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FAQs – removal of unrestricted lawyers from the OMARA regulatory scheme

1. What legislation implements the change?

Legal practitioners with unrestricted legal practising certificates (unrestricted lawyers) will be removed from the regulatory scheme governing registered migration agents (RMAs) by Schedule 1 to the *Migration Amendment (Regulation of Migration Agents) Act 2020* (the legislation). This legislation will also allow legal practitioners with restricted legal practising certificates (restricted lawyers) to be both RMAs and legal practitioners for an eligible period.

The legislation received the Royal Assent on 22 June 2020, after the originating bill passed both Houses of Parliament on 15 June 2020. The legislation will come into effect on 22 March 2021.

Details of the practical implementation of the legislation, and its effect on restricted and unrestricted lawyers, will be provided in a separate FAQs document.

2. Why will unrestricted lawyers be removed from the Office of the Migration Agents Registration Authority (OMARA) regulatory scheme?

The legislation will give effect to Recommendation 1 of the 2014 *Independent Review of the Office of the Migration Agents Registration Authority* (the Kendall Review), which recommended that lawyers be removed from the regulatory scheme that governs RMAs.

The Kendall Review found that **legal practitioners are already subject to a strict professional regulatory regime**, and recommended that lawyers be entirely regulated by relevant state and territory legal professional bodies, so as to avoid dual regulation.

3. What consultation has the Government undertaken with affected stakeholders?

The Kendall Review included a public consultation process in 2014 that canvassed the views of stakeholders across the migration advice industry.

The Senate Legal and Constitutional Affairs Legislation Committee¹ (the Committee) ran a public inquiry into the legislation between November 2019 and February 2020, upon referral by the Senate. The Committee's report, released on 27 February 2020, stated that the Committee 'recognises the **overwhelming support for this legislation** expressed in most of the submissions' and recommended the Senate pass the legislation without delay.

¹ Committees provide an opportunity for organisations and individuals to participate in policy making and to have their views placed on the public record and considered as part of the decision-making process. A Legislation Committee's purpose is to deal with bills referred by the Senate, the Estimates process and oversee the performance of departments.

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Role_of_the_Committee

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4. Will consumers continue to be protected after the removal of lawyers from the OMARA regulatory scheme?

The Committee stated that it is 'confident that the **legal profession in Australia is well-regulated and offers effective consumer protection mechanisms**, including for vulnerable consumers, such as those who seek migration assistance'.

As noted in the Kendall Review, 'lawyers practice in many areas that are highly complex. They do so with the knowledge that if they are negligent or unprofessional they will be subject to some of the strictest and harshest disciplinary procedures and professional sanctions in the country'.

The relevant state and territory legal professional bodies have a broader range of powers (underpinned by statutory schemes) to resolve consumer-related issues than the scheme governing RMA's. This includes penalties outside the OMARA's jurisdiction, including financial penalties for improper conduct, and recommending compensation for affected clients.

5. Will the removal of unrestricted lawyers from the OMARA regulatory scheme make it easier for lawyers to enter the migration advice industry?

Currently, in order to obtain OMARA registration, a lawyer needs to provide evidence of their Australian legal practising certificate, meet the integrity requirements and pay a registration application fee.

From 22 March 2021, unrestricted lawyers will no longer have to register and pay a registration application fee to the OMARA to provide immigration assistance in connection with legal practice² (referred to as 'immigration assistance' in this document). Unrestricted lawyers will have to continue to maintain their legal practising certificate and pay the applicable fee to their relevant state or territory legal professional body. Therefore, the only benefit the legislation will provide to lawyers is that **unrestricted lawyers will no longer have to pay two sets of fees** to provide immigration assistance. Qualification requirements for entering the migration advice industry will remain unchanged (as discussed in Q6 below).

6. Does the change mean that lawyers will be able to enter the migration advice industry with a lower level of qualifications?

