

Migration Agents Registration Authority

COMPLAINT-HANDLING PROCESS

June 2007

Report by the Acting Commonwealth and Immigration Ombudsman,
Dr Vivienne Thom under the *Ombudsman Act 1976*

REPORT NO. **05|2007**

Reports by the Ombudsman

Under the *Ombudsman Act 1976* (Cth), the Commonwealth Ombudsman investigates the administrative actions of Australian Government agencies and officers. An investigation can be conducted as a result of a complaint or on the initiative (or own motion) of the Ombudsman.

The *Ombudsman Act 1976* confers five other roles on the Commonwealth Ombudsman—the role of Defence Force Ombudsman, to investigate action arising from the service of a member of the Australian Defence Force; the role of Immigration Ombudsman, to investigate action taken in relation to immigration (including immigration detention); the role of Postal Industry Ombudsman, to investigate complaints against private postal operators; the role of Taxation Ombudsman, to investigate action taken by the Australian Taxation Office; and the role of Law Enforcement Ombudsman, to investigate conduct and practices of the Australian Federal Police (AFP) and its members. There are special procedures applying to complaints about AFP officers contained in the *Australian Federal Police Act 1979*. Complaints about the conduct of AFP officers prior to 2007 are dealt with under the *Complaints (Australian Federal Police) Act 1981* (Cth).

Most complaints to the Ombudsman are resolved without the need for a formal finding or report. The Ombudsman can, however, culminate an investigation by preparing a report that contains the opinions and recommendations of the Ombudsman. A report can be prepared if the Ombudsman is of the opinion that the administrative action under investigation was unlawful, unreasonable, unjust, oppressive, improperly discriminatory, or otherwise wrong or unsupported by the facts; was not properly explained by an agency; or was based on a law that was unreasonable, unjust, oppressive or improperly discriminatory.

A report by the Ombudsman is forwarded to the agency concerned and the responsible minister. If the recommendations in the report are not accepted, the Ombudsman can choose to furnish the report to the Prime Minister or Parliament.

These reports are not always made publicly available. The Ombudsman is subject to statutory secrecy provisions, and for reasons of privacy, confidentiality or privilege it may be inappropriate to publish all or part of a report. Nevertheless, to the extent possible, reports by the Ombudsman are published in full or in an abridged version. Copies or summaries of the reports are usually made available on the Ombudsman website at www.ombudsman.gov.au. Commencing in 2004, the reports prepared by the Ombudsman (in each of the roles mentioned above) are sequenced into a single annual series of reports.

ISBN 978 0 9775288 7 5

Date of publication: June 2007

Publisher: Commonwealth Ombudsman, Canberra Australia

© Commonwealth of Australia 2007

This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Australian Government, available from the Attorney-General's Department.

Requests and enquiries concerning reproduction and rights should be addressed to the Commonwealth Copyright Administration, Copyright Law Branch, Attorney-General's Department, National Circuit, Barton ACT 2601, or posted at <http://www.ag.gov.au/cca>.

Requests and enquiries can be directed to the Director Public Affairs, Commonwealth Ombudsman, GPO Box 442, Canberra ACT 2601; email ombudsman@ombudsman.gov.au or phone 1300 362 072 (local call charge). Copies of this report are available on the Commonwealth Ombudsman's website <http://www.ombudsman.gov.au>.

CONTENTS

EXECUTIVE SUMMARY	1
Introduction	1
Scope of the investigation	1
Conclusions.....	1
Recommendations	1
PART 1—INTRODUCTION.....	5
Background to the migration advice industry	5
MARA and complaints.....	6
Scope	7
Methodology.....	7
PART 2—INVESTIGATION FINDINGS AND DISCUSSION	9
Accessibility—awareness.....	9
Accessibility—choice of contact methods and particular needs.....	11
Efficiency.....	13
Fairness—impartiality.....	16
Fairness—transparency	20
Integration	21
PART 3—ISSUES OUTSIDE THE SCOPE OF THE INVESTIGATION	24
PART 4—GENERAL CONCLUSIONS	26
ATTACHMENT A	27
A Brief History of Migration Advice Industry Regulation.....	27
ATTACHMENT B	29
The MARA complaint-handling process.....	29
Roles and responsibilities of MARA complaint-handling staff and related committees.....	30
Responsibilities	30
MARA complaint-handling documentation and delegations.....	30
APPENDIX—GLOSSARY	33

EXECUTIVE SUMMARY

Introduction

In 1998, the Australian government appointed the Migration Institute of Australia Limited (MIA) as the Migration Agents Registration Authority (MARA) with responsibility for regulating the migration advice industry. The current statutory self-regulatory arrangements administered by MARA are due to be reviewed prior to June 2008.

A key function of MARA is to investigate complaints about the services provided by registered migration agents and to take disciplinary action where appropriate, including cautions, suspension or cancellation of registration or barring a former agent from registration. Complaints against migration agents originate from clients of agents, other agents, tribunals and courts, the Department of Immigration and Citizenship (DIAC), and MARA itself.

Scope of the investigation

The purpose of this own motion investigation was to review MARA’s complaint-handling process with a view to ascertaining whether

- MARA’s commitment to resolving complaints is reflected in its systems and processes
- the resolution of complaints is in accordance with best practice
- there are opportunities for improvement.

Conclusions

This investigation revealed that MARA’s complaint-handling process has improved significantly over the past 12 months, particularly relating to the development of procedures and supporting documentation. Identifying opportunities to be more flexible in its operation should now be the focus. In our view, MARA has demonstrated a willingness to develop a more client focused and accountable culture. However, there is much that can still be done to ensure that MARA continues to look at ways to ensure those most vulnerable are protected; are aware of the complaint-handling system and have appropriate access to it; and both complainants and agents can have confidence in the outcomes achieved.

Recommendations

Based on the conclusions drawn from this investigation, the following recommendations are made to improve complaint handling in the migration advice profession.

Recommendations relating to accessibility—awareness

That MARA:

1. Develop and implement a communication and education strategy and a targeted media campaign to make consumers aware of their complaint-handling process. MARA should also consider:

- Consulting with and forming partnerships with appropriate community bodies, such as ethnic group representatives, community legal centres, migrant resource centres and agent forums, to develop and conduct education programs and to disseminate brochures and posters.
- Ensuring brochures, including the Information on the Regulation of the Migration Advice Profession (IRMAP) brochure, and posters:
 - are reviewed regularly to ensure they are written in a plain English style
 - are translated into the languages identified as the most commonly spoken by people who use migration agents
 - provide basic information on the services MARA provides including encouraging feedback and complaints
 - list all formats in which a complaint can be made
 - incorporate contact information for clients with a disability and incorporate the numbers for telephone interpreting services.
- Including a 'complaints and compliments' link on its website home page—such a website page should also provide access to all MARA complaints related information and direct links to other related complaint-handling agencies including DIAC, the Ombudsman, and other professional associations such as the relevant State and Territory law societies or legal services commissioners.
- Visiting immigration detention centres to promote the role of MARA and to assist detainees wanting to make complaints about migration agents. MARA should also disseminate brochures and posters to immigration detention centres.

Recommendations relating to accessibility—choice of contact methods and particular needs

That MARA:

2. Accept verbal complaints from individual complainants. Where necessary, the details should be confirmed in writing with the complainant or through the use of a properly accredited interpreter where there are particular issues such as timing or literacy. In addition, the Code of Conduct should be amended to remove the reference to clients making a complaint 'in writing'.
3. Train public contact staff to assist individuals to prepare and lodge complaints.
4. Establish a 'free call' or 'cost of a local call' telephone number for regional and interstate complainants to make enquiries and seek assistance in lodging a complaint.
5. Give priority to making information resources available to volunteers in the legal and ethnic community and in migrant resource centres to assist complainants prepare and lodge their complaints.
6. Review its complaint form to ensure it is in a format that is easily understood by complainants and allows for the collection of all information relevant to consideration of an investigation.

