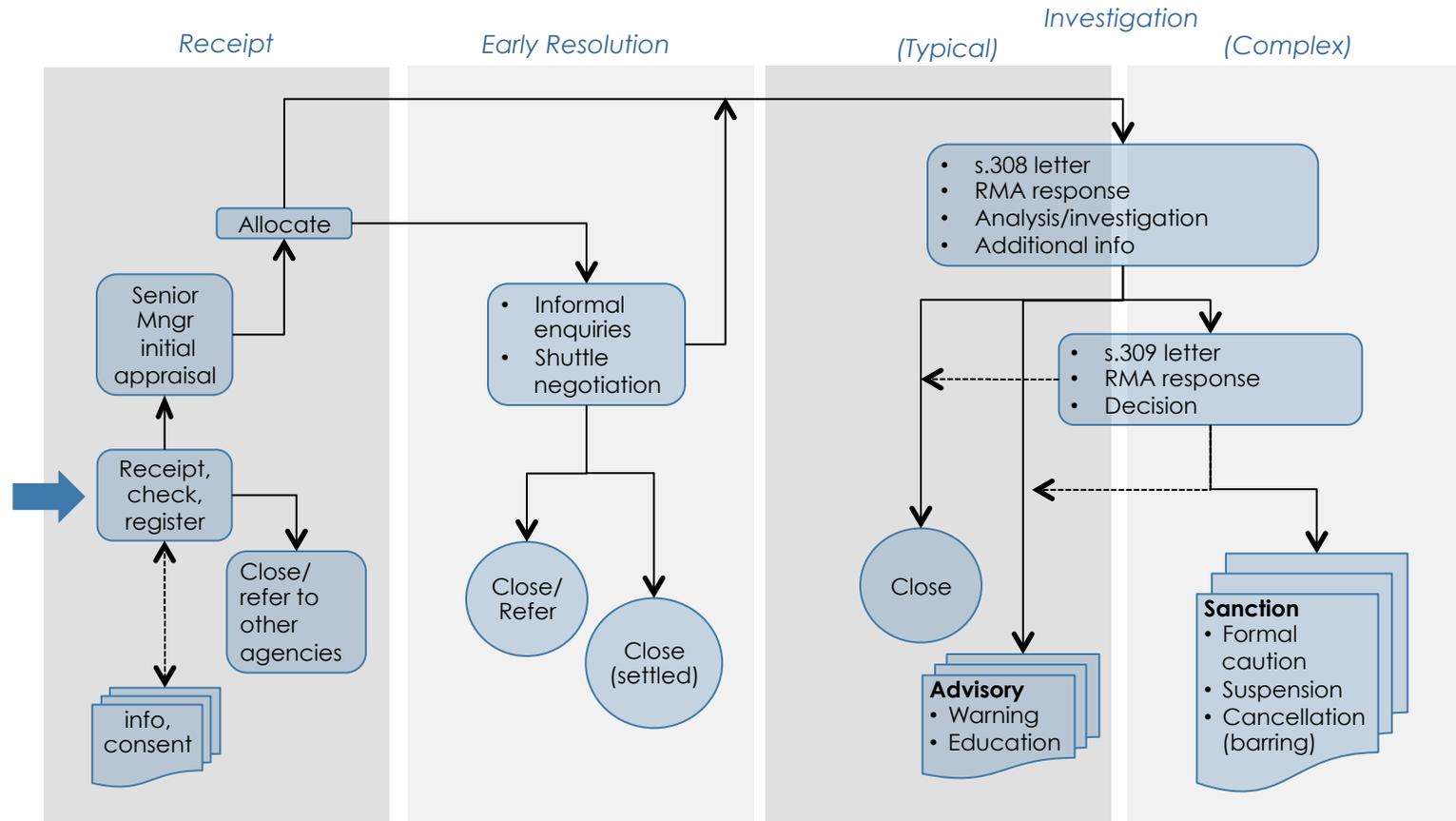
In the **long term**, the Office of the MARA should work to:

6. Build the case for and seek additional powers to expand the MARA's regulatory 'toolbox'
  - enabling a wider range of responses to better match the particular circumstances or types of professional conduct breaches – supporting objectives in areas 2, 3 and 4 above.

## Overview of current complaints-handling

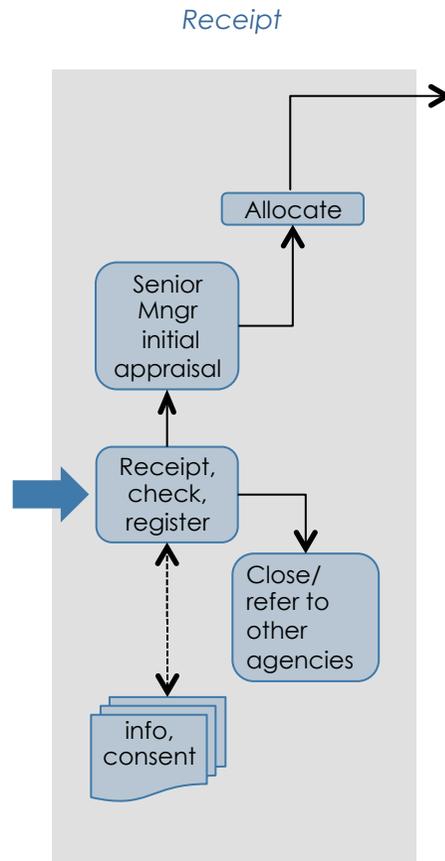


# Overview of Office of the MARA complaints process\*



\*Our representation above maps the Office of the MARA processes using generic complaints terminology. It omits some detail and may use different terms from internal documents. For example, to simplify, we have not referred to the sections of the Migration Act that are used where a complaint is about a former registered migration agent.

# Overview - Complaints process – Initial receipt



## 1. Description

- Complaint checked and assessed to determine possible breaches of Code
- Referral to other agencies for matters outside jurisdiction
- Closing of complaints where information does not suggest a breach
- Information and complainant consents completed if necessary
- RMA's complaint record checked
- Initial appraisal by senior manager to 'triage' complaints (informal resolution, typical investigation and complex investigation) and determine urgency
- Complaint directed to team/staff member according to 'triage' classification
- Complaint acknowledged

## 2. Current good practice elements include:

- Prompt acknowledgement to complainant
- Involvement of senior manager in 'triage' appraisal of complaints
- Prompt direction of complaints to team/staff member according to 'triage' classification
- Case management system to record complaint and track future progress

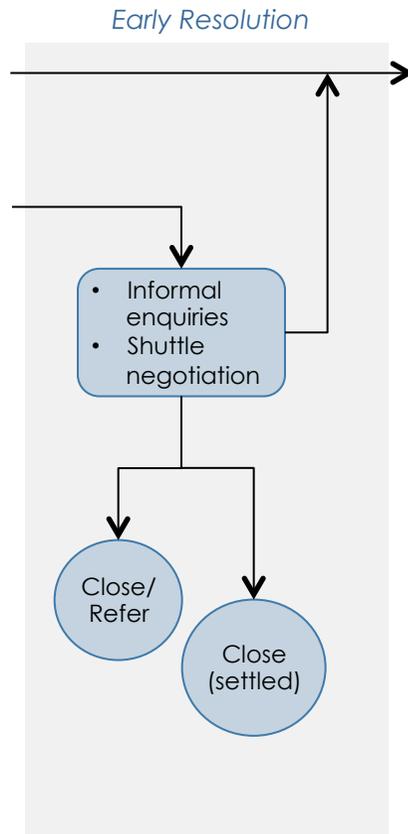
## 3. Observations/findings:

- Effective senior manager input and prompt allocation process
- 2 day turnaround for acknowledging complaints being achieved
- Sensible, practical, flexible approach

## 4. Opportunities:

- Revisit complaint definitions used in allocation process with a view to increasing focus on regulatory value for effort – in particular to distinguish 'consumer-type' complaints (service, fees, etc) from likely serious professional misconduct issues

# Overview - Complaints process – Early resolution



## 1. Description

- For complaints with an easily rectifiable technical breach and the client impact is not significant, the Receiving Team will attempt early resolution. Typically this will involve calling the RMA and testing their preparedness to meet consumer demand for a fee refund, a release to the consumer of the consumer's file or to rectify advertising. Where redress is not obtained, the consumer will typically be referred to Fair Trading and Consumer Tribunal.

## 2. Current good practice elements include:

- Informality, speed, currency
- No threats of investigation/formal processes for RMA
- Efficient handling within office - eg. few hand-offs of file from one officer to another
- Where 'aggravating factors' identified during conciliation, complaint re-classified and investigation commenced
- Where appropriate, complaint closure or referral to other agency occurs.

