Migration Agents Regulations 1998

Statutory Rules 1998 No. 53 as amended

made under the

Migration Act 1958

This compilation was prepared on 1 July 2005
taking into account amendments up to SLI 2005 No. 131

The text of any of those amendments not in force
on that date is appended in the Notes section

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1 **Name of Regulations** [see Note 1]
These Regulations are the *Migration Agents Regulations 1998*.

2 **Commencement** [see Note 1]
(1) Regulation 6 and Schedule 1 commence on 21 January 1999.
(2) The remainder of these Regulations commence on gazettal.

3 **Interpretation**
(1) In these Regulations:
   - *Act* means the *Migration Act 1958*.
   - *approved activity*, in relation to the continuing professional development of registered migration agents, means an activity specified by the Authority under clause 3 of Schedule 1.
   - *Authority* means the Migration Agents Registration Authority.
   - *electronic communication* has the meaning given by the *Electronic Transactions Act 1999*.
   - *financial institution* means a body corporate that, as part of its normal activities:
     (a) takes money on deposit and makes advances of money; and
     (b) does so under a regulatory regime, governed by the central bank (or its equivalent) of the country in which it operates, that the Minister is satisfied provides effective prudential assurance.
   - *Information on the Regulation of the Migration Advice Profession* means the current version of the document produced for regulation 9A.
   - *prescribed institution* means:
     (a) an institution of higher education within the meaning of the *Higher Education Funding Act 1988*; or

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Regulation 3

(b) Bond University, within the meaning of the Bond University Act 1987 of Queensland.

(2) In these Regulations, an individual applies for repeat registration if the individual:

(a) applies for registration; and

(b) has been registered at some time in the period of 12 months before making the application.
Part 2  Immigration assistance given by persons not registered

Division 2.1  Assistance given by employers and their employees

3A  Definitions for Division 2.1

In this Division:

employee has the meaning given by regulation 3B.

employer has the meaning given by regulation 3B.

migrating employee, in relation to an employer, means an employee, or a prospective employee, of the employer:

(a) whom the employer intends to sponsor or nominate for the Migration Regulations 1994; or

(b) whom the employer is likely to sponsor or nominate for those Regulations.

specified application means an application for one of the following classes of visa:

(a) Employer Nomination (Migrant) (Class AN);
(b) Employer Nomination (Residence) (Class BW);
(c) Labour Agreement (Migrant) (Class AU);
(d) Labour Agreement (Residence) (Class BV);
(e) Temporary Business Entry (Class UC).

3B  Meaning of employer and employee

For this Division, a person is the employer of an individual, and the individual is the employee of the person, if:

(a) the person engages the individual to work in the person’s workplace for an indefinite period rather than for a specified term or for the duration of a specified task; and

(b) the person is responsible for paying the individual’s salary or wages.
3C Assistance given by employers

(1) For subregulation (2), the relevant circumstances are that an employer gives assistance of the kind mentioned in subsection 276 (1) or (2) of the Act to a migrating employee of the employer in relation to a specified application made by the migrating employee.

(2) For subsection 276 (4) of the Act:
(a) the employer in the relevant circumstances does not give immigration assistance; and
(b) an employee who acts on behalf of the employer in the relevant circumstances does not give immigration assistance.

3D Representations made by employers

(1) For subregulation (2), the relevant circumstances are that an employer makes representations of the kind mentioned in subsection 282 (4) of the Act on behalf of a migrating employee of the employer in relation to a specified application made by the migrating employee.

(2) For subsection 282 (5) of the Act:
(a) the employer in the relevant circumstances does not make immigration representations; and
(b) an employee who acts on behalf of the employer in the relevant circumstances does not make immigration representations.

Division 2.2 Assistance given by professional development sponsors

3E Definitions for Division 2.2

In this Division:
applicant means a person who is seeking to satisfy, or intends to seek to satisfy, the criteria for the grant of a Subclass 470 (Professional Development) visa.
**professional development sponsor** means an organisation that is sponsoring, or intends to sponsor, an applicant in relation to his or her application for a Subclass 470 (Professional Development) visa.