Recommendations relating to efficiency

That MARA:

7. Review its complaint-handling targets and identify ways to improve its performance against those targets.
8. Review whether all complaints it investigates are matters which should come within the system. This would include:
 - consideration of whether some complainants should be encouraged to take their complaint up with the agent, with MARA playing a more active role in facilitating the approach to the agent
 - greater use of mediation early in the investigation process.
9. Review its case management procedures and operations manual to:
 - classify complaints in accordance with their level of complexity or priority
 - provide more flexibility in approach depending on the complexity or seriousness of the complaint
 - ensure timely completion of each step in the process.

Recommendations relating to fairness—impartiality

That MARA:

10. Include on the Professional Standards and Registration Committee one or more independent persons with experience in other areas of law, including administrative law, and from consumer or community organisations, when complaints and proposed decisions to discipline agents are being considered. This would assist in providing added assurance that potential conflicts of interest are managed properly, and that there is an adequate client focus. Similar arrangements should be put in place when the MARA Board is considering complaints and proposed decisions to discipline agents.
11. As an interim measure, put in place Professional Standards and Registration Committee subcommittees, with membership made up of groups of migration agents who are not in competition for clients with the agent under investigation.
12. Ensure that records of the Professional Standards and Registration Committee accurately report determinations made regarding potential conflicts of interest by sitting committee members and of committee members' absences from meetings as a result, and MARA make these records available to the relevant complainant and the agent under investigation.
13. MARA and DIAC establish formal consultative arrangements with the peak professional bodies, including the MIA and the Law Council of Australia for discussions on policy, legislative and administrative changes relating to migration agent regulation and the industry review.
14. As part of its revised approach to auditing agents, make decisions about which agents to audit based on transparent risk assessment processes rather than link audits directly to complaints received.

Recommendations relating to fairness—transparency

That MARA:

15. Cease counting alleged problems, which are identified by it during the course of a complaint investigation (or identified separately by MARA), as separate complaints and distinguish clearly in public reporting between complaints raised by external parties and those problems it identifies itself.

Recommendations relating to integration

That MARA:

16. Give more attention to the collection and use of more qualitative data on systemic issues and trends for the purpose of strategic planning and risk assessment, including client and agent education and audit activities.
17. Undertake an annual audit of finalised cases using all available relevant records in relation to the complaints under audit, not just the paper-based files.
18. Regularly review the mechanisms it has in place to ensure the quality of its investigations, including the analysis of the issues, the decisions taken and the advice provided to complainants and agents, and feed the results into staff training exercises.

MARA's response to the report

On 14 May 2007, Mr Bernie Waters, Chief Executive Officer of MARA, wrote to the Ombudsman in response to the draft report. He wrote that: 'The MARA is in the process of revising its complaint-handling processes to make them more "user-friendly" and efficient. The Ombudsman's report is very timely in this context and we have carefully examined the report and its recommendations. We accept the thrust of all the recommendations but have the following further comments in relation to the report'. MARA's comments are provided in Part 2 of this report.

DIAC's response to the report

On 26 April 2007, Mr Andrew Metcalfe, Secretary of the Department of Immigration and Citizenship, wrote to the Ombudsman in response to the draft report. The Secretary noted that MARA has already improved its performance against several of the recommendations, and met and discussed options for improvement with DIAC on 9 March 2007. The Secretary provided comments on some specific recommendations and sections of the report. The comments are provided in Parts 2 and 3 of this report.

PART 1—INTRODUCTION

Background to the migration advice industry

1.1 The migration advice industry was largely unregulated until 1992. Anyone could give migration advice, including migration agents, solicitors and members of the community. In 1992, the Australian government introduced statutory regulation. As a result, only registered migration agents have been able to provide immigration advice, as defined in s 276 of the *Migration Act 1958* (Migration Act).

1.2 A review of the scheme in 1996 found that: 'The scheme has provided a measure of consumer protection and its credibility as a consumer protection mechanism has strengthened somewhat ...'¹. The review also found that '... there has been inadequate promotion of the current Scheme and, in whatever arrangement replaces the current Scheme, an ongoing consumer information strategy, targeted in particular to members of non-English speaking background communities, be developed.'² The government decided to move the industry toward self-regulation through the introduction of statutory self-regulation.

1.3 The Migration Institute of Australia Limited (MIA) was appointed as the Migration Agents Registration Authority (MARA) in 1998, following amendments to Part 3 of the Migration Act. Reviews of statutory self-regulation in 1999³ and 2001–02⁴ found that consumer protection and the competence and ethical behaviour of agents had improved, but recommended the continuation of statutory self-regulation. A significant number of amendments strengthening the role of MARA have been made to the Migration Act since the 2001–02 review. A further review of the statutory self-regulatory arrangements of the migration advice industry is due by June 2008. A brief history of regulation of the migration advice industry is set out in Attachment A. Approximately 44% of registered migration agents are members of the MIA.

1.4 MARA, through a Deed of Agreement between the Australian government and the MIA, carries out the statutory functions of regulation for the migration advice profession. MARA's functions⁵ under Part 3 of the Migration Act include:

- processing applications for initial and repeat registration
- monitoring the conduct of registered migration agents giving immigration assistance and lawyers giving immigration legal assistance
- investigating complaints and taking disciplinary action where appropriate, including cautioning a registered migration agent, suspending or cancelling an agent's registration or barring a former agent from registration
- referring complaints about lawyers relating to their provision of immigration legal assistance to other responsible authorities where appropriate

¹ Report on Review of the Migration Agents Registration Scheme, March 1997, p 3.

² Review of Migration Agents Registration Scheme, p 21.

³ Review of the Statutory Self-regulation of the Migration Advice Industry, August 1999, pp. 5–6.

⁴ Review of Statutory Self-regulation of the Migration Advice Industry, 2001–02, pp. 2–3.

⁵ Migration Agents Registration Authority 2004–2005 Annual Report.

- using mediation and other dispute resolution approaches to resolve matters where appropriate
- informing prosecuting authorities about apparent offences against the Migration Act, including cases of unregistered practice
- monitoring the adequacy of the migration agents’ Code of Conduct and advising the Minister of any deficiencies
- prescribing a course and an examination for entry to the profession
- coordinating a Continuing Professional Development program for registered migration agents
- providing an annual report to the Minister for tabling in Parliament.

MARA and complaints

1.5 In any self-regulatory scheme, a good complaint-handling process is critical, both for ensuring people are treated fairly and to maximise opportunities to improve the process. Complaints can provide immediate feedback about individual service providers of concern, and analysis of complaint information can provide useful information about more systemic problems. However, in the migration environment, where consumers may be particularly vulnerable and fearful of authority, they may be apprehensive about complaining. Another possible disincentive to making a complaint is the perceived lack of real outcomes and redress for the individual. The current statutory scheme has no provision for a complainant to have their agent fees refunded or for any further merits review opportunity, no matter how reprehensible the activities of the agent. While a person may be able to seek redress through the courts (for example, for breach of contract or negligence) or through law societies/legal services commissioners, MARA’s complaint-handling process has been specifically set up to deal with issues customers may have with their migration agents.

1.6 Given this, it is important to ensure that MARA’s complaint-handling process is accessible, robust, fair, timely, transparent, free from conflicts of interest and meets best practice standards. Complaints to the Ombudsman’s office, although few in number, gave rise to concerns about the extent to which MARA’s process meets these expectations as highlighted by the case study below.

Case Study: Unreasonable delay, difficulty in getting resolution, inconsistent standards

MARA advised Mr A of a complaint made against him made by Mr B, over 12 months after receiving the complaint. It then took a further four months to dismiss it (and only after we investigated Mr A’s complaint to us about MARA’s actions). MARA dismissed a complaint by Mr A against Mr B within two months. MARA received two pieces of uncorroborated evidence on the same issue, overlooked Mr A’s evidence and applied different approaches to the complaints.

We concluded that:

- MARA took an unreasonable amount of time to handle the complaint about Mr A
- MARA took different approaches to the complaints, which resulted in different standards being applied
- the investigation was handled poorly.