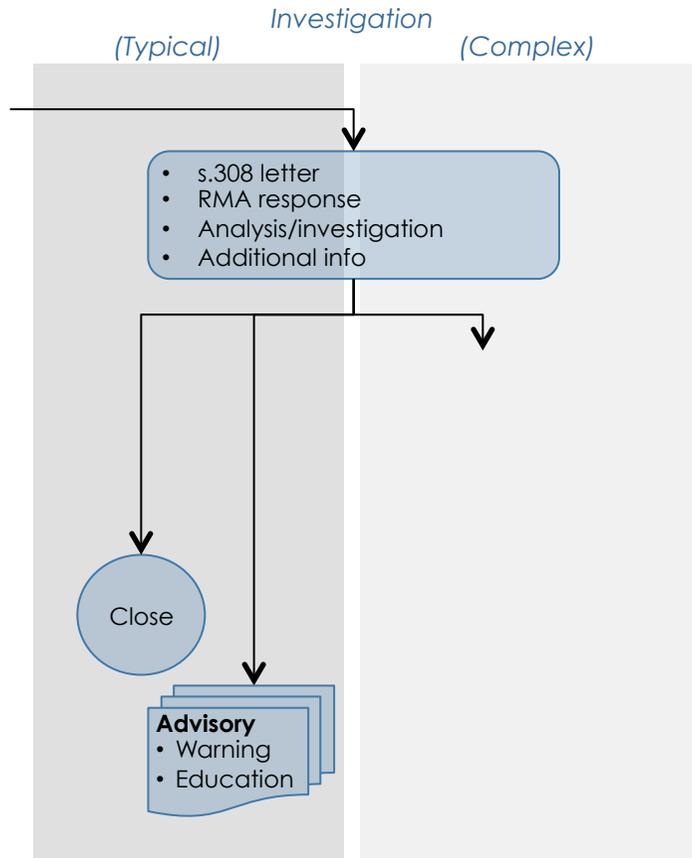
## 3. Observations/Findings:

- Sensible recent innovation to (sometimes) send RMA the complaint and allow them to provide their side of story in writing (ie without invoking s.308 process)
- Unlike Ombudsmen and some tribunals, the Office of the MARA lacks powers to compel consumer redress (this lack of power is also a feature of other professional conduct domains – eg. the Legal Profession Act 'civil dispute' resolution process)

## 4. Opportunities:

- Increase use of informal resolution processes
- Establish 'limited merit' closure process - ie. no finding of either breach or no breach, but RMA advised that the complaint will be recorded and the matter could be revisited, for example, if future similar complaints are made
- Second staff from other external disputes resolution scheme for practice/skills transfer in early resolution/shuttle negotiation (eg. Financial Ombudsman or Legal Services Commissioner)

# Overview - Complaints process – Investigation



## 1. Description

- s.308 letter sent to RMA requiring statutory declaration response
- Department database may be used to check information provided
- Detailed analysis of Code to identify possible breaches
- Detailed explanation to RMA of findings – for 'Typical' complaints the result is generally either no breach or formal warning

## 2. Good practice elements include:

- Oversight/allocation by team leader
- Clear procedures
- Template resources

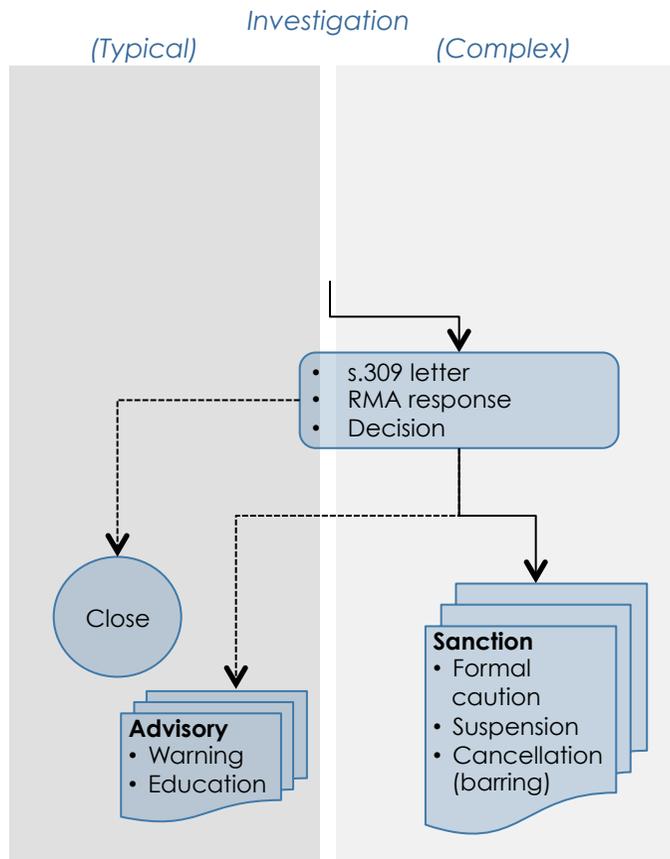
## 3. Observations/findings:

- Some resignation by staff that efficiency targets (eg. 30 day turnaround for s.308 notices) unachievable given workload
- Once s.308 process triggered – for most 'Typical' complaints:
  - process is overly formal with a highly specific 'charge sheet' style approach
  - staff skills stretched by an overly labour-intensive drafting approach (both s. 308 letter and explanation of reasons)
  - demands on RMA are high, invites defensive approach
  - seen by some as 'sledgehammer to crack nut'
- Investigation process frequently too slow to deliver complainant outcomes that are of value
- Investigation delay increases risk that outcomes will produce little regulatory 'leverage' and be seen as inconsequential in market
- Other (longer-established) regulators – more willing to finalise complaints without full investigation

## 4. Opportunities:

- Stronger risk-based approach so that 'Typical' complaints are dealt with less formally/more efficiently and more appropriate to likely outcomes.

# Overview - Complaints process – Sanction



## 1. Description

- s.309 letter sent to RMA
- Detailed analysis of information to determine what breaches have occurred and what regulatory response is appropriate
- Detailed statement of reasons – for 'Complex' complaints usual result is caution, suspension or cancellation/ barring

## 2. Current good practice elements include:

- Case strategy reviews
- Legal skills applied
- Grouping complaints against same RMA

## 3. Observations/findings:

- Pursuit of all incidents/ breaches involving particular RMA rather than focus on key breaches and incidents
- Intensive work put into s.309 letter and statements of reasons
- For 'Complex' team, some investigations are truly complex and others are just 'difficult' (evidence, language, location)
- Other delaying factors include staff turnover & workload management
- Regulatory outcomes far too slow for optimum leverage/impact

## 4. Opportunities:

- Restrict investigation focus to sub-set of incidents/ complaints that would be sufficient to warrant proposed regulatory action
- Briefer statements of reasons
- More specialisation within office eg. by type (and complexity) of visa
- More streamlined review process for statements of reasons
- Option to sometimes halt sanction process where RMA ceases registration – and use registration process as an alternative regulatory tool should the RMA try to re-enter the industry

## Discussion and Observations

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## 1. Sound Processes

We found that the Office of the MARA's complaints process is sound, with many of the elements of what we would see as current good practice.

These good practices include:

- A senior management 'triage' directing incoming complaints to the best-suited process and to the case officers with the best match of skills and experience;
- Attempts to use informal early resolution approaches to deal with less serious matters;
- Use of documented guidance and templates;
- Use of internal data and available relevant information from external sources;
- Frequent case review activity by team leaders and senior managers; and
- Re-allocating staff to deal with peak workloads.

## 2. Improvement

It is clear that the Office of the MARA management have invested and are continuing to invest considerable effort on improving the efficiency and quality of the complaints process.

We see improvement continuing from management's current efforts and we have identified further areas for refinement which we think will provide for continuing incremental improvement in quality and efficiency.

## 3. Volumes/workload

While there is some current indication that the organisation is gradually getting ahead of the current complaints load, the current on-hand caseload for the office has been around 300 for quite some time. All the signs are that within current approaches, this is an unsustainable load for scale of the MARA.

- Individual case officers have caseloads that result in some files remaining effectively untouched for months at a time;
- The complaints handling work environment is a high work demand environment and key officers work long hours which is unsustainable;
- All available appropriately skilled resources within Professional Standards and Integrity are currently dedicated to complaints – leaving no resources for policy, monitoring/Integrity and other forms of proactive regulation; and
- Our experience and that of other regulatory and complaints-handling organisations is that long periods of unmanageable workload will take its toll on staff well-being, morale and retention.

Complaint trends do not offer much comfort. Although Office of the MARA effort at inter-agency dialogue has reduced the flow of complaints referred from other agencies, this has been more than offset by increased complaints from the public, which are on an upward trend that shows no sign of abating.

If our experience with consumer complaints agencies over the past decade is any guide, MARA should expect public complaints numbers to continue to grow at beyond population growth for the foreseeable future.