3F **Assistance given by sponsors**

(1) For subregulation (2), the *relevant circumstances* are that a professional development sponsor gives assistance of the kind mentioned in subsection 276 (1) or (2) of the Act to an applicant in relation to a Subclass 470 (Professional Development) visa.

(2) For subsection 276 (4) of the Act:

(a) a professional development sponsor in the relevant circumstances does not give immigration assistance; and

(b) an employee of a professional development sponsor who acts on behalf of the sponsor in the relevant circumstances does not give immigration assistance.

3G **Representations made by sponsors**

(1) For subregulation (2), the *relevant circumstances* are that a professional development sponsor makes representations of the kind mentioned in subsection 282 (4) of the Act on behalf of an applicant in relation to a Subclass 470 (Professional Development) visa.

(2) For subsection 282 (5) of the Act:

(a) a professional development sponsor in the relevant circumstances does not make immigration representations; and

(b) an employee of a professional development sponsor who acts on behalf of the sponsor in the relevant circumstances does not make immigration representations.
Division 2.3 Assistance given by other persons

3H Assistance given by close family members

For the definition of close family member in subsection 280 (7) of the Act, close family member, in relation to a person, means:

(a) the person’s spouse; or

(b) a child, adopted child, parent, brother or sister of the person.

Division 2.4 Infringement notices relating to giving of immigration assistance

3I Definitions for Division 2.4

In this Division:

authorised officer includes the Secretary.

infringement notice means a notice under regulation 3J.

offence means a contravention of subsection 280 (1) of the Act.

penalty means the penalty mentioned in paragraph 504 (1) (ja) of the Act.

Note Authorised officer is defined in subsection 5 (1) of the Act.

3J When can an infringement notice be served?

(1) If an authorised officer has reason to believe that a person has committed an offence, he or she may serve an infringement notice on the person in accordance with this Division.

(2) To avoid doubt, if an authorised officer has reason to believe that a person has committed 2 or more offences of the same kind, he or she may serve a separate infringement notice on the person in accordance with this Division in respect of each alleged offence.
3K What must an infringement notice contain?

(1) An infringement notice must:
   (a) state the name of the authorised officer who served the notice; and
   (b) set out the day on which, or period during which, the offence is alleged to have been committed; and
   (c) give brief particulars of the alleged offence; and
   (d) set out the penalty; and
   (e) state that, if the person on whom it is served does not wish the matter to be dealt with by a court, he or she may pay that penalty within 28 days after the date of service of the notice unless the notice is withdrawn before the end of that period; and
   (f) specify where and how that penalty may be paid; and
   (g) set out the procedures relating to the withdrawal of notices and the consequences of the withdrawal of a notice.

(2) An infringement notice may contain any other information that the authorised officer considers necessary.

3L Can the time for payment be extended?

If an infringement notice has been served on a person, an authorised officer may, if he or she is satisfied that in all the circumstances it is proper to do so, allow a further period for payment of the penalty, whether or not the period of 28 days after the date of service of the notice has expired.

3M What happens if the penalty is paid?

(1) This regulation applies if the person on whom an infringement notice is served pays the penalty in relation to the alleged offence before the end of:
   (a) the period of 28 days after the date of service of the notice; or
   (b) if a further period has been allowed under regulation 3L — that further period.
(2) Any liability of the person in relation to the alleged offence is discharged.

(3) No further proceedings may be taken in relation to the alleged offence.

(4) The person is not to be taken to have been convicted of the alleged offence.

(5) However, this regulation does not apply if an infringement notice is withdrawn in accordance with regulation 3N, whether or not the penalty has been paid in accordance with subregulation (1).

(6) If 2 or more infringement notices are served on a person in respect of separate alleged offences, this regulation applies only in respect of the alleged offence or offences in respect of which the penalty is paid in accordance with subregulation (1).

3N Can an infringement notice be withdrawn?

If an infringement notice has been served on a person, an authorised officer may withdraw it by notice in writing served on the person in accordance with this Division, at any time before:

(a) the end of 28 days after the date of service of the infringement notice; or

(b) if a further period has been allowed under regulation 3L — the end of that further period.