1.7 In view of the importance of a robust, transparent and effective process and the concerns raised about MARA, the Ombudsman decided to conduct an own motion investigation into MARA's complaint-handling process pursuant to s 5(1)(b) of the *Ombudsman Act 1976* (Ombudsman Act). Clause 6.3 of the Deed of Agreement between the Australian government and the MIA states that the MIA agrees to comply with the Ombudsman Act as it applies to MARA and to cooperate with any reasonable enquiries.

1.8 The intention of this investigation is to determine the extent to which MARA's complaint handling meets best practice and to identify potential opportunities for improvement in its processes.

Scope

1.9 A desired outcome of the investigation is to confirm whether MARA's commitment to resolving complaints is reflected in its systems and processes and is in accordance with best practice.

1.10 Based on experience the Ombudsman's office has with complaints, the following were matters for particular attention:

- the accessibility of the complaint-handling process
- the effectiveness of measures to enable timely and responsive handling of complaints
- procedures for advising complainants of the outcome of their complaints, including in cases where a decision is made not to pursue a complaint
- the effectiveness of measures to help ensure the process is free of bias and conflict of interest, real or perceived
- how information about complaints may be used for broader purposes, such as improving the training of migration agents.

Methodology

1.11 We analysed MARA's complaint-handling documentation and guidelines and assessed them against standards for best practice, in particular, the new *Australian Standard, Guidelines for complaint handling in organisations* (ISO 10002:2006); the *Standards Australia Handbook—The why and how of complaints handling*; the Commonwealth Ombudsman's forthcoming *Better Practice Guide to Complaint Handling*⁶; and the complaint-handling processes of legal bodies and other self-regulatory and government agencies.

1.12 We analysed MARA documentation (including the Deed of Agreement), policy and procedure documents (including the operations manual), and the roles, responsibilities and delegations of complaint-handling staff and committees. We reviewed the MARA sanctions process, statistics and a selection of MARA complaint files. Information about MARA's complaint-handling process and supporting documentation and delegations is at Attachment B.

⁶ Commonwealth Ombudsman Better Practice Guide to Complaint Handling to be published in 2007.

1.13 DIAC provided background information, including briefings by the Agents Initiative and Monitoring Section (AIMS), and the provision of MARA Quarterly Reports and the annual audit of MARA cases.

1.14 We received briefings on the new Graduate Certificate in Migration Law and Practice for prospective migration agents from one of the course developers, from DIAC and from MARA.

1.15 We also analysed information available from complaints made to us, and assessed the information currently available to the public via MARA's website, including complaint information, brochures and the Deed of Agreement. In addition, we examined parliamentary inquiries, reports and relevant sections of the Migration Act and the Regulations. This included the *Review of Statutory Self-Regulation of the Migration Advice Industry 2001–02*.

1.16 We conducted interviews, discussions and phone hook-ups with the following groups and organisations:

- MARA Executive and Professional Standards Team
- DIAC Agent Initiatives and Monitoring Section (AIMS)
- Migration Review Tribunal and Refugee Review Tribunal
- community legal centres including Immigration Advice and Rights Centre and Asylum Seeker Resource Centre
- two migrant resource centres
- Administrative Appeals Tribunal
- Law Council of Australia and Law Institute of Victoria
- Law Society of NSW
- Australian Taxation Office and The Treasury regarding Tax Agents Regulation reform
- a number of lawyer and non-lawyer migration agents.

1.17 In addition, we received a number of unsolicited submissions from legal bodies, lawyer and non-lawyer migration agents.

PART 2—INVESTIGATION FINDINGS AND DISCUSSION

2.1 A key function of MARA is to investigate complaints about the services provided by registered migration agents and where appropriate to take disciplinary action, including cautions, suspension or cancellation of registration or barring a former agent from registration. Complaints against migration agents originate from clients of agents, other agents, tribunals and courts, DIAC, and MARA itself.

2.2 Complaints were made against 283 registered agents during 2005–06.⁷ From July 2003 to June 2006, approximately 12% of registered agents have had complaints against them resulting in breaches being found.⁸

2.3 Like the Australian and international standards, the Ombudsman's *Better Practice Guide to Complaint Handling* sets out the key elements essential to all good complaint-handling models: accessibility, responsiveness, efficiency, fairness and integration. We discuss these issues below.

2.4 For the purposes of this report we have limited discussion to those matters where we believe that there are discrepancies between MARA practice and what we regard to be best practice.

Accessibility—awareness

2.5 MARA presently has no community education program, nor does it have a program of regular communication with migrant resource centres or community centres, or of identifying ethnic group forums, for the purpose of promoting MARA's role. MARA has, from time to time, advertised in the ethnic press and on ethnic television. The television commercials, when running, largely promoted the migration agent profession and the benefits of using a registered agent. They provided little information on consumer rights and the complaint process. MARA does not visit immigration detention centres. Senior staff at one detention centre did not know what MARA was and MARA posters were not on display. The need to develop and implement an education campaign has been identified by MARA and it is currently developing a resource kit and working with Members of Parliament's offices. MARA has developed an electronic newsletter and has increased advertising in local newspapers.

2.6 MARA has developed a communications plan in response to a number of recommendations of the 2001–02 *Review of Statutory Self-Regulation of the Migration Advice Industry* conducted by the former Department of Immigration and Multicultural and Indigenous Affairs. This plan is now beginning to be implemented. It includes proposals to conduct regular agent surveys and to develop a series of communication vehicles aimed at informing and educating migration agents about the MIA and MARA, and building relationships. A communications manager has been appointed to review writing styles with a focus on plain English. MARA is making more documents public, primarily through its website. This includes information on the IRMAP, the Client Service Charter, brochures about MARA and complaint handling, a Mediation Information Kit and a poster on 'Use a Registered Migration Agent'.

⁷ Migration Agents Registration Authority 2005–2006 Annual Report.

⁸ Statistics provided by DIAC.

2.7 Customers need to be aware that there is a complaint-handling process available to them should they need it. Special attention needs to be paid to this issue where the complaint-handling body is quite separate to the service provider.

2.8 MARA's primary vehicle for information on the complaint-handling process is the IRMAP document, which outlines the functions of MARA, what a client can expect by engaging the services of a registered migration agent, and what to do if the client is dissatisfied with the services a migration agent provides. It includes brief advice on how to make a complaint. Agents are required to provide clients with the IRMAP before commencing work for them. MARA will, from time to time, audit migration agents to check whether the IRMAP is being provided to clients.

2.9 At the start of our investigation, the IRMAP was a four-page document that we considered was wordy and difficult to understand. It was not written in plain English, nor was it available in different languages. Anecdotal evidence from community legal centres indicated that less scrupulous agents may not be giving clients the IRMAP. In other incidences, some clients appeared not to realise what documents they had received, or alternatively, without an explanation from the agent have not been able to understand the document. Staff from community legal centres and migrant resource centres interviewed as part of this investigation suggested that consumers who sought their assistance often had no idea of the existence of MARA's complaint process and could not recall seeing the IRMAP. A number of the staff of these centres were also uncertain about MARA's complaint-handling process.

2.10 In January 2007, MARA released a new one-page version of the IRMAP and made it available on its website in English and twelve additional languages. We commend MARA on this initiative. We suggest that it continue to make official translations of the IRMAP available in additional languages. This will help ensure that clients of agents can obtain the IRMAP in their preferred language and that they are aware of avenues for pursuing any complaints. MARA has stated that it is required to distribute the IRMAP in English. We suggest MARA:

- put an English version on one side
- put one of a range of community language versions on the reverse side with an agent to be required to provide the most appropriate version
- identify places where a person can seek translation from English if the client is a speaker of a language other than one of those available.

2.11 MARA's complaint brochure uses complex language, long sentences and small print. It is not easily located on MARA's website and does not appear to be readily available in immigration detention centres or through community based legal and migrant resource centres.

Recommendation 1

MARA develop and implement a communication and education strategy and a targeted media campaign to make consumers aware of their complaint-handling process. MARA should also consider:

- Consulting with and forming partnerships with appropriate community bodies, such as ethnic group representatives, community legal centres, migrant resource centres and agent forums, to develop and conduct education programs and to disseminate brochures and posters.