*... continued overleaf*

The experience from the complaint-handling organisations that we speak to is that there are several trends that are driving increases in complaint numbers over and above population growth.

Greater consumer awareness across all sectors of what are reasonable fees, what standard of service to expect, what consumer rights are and where redress can be sought is being driven by the proliferation of on-line and social network sources of information and advice. There is also some evidence from our interviews with consumers of a increasing cultural willingness to complain.

In addition, the MARA can expect to achieve a higher profile and greater consumer awareness as a function of its own increased profile and effectiveness. Our expectation is that rising consumer expectations will outpace any offsetting improvements in professional standards.

Finally, as in any regulated environment, the MARA will experience future spikes in complaints volumes (eg. a collapse of an active RMA business, a change in government migration policy, publicity around migration issues, a collapse of an international education institution, etc).

We do not think that any modern regulator (including a professional conduct regulator) can be in a position to promise full investigation of 100% of all complaints made – unless, like an industry ombudsman, they are funded on a per-complaint basis.

## 4. Staffing

While a simple increase in resources would provide some short to medium term relief, we do not expect that this is likely for the foreseeable future and in any event, we do not think that the long-term solution is to keep adding resources.

Recent recruitment of legally qualified staff has been a positive for the office and clearly should be repeated for the future skills mix.

We do not think however, that restructuring for even more senior staff is a 'silver bullet'. As a small agency, within a large host department and a very large public service, the Office of the MARA will always have to compete for staff and will always have to be able to work with a mix of experience and skills and reasonably frequent turnover.

## 5. Proactivity

The complaints workload issues that confront the Office of the MARA point to a more significant issue than simply getting on top of a 'backlog'.

The MARA is only managing to achieve what it is currently doing in the complaints space by diverting staff from proactive regulatory functions such as monitoring, intelligence analysis, risk assessment, policy development, outreach, programmatic activity, etc.

As an effective regulator, the Office of the MARA must be able to use intelligence to assess the risk profile of its industry (profession), choose from its regulatory toolbox where to focus effort (including which complaints it will put the most effort into investigating) and maintain the flexibility to respond to shifting priorities (true risk-based regulation).

The key strategic issue confronting the Professional Standards and Integrity Section of the MARA is that current policy settings and stakeholder expectations mean there is no effective ability to control the proportion of its resources applied to the complaints aspect of its regulatory work. Unless something changes, it will remain hostage to externally-driven complaints volumes.

## 6. Regulatory best practice

Quite apart from limiting the MARA's effectiveness, this lack of control is likely to expose it to future criticism (reactivity, lack of timeliness) from other parts of government and the community.

The Australian National Audit Office's Better Practice Guide *Administering Regulation* emphasises that, to maximise regulatory effectiveness within available resources, a regulator needs to be proactive (monitoring compliance) and to use a risk management methodology when responding to non-compliance.

*"Regulators have a responsibility to provide assurance to the Australian community, and particularly to stakeholders in a regulatory regime, that mandated requirements are being met. This includes not only monitoring compliance . . . of entities that have met legislated market entry requirements, but also making sure that all entities operating in a regulated market are operating legally. A risk-based compliance monitoring framework is essential to meeting this responsibility." (page 51)*

*"Flexibility in responding to non-compliance enables a regulator to design and implement a response that is targeted at the highest priority risks posed by the non-compliance. This approach is likely to achieve desired regulatory outcomes at administrative costs to the regulator and compliance costs on the regulated entity commensurate with the risks of the non-compliance." (page 64)*

The Better Practice Guide cites with approval one regulator's seven graduated levels of regulatory intervention – the first being "No regulatory action" ie. the regulated entity being informed of the regulator's decision not to act where the concern or breach is minor and temporary.

By way of a less happy illustration - a Senate economics committee report in September 2010 found fault with the Australian Securities and Investments Commission (ASIC) supervision of the insolvency industry. The Senate report recommended that ASIC be stripped of the responsibility and a new regulator be established to oversee the insolvency sector. The findings from the inquiry noted ASIC's "overly reactive" approach and its reliance on "a complaints-based approach which reacts to existing problems rather than deterring future misconduct".

## 7. Regulatory 'toolkit'

We observed that the MARA has a limited range of regulatory tools at its disposal. This is a function of its history and comparative youth – not a criticism of the agency.

To illustrate, the Office of the MARA does not have:

- Powers for compulsory on-site inspection of RMA premises and records
- Ability to attach conditions to registrations or renewals
- Ability to agree enforceable undertakings (undertakings by the RMA that if breached could, through Court process, ultimately lead to a finding of contempt of court).

We think that these would significantly enhance the Office of the MARA's regulatory effectiveness and reduce its current over-reliance on complaints investigation.

We acknowledge that while these are commonplace powers amongst regulators generally, not all professional conduct bodies have them. We also understand that achieving this expanded 'toolkit' may take some time.

## 8. Consumer redress

While the Office of the MARA does put effort into early resolution of some complaints, this is currently generally limited to those matters that are pretty clearly distinguished as being about consumer issues such as service and/or fees.

Our recommendations encourage the Office of the MARA to increase this proportion and to strengthen the ability to negotiate settlements where appropriate – recognising that the organisation does not have any power to order consumer redress. This of course, limits its capacity to resolve disputes to those where the RMA is prepared to cooperate.

The obvious next step would be for the MARA to obtain the power to bind RMAs to accept MARA decisions as to consumer redress. While we can see the value of this from a consumer perspective, we are not sure that this is the immediate priority for the organisation or the sector and we have not at this time made this recommendation (see discussion at Pages 21, 22).

We do think that the organisation could benefit from a secondment of staff from other organisations with experience in this type of consumer complaints resolution.

## Recommendations



## The imperatives

1. To reduce average complaints resourcing by 20-25% in order to restore the Office of the MARA's capacity for proactive activity - including outreach/integrity/intelligence/programmatic work/campaigns.
2. To restore complaints handling and other regulatory responses to a level of timeliness that will improve complainant outcomes, be credible in the market and maximise regulatory leverage and cost/effectiveness.
3. To restore the Office of the MARA's ability to control its own priorities and manage resourcing through future increases and fluctuations in complaints workload.

## Recommended areas of focus

Initiatives that can largely be implemented in the short to medium term:

1. **Further develop, articulate and embed an Office of the MARA regulatory risk model**
  - By developing and embedding the model into its operations and external relationships, providing the capacity to prioritise – on a risk basis - application of regulatory resources between different regulatory approaches – including, where warranted, earlier closure of some complaints.
2. **Further develop the approach taken to 'consumer-type' complaints** (complaints that are primarily disputes about service, fees, etc.)
  - By using the risk model to recognise additional matters as appropriate for early resolution rather than investigation – and by developing an approach that will more often deliver negotiated outcomes for consumers

3. **Streamline the approaches taken for less serious professional conduct matters**

- By applying the risk model and using less formal and more summary ways of dealing with low seriousness matters

4. **Sharpen the focus of the approach to more serious matters**

- By applying the risk model to prioritise serious and complex matters and innovating in the process of decision-making

5. **Re-activate the Section's Integrity (pro-active, programmatic) work using the complaints database as a key source of intelligence**

