Thousands of registered migration agents to lose accreditation with new legislation

By Murray Hunter

18 September 2020

Australian Migration Agents CEO Robert Chelliah says the new legislation is a step back for the migration profession (Image by Dan Jensen)

New legislation affecting the roles of migration agents is a step backwards for industry professionals and will lower standards, writes Murray Hunter.

ON 15 JUNE 2020, the *Migration Amendment (Regulation of Migration Agents) Bill 2019* was passed in the Australian Parliament. It is expected to commence in March 2021 with the effect of removing the need of Office of Migration Agents Registration Authority (OMARA) registration for lawyers.

The impact of this new legislation will put at serious risk the livelihood of thousands of "non-lawyer" registered migration agents (RMAs) and their families at a time when their livelihoods are vulnerable due to the COVID-19 pandemic.

Under the current migration legislation, all lawyers wishing to provide immigration assistance must also register with OMARA. Those lawyers are then called "lawyer RMAs", as different from "non-lawyer RMAs" who are not lawyers. Upon registration, each RMA is given a Migration Agent Registration Number (MARN) with all publicly available details listed on OMARA's website which is very helpful for customers.

All RMAs have to complete the Continuing Professional Development (CPD) training, pay a registration fee of $1,600 per year and follow a very rigid Code of Conduct (COC) in their migration practice. The OMARA regulates all lawyer RMAs and non-lawyer RMAs and may discipline any RMA in breach of COC in order to ensure a consistent standard of the migration advice profession.

In fact, both lawyer RMAs and non-lawyer RMAs have been working and competing fairly to provide immigration services for benefits of consumers for many decades under the existing migration legislation.

However, under the new *Deregulation Bill 2019*, all lawyers with unrestricted practising certificates will be removed from the obligation to be registered with OMARA. This means when the Bill comes into effect early next year, more than 60,000 lawyers in Australia, including those without any knowledge and skills in migration law, can freely provide immigration assistance without paying an annual registration fee and fulfilling the stringent entry requirements into the profession.

In addition, all those lawyer RMAs who have been

disciplined by OMARA, including those who have been barred or with registration cancelled to prevent them from practising due to unethical conduct, will automatically be released from such OMARA disciplinary measures and thus able to provide migration services to vulnerable consumers.

It is the view of many within the industry that this step will drastically increase the cost of migration and visa advice to clients. It will potentially represent a loss of expertise within the industry as non-migration specialists take up the void that has been serviced very well by non-lawyer RMAs who usually charge much lower professional fees than lawyers.

Non-lawyer RMAs have played a crucial role in Australia's migration programs over the last 40 years. Australian migration law, the corresponding regulations, visa classes and requirements and procedural processes are extremely complex. Australian Migration Agents CEO and long-time RMA Robert Chelliah said that experience and thorough understanding of migration procedural frameworks and decision criterion is critical to providing clients with positive outcomes.

Without this experience and in-depth understanding of the procedural nature of Australian migration framework, there would be less than optimal results for clients. In this respect, the new *Deregulation Bill 2019* is a real step back for the migration profession and the minimum profession standards will not be maintained.

In addition to the above new law, the Department of Home Affairs (DHA) has recently conducted an inquiry on *'Creating a world class migration advice industry'*, where industry submissions closed in July 2020. While the review's purpose is to create a world class migration advice industry, the review to date has just focused its inquiry into non-lawyer RMAs and left out lawyer RMAs, without giving any reasons for justification.

The proposed changes in the review will place a burden on non-lawyer RMAs. It will introduce a tiering system where both new and existing non-lawyer RMAs are subject to a "ranking" with rigorous exams for each tier. The tiering system, if implemented, can lead to a situation that a well-experienced non-lawyer RMA with over 30 years of unblemished practice may need to sit an exam to upgrade from the base tier to an intermediate tier, while a fresh lawyer without any knowledge and skills in migration law can enjoy the privilege of carrying out immigration work in all tiers.