- Ensuring brochures, including the Information on the Regulation of the Migration Advice Profession (IRMAP) brochure, and posters:
 - are reviewed regularly to ensure they are written in a plain English style
 - are translated into the languages identified as the most commonly spoken by people who use migration agents
 - provide basic information on the services MARA provides including encouraging feedback and complaints
 - list all formats in which a complaint can be made
 - incorporate contact information for clients with a disability and incorporate the number for telephone interpreting services.
- Including a ‘complaints and compliments’ link on its website home page—such a website page should also provide access to all MARA complaints related information and direct links to other related complaint-handling agencies including DIAC, the Ombudsman, and other professional associations such as the relevant State and Territory law societies or legal services commissioners.
- Visiting immigration detention centres to promote the role of MARA and to assist detainees wanting to make complaints about migration agents. MARA should also disseminate brochures and posters to immigration detention centres.

MARA’s response—Agreed.

DIAC’s response

DIAC has developed simple information brochures about ‘Using a migration agent’ and ‘Who can give immigration assistance’. Client service areas, migration agents, Members of Parliament, detention services and other areas of DIAC have all been advised about the brochures and approximately 30,000 of each have been sent out to these areas to date.

DIAC is willing to assist MARA with dissemination of information (brochures and posters) about making a complaint about migration agents, for example, to detention centres. This is part of DIAC’s role in providing assistance to MARA.

DIAC has also recognised that many departmental staff are not aware of the role of MARA. DIAC is currently redrafting MSI 400, *Migration agents and unregistered persons: Dealing with conduct of concern*, about dealing with migration agents and the rewritten document will include information about the role of key stakeholders in the migration advice profession. Training packages, also being developed by DIAC, should assist in informing departmental staff about the role of MARA and will advise clients how to make a complaint about a migration agent. DIAC also has information on the website about migration agents and referring clients to MARA if they have complaints.

Accessibility—choice of contact methods and particular needs

2.12 A range of contact and complaint options provides greater accessibility to a complaint process, particularly for clients with particular needs, for example, for people with a disability or people from non-English speaking backgrounds.

2.13 MARA will only accept complaints in written form, with a preference for complaints to be prepared on the MARA Complaint Form (Form M03), which is available on its website. MARA is prepared to accept letters in a complainant's own language.

2.14 The complaint form is cumbersome and may not always lead to the production of sufficient information upon which MARA can conduct an investigation. We suggest that the form's wording and the information requested be reviewed. MARA may wish to consider piloting alternatives with migration agents' consultative forums and relevant community groups. We also suggest that MARA consider best practice in like professions. In this respect we commend the NSW Office of Legal Services Commissioner's complaint form as an example.

2.15 We acknowledge that in the majority of cases, and in particular complaints made by other migration agents or professional advisers, it is appropriate that MARA seek the necessary information in writing. However, for the more vulnerable clients—those with little grasp of the English language or of Australian laws and who may fear authority—the inflexibility of the complaint lodgement process may discourage them from lodging a complaint.

2.16 Consumers have not been encouraged to contact MARA to seek advice on complaints other than by email or telephone. Further, telephone contact is to a Sydney telephone number. There are no free call or local call options. Until recently MARA did not have a shopfront and its physical address was not available to consumers. Now that MARA has a shopfront, it has the capacity to better advertise its existence and encourage potential complainants to use it.

2.17 MARA public contact staff should be trained to assist individuals in preparing a complaint and take them through the process that will be adopted in investigating and seeking a resolution to the complaint. Telephone and email facilities should also be considered as mediums for accepting complaints.

2.18 MARA is planning on making information resources available to volunteers in the legal and ethnic community and working more closely with migrant resource centres to assist complainants to prepare their complaints. We also note that the Code of Conduct, which agents are required to display in their office and to provide clients if they request a copy, states in its heading 'If a client believes that a Registered Migration Agent has acted in breach of this Code of Conduct, a complaint can be made in writing to: Migration Agents Registration Authority'. We suggest that the Code be amended to remove the reference to clients making a complaint 'in writing'.

Recommendation 2

MARA accept verbal complaints from individual complainants. Where necessary, the details should be confirmed in writing with the complainant or through the use of a properly accredited interpreter where there are particular issues such as timing or literacy. In addition, the Code of Conduct should be amended to remove the reference to clients making a complaint 'in writing'.

MARA's response—Agreed.

Recommendation 3

MARA train public contact staff to assist individuals to prepare and lodge complaints.

MARA's response—Agreed.

Recommendation 4

MARA establish a 'free call' or 'cost of a local call' telephone number for regional and interstate complainants to make enquiries and seek assistance in lodging a complaint.

MARA's response—Agreed.

Recommendation 5

MARA give priority to making information resources available to volunteers in the legal and ethnic community and in migrant resource centres to assist complainants prepare and lodge their complaints.

MARA's response—Agreed, MARA advises it will provide assistance through a resource kit and 'help line'.

Recommendation 6

MARA review its complaint form to ensure it is in a format that is easily understood by complainants and allows for the collection of all information relevant to consideration of an investigation.

MARA's response—Agreed.

DIAC's response

DIAC is currently reviewing its procedures and redrafting the relevant instructions. This includes identifying a more streamlined way for staff to lodge complaints about migration agents, while ensuring the appropriate evidence is included.

Efficiency

2.19 Delays in finalising complaints can impact on procedural fairness and natural justice for both the complainant and the agent subject to the complaint. The longer it takes to finalise a complaint, the more difficult it can be to get a satisfactory and acceptable outcome for the parties.

2.20 Targets for finalising different types of complaint vary, depending on the industry and the nature of complaint. For example, the Australian Securities and

Investments Commission in its policy statement on complaint resolution schemes in the financial sector, suggests that: 'the pursuit of "best practice" procedures should result in time frames shorter than 45 days being regularly achieved'.⁹ The Australian Taxation Office has set a standard of resolving 85% of complaints within 21 days of receipt and achieved 83% to June 2006.¹⁰ Federal Ombudsmen including the Private Health Insurance Ombudsman, the Telecommunications Industry Ombudsman and the Commonwealth Ombudsman identify different timeframe standards for different categories or levels of complaints, ranging from two days, seven days, 30 days, 90 days, six months and nine months. The Office of the Legal Services Commissioner (NSW) on average completes 75% of complaints within six months but recognises that some investigations can take longer, particularly in relation to complex matters or where there is difficulty in obtaining information.

2.21 Complainants to MARA are advised that complaints may take up to twelve months to resolve. The Deed of Agreement between the Australian government and the MIA identifies targets of 90% of complaints received to be completed within six months, 99% within 12 months and 100% in 24 months.

2.22 The MARA 2005–2006 Annual Report¹¹ states that 548 new complaints were received in 2005–06, an increase of 12% on the previous year. A total of 788 complaints were finalised in 2005–06, which is an increase of 9% over the previous year. Of the finalised cases, 368 were received during 2005–06. By 30 June 2006, 354 or 65% of complaints received in 2005–06 were finalised in six months, and 67% in 12 months. As at 14 May 2007, 75% of complaints received in 2005–06 were finalised within six months.

2.23 MARA's targets and actual performance do not meet best practice when considered against performance targets in comparable complaint-handling processes. We acknowledge that the six-month finalisation rates for 2005–06 (as at 14 May 2007) are a significant improvement on 2004–05, when only 58% were finalised within that time. We also note that considerable effort was put into finalising old cases (that is, 12 months old or more, with a significant number being over 24 months old) that had been received in previous years. These improvements were primarily achieved by increasing staff numbers involved in complaint handling. The funding for this was raised through increased agent registration fees.

2.24 The finalisation rates are still much lower than MARA's performance targets. MARA surveyed agents about the time taken to complete the complaint process, with a satisfaction rating of 5.94 out of a possible 10.¹² In our view, potential complainants would be discouraged from making a complaint, given the current timeframes and the general indication given by MARA that it may take 12 months or more to finalise. MARA has advised that its complaint-handling processes have been further improved, and they are well on track to meeting the 12 month and 24 month targets by the end of June 2007.