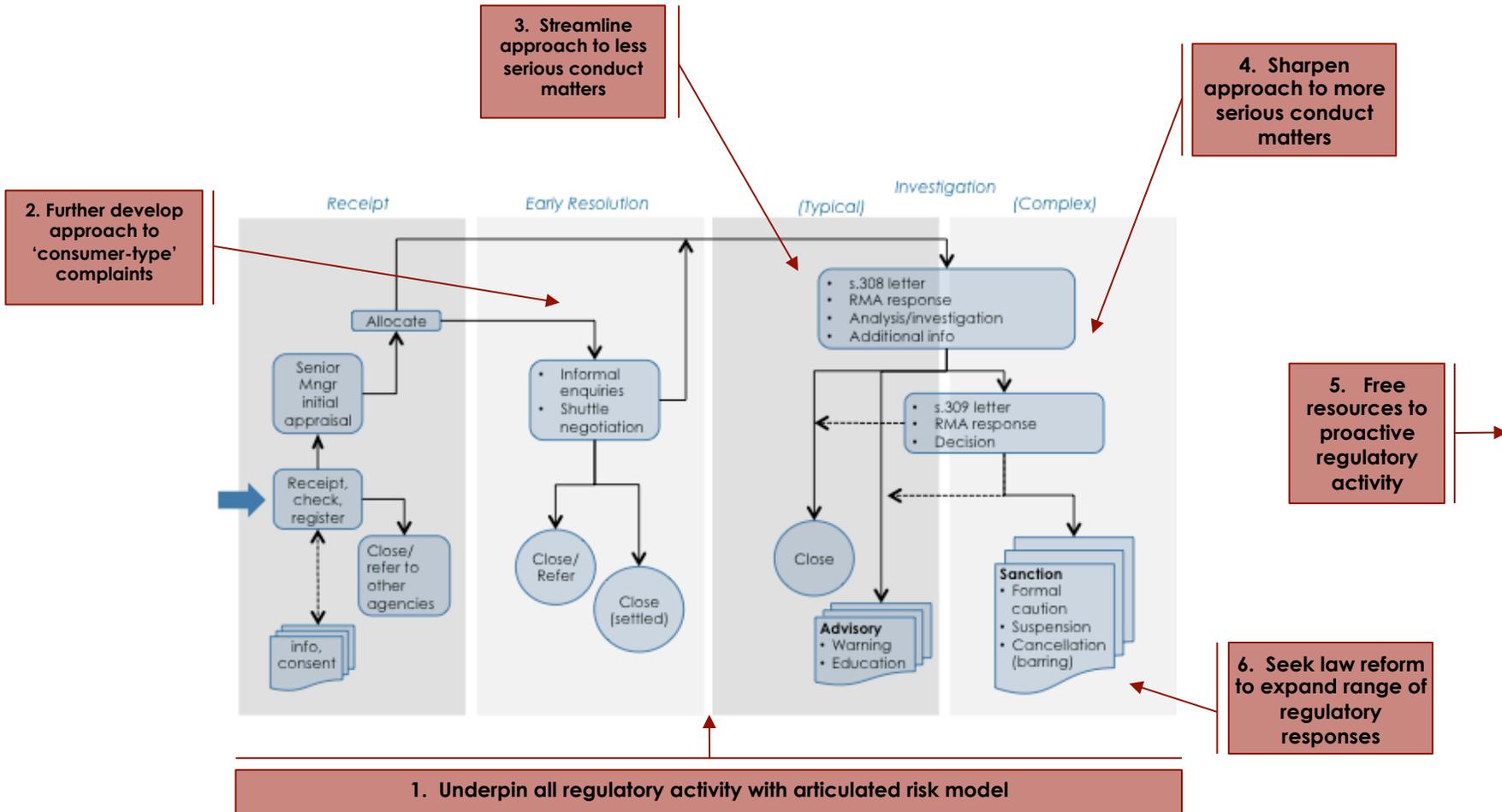
- By applying the risk model to identify monitoring targets (agents who pose regulatory risk or issues worthy of programmatic focus).

For the medium to longer term:

6. **Develop the Office of the MARA's case for additional powers to expand its regulatory 'toolbox'**

- Enabling a bigger range of responses to better match the particular circumstances or types of professional conduct breaches – supporting the objectives in areas 2, 3 and 4 above.

# Recommended Areas of Focus



# Recommendation 1. – A risk model

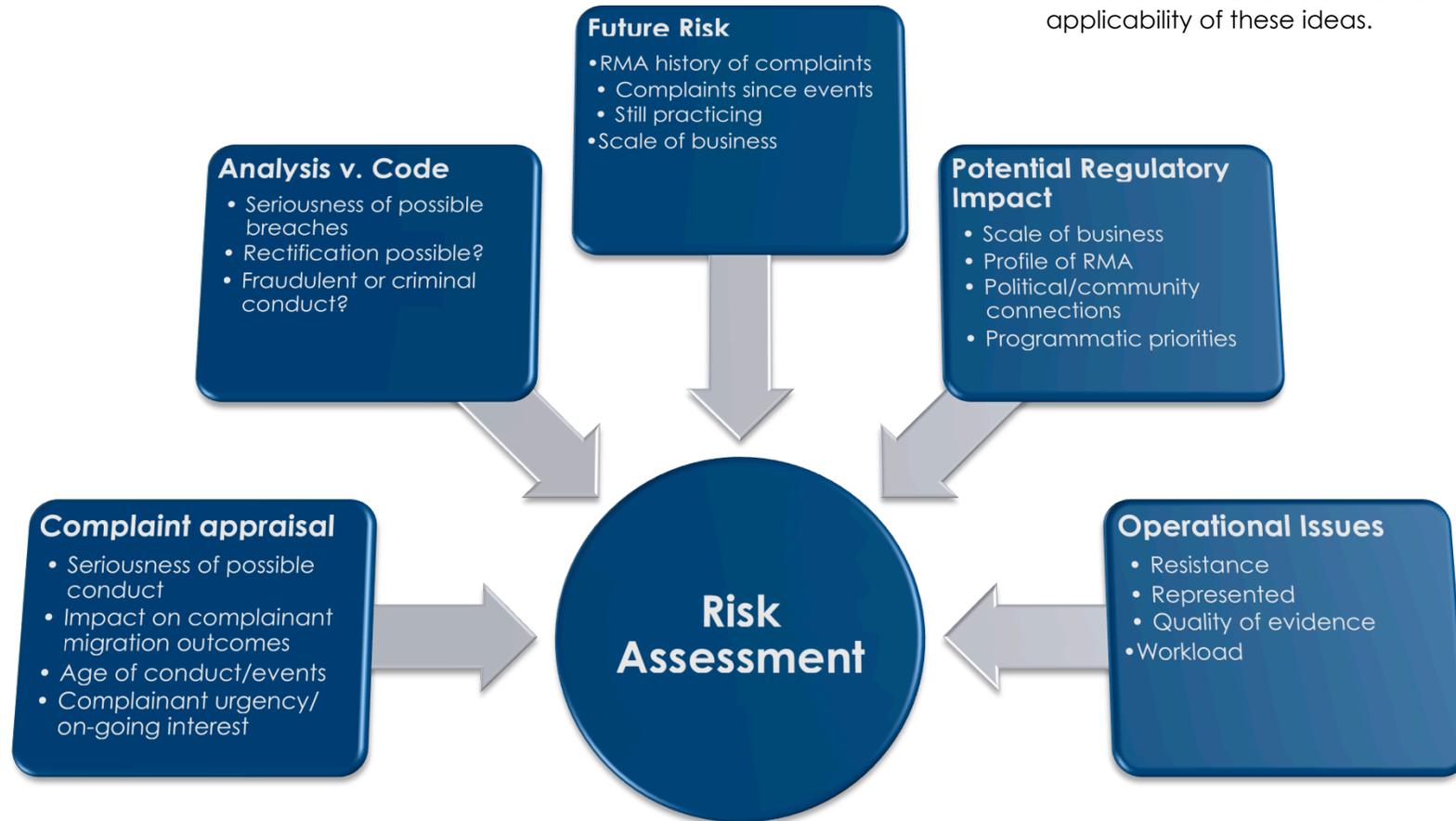
## 1. To further develop, articulate and embed an Office of the MARA regulatory risk model

- By developing and embedding the model into its operations and external relationships, providing the capacity to prioritise – on a risk basis - application of regulatory resources between different regulatory approaches – including, where warranted, earlier closure of some complaints.

1. The Office of the MARA needs to be able to focus scarce resources where it will obtain maximum regulatory leverage and impact. It also needs to ensure that there is a reasonably proportionate lower effort and cost to actioning lower priority matters. The Office will need to be selective about the matters that are pursued through the formal investigative processes set out in Part 3 of the Migration Act. It is also unavoidable that it must be prepared to take minimal or no action in some cases.
2. To provide a sound basis for doing this – and articulating this to its stakeholders - the Office of the MARA should further develop a regulatory risk/prioritisation model (the basics of which are already present) that brings together the current various decision-making considerations (mostly to do with seriousness of breaches and regulatory record of the RMA) and some newly articulated considerations that go to the likely regulatory impact (leverage) of pursuing a matter, the likely regulatory risk (mischief) while the matter remains incomplete - and the likely cost of the regulatory action.
3. This can be a sensitive concept for regulatory agencies to implement for the first time – frequently coming up against legitimate – but often one dimensional - stakeholder arguments (eg. *“the consumer needs help”*, *“the RMA conduct was appalling”*, *“we have to get/keep them out of the industry”*).
4. The challenge is to bring stakeholders along with the idea of a multi-dimensional assessment – ie. *“taking all factors into account, in the circumstances, what is the most effective thing that we are practically able to do?”*
4. An example (from our naïve view) is barring action for agents who have relinquished their registration (possibly as a defensive tactic) during the investigation process. Although likely quite serious breaches, a hard-nosed assessment of the likely future risk for some of these may well suggest that the barring process will be costly and for limited overall benefit. An alternate process may produce a more cost-effective outcome for some matters (see detail discussion of Recommendation 4).
5. Another example is targeting specific types of complaints for priority as part of a thematic regulatory program. For instance, complaints of comparatively low outright seriousness about (say) record-keeping, might be given priority because they align with a particular message on record-keeping obligation that the Office of the Office of the MARA is focused on for a time.
6. The graphic overleaf is the starting point for a regulatory risk model. It incorporates feedback from our workshop and initial file testing. We also think that involving the Advisory Board in testing the developing ideas would be very useful.