Example

An infringement notice may be withdrawn by an authorised officer for the purposes of further investigation of the alleged offence.

3O Refund of penalty if notice withdrawn

If:

(a) an infringement notice has been served on a person; and

(b) the person has paid the penalty in accordance with the notice, or within any further period allowed under regulation 3L; and
(c) the notice has been withdrawn;
an authorised officer must arrange for the refund to the person
of an amount equal to the amount paid.

Note In accordance with subregulation 3M (5), if an amount is refunded to a
person under regulation 3O in respect of a penalty paid in accordance with an
infringement notice that has been withdrawn, regulation 3M does not apply in
relation to the alleged offence for which the infringement notice was issued.
Accordingly, the person’s liability in relation to the alleged offence is not
discharged, further proceedings may be taken in relation to the alleged offence and
the person may be convicted of the alleged offence.

3P Evidence

(1) At the hearing of a prosecution for an offence specified in an
infringement notice, a certificate signed by an authorised
officer and stating:
(a) that the authorised officer did not allow a further period
under regulation 3L for payment of the penalty set out in
the notice; and
(b) that the penalty has not been paid in accordance with the
notice;
is evidence of those matters.

(2) At the hearing of a prosecution for an offence specified in an
infringement notice, a certificate signed by an authorised
officer and stating:
(a) that the authorised officer allowed, under regulation 3L,
the further period specified in the certificate for payment
of the penalty; and
(b) that the penalty has not been paid in accordance with the
notice or within the further time allowed;
is evidence of those matters.

(3) At the hearing of a prosecution for an offence specified in an
infringement notice, a certificate signed by an authorised
officer and stating that the notice was withdrawn on a day
specified in the certificate is evidence of that fact.

(4) A certificate that purports to have been signed by an authorised
officer is taken to have been signed by that person unless the
contrary is proved.
Part 2 Immigration assistance given by persons not registered
Division 2.4 Infringement notices relating to giving of immigration assistance

Regulation 3Q

3Q Can there be more than one infringement notice for the same offence?
If:
(a) an infringement notice is served on a person in relation to an alleged offence; and
(b) that infringement notice is withdrawn; nothing in this Division prevents a further infringement notice being served on the person in relation to that alleged offence.

3R What if payment is made by cheque?
If a cheque is offered as payment of all or part of the amount of a penalty set out in an infringement notice, payment is taken not to have been made unless the cheque is honoured upon presentation.

3S Infringement notice not compulsory
Nothing in this Division:
(a) requires an infringement notice to be served on a person in relation to an alleged offence; or
(b) affects the liability of a person to be prosecuted for an alleged offence if the person does not comply with an infringement notice; or
(c) affects the liability of a person to be prosecuted for an alleged offence if an infringement notice is not served on the person in relation to the offence; or
(d) affects the liability of a person to be prosecuted for an alleged offence if an infringement notice is served and withdrawn; or
(e) limits the amount of the fine that may be imposed by a court on a person convicted of an offence.

3T How must a notice be served?
A notice to be served in accordance with this Division must be served on a person by:
(a) giving it to the person personally; or
(b) sending it to the person’s residential or business address last known to the authorised officer.
3U Relation by employment

(1) For subsection 278 (2) of the Act, an individual is related by employment to another individual if both of them are employed by a third individual.

(2) For subsection 278 (2) of the Act, an individual is related by employment to another individual if:
(a) one of the individuals holds 25% or more of the shares issued by a corporation that provides immigration assistance, or services including immigration assistance; and
(b) the other individual is employed by the corporation.

Note Immigration assistance is defined in section 276 of the Act.

(3) For subsection 278 (2) of the Act, an individual is related by employment to another individual if:
(a) one of the individuals holds a charge (whether fixed or floating) or a mortgage or any other form of security over some or all of the assets of a business or corporation that provides immigration assistance, or services including immigration assistance; and
(b) the other individual is employed by the business or corporation.

Note Immigration assistance is defined in section 276 of the Act.