2.25 We note that MARA does not differentiate between simple and complex complaints in terms of its processes for handling the complaints or the setting of performance targets. MARA has recently introduced a detailed step-by-step process,

⁹ Australian Securities and Investments Commission, Policy Statement PS 139, Approval of external complaint resolution schemes, Part II, Underlying Principles of the guidelines, PS 139.117.

¹⁰ Australian Taxation Office website; Service Standards 2005–06.

¹¹ See MARA 2005–2006 Annual Report Chapter Three Consumer Protection And Monitoring Standards, pp 21–32.

¹² The Leadership Factor, MARA Migration Agent Survey 2005, p 9.

outlined in Operations Manual 700, which is to be followed for all investigations. It appears that the only variation in process for a complex versus simple matter is a decision as to whether the investigation will be undertaken by a Professional Standards Team staff member, or whether it may be necessary to involve an external Professional Standards Committee member (see Attachment B for an explanation of the roles). We are advised that the Chief Executive Officer (CEO) meets fortnightly with relevant staff to ensure that incoming complaints are properly streamed—that is, serious matters that need to be given priority are allocated to the Professional Standards Committee or a senior investigator, relatively minor matters that can usually be handled quickly are allocated to less experienced staff, and a ‘normal’ stream for the remaining complaints.

2.26 Our examination of MARA complaint files identified a number of practices that lead to the process often taking a long time to finalise. DIAC’s annual audit of nine complaint files identified similar issues. For example, requests by an agent subject to a complaint for an extension of time are usually granted, without any assessment of the reason or an appropriate time period. In addition, an agent’s comments on a complaint are routinely forwarded to the complainant. No recorded action for several months was evident on several older more complex complaints. MARA’s practice of recording an additional complaint if the agent was late in providing documents or provided insufficient information, adds extra administration for complaint-handling staff. These practices often add several months to an already lengthy process. Clients of these agents, some of whom may have seriously breached the Code of Conduct, are unprotected during this time.

Recommendation 7

MARA review its complaint-handling targets and identify ways to improve its performance against those targets.

MARA’s response—Agreed.

Recommendation 8

MARA review whether all complaints it investigates are matters which should come within the system. This would include:

- consideration of whether some complainants should be encouraged to take their complaint up with the agent, with MARA playing a more active role in facilitating the approach to the agent
- greater use of mediation early in the investigation process.

MARA’s response—Agreed.

Recommendation 9

MARA review its case management procedures and operations manual to:

- classify complaints in accordance with their level of complexity or priority
- provide more flexibility in approach depending on the complexity or seriousness of the complaint
- ensure timely completion of each step in the process.

MARA's response—Agreed.

Fairness—impartiality

2.27 A complaint process should, to the maximum extent possible, be free of conflict of interest, actual or perceived. This can raise particular challenges in the case where an industry representative body is also the regulatory body and complaint-handling organisation.

2.28 In examining the issue of impartiality we explored two key matters. We looked at the potential conflict of interest with regard to the decision-making process on sanctions, because the decision makers are themselves migration agents; and we examined the relationship between complaints and audit activity.

2.29 The CEO of the MIA and a number of senior staff of MARA are delegates for making decisions with regard to disciplinary action against migration agents. Delegates are bound by the written directions of the MIA Board, which is also the MARA Board. According to the written directions issued by the MIA, final decisions to discipline agents can only be taken by the board, which is itself made up of registered migration agents, or by the Professional Standards and Registration Committee (PSR Committee), which comprises five Directors of the MIA and hence are also registered migration agents.

2.30 MARA does not believe that there is any conflict of interest in this arrangement. It advises that should such a conflict be identified, a decision would be made that the delegate or committee member would not participate in the decision-making process. We are aware of a number of occasions where this has been necessary. Information from migration agents received during the course of this investigation does, however, raise questions about the transparency of the process. We have been provided with records of meetings that do not reflect that a MARA Board member has withdrawn from discussion regarding a complaint or sanction where they were perceived to have a conflict of interest by the agent under investigation. Both the complainant and the agent under investigation should be provided with some assurance of no conflict of interest. MARA advises that it has not been able to identify any such occasion where a board member did not withdraw from discussion regarding a sanction where they were perceived to have a conflict of interest, and the CEO has extended an invitation via the Ombudsman's office for the agent concerned to meet and discuss their concerns.

2.31 MARA has the power under s 303 of the Migration Act to discipline agents. This power is delegated to a number of senior staff under Delegation E1. Delegates are required to have regard to the written directions issued by the MIA. In particular, Written Direction No 1 says that any decision to discipline an agent (s 303), after they

have been given notice (s 309), must be made by the board of the MIA acting as MARA or by the PSR Committee. Senior staff, as delegates under Delegation E1, are given the delegation to discipline agents but are subject to the written directions which say they cannot make the final decision to discipline. The written directions mean that a delegate should not exercise a delegated power (s 303) and may be in conflict with the *Acts Interpretation Act 1901*. While we do not disagree that decisions as serious as disciplining an agent be made by the board or PSR Committee, we suggest that DIAC and MARA obtain considered legal advice on whether the direction given to delegates impermissibly seeks to limit a power granted by the delegation to which it is referable. MARA has advised that DIAC obtained legal advice in March 2006 on the written directions referred to on behalf of MARA and MARA has acted in accordance with that advice.

2.32 MARA promotes the benefits of an agent's peers being the ones to make decisions on sanctions. While there are some advantages for the decision maker having an understanding of the matters from the agent's perspective, we believe that this should be achieved by more independent means. In our view, having practising migration agents as the decision makers will invariably lead to questions of conflict or bias and result in reduced confidence in the process.

2.33 A perception of conflict may arise if decisions are being made by committee/board members who may be regarded as being in competition with the agent under investigation, simply because they operate in the same state or territory or in the same area of specialisation or market. These conflicts need to be able to be identified and, as an interim measure, may be overcome by establishing subcommittees made up of 'non-competitive' agents. A more permanent and effective way of managing this issue would be to include one or more independent persons, with experience in other areas of law, including administrative law, and from consumer or community organisations, on the PSR Committee, when complaints and proposed decisions to discipline agents are being considered. This would assist in providing added assurance that potential conflicts of interest are managed properly, and that there is an adequate client focus. Similar arrangements should be put in place when the board is considering complaints and proposed decisions to discipline agents.

2.34 It was also put to us that because the MIA is responsible for MARA, MIA members have access to information about MARA processes and practices that other agents do not. Only about 44% of registered migration agents are members of the MIA. Our investigations indicate that MIA members have the same level of difficulty in extracting information from MARA as agents generally. (Transparency issues are discussed in more detail later in this report.) This is highlighted by the fact that the MIA Professional Practice Panel, which, according to the MIA Annual Report 2005–06 was established to provide support to member agents subject to MARA investigations, has had difficulty in gaining access to MARA documentation on the complaint-handling practices and procedures. Furthermore, it appears that MIA members may indeed be hampered in receiving support from their board because of its relationship with MARA. MARA's view is that the reference to the Professional Practice Panel is not correct, as the MIA has not yet established this Panel. MARA believes that it treats all agents equally and has set out a good description of its complaint process on its website.

2.35 It was also suggested by the legal bodies consulted that the MIA has a level of access to DIAC information not readily available to them, including consultation on policy, updates on changes to migration legislation or DIAC practices and procedures and DIAC contact arrangements. On this point, DIAC suggested that it does not

intentionally treat the MIA or the Law Council of Australia differently when it comes to consultation and that both had been involved on policy development and information exchanges, although this may have been through state based forums rather than at the national level. DIAC recognises the need to increase stakeholder involvement in some matters and will be looking to ensure the peak bodies are involved in considerations for the review of the migration advice industry due by June 2008.

2.36 Under s 316(1)(b) of the Migration Act, MARA is responsible for monitoring the conduct of registered migration agents and lawyers. The Deed identifies industry audits as the key performance indicator and the aim is to audit 4% of the profession annually. MARA achieves this by auditing all agents who have a complaint raised against them, and who have not been audited in the previous 12 months (excluding frivolous or vexatious complaints or in general those complaints which are not advised to the agent, for example, because of lack of permission to publish by the complainant). The audit is undertaken irrespective of the outcome of the complaint investigation.