# Recommendation detail – an illustrative risk model

This suggested model is explored further in Attachment A – Risk Classification Matrix. That is a document that was workshopped with the Office of the MARA staff to test the practical applicability of these ideas.



## Recommendation 2. - Consumer disputes

### 2. To further develop the approach taken to 'consumer-type' complaints (complaints that are primarily disputes about service, fees, etc.)

- By using the risk model to recognise additional matters as appropriate for early resolution rather than investigation and by developing an approach that will more often deliver negotiated outcomes for consumers.
1. In our review of files and in discussion with staff we found that there are numbers of complaints which would – in other environments – likely be classified as consumer disputes rather than possible professional conduct breaches.
  2. The Office of the MARA needs to be able to quickly and informally deal with these consumer disputes – other than through the resource-intensive (and not especially consumer-friendly) professional conduct 'lense'.
  3. We understand that this is not always a clear cut distinction and that a matter classified in either way initially, may well require reclassification after further information is obtained. However, this distinction is already part of the Office of the MARA complaints process – with early resolution techniques being tried in some of these cases.
  4. We think that the Office of the MARA could treat a larger proportion of complaints as falling into this space (ie. seek informal early resolution rather than triggering the formal Part 3 investigation processes). We also think that there is opportunity to be more proactive in proposing settlement terms to the RMA. This would involve:
    - a more concentrated shuttle negotiation process than is the case at present; and
    - acceptance that these complaints will not automatically progress to professional conduct processes if the consumer dispute is not settled.
  5. As an additional, albeit longer term initiative, consideration could also be given to seeking amendment of the Code of Conduct to give the Office of the MARA the power to award compensation to consumers where warranted. Judging from our review, the amounts of money involved are typically small (under \$2000) and a low compensation cap of \$5000 would probably be more than sufficient to deal with the majority of matters likely to fall into this category.
  6. Many licensed services in the community operate with an Ombudsman that is able to consider consumer complaints and compel redress, however we note that the Legal Services Commissioners do not have this power over their legal practitioners. Instead, the role given to the Commissioners by the Legal Profession Act is a dispute conciliation role – with administrative tribunals having the dispute decision role. Given the overlap between the professions, there may be some resistance to the Office of the MARA having a dispute decision role and binding authority.

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## Recommendation 2. - Consumer disputes

7. Our second concern is one of timing. We think that the MARA needs to first focus primarily on its effectiveness as a regulatory agency, not as a consumer complaints organisation.
8. While it is efficient and sensible to use its initial assessment and response, where appropriate and possible, to negotiate some redress for consumers, the broad thrust of our recommendations are for less formality and more streamlined responses at the less serious end of the conduct spectrum and for more focused enforcement for more serious conduct.
9. We are concerned that the use of binding authority will increase formality, the need for procedural fairness, time taken and the cost of redress – all problems experienced by ombudsman schemes with binding authority.
10. Tackling this area may well be a priority in future, however we are inclined to think that the Office of the MARA will be better able to deal with this once it is a stronger, more credible risk-based regulator.

## Recommendation 3 – Streamlined investigation

### 3. To streamline the approaches taken for less serious professional conduct matters

- By applying the risk model and using less formal and more summary ways of dealing with low seriousness matters

1. Matters that are not resolved informally are currently investigated using the formal, quite inflexible approach of Part 3 of the Act. Here we note that although there is an internal distinction in the team allocation between 'typical' and 'complex', this is not evident externally as the processes are essentially identical.
2. Whilst this formal approach is appropriate where a sanction is a likely outcome (ie. for matters with an 'Extreme' severity rating using the matrix at page 58 of the Office's Policy and Procedures Manual), we think that this is less appropriate for other complaints where a formal sanction is unlikely to be the outcome. For these other matters (and we surmise that this would include most of the 'typical' complaints), we think that the regulatory outcomes achieved do not warrant a long-winded drafting process.
3. To effect this suggestion, we think that the Office of the MARA would need to revise its complaint classification approach so as to take into account the broad range of factors in the risk prioritisation model.
4. The result would be that (to adopt similar wording to that used in the Legal Profession Act) the formal investigation process test could be reserved for instances where either substantial or repeated misconduct is suspected to have occurred.
5. For other investigated matters, instead of invoking the s. 308 process, the agent would be provided with a copy of the complaint and invited to provide a response by email or letter, with the telephone being used throughout the investigation to engage directly with the agent.
6. An analysis of the 480 complaints closed during the 11 months to 31 May 2012 demonstrates the potential for considerable resource savings if this recommendation is adopted – during this period there were 181 complaints where a s.308 notice was served and that were discontinued, dismissed or otherwise resolved without a sanction. If the Office of the MARA had dealt with these matters as informal investigations, this could have freed resources for other more proactive work.

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## Recommendation 3 – Streamlined investigation

7. As well as changing the information collection methodology, over time, it would also be appropriate for the Office to develop a toolbox of possible outcomes for these streamlined investigation matters that are designed to educate the RMA concerned and to discourage future non-compliance. This could include:
  - Putting the RMA on notice that, whilst no regulatory action will now be taken regarding the current complaint, the matter may be revisited in the future if there are further complaints and/or the matter may be taken into account in the Office's targeting of its inspection/monitoring efforts.
  - Asking the RMA to explain/document their processes of relevance to the complaint – thereby educating the RMA about their obligations and promoting good processes. Again the complaint could be taken into account in the Office's targeting of monitoring activity.
  - A voluntary undertaking whereby the RMA acknowledges the general issue, without admission of a breach, and agrees to remedial action that the Office of the MARA puts to them eg. attendance at specified training course, improved record keeping, revised consumer documentation or advertising. At the time of registration renewal, the MARA could require the agent to provide evidence of compliance with the undertaking. Alternatively compliance could be checked by an on-site inspection within the next 12 months.
- Imposing a condition on the RMA's registration, limiting their areas of practice or raising the standard of compliance for a period of time. (See Rec 6.)
8. Finally it would be important for the Office to expand its internal and external reporting so as to include a count and description of these types of outcomes – all of which have the potential to change agent behaviour in the interests of protecting the public.
9. As a matter of internal clarity, we have used the terms "Streamlined" and "Formal" to distinguish what is intended for the new processes. We do not necessarily think that these terms are correct for ongoing use or for public consumption. There is a risk that the former will be seen as somehow incomplete – or slipshod.
10. The intention should be that the "Streamlined" investigation should become known as the default, 'normal' investigation and the "Formal" investigation be seen as the 'special, extra-strength' investigation process – used only in serious circumstances. We think that the terminology will be important for the Office of the MARA to get right.