3V Information on the Register of Migration Agents

For paragraph 287 (2) (i) of the Act, the following matters are prescribed:
(a) the registered migration agent’s facsimile number;
(b) the registered migration agent’s web site address;
(c) the registered migration agent’s postal address;
(d) the registered migration agent’s e-mail address;
(e) if a decision has been made under section 303, 306AG or 306AGAC of the Act to caution the registered migration agent, or to suspend or cancel the registered migration agent’s registration:
   (i) particulars of any application for review lodged by the agent against the decision; and
   (ii) particulars of any order by the Administrative Appeals Tribunal or a court to stay the decision.

3W Publication of names of former registered migration agents

For subsection 287 (3A) of the Act:
(a) the prescribed way is by publishing the list on the Authority’s web site; and
(b) the prescribed period is not later than 12 months after the date of publication.

3X Removal of disciplinary details from the Register of Migration Agents

(1) For subsection 287 (6) of the Act, if particulars of a caution that has ceased to have effect are recorded on the Register, the Authority must remove the details from the Register not later than 14 days after the caution has ceased to have effect.

(2) For subsection 287 (6) of the Act, if particulars of a suspension that has ceased to have effect are recorded on the Register, the Authority must remove the details from the Register not later than 14 days after the suspension has ceased to have effect.

3XA Application for repeat registration

An individual who applies for repeat registration must submit with the registration application an approved form identifying the average fees charged by the individual, as a registered migration agent, during the 12 months immediately before the individual applies for repeat registration.

Note See regulation 3 for the meaning of repeat registration.
Regulation 3Y

3Y Time of registration application

For subsection 288 (4) of the Act, the day on which a registration application is taken to have been made is either:
(a) if the registration application is sent by pre-paid post — the day on which the registration application is delivered to the Authority’s post office box; or
(b) the day on which a person gives the registration application by hand to a person employed by the Authority at an Authority office.

4 Publication of notice of intention to apply for registration

(1) For subsections 288A (2) and (3) of the Act:
(a) an individual; or
(b) two or more individuals who are employees of the same employer;
must publish the notice in the way set out in this regulation.

(2) The notice must include the following information about the individual or each of the individuals:
(a) full name;
(b) any other name by which he or she is or has been known;
(ba) present citizenship;
(c) address for correspondence;
(d) the physical address of any place at which the individual intends to practise as a registered migration agent;
(e) if the individual intends to work as an employee:
   (i) the employer’s business name (if any); and
   (ii) the employer’s name and address for correspondence; and
   (iii) the employer’s business address;
(f) if the individual does not intend to work as an employee:
   (i) the business name (if any) that the individual is proposing to use; and
   (ii) the individual’s address for correspondence; and
   (iii) the individual’s business address.
(3) The notice must also state:
   (a) the address of the Authority for correspondence; and
   (b) that information about other applicants can be found on
       the Authority’s web site.

   Note  The URL for the Authority’s web site is http://www.themara.com.au.

(4) However, subregulations (2) and (3) do not require the
    individual or each of the individuals to include the same
    address more than once.

(5) The notice must be published in writing:
   (a) in the public notices section of the Saturday edition of a
       newspaper that:
      (i) is published in the English language; and
      (ii) is ordinarily published every day from Monday to
           Saturday; and
      (iii) circulates in each State, the Australian Capital
           Territory and the Northern Territory; and
      (iv) is specified by the Minister by a notice published in
           the Gazette for the purposes of this paragraph; or
   (b) with the agreement of the Authority, in the public notices
       (or equivalent) section of a newspaper that is published in
       Australia in a language other than English:
      (i) if the newspaper is a daily newspaper — in the
          Saturday edition; or
      (ii) if the newspaper is a weekly publication — on the
           day of publication.

(6) The notice must also be published on the Registration
    Applicants page of the Authority’s web site for a continuous
    period of at least 30 days.

   Note  The URL for the Authority’s web site is http://www.themara.com.au.

5 Prescribed qualifications

(1) For paragraph 289A (c) of the Act:
   (a) a prescribed course is a course approved by the Authority
       and listed on the Authority’s web site; and
Regulation 6

(b) the prescribed period is the 12 month period immediately before the day on which the applicant is taken to have made the application for registration; and
(c) a prescribed exam is an exam approved by the Authority and listed on the Authority’s web site.