2.37 This is a blanket approach to audit activities. It is not based on any risk assessment of the individual concerned, nor is it strategic in nature. For example, candidates for audit are not selected on the basis of their level of experience, the structure of their business, or the profile of their clients.

2.38 To subject an agent to an audit at the same time he or she is required to cooperate with a complaint investigation puts unnecessary pressure on the agent who has to respond to both the complaint allegations and the audit requests in a similar time frame. This adds to the stress of an already stressful process, irrespective of the agent's level of compliance. It is also possible that persons aware of this blanket policy may raise spurious or vexatious complaints about an agent in order to inconvenience them.

2.39 Further, we believe that the linking of audits directly to the complaint process is inconsistent with the concept of complaints being an opportunity for improvement. Late in the investigation we were advised that MARA has reviewed its approach to auditing, and changes will be implemented.

Recommendation 10

MARA include on the Professional Standards and Registration Committee one or more independent persons with experience in other areas of law, including administrative law, and from consumer or community organisations, when complaints and proposed decisions to discipline agents are being considered. This would assist in providing added assurance that potential conflicts of interest are managed properly, and that there is an adequate client focus. Similar arrangements should be put in place when the MARA Board is considering complaints and proposed decisions to discipline agents.

MARA's response

Agreed, but implementation of Recommendation 10 will require change to s 319A of the Migration Act and MARA has asked the Australian government to make this legislative change.

DIAC's response

Setting up an independent PSR Committee would require change to legislation. This suggestion will be included for consideration in the context of the 2007–08 migration advice industry review.

Ombudsman's comment

DIAC's comment was on an earlier version of Recommendation 10 which read 'MARA establish an independent Professional Standards and Registration Committee that does not include practising migration agents'. We changed this following comment from MARA and DIAC.

Recommendation 11

As an interim measure, MARA put in place Professional Standards and Registration Committee subcommittees, with membership made up of groups of migration agents who are not in competition for clients with the agent under investigation.

MARA's response—Agreed.

Recommendation 12

MARA ensure that records of the Professional Standards and Registration Committee accurately report determinations made regarding potential conflicts of interest by sitting committee members and of committee members' absences from meetings as a result, and MARA make these records available to the relevant complainant and the agent under investigation.

MARA's response—Agreed.

Recommendation 13

MARA and DIAC establish formal consultative arrangements with the peak professional bodies including the MIA and the Law Council of Australia for discussions on policy, legislative and administrative changes relating to migration agent regulation and the industry review.

MARA's response—Agreed, MARA advises it has already initiated this.

DIAC's response

DIAC meets with the MIA and with MARA on a quarterly basis. DIAC is currently setting up more formal arrangements with the Law Council of Australia and has met with them once this year. DIAC is currently developing and considering a range of options aimed at improving its engagement with key stakeholders such as these.

Recommendation 14

As part of its revised approach to auditing agents, MARA make decisions about which agents to audit based on transparent risk assessment processes rather than link audits directly to complaints received.

MARA's response—Agreed.

Fairness—transparency

2.40 Policies about complaint handling should be made available to the public, to give confidence in the process, and to complainants and those complained about so that they can understand the process. There should also be a clear distinction between complaints made by external people/organisations and other issues of concern raised by the complaint-handling body itself.

2.41 MARA has begun to consider ways of making its decision-making processes more transparent. It has developed a 12 step flow chart on its complaint-handling procedure (see Attachment B) which has been published on its website and in its annual reports. During 2005–06, MARA also published on its website new delegations and accompanying directions. Evidence provided to us, however, indicates that MARA has been reluctant to provide agents with more detailed explanations of the complaint-handling process and their rights and responsibilities. For example, as indicated in paragraph 2.34, we understand that the MIA established a Professional Practice Panel in late 2005 to, among other things, provide advice to MIA members about the complaint-handling process and how to conduct themselves if they find themselves under investigation. Despite requests to MARA for more detailed information on the process, this was not forthcoming.

2.42 In our view, it is important that MARA is seen as open and transparent if it is to gain the trust and confidence of migration agents and users of its services. Migration agents should not regard the process as secret, nor should they need to feel apprehensive about the way complaints will be handled and what they can expect from the process. MARA needs to make publicly available a detailed explanation of the process, how investigations are conducted, what agents' rights and responsibilities are, including review rights, and what timeframes and other standards are to be met along the way. MARA has started providing more information to agents about the complaint-handling process, and updated material on its website. We encourage MARA to continue with this initiative.

2.43 In 2005–06, 196 complaints or 33.5% of the total complaints MARA received were in fact complaints referred to MARA by itself.¹³ Our investigation identified a number of these complaints as administrative issues, albeit potential breaches of the Code of Conduct by agents, often raised during the course of other complaint investigations against those agents. For example, if MARA was investigating a complaint against an agent and was seeking information from that agent, if the agent did not respond or did not respond to MARA's satisfaction, MARA would record another complaint against that agent and deal with that as a separate investigation. The other main source of these complaints is false or misleading advertising, for example, omitting a registration number, incorrect wording or implying a relationship with DIAC or MARA.

¹³ MARA 2005–2006 Annual Report, Table 9: Sources of complaints to the Authority, p 24.

2.44 These matters are not complaints in the true sense of the word and in our view lead to over-counting where it arises in the course of a complaint. This distorts the true picture of complaint numbers, the resources MARA puts into complaint handling, and its performance against targets. Where appropriate matters should be addressed as an issue within the original complaint rather than be regarded as a separate complaint. Where MARA itself raises a complaint, this should be identified separately from complaints originating from outside MARA.

Recommendation 15

MARA cease counting alleged problems, which are identified by it during the course of a complaint investigation (or identified separately by MARA), as separate complaints and distinguish clearly in public reporting between complaints raised by external parties and those problems it identifies itself.

MARA’s response—Agreed.

Integration

2.45 Information obtained from complaints can provide invaluable opportunities to identify areas for improvement, either at an individual provider or systemic level.

Statistical analysis

2.46 MARA’s data collection system is illustrative of an approach that is internally focused on the needs of the industry and the statutory reporting needs. It collects an extensive range of quantitative data including:

- number of complaints received, finalised and on hand
- number of complaints received, including sources of complaints
- nature of allegations, including a break up of standards of professional conduct
- outcomes of complaints, including no further action, discontinued or dismissed complaints, complaints referred elsewhere, sanctions imposed and breaches found
- outcomes in relation to source of complaint
- agents complained about, including breaches found
- finalisation rates, including age analysis of complaints finalised and complaints open at end of period.

2.47 MARA does not collect qualitative data or use the data it has for the purpose of strategic or risk assessment. For example, it does not collect any detailed demographic information such as source of complaints, the underlying causes of complaints, location of complainants, groups of interest, systemic issues or other trends. This makes it difficult for MARA to develop a profile of migration agents or their more vulnerable clients. In our view, this approach does not have protection of consumer rights as a primary focus. It prohibits effective strategic planning and targeting for communication and education programs to both the agents and users of services.

2.48 More attention needs to be given to identifying and responding to systemic issues. This would enable MARA to better target specific areas of concern with agent compliance with the Code of Conduct and to identify opportunities for improved support to agents, including through the development of focused training and education in order for them to be able to meet client expectations. This information could be fed into the Graduate Certificate in Australian Migration Law and Practice program and Continuing Professional Development activities.

Quality assurance

2.49 DIAC undertakes an annual audit of nine finalised complaint matters and provides a written report to MARA with recommendations for improvements to the investigation and decision-making processes. DIAC’s audit process is not effective as a quality assurance check. It is based on a small sample of cases, selected by MARA, which is not totally random. In addition, it is undertaken using only the paper-based records, not the entire MARA file that includes electronic files on the complaint and on the agent.

2.50 MARA does not have an effective quality assurance process for complaint handling. Instead, it has a number of processes that can only be described as quality control, with the aim of maintaining a consistent complaint-handling process and consistency of correspondence. It does not have a system that assesses the quality of investigation and decision making—for example, a review or audit mechanism—except for DIAC’s annual audit. The complaint files contain little information on analysis of issues or the investigation and decision-making processes. DIAC’s audit points out that it is difficult to determine if all steps were followed in all cases. We also found this difficult given the nature of record keeping across both electronic and paper-based files. An effective quality assurance process would identify such gaps and lead to continual improvement.