No. Lawyers are already eligible to be registered as RMA's without being required to complete a prescribed course or pass a prescribed exam (if they meet the rest of the eligibility criteria). This is because an Australian legal practising certificate is currently a prescribed qualification for RMA registration.

As such, the removal of unrestricted lawyers from the OMARA regulatory scheme alone **will not result in changes to qualification requirements** that they need to fulfil to provide immigration assistance.

Further, the OMARA currently grants lawyers with credit for continuing professional development (CPD) they undertake as part of their requirements for maintaining a legal practising certificate,

² The Committee clarified that the meaning of 'in connection to legal practice' is 'not about identifying a specific organisational structure, and instead it relates to referring legal practitioners to the legal regulatory rules of the relevant state and territory legal professional bodies'.

so that they are not required to complete two sets of CPD. Removal of unrestricted lawyers from the OMARA regulatory scheme will not affect their CPD requirements.

7. What will change for non-lawyer RMAs?

The removal of unrestricted lawyers **will not affect the legislative framework governing RMAs** who are not lawyers. The provisions will continue to operate as they do now, once unrestricted lawyers are removed from the OMARA regulatory scheme.

8. What will happen to disciplinary decisions imposed by the OMARA on RMAs who are unrestricted lawyers?

After 22 March 2021, the OMARA will continue to have the power to **refer the conduct of current and former RMAs** who are also lawyers to state and territory law societies. Arrangements will be put in place that will assist the OMARA and legal professional bodies to share relevant information.

Even though disciplinary decisions imposed by the OMARA on an unrestricted lawyer will cease to have effect from 22 March 2021, the relevant state or territory legal professional bodies will be informed about the disciplinary decision and the conduct that caused it. The relevant body, as a regulator of lawyers providing immigration assistance in that state or territory, will make a decision about potential repercussions for the lawyer concerned.

Statements about all OMARA's disciplinary decisions (cautions, suspensions, cancellations and barrings) will continue to be published on the [OMARA website](#).

9. What is the expected economic effect of the removal of lawyers from the OMARA regulatory scheme?

The Committee's report states: '**Unnecessary over-regulation costs the taxpayer, damages productivity, may deter investment, and can undermine job growth**. The government is seeking to reduce inefficient regulation wherever this can be achieved without imposing unacceptable risks'.

Removal of lawyers from the OMARA regulatory scheme is not expected to have a significant economic impact on the migration advice industry. Due to the complexity of migration law, it is unlikely that not having to pay the OMARA registration application fee alone would be sufficient reason for a lawyer to commence providing immigration assistance.

10. Will the removal of unrestricted lawyers from the OMARA regulatory scheme affect the cost of immigration assistance to consumers?

Lawyers will continue to be able to provide immigration assistance alongside RMAs, so the existing competition in the industry will remain. The legislation does not impose additional costs on unrestricted lawyers that could be justifiably transferred to consumers. On the contrary, it relieves them from having to pay two sets of fees (as discussed in Q5).

It should be noted also that the [Code of Conduct for RMAs](#) requires RMAs to set and charge a fee that is reasonable in the circumstances of the case. Fees set by lawyers, including in relation to the

provision of immigration assistance from 22 March 2021, are regulated by state and territory legal professional bodies and the statutory schemes underpinning them.³

11. Why is the role of lawyer RMAs out of scope of the Migration Agents Instruments Review (the Review)?

The purpose of the Review is to review the existing regulatory framework governing RMAs.

Since the legislation will remove unrestricted lawyers from the regulatory framework governing RMAs on 22 March 2021, the framework will not be applicable to them after that time. Therefore, unrestricted lawyers will not be affected by any potential legislative reform post 22 March 2021, that results from the Review.

Restricted lawyers who are also RMAs will be subject to the RMA regulatory framework for the eligible period of two years. More details about the practical implementation of the legislation will be provided in additional FAQs that will be distributed by the OMARA shortly.

³ For example, under the *Legal Profession Uniform Law (NSW)*, solicitors are entitled to charge fees which are fair and reasonable.