(2) For paragraph 289A (d) of the Act, a current legal practising certificate issued by an Australian body authorised by law to issue it is prescribed.

6 Continuing professional development

(1) For section 290A of the Act, the requirements for continuing professional development of registered migration agents are set out in Schedule 1.

(2) In order to determine whether an applicant has met the requirements set out in Schedule 1, the Authority may require the provider of an approved activity to give the Authority information that is sufficient for the Authority to determine whether the applicant has successfully completed the approved activity.

6A Approved activities — assessment by Authority

(1) The Authority may assess an activity to decide whether to specify it as an approved activity.

(2) If the provider of the activity asks the Authority to assess an activity under subregulation (1), the Authority may charge a fee for performing the assessment.

(3) If the provider of an activity does not ask the Authority to assess the activity, the Authority may charge a fee for the assessment only if the activity becomes an approved activity.

(4) The fee for subregulation (2) or (3) is $99.

6B Prescribed professional indemnity insurance

(1) Subject to subregulation (2), for subsection 292B (1) of the Act, professional indemnity insurance for at least $250 000:
(a) held by an individual; or
Regulation 6B

(b) held by an organisation of which the individual is a director, employee or member;
is prescribed.

(2) Subregulation (1) does not apply, before 1 July 2006, to an individual who acts as disclosed in the individual’s registration application:
(a) solely on a non-commercial or non-profit basis; and
(b) as a member of, or a person associated with, an organisation that operates in Australia solely on a non-commercial or non-profit basis.

Note From 1 July 2006, a registered migration agent who acts solely on the non-commercial basis described in subregulation (2) will be required to have professional indemnity insurance of the kind prescribed in subregulation (1).

(3) An individual is taken to have complied with subregulation (1) if he or she:
(a) is:
(i) a member or employee of a partnership; or
(ii) a director or employee of an incorporated legal practice; or
(iii) a sole legal practitioner or an employee of a sole legal practitioner; and
(b) has satisfied the Authority that he or she has a current legal practising certificate.

Note An individual described in subregulation (3) would already hold professional indemnity insurance for at least $250 000 as part of the requirements for their current legal practising certificate. The individual would not need to provide evidence of professional indemnity insurance to the Authority once the Authority is satisfied that the individual has the certificate.

An individual who is not mentioned in subregulation (3) will need to provide evidence to satisfy the Authority that the individual has professional indemnity insurance for at least $250 000.
6C Registration application — Australian permanent resident

For paragraph 294 (1) (b) of the Act, Australian permanent resident means a non-citizen who is the holder of a permanent visa.

7 Publication of statement about a caution, or the cancellation or suspension of registration

(1) For paragraphs 305A (1) (a) and 306AL (1) (a) of the Act, the Authority must publish the statement in writing on the Authority’s web site.

(2) For subsection 332C (2) of the Act, the Authority must remove any statement published on its web site under subregulation (1):
   (a) if a statement about any caution is published — either:
      (i) not later than 12 months after the Authority is satisfied that the agent has met any imposed conditions and the Authority has removed the caution from the Register of Migration Agents; or
      (ii) not later than 12 months after the date of expiry of the agent’s registration if the agent fails to meet any condition set for removing the caution from the Register of Migration Agents; or
      (iii) not later than 12 months after the date of expiry of the agent’s registration if no conditions have been imposed; or
   (b) if a statement about any suspension is published — not later than 5 years after the date of publication; or
   (c) if a statement about any cancellation is published — not later than 10 years after the date of publication.

7A Requiring registered migration agents to give information or documents

For subsection 305C (2) of the Act:
   (a) prescribed information, for each of the registered migration agent’s clients, or each client of the business or corporation which employs the agent, is:
(i) the client’s contact information; and
(ii) the departmental client number or file number; and
(iii) the client reference number issued by the agent; and
(iv) the client’s date of birth; and
(b) prescribed documents are:
   (i) copies of the client files of the registered migration agent, or of the business or corporation which employs the agent, including copies of the documents described in clause 6.1 of Schedule 2; and
   (ii) copies of client ledgers, client account documents, and any other financial documents which relate to moneys paid by or owed to clients of the registered migration agent, or clients of the business or corporation which employs the agent.