Recommendation 16

MARA give more attention to the collection and use of more qualitative data on systemic issues and trends for the purpose of strategic planning and risk assessment, including client and agent education and audit activities.

MARA’s response—Agreed.

Recommendation 17

MARA undertake an annual audit of finalised cases using all available relevant records in relation to the complaints under audit, not just the paper-based files.

MARA’s response—Agreed.

Recommendation 18

MARA regularly:

- review the mechanisms it has in place to ensure the quality of its investigations, including the analysis of the issues, the decisions taken and the advice provided to complainants and agents, and feed the results into staff training exercises.

MARA's response—Agreed.

PART 3—ISSUES OUTSIDE THE SCOPE OF THE INVESTIGATION

3.1 During the course of the investigation, matters came to our attention that were outside the scope of the investigation but which we believe should be addressed. We suggest that the majority of these issues should be considered in the review of statutory self-regulation due by June 2008. We will also consider whether there is scope to conduct other own motion investigations covering some of the administrative aspects of these issues.

3.2 A major issue raised in submissions to us was lawyers' concerns regarding lawyers being subject to regulation by MARA and their own profession. Some argued that this provides a disincentive for lawyers to practise migration law and consequently has an impact on the quality of advice being provided by the industry to the detriment of the vulnerable clients of migration agents. Other concerns were raised about:

- the adequacy of qualifications, education programs and continuing professional development commitments required by migration agents
- MARA not including advice to consumers that some migration agents are lawyers and some are not, in their general advice as to what to consider when choosing an agent
- perceived inaction by MARA in investigating non-lawyer migration agents who appear to be holding themselves out as lawyers and providing legal advice and appearing in court. MARA advises that it is not their responsibility to investigate such actions, and they refer all such instances that come to their attention to the relevant legal bodies. We suggest that, in cases where the person is a registered migration agent, such issues might also need to be considered when assessing whether a person is a fit and proper person or a person of integrity when their registration, or re-registration, is being considered, and MARA might seek to outline its policy in this regard on its website.

3.3 DIAC advises that the 2007–08 migration advice industry review will include an evaluation of the dual registration of migration lawyer agents.

3.4 Our analysis also brought attention to possible inadequacies in MARA's handling of other areas of responsibility such as monitoring agent conduct through its audit program. We have suggested that the current system of auditing agents subject to complaints is not strategic and that it should be reviewed with greater attention to risk assessment analysis. MARA's audit activities also give rise to questions about the extent to which the Migration Act gives MARA the power to enter an agent's premises and to seize an agent's documents and files.

3.5 Some people raised concerns that the current financial arrangements between the Australian government and MARA mean that DIAC has control of decisions on migration agent regulation and that this gives rise to potential conflicts of interest or bias on the part of DIAC towards some agents under investigation. DIAC advises that it plays no part in the MARA decision-making process and most people in DIAC are unaware of which agents are being investigated by MARA at any given time.

3.6 We understand that the Australian government is considering extending regulation of immigration advice to overseas-based agents. We note that complaint handling about overseas agents may be extremely difficult, time consuming and costly to manage. It may well be beyond MARA's current capacity and resourcing to investigate substantive complaints about overseas agents, especially where, in some cases, it may be necessary to travel for that purpose or legal action may be involved. Given the issues raised in this investigation, it would be of concern if further pressure were placed on the current system and resources to support such an extension. We suggest the government look closely at how the extended registration is to be financed and what additional resources would be needed to support it. Interim arrangements, including separate funding to investigate complaints about overseas agents and separate audit processes may be appropriate. We suggest that this issue be considered in the review of statutory self-regulation.

3.7 DIAC advises that the regulation of offshore agents was comprehensively considered during the course of the 2001–02 Review of Statutory Self-Regulation of the Migration Advice Industry, and this is the only outstanding significant recommendation of that review. Since then, DIAC has consulted broadly to develop a model that will improve consumer protection for offshore clients. It is not proposed to consider regulation of offshore agents in the 2007–08 industry review.

PART 4—GENERAL CONCLUSIONS

4.1 This own motion investigation revealed that MARA's complaint-handling process has improved significantly over the past 12 months, particularly relating to the development of procedures and supporting documentation. Identifying opportunities to be more flexible in its operation should now be the focus. In our view MARA has demonstrated a willingness to develop a more client focused and accountable culture. However, there is much that can still be done to ensure that MARA continues to look at ways to ensure those most vulnerable are protected; are aware of the complaint-handling process; have appropriate access to it; and both complainants and agents can have confidence in the outcomes achieved.

ATTACHMENT A

A Brief History of Migration Advice Industry Regulation

Pre-1992	Migration advice industry largely unregulated.
1992	Migration Agents Registration Scheme (MARS) established. People providing immigration advice required to register as migration agents.
1996	<p>Review of MARS finds:</p> <ul style="list-style-type: none">• full regulation had mixed results• consumer protection levels increased• complaint mechanisms are expensive, slow and unresponsive to consumer concerns. <p>In response to the review the Australian government decided to move towards full self-regulation.</p>
21/03/1998	Statutory self-regulation commences for two-year period following amendments to Part 3 of the Migration Act.
23/03/1998	<p>Migration Institute of Australia Limited (MIA) appointed as the Migration Agents Registration Authority to administer the relevant provisions of the Migration Act and to undertake the role of the industry regulator. New arrangements aimed at increasing consumer protection included:</p> <ul style="list-style-type: none">• the introduction of criteria for competence for agents working in the non-commercial sector• prescription of qualifications for registration equally applicable to both the commercial and non-commercial sectors of the industry• the publication of notice of intention to apply for registration as a migration agent and of notices of cancellation or suspension of registration• annual repeat registration contingent upon continuing professional development for migration agents (equally applicable to both sectors of the industry)• the Code of Conduct for migration agents• the gazettal of approved activities for Continuing Professional Development purposes¹⁴.
1999	<p>DIAC review of effectiveness of arrangements concluded:</p> <ul style="list-style-type: none">• consumer protection had improved• competence and ethical behaviour of agents had improved

¹⁴ 2001–02 Review of Statutory Self-Regulation of the Migration Advice Industry, p 15.

Commonwealth and Immigration Ombudsman—MARA's complaint-handling process

- substantial concerns remained about a small segment of the industry
- the industry was not ready for full self-regulation.