Robert Chelliah said:

> *"The simple logic is, should the Department of Home Affairs really wish to build a world class migration advice industry, it should have broadened the scope of this inquiry into both non-lawyer RMAs and lawyer RMAs because they are both equal service providers within the same profession."*

A major question is why did all these changes to Australian migration law happen? The answer can possibly be traced back to 2014 when the former Assistant Minister for Immigration and Border Protection, Senator Michaelia Cash, a former lawyer herself, appointed Dr Christopher Kendall to conduct an independent review of the OMARA. Dr Kendall conducted the inquiry in his individual capacity and made a final report which is widely-known as the Kendall Report 2014.

This report made a total of 24 recommendations, most of which later became legislation. For example, *Recommendation 1* led to enactment of the *Deregulation Bill 2019*, *Recommendations 11*, *12*, *13* and *16* led to the IMMI 18/003 regulations.

According to RMA Voice Inc, the peak body representing non-lawyer RMAs, the Kendall Report is seriously flawed and will perpetuate some of the shortcomings of the industry, rather than remedy them. Dr Kendall himself was far from being an independent reviewer of OMARA as he was sitting on the executive of the Law Council of Australia (LCA) at the time, which made submissions to the inquiry supporting the LCA agenda.

The review's terms of reference stated clearly that the subject of the review is OMARA and not RMAs. The primary scope of the review was to examine and report on OMARA's organisational capability and challenges, as well as the quality and effectiveness of its controls and governance. The purpose of the review is to determine if OMARA should continue to exist and, if so, provide recommendations for improvement.

In RMA Voice Inc's view, Dr Kendall did in fact go outside the review's stated terms of reference to include all RMAs in the subject of the review and the majority of the review just focused on RMAs instead of OMARA itself. Seventeen out of 24 recommendations made by Dr Kendall fell outside the stated terms of reference (TOR) and all recent migration legislation and regulations are the direct result of these "out of scope" recommendations.

While it is still not clear why these overshoots of the TOR happened in 2014, the resulting recommendations are very consistent with the LCA's submission, its long-term objective of removing lawyers from OMARA's registration and placing more burden on non-lawyer RMA entry into the industry. This can be observed in the LCA's submission to Dr Kendall in 2014 and their submission to DHA in Jul 2020.

Non-lawyer RMAs have suffered dire consequences. Under the *IMMI 18/003* regulations, from January 2018, the entry requirements had been raised. Prior to 2018, those wishing to become a non-lawyer RMA only needed a graduate certificate in migration law and practice, a six-month course. However, from the beginning of 2018, potential RMAs are required to complete a graduate diploma in migration law and practice, which is a one-year course costing $25,000 and passing a rigorous Capstone Exam where the failure rate is 80 per cent at a cost of $2,500.

Conversely, there is no entry requirement for a lawyer to register and work as a lawyer RMA, providing they hold a legal practising certificate, regardless of their knowledge and skills in migration law and practice.

As of 31 December 2019, there were 7,249 RMAs of which 5,027 were non-lawyer RMAs and 2,222 lawyer RMAs. According to industry sources, the value of the migration advice industry was worth almost $1 billion in 2019, although substantially lower in 2020 due to the COVID-19 pandemic and the closing of Australian borders.

With the livelihoods of up to 5,000 non-lawyer RMAs at stake, a vast array of industry experience and expertise will be lost to those who require migration assistance. And the more important issue is the recent migration legislation has only perpetuated the shortcomings by creating an uneven field, in favour of certified lawyers over non-lawyer RMAs who have been the backbone of client advice since the 1980s. This will ultimately impact on all vulnerable immigration customers' interests.

RMA Voice Inc has made requests to the Department of Home Affairs for the shortcomings in the recommendations within the Kendall Report 2014 to be examined and corrected to remedy the bias in favour of lawyers over non-lawyer RMAs. It is the view of many within the industry that the implementation of the recommendations will drastically increase the cost of migration and visa advice to clients, potentially representing a loss of expertise within the industry as non-migration specialists take up the void that has been serviced very well according to OMARA's own statistics by non-lawyer RMAs.

In addition, the current registration body, OMARA, will be greatly weakened as legal practitioners don't have to register, which will potentially lead to a number of accountability issues within the migration agent profession in the future. This is counterproductive to the Department of Home Affairs' vision of creating a world-class migration advice industry.

Murray Hunter ***is an Australian independent academic based in Thailand. You can follow Murray on Twitter*** @DalastKimbasabi.