7B Stay orders — prescribed supervisory requirements

(1) For sections 306AA and 306AK of the Act, the supervisory requirements mentioned in subregulations (2), (3) and (4) are prescribed.

(2) The registered migration agent who benefits from the stay of a decision to either cancel or suspend his or her registration (the supervised agent) must be supervised by another registered migration agent (the supervising agent).

(3) The supervising agent must not:
   (a) be the subject of a complaint in relation to which the Authority is considering the cancellation or suspension of the supervising agent’s registration, or cautioning the supervising agent, or refusing an application for registration by the supervising agent; or
   (b) be subject to any disciplinary action; or
   (c) be employed by the business or corporation that employs the supervised agent.

(4) The supervising agent must:
   (a) meet with or telephone any new client of the supervised agent within 28 days of the supervised agent agreeing to
Regulation 7C

represent the client, and explain the supervising agent’s role; and
(b) make file notes of all meetings with any new client of the supervised agent; and
(c) check any new visa or review application, and the client’s file, prior to lodging by the supervised agent; and
(d) check preparations for any Administrative Appeals Tribunal, Refugee Review Tribunal or Migration Review Tribunal hearing involving the supervised agent, and attend the hearing with the supervised agent; and
(e) work directly and regularly (at least once every 21 calendar days) with the supervised agent to ensure compliance with the Code of Conduct in Schedule 2; and
(f) notify the Authority in writing within 14 days after agreeing to supervise the supervised agent; and
(g) notify the Authority in writing within 14 days after ceasing to supervise the supervised agent.

7C Immigration assistance in a prescribed capacity

For subsection 306AC (4) of the Act, a registered migration agent engaged by the Department under the Immigration Advice and Application Assistance Scheme is prescribed.

7D Matters to be considered when referring to the Authority

For subsections 306AC (5) and 311H (2) of the Act, the following matters are prescribed:
(a) whether:
   (i) the registered migration agent’s, or former registered migration agent’s, client failed to satisfy one or more time of decision visa criteria; and
   (ii) each of those criteria would have been satisfied if the client had been assessed against the criteria at the time of application;
(b) whether the registered migration agent’s, or former registered migration agent’s, client failed to satisfy one or more visa criteria because of changes to legislation or
policy between the time of application and the time of decision;
(c) whether the circumstances in the country of origin of a registered migration agent’s, or former registered migration agent’s, client have changed sufficiently for the client to be refused the grant of a protection visa;
(d) whether any applications by a registered migration agent’s, or former registered migration agent’s, clients:
   (i) which were refused by the Department; and
   (ii) in relation to which that refusal has subsequently been affirmed by merits review;
have since been approved as a result of a successful application for either:
   (iii) judicial review of the decision; or
   (iv) the substitution of a more favourable decision by the Minister under section 351, 391, 417, 454 or 501J of the Act;
(e) any other relevant matter.

7E Publication of statement about barring former agents from registration

(1) For paragraphs 311C (1) (a) and 311P (1) (a) of the Act, the Authority must publish the statement in writing on the Authority’s web site.

(2) For subsection 332D (2) of the Act, the Authority must remove a statement published on its web site under subregulation (1) not later than 10 years after the date of publication.

7F Requiring former registered migration agents to give information or documents

For subsection 311EA (2) of the Act:
(a) prescribed information, for each of the registered migration agent’s clients, or each client of the business or corporation which employs the agent, is:
   (i) the client’s contact information; and
Part 3 Registered Migration Agents

Regulation 7G

(ii) the client reference number issued by the Department; and
(iii) the departmental client number or file number; and
(iv) the client’s date of birth; and

(b) prescribed documents are:
(i) copies of the client files of the registered migration agent, or of the business or corporation which employs the agent, including copies of the documents described in clause 6.1 of Schedule 2; and
(ii) copies of client ledgers, client account documents, and any other financial documents which relate to moneys paid by or owed to clients of the registered migration agent, or clients of the business or corporation which employs the agent.