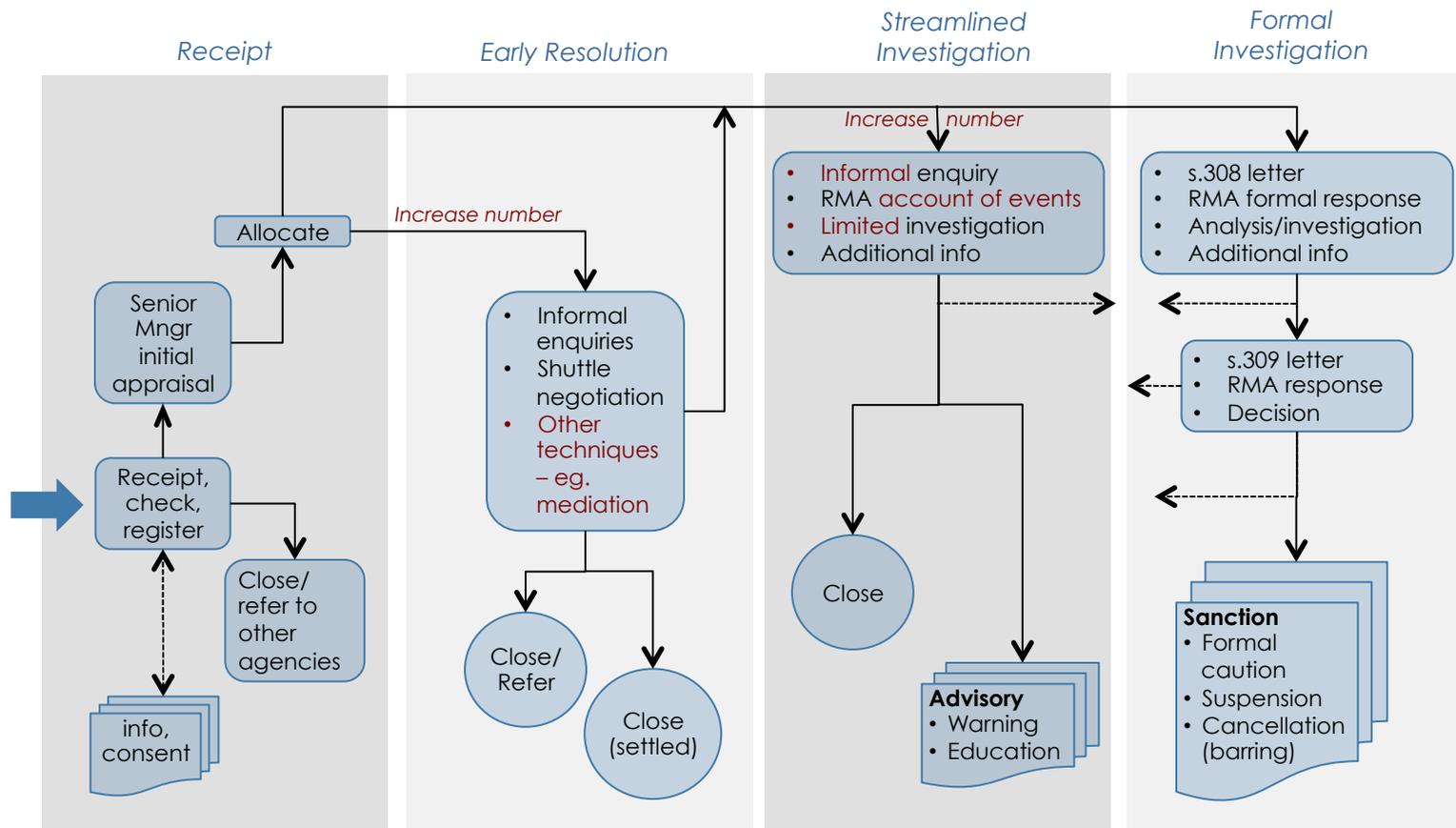
## Recommendation 4 – Sharpen focus

### 4. To sharpen the focus of the approach to more serious matters

- By applying the risk model to prioritise serious and complex matters and innovating in the process of decision-making

1. The Part 3 provisions are at their most appropriate for the most serious and repeat breaches. Most of our other recommendations are designed to divert less appropriate matters to other responses and thereby free resources partly to greater effort in this category (as well as to other more proactive Integrity work).
2. We observe that the pursuit of these more difficult matters is highly resource intensive and suggest that some improvement in efficiency could be achieved from:
  - Specialising within Office eg. by type (and complexity) of visa
  - Use of a small team (eg. the decision draftsman and a support analyst) to work intensively on a particularly resource intensive cluster of complaints against an agent
  - Risk-based measures to limit the length and complexity of decisions
  - Continue development of template or boilerplate text where possible
3. Within this category there is also room to use the risk model to target resources better. Not all serious matters will have the same regulatory leverage when completed. Not all serious matters will have the same risk of mischief if they are not pursued.
4. One suggestion from staff related to investigations into agents who have relinquished their registration. Rather than pursuing barring action, a matter of this kind could be put into a state of 'suspense' and effectively turned over to the agent registration process where it could be re-activated if the individual sought re-registration in the future. Whilst there may be some inefficiency in re-starting a matter at a later re-registration stage, this inefficiency could be more than offset by the numbers of complaints that would be effectively in permanent suspense because no re-registration is ever sought.
5. Of course, as the risk model demonstrates, the fact that the agent has relinquished their registration is only one factor that needs consideration – but at times the weight of other factors may not tell against this approach. Clearly there would need to be some work done on the law and policy, however we think it is an idea worth pursuing. At the very least, the Office of the MARA may be better putting some of these matters in temporary 'suspense' to allow it to clear other current and higher risk/regulatory value complaints.

# Proposed Office of the MARA complaints process



Our representation above shows *in red* the proposed changes (Recommendations 1-4) to the current Office of the MARA processes as illustrated at Page 6. Note that the dotted lines between the two investigation processes indicate that some flexibility will be required to allow for unfolding understanding of the facts of a case. Note that this diagram does not show future possibilities emerging from additional powers, more active monitoring activity or better use of the registration/renewal process.

## Recommendation 5 – Proactive work

### 5. To re-activate the Section's Integrity (proactive, programmatic) work using the complaints database as a key source of intelligence

- By applying the risk model to target monitoring work (agents who pose regulatory risk or issues worthy of programmatic focus)

1. As discussed earlier in the report, there is a compelling case that effective regulation, particularly in a resource-constrained environment, includes a risk-based compliance monitoring framework.
2. The Office of the MARA is well aware of this and established a monitoring capability at the outset. Management are keen to re-activate and further develop this capability – and more efficient complaints resolution will free up the resources for this. The risk model will provide the underpinnings for a more targeted and clearly articulated focus.
3. Whilst clearly important that this occurs as soon as possible, there is a balance to be struck. Clearly it would be operationally easier to wait until the changes we recommend elsewhere are well underway and efficiencies become clearly evident. This ensures that the Section is not stretched too thin in trying to bed down too much change at once. On the other hand, it is our experience that beginning proactive risk-based operations can be an exciting morale-boost for staff and it is the prospect of expanding this that will help to motivate change.
4. It is also our experience that reporting the early results of proactive risk-based regulation is a highly effective way to engage stakeholders who may be doubtful about the changes begin implemented.
5. As part of the re-activation of the monitoring capability, there will be a need to establish new methodologies and database classifications for Integrity activities – and new timelines that are appropriate for this work.
6. In the longer term, we think that there would be merit in classifying and reporting upon at least some DIAC referrals as Integrity enquiries rather than as complaints. As we understand it, some DIAC referrals successfully identify an agent whose migration applications to DIAC suggest performance issues – but the referral does not necessarily pinpoint migration applications that well evidence the concern (including perhaps because the migration client is unwilling to co-operate with the Office of the MARA's investigation). As a result, the investigation process needs to be quite different from a conventional complaint investigation – more we would suggest in the nature of an 'own motion' enquiry - and as a result frequently demands a longer timeframe for conclusion. This should be recognised in the Office of the MARA's classification and reporting processes.

## Recommendation 6. Expand regulatory toolkit

### 6. To develop the Office of the MARA's case for additional powers to expand its regulatory 'toolbox'

- Thereby enabling a bigger range of responses to better match the particular circumstances or types of professional conduct breaches – supporting the objectives in areas 2, 3 and 4 above.

1. As mentioned in the context of earlier recommendations, we think that the Office of the MARA would benefit from a more comprehensive set of regulatory powers. In the long term support of the recommended areas for focus, we suggest that the Office of the MARA should develop its case for these additional powers and pursue this as and when the opportunity for law reform presents.
2. The Migration Act currently gives the Office of the MARA responsibility for monitoring the conduct of RMAs. But the Act does not compel RMAs to provide assistance to the Office of the MARA when monitoring their compliance with the Code (as per the obligation owed in other regulatory domains – eg. by financial services licensees to ASIC).
3. As a result, the Office of the MARA can only undertake a site inspection of client files where the RMA agrees to this. Failing agreement, the Office of the MARA has to fall back on the s.308 power to conduct a review of records from the distance of the office.
4. We think that this is a significant limitation for the Office of the MARA. If the Office of the MARA is to become a truly risk-based modern regulator that undertakes proactive intelligence-based compliance monitoring, it needs to have the power to compel RMAs to co-operate – especially those who might have most to lose from co-operation.
5. While the Office of the MARA may not be able to fully resource a physical presence in all states & territories, external resources could be called upon to assist with fieldwork and in some cases, joint investigations could be carried out with agencies such as Tax or Customs.
6. We think that the Office of the MARA should discuss this with relevant agencies with a view to including appropriate obligation for cooperation in a future version of the Code of Conduct.
7. Another limitation for the Office of the MARA is that it does not have a legislative power to obtain an enforceable undertaking ie. an undertaking that can be enforced through the Courts. Other larger regulators have found this to be one of the most successful innovations in regulation in the past decade. At the moment, the Office of the MARA can seek voluntary undertakings - and we have described above how this might be creatively used to more effectively respond to the more minor breaches. But because a voluntary undertaking cannot be reliably enforced, the undertaking route is unlikely to be appropriate in the more serious matters – limiting the Office's armoury.

... continued overleaf

## Recommendation 6. – Expand regulatory toolkit

8. Also critical to the ongoing effectiveness of any licensing or registration authority is the capacity to impose conditions. The Office of the MARA has the advantage of an annual renewal cycle which provides a frequent opportunity to remind agents of their obligations – and, if the power exists (either expressly or by implication) to impose conditions, to set specific restrictions or obligations on the agent.
9. As discussed above, this enables a graduated response from the regulator and is a powerful tool for reinforcing RMA obligations and forcing improved behaviour without the draconian step of putting the agent completely out of business.
10. We recommend that the Office of the MARA begin the process of developing these ideas and the process of winning support for changes to the law and the code as required to achieve these outcomes.