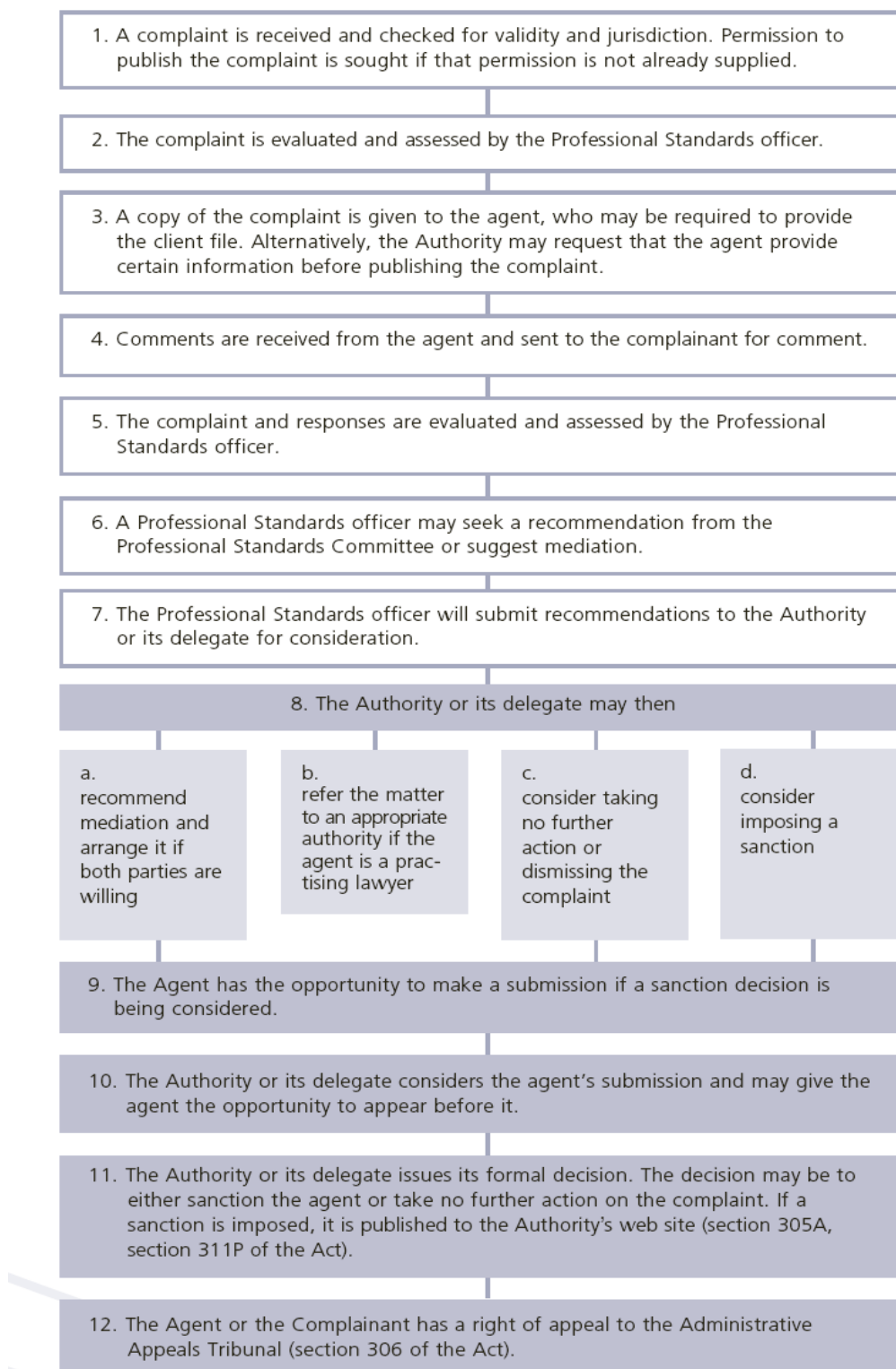
2001-02 Review of Statutory Self-Regulation of the Migration Advice Industry concluded the industry was not ready for full self-regulation and made numerous further recommendations aimed at strengthening the professionalism of the migration advice profession and improving consumer protection.

2003 Deed of Agreement signed between the Australian government and the MIA setting out the terms and conditions under which the MIA carries out the statutory functions of MARA for the period to March 2009 with a further review of the regulation arrangements scheduled to occur by June 2008.

ATTACHMENT B

The MARA complaint-handling process

Figure 8: Typical complaints handling procedure



Roles and responsibilities of MARA complaint-handling staff and related committees

The Professional Standards Team (PST) currently consists of:

- one Professional Standards Team Leader (TL)
- one Senior Professional Standards Officer (SPSO)
- one Senior Public Access Officer (SPAO)
- three Professional Standards Officers (PSO)
- one Public Access Officer (PAO)
- one Administration Assistant.

The related committees are the Board of Directors, the Professional Standards and Registration (PSR) Committee, the Professional Standards Committee (PSC) and the Conduct Advisory Panel (CAP).

Members of the Board of Directors of the MIA, all migration agents, are the members of the PSR Committee. The PSR Committee and the Board of Directors of the MIA are the only groups that can make disciplinary decisions.

The PSC comprises 12 individuals with relevant experience and expertise in administrative law, consumer and community organisations, the migration advice industry or tribunal experience. The PSC reports to a Senior Member of the PSC.

The CAP is comprised of members of the PSC and review matters dealing with Directors of the MIA who act in the capacity of MARA.

Responsibilities

A PST officer or PSC member can recommend disciplinary action against a registered or former migration agent. The delegate can decide to issue a 'show cause' notice. The PST officer or PSC member considers the response. If disciplinary action is believed to be warranted a recommendation is made to the PSR Committee.

The delegate can decide to take no further action on a complaint.

Each PSO and SPSO has approximately 60 active complaints at any given time. Officers with a reduced capacity (TL, SPAO, PAO) have approximately 25 active complaints.

MARA complaint-handling documentation and delegations

MARA Complaint Handling Operation Manual

- Flowchart
- Complaints Database—How to
- Key Performance Indicators of the PSC
- Key Accountabilities of the Professional Standards Team
 - Key Accountabilities—Professional Standards Team Leader
 - Key Accountabilities—Senior Professional Standards Officer
 - Key Accountabilities—Senior Public Access Officer

Commonwealth and Immigration Ombudsman—MARA's complaint-handling process

- Key Accountabilities—Professional Standards Officer
- Key Accountabilities—Public Access Officer
- Key Accountabilities—Administration Assistant (Professional Standards)
- Legislation summary
- Delegation No. E1—Delegation Pursuant to Section 319A of the *Migration Act 1958*—Date of effect of Delegation is 8 May 2006
- Delegation No. E2—Delegation Pursuant to Section 319A of the *Migration Act 1958*—Date of effect of Delegation is 8 May 2006
- Written Direction No. 1—Decision Making under Section 303(1) and 311A(1)—Date of effect is 8 May 2006
- Written Direction No. 3—Decision Making under Section 305C—Date of effect is 8 May 2006
- Delegation No. C1—Delegation of Statutory Powers under Part 3 of the *Migration Act 1958*—Date of effect is 2 February 2006
- Appointment of PSR Committee—Approved 16 February 2006
- Complaints Database—How to
- Lawful Decision Making Handbook for MARA
- Roles, responsibilities and delegations of complaints handling staff and related committees
- Complaints database—How to
- Lawful decision making handbook for MARA
- OM 700 Procedures for handling complaints
- OM 701 Issue of a notice to an agent to issues corrective advertising
- OM 711 Issue of a section 308 notice
- OM 715 Issue of a section 308 (1) notice requiring clarification of claimed legal professional privilege
- OM 721 The issue of a section 305C or a section 311EA notice
- OM 722 issue of a section 306D notice
- OM 730 issue of a section 309 (2) notice
- OM 731 issue of a section 309 (2) notice to an agent who fails to respond to requests for information
- OM 732 issue of a section 309 (2) notice to an agent who fails to respond fully to authority requests
- OM 735 issue of a section 309 (2) (failed to provide documents requested in a s 308 (1)(2) notice, LLP claimed)
- OM 741 issue of a section 311D notice
- OM 750 refer a role of a complaint to mediation
- OM 761 issue of a notice of 'no further action at this stage'
- OM 771 issue of a notice of decision to dismiss the complaint as there is no permission to publish
- OM 772 issue of a notice of decision to dismiss the complaint as the complaint is not within the authority's jurisdiction
- OM 773 issue of a notice of decision to refer the complaint to the Department of Immigration and Citizenship

Commonwealth and Immigration Ombudsman—MARA's complaint-handling process

- OM 774 issue of a notice of decision to dismiss the complaint has the complainant is frivolous, vexatious or there is no breach
- OM 775 issue of pay notice of decision to refer the complaint to an authority responsible for disciplining lawyers
- Form M03—Complaint Form.

APPENDIX—GLOSSARY

AIMS	Agents Initiative and Monitoring Section
CAP	Conduct Advisory Panel
CEO	Chief Executive Officer
DIAC	Department of Immigration and Citizenship
IRMAP	Information on the Regulation of the Migration Advice Profession
MARA	Migration Agents Registration Authority
MIA	Migration Institute of Australia Limited
Migration Act	<i>Migration Act 1958</i>
PAO	Public Access Officer
PSC	Professional Standards Committee
PSO	Professional Standards Officers
PSR Committee	Professional Standards and Registration Committee
PST	Professional Standards Team
The Deed	The Deed of Agreement between the Commonwealth and the Migration Institute of Australia Limited (MIA) to establish the MIA as MARA
TL	Team Leader
SPAO	Senior Public Access Officer
SPSO	Senior Professional Standards Officer