Implementation



Any change that encompasses change across different aspects of an organisation's regulatory operations requires some thought applied to the extent and pace of change. We think that changes of this nature should, if practicable, be trialled on a small scale first, learnings be recorded in refined processes and policy and then rolled out.

Depending on the recommendation being trialled, different approaches will be needed. The trial may be as simple as using a small sample of current files and applying the proposed new criteria to see how it works. Some trials (eg. Streamlined investigations) may take many months before results can begin to be assessed.

## **Risk Model**

This review has progressed development of the Risk Model to a usable, but early stage of development. We suggest that the Attached Matrix be used as a starting point for the emerging risk approach – and treated as a working document that records – in progressively increasing detail – how complaints will be considered and prioritised for action in future.

This is the underpinning logic to all other change, so it must be first priority. We strongly suggest that the proposed revised criteria be applied against the oldest, as yet un-actioned, on-hand complaints. Any matters within that group that are realistically too old to meaningfully progress (on either problematic evidence or negligible impact grounds) should be closed – providing much needed breathing space.

Risk-rating of new complaints should follow – once the new Streamlined Investigation process is defined and complaints can be directed to the new process.

## **Early Resolution Process**

The changes for this function are not radical. The recommendation is to see how much more can be successfully done in this stream. That is a matter of experimentation and keeping records to enable evaluation – and in our view it can start as soon as there is capacity and enthusiasm. A secondment from another organisation would be a good way to kick off the process of change.

## **Streamlined Investigations**

To trial this new way of working will require the drafting of some new procedural guidance. Given the volumes of work on hand, we suggest that with the team leader's assistance, 2 staff should begin dealing with complaints under the new process. Once enough of those complaints have reached finalisation, a period of refinement should follow and then roll-out to all staff.

This is the reform that we expect to produce the greatest gains in efficiency, and it is the one that other recommendations depend on, so it should be commenced early in the sequence.

This process will also likely create the most anxiety amongst stakeholders, so it will be worth setting out the terms and scope of the trial in writing and keep the Advisory Board informed of progress.

*... continued overleaf*

## **Sharpen focus for Formal Investigations**

The changes for this function are again, not radical however they are potentially more sensitive. The proposed changes are by way of refinement and experimentation and should be comfortably within the capacity of the senior staff currently doing 'complex' cases.

We suggest a review of all cases that are on-hand but as yet un-actioned or at early stages of investigation to identify candidates for application of the suggested approaches.

Applying new approaches does not require any other reforms to be in place other than the Risk Model and could be commenced at any time. We are conscious however that change across all aspects of operations at once, unless well-delegated, will put great pressure on the Director of the area. We see that the Director's time should be focused on the greatest management challenges involved in the earlier complaints stages. We therefore suggest that much of the experimentation with approach in the formal investigations area should be driven from within the team and that the pace of change be measured and digestible.

## **Proactive work**

As discussed earlier, there is a balance to be struck between freeing capacity to begin new proactive work (wait) and harnessing the energy available from new and exciting risk-base regulatory work (hurry up).

This will be a judgement for the time, but we imagine that six-nine months would be the minimum time required to progress implementation enough to make room for new work.

## **Expanding powers**

We think that while the additional suggested powers may take some time to achieve, they are important enough to ensure that the organisation is preparing its business case for them as soon as practicable.

We note that the additional powers can be achieved to different extents by different means. There may be some scope within the existing Act to strengthen the licensing registration (renewal) process. Other abilities could derive from a revised Code rather than requiring law reform.

A clear articulation for why the Office of the MARA needs each of the additional powers is the first step. Telling examples from real cases in support is the second. Analysis of the Office of the MARA's database of complaints and of Departmental data is the next requirement and finally, possible solutions must be ready to be put forward.

Inevitably, long-term reform will not be the MARA's top priority, however the next significant opportunity to put the case for reform could be at any time (eg. a political storm around a collapse of RMA-assisted international student scheme, a large scale fraud uncovered). At the very least, the next federal election is a possible opportunity for new policy initiatives. An incoming government may well have migration relatively high on its agenda.

## **Project management**

Once some initial scoping and testing has been done, the process of overseeing implementation should be treated as a major business plan project, with a documented plan, milestones, evaluation criteria and go/no-go points.

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## Contact Details

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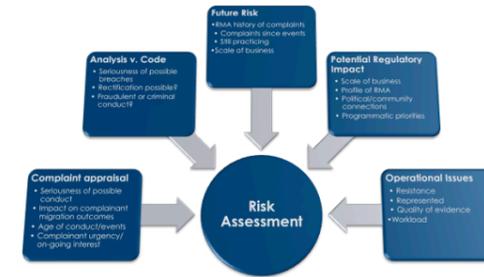
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Revised Draft Classification Matrix for a Risk-based Complaints Handling Methodology

Notes

- For each type of complaint, it is possible that issues will be raised that are more pertinent to another regulator or forum eg State Legal Services Commissioners – in which case a referral will be appropriate.
- For simplicity, reference has not been made to the Migration Act sections that apply where the investigation pertains to a former agent.



Example complaint assertions	RISK ASSESSMENT					Early Resolution Process	RESPONSE	
	Complaint Appraisal	Code Analysis	Future Risk	Potential Regulatory Impact	Operational Issues		Approach to be taken	Likely outcomes
<ul style="list-style-type: none"> <li>Misunderstanding</li> <li>Unreasonable fee dispute</li> </ul>	<ul style="list-style-type: none"> <li>Redress only likely outcome</li> </ul>	<ul style="list-style-type: none"> <li>No breach of Code evident</li> </ul>	<ul style="list-style-type: none"> <li>Very low</li> </ul>	<ul style="list-style-type: none"> <li>Nil</li> </ul>	<ul style="list-style-type: none"> <li>TBC</li> </ul>		<ul style="list-style-type: none"> <li>Discuss with complainant and advise no Code breach evident</li> </ul>	<ul style="list-style-type: none"> <li>Complaint closed without any further action</li> </ul>
<ul style="list-style-type: none"> <li>Some agent delay/ necessity for client to follow up agent to progress matter</li> </ul>	<ul style="list-style-type: none"> <li>Old event</li> <li>Complainant not available/ fails to provide requested information</li> <li>Meaningful redress unlikely</li> </ul>	<ul style="list-style-type: none"> <li>Breach may or may not be evident</li> </ul>	<ul style="list-style-type: none"> <li>Very limited or no previous history of complaints</li> </ul>	<ul style="list-style-type: none"> <li>Impractical to collect evidence</li> <li>Regulatory impact likely to be very low</li> </ul>	<ul style="list-style-type: none"> <li>TBC</li> </ul>		<ul style="list-style-type: none"> <li>Discuss with complainant and advise practical issues</li> </ul>	<ul style="list-style-type: none"> <li>Complaint closed without any further action</li> </ul>
<ul style="list-style-type: none"> <li>Some agent delay/ necessity for client to follow up agent to progress matter</li> </ul>	<ul style="list-style-type: none"> <li>Complainant's migration outcomes not significantly impacted</li> </ul>	<ul style="list-style-type: none"> <li>Complaint raises possibility of a minor breach that:                             <ul style="list-style-type: none"> <li>has already been rectified;</li> </ul>                             or                             <ul style="list-style-type: none"> <li>is easily rectifiable eg by fee adjustment, handing over of file to new agent.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Very limited or no previous history of complaints</li> </ul>	<ul style="list-style-type: none"> <li>Programmatic/ campaign interest in either the RMA, the affected community, the type of complaint</li> </ul>	<ul style="list-style-type: none"> <li>TBC</li> </ul>		<ul style="list-style-type: none"> <li>Discuss with complainant to understand what redress they are seeking</li> <li>Advise agent by phone of complaint substance</li> <li>Shuttle negotiation to achieve redress if this is appropriate</li> </ul>	<ul style="list-style-type: none"> <li>Negotiated redress where appropriate eg resolution of billing dispute, correction of advertising, provision of file by agent to complainant</li> <li>AND</li> <li>File closed with email to agent confirming what has been agreed</li> </ul>
<ul style="list-style-type: none"> <li>Lack of diligence by agent</li> <li>Contradictory/ unclear advice by agent</li> <li>Discourteous behaviour towards the client or another person</li> </ul>	<ul style="list-style-type: none"> <li>Complainant's migration outcomes may have been somewhat impacted</li> </ul>	<ul style="list-style-type: none"> <li>Complaint raises possibility of a minor breach that:                             <ul style="list-style-type: none"> <li>has already been rectified;</li> </ul>                             or                             <ul style="list-style-type: none"> <li>is easily rectifiable eg by fee adjustment, handing over of file to new agent.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Some history of previous minor complaints against the agent (less than 3 in last 12 months)</li> <li>#complaints v. scale of RMA business (likely future mischief)</li> </ul>	<ul style="list-style-type: none"> <li>Programmatic/ campaign interest in either the RMA, the affected community, the type of complaint</li> <li>Profile of RMA – (regulatory impact of action/no action)</li> </ul>	<ul style="list-style-type: none"> <li>TBC</li> </ul>		<ul style="list-style-type: none"> <li>Discuss with complainant to understand what redress they are seeking</li> <li>Provide agent by email with copy/ substance of complaint</li> <li>Shuttle negotiation to achieve redress if this is appropriate</li> </ul>	<ul style="list-style-type: none"> <li>Negotiated redress where appropriate eg resolution of billing dispute, correction of advertising, provision of file by agent to complainant;</li> <li>AND</li> <li>File closed with letter to agent confirming what has been agreed and noting that the allegations, if made out, could suggest a minor breach of the Code and that if future complaints are received this matter could be reinvestigated</li> </ul>

Differences from current early resolution process:

- Proposed new 'Early Resolution' criteria encompasses Minor and Moderate severity matters as described in the Office's P&P Manual. P&P indicates that informal action possible outcome for Minor matters but Caution or Caution with conditions is a possible alternative to informal action for Moderate severity matters. To that extent, this new classification matrix will 'move the bar' so that more matters are 'informal'
- Proposed new classification criteria accepts that financial loss may be sustained by the client (P&P Minor and Moderate severity classification indicates that impacts likely to be no financial loss for client).
- Proposed new classification criteria brings in additional factors ie. account profile of RMA, programmatic interests.
- Proposed new approach would see some additional matters closed without contact with the RMA eg because of age, complainant unresponsiveness.
- For matters where a resolution is sought, proposed new approach would require more telephone interaction by the Office of the MARA with the parties and more directed shuttle negotiation by the Office.



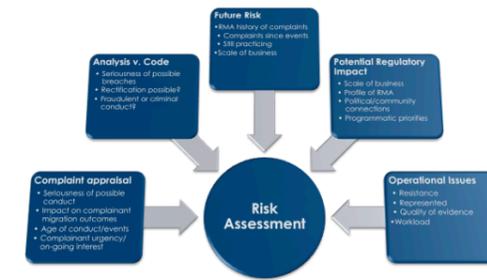
RISK ASSESSMENT

RESPONSE

Example complaint assertions	Complaint Appraisal	Code Analysis	Future Risk	Potential Regulatory Impact	Operational Issues	Streamlined investigation process	Approach to be taken	Likely outcomes
<ul style="list-style-type: none"> <li>Failure to provide documentation required by Code</li> <li>Undue pressure placed on client</li> <li>Unrealistic expectations raised</li> <li>Poor advice</li> </ul>	<ul style="list-style-type: none"> <li>Significant frustration for complainant;</li> <li>OR</li> <li>Migration outcomes for client/s adversely affected eg through significant delay</li> </ul>	<p>Complaint raises likelihood of:</p> <ul style="list-style-type: none"> <li>breach of specific record keeping requirements in Code;</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>indifference to Code obligations and/ or client's interests;</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>repeated minor level issues (eg. complaint asserts 3 or more separate and discrete instances in last 12 months)</li> </ul> <p>BUT:</p> <ul style="list-style-type: none"> <li>formal sanctioning unlikely to be appropriate outcome.</li> </ul>	<ul style="list-style-type: none"> <li>History of previous minor complaints against the agent suggestive of a pattern of minor misconduct eg. poor record keeping (3 or more complaints from different complainants in last 12 months or more than 6 previous complainants in total)</li> <li>#complaints v. scale of RMA business (likely future mischief)</li> </ul>	<ul style="list-style-type: none"> <li>Programmatic/ campaign interest in either the RMA, the affected community, the type of complaint</li> <li>Profile of RMA – (regulatory impact of action/no action)</li> </ul>	<ul style="list-style-type: none"> <li>TBC</li> </ul>		<p><b>Streamlined investigation process</b></p>	<ul style="list-style-type: none"> <li>Discuss with complainant to obtain further information</li> <li>Provide agent with copy/ substance of complaint and ask for email or letter response to complaint</li> <li>Compare documentation provided by parties with Departmental records</li> <li>Discuss any anomalies with agent and provide further opportunity to produce documents</li> <li>Where intended outcome is an advisory/warning letter - discuss proposed key findings with agent and provide opportunity for agent to volunteer corrective action, draft brief Warning letter (4 page maximum as a guide) for review by AD</li> <li>Where informal processes are not producing results, decision should be taken as to whether to use more formal investigation process. A reclassification recommendation should include a brief summary of evidence and brief reasons for recommendation.</li> </ul>

Differences from approach to 'Typical' complaints:

- Proposed new 'Streamlined investigation' criteria is similar to Major severity matters as described in the Office's P&P Manual but in some respects more specific eg reference to breach of record keeping obligations, to number of separate instances asserted by the complainant (as well as number of previous complainants) etc.
- Proposed new classification criteria brings in additional factors ie account profile of RMA, programmatic interests.
- Instead of relying upon formal s.308 powers, proposed new approach is to engage early and directly with the RMA through telephone and email, to seek voluntary cooperation from RMA and ask RMA to provide response to complaint in a less directed way than at present without reference to particular sections of Code, to focus on encouraging the RMA to volunteer improvements to general practices (voluntary undertaking) and to provide shorter warning letters than is the current practice.



Example complaint assertions	RISK ASSESSMENT					Formal Investigation process	RESPONSE	
	Complaint Appraisal	Code Analysis	Future Risk	Potential Regulatory Impact	Operational Issues		Approach to be taken	Likely outcomes
<ul style="list-style-type: none"> <li>Fraudulent treatment of client payments</li> <li>Fabrication of documents/evidence</li> <li>Very high or systematic overcharging</li> <li>Significant incompetence</li> <li>Previous informal investigation reveals evidence of serious problems</li> </ul>	<ul style="list-style-type: none"> <li>Substantial detriment to complainant's migration outcomes eg. client unable to seek review/achieve migration outcome due to deadlines missed by agent.</li> </ul>	<p>Complaints suggests likelihood of:</p> <ul style="list-style-type: none"> <li>gross indifference to, Code obligations;</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>repeated moderate level issues (eg. complainant asserting more than 3 separate and discrete instances in last 12 months);</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>fraudulent or other criminal behaviour;</li> </ul> <p>SO THAT:</p> <p>formal sanction likely to be an appropriate outcome.</p>	<ul style="list-style-type: none"> <li>Intimidation or harassment of complainant or other people;</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>History of previous minor/moderate complaints against the agent suggestive of a pattern of significant professional misconduct (3 or more complaints from different complainants in last 12 months or more than 6 in total).</li> <li>Whether agent is still registered</li> <li>#complaints v. scale of RMA business (likely future mischief)</li> </ul>	<ul style="list-style-type: none"> <li>Programmatic/campaign interest in either the RMA, the affected community, the type of complaint</li> <li>Profile of RMA – (regulatory impact of action/no action)</li> </ul>		<p><b>Formal Investigation process</b></p>	<ul style="list-style-type: none"> <li>Discuss with complainant to obtain further information</li> <li>Obtain Departmental records</li> <li>Provide agent with copy/substance of complaint and s.308 notice</li> <li>Serve s.309 notice if propose to formally sanction</li> <li>Specialist or senior staff to draft sanction decision for review by their manager</li> </ul>	<ul style="list-style-type: none"> <li>If applicable, referral of criminal behaviour (including fraud) to the Migration Agents Section of the Department with view to referring to Police</li> </ul> <p>AND</p> <p>For current agents:</p> <ul style="list-style-type: none"> <li>Caution with/ without conditions;</li> <li>Suspension with/ without conditions;</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>De-registration</li> </ul> <p>For former agents:</p> <ul style="list-style-type: none"> <li>Letter advising that matter will be reinvestigated if the former agent re-applies for registration;</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>Barring action</li> </ul> <p>(Note - a possible outcome could be an advisory/ warning letter but this should be a relatively rare result. Too many results of this kind should prompt a review of the classification criteria and Triage processes.)</p>

**Differences from approach to 'Complex' complaints:**

- Proposed new 'Streamlined investigation' criteria is similar to Extreme severity matters as described in the Office's P&P Manual but also incorporates gross indifference to Code obligations and takes account of the number of separate instances asserted by the complainant (as well as number of previous complainants).
- Proposed new classification criteria brings in additional factors ie account profile of RMA, programmatic interests.

This level of granularity does not incorporate some of the refinement-type suggestions in our report that aim to achieve some minor efficiencies. The only difference in approach evident from this matrix is the contemplation that on occasions the Office of the MARA may decide to rely upon the registration process to keep out an agent who has left the industry rather than continuing with barring procedures.