7G Method of notification of giving of immigration assistance to visa applicants

(1) For section 312A of the Act, the registered migration agent must notify the Department by:
(a) sending a completed Form 956 to the Department; or
(b) sending a letter to the Department that:
(i) is dated; and
(ii) is signed by the agent; and
(iii) includes the name of the visa applicant; and
(iv) includes the visa applicant’s departmental client number or file number (if known); and
(v) includes the agent’s Migration Agent Registration Number; or
(c) completing the ‘Migration Agent’s Details’ section of a visa application form.

(2) The registered migration agent must notify the Department in relation to subregulation (1), either:
(a) at the time of lodging the applicant’s visa application with the Department; or
Migration Agents Regulations 1998

Regulation 7I

(b) if the visa application has already been lodged — not later than 28 days after commencing to act on behalf of the visa applicant.

7H Method of notification of giving of immigration assistance to review applicants

(1) For section 312B of the Act, the registered migration agent must notify the Refugee Review Tribunal or the Migration Review Tribunal by:

(a) sending a completed approved form to the Refugee Review Tribunal or the Migration Review Tribunal; or

(b) sending a letter to the Refugee Review Tribunal or the Migration Review Tribunal that:

(i) is dated; and

(ii) is signed by the agent; and

(iii) includes the name of the review applicant; and

(iv) includes the agent’s Migration Agent Registration Number.

(2) The registered migration agent must notify the Refugee Review Tribunal or the Migration Review Tribunal in relation to subregulation (1):

(a) at the time of lodging the applicant’s review application with the Refugee Review Tribunal or the Migration Review Tribunal; or

(b) if the review application has already been lodged — not later than 28 days after commencing to act on behalf of the review applicant.

7I Statement of services

For paragraph 313 (3) (c) of the Act, the period is 28 days after the decision, in relation to the immigration assistance, is made about:

(a) a visa application; or

(b) a cancellation review application; or

(c) a nomination or sponsorship application; or
(d) a request to the Minister to exercise his or her power under section 351, 391, 417 or 454 of the Act.

8 Code of Conduct

For subsection 314 (1) of the Act, the Code of Conduct is set out in Schedule 2.

9 Complaints

For paragraphs 316 (c) and (e) of the Act, any person or body may make a complaint, including:
(a) a client of the registered migration agent or lawyer;
(b) an official;
(c) an employee or member of the Institute;
(d) an employee of the Authority;
(e) a parliamentarian;
(f) a tribunal or court;
(g) a community organisation;
(h) the Department.

Note 1 Institute means the Migration Institute of Australia Limited: see Act, s 275.

Note 2 The terms official and parliamentarian are defined in s 275 of the Act.

9A Information booklet

The Authority must arrange for a document to be produced, with the title Information on the Regulation of the Migration Advice Profession, that the Authority is satisfied will adequately inform potential clients of a registered migration agent about:
(a) the migration advice profession; and
(b) the functions of the Authority and the legislation regulating the profession; and
(c) what a client can reasonably expect from a registered migration agent; and
(d) complaint procedures.
9B Disclosure of personal information by the Authority

(1) For subsection 321A (2) of the Act, each of the following is a prescribed circumstance:

(a) a registered migration agent, or an inactive migration agent, is currently under investigation for possible offences under the Act;

(b) a client of a registered migration agent, or an inactive migration agent, is currently under investigation for possible offences under the Act;

(c) the Minister is considering referring a registered migration agent, or an inactive migration agent, to the Authority for mandatory sanctioning;

(d) the Department is considering making a complaint to the Authority about a registered migration agent, or an inactive migration agent;

(e) a registered migration agent, or an inactive migration agent, has been sanctioned by the Authority;

(f) the personal information is required to allow the Secretary, an authorised officer or a review authority to collect information about the conduct of registered migration agents, or inactive migration agents.

(2) For subsection 321A (3) of the Act, the recipient may disclose personal information disclosed under subsection 321A (1) of the Act to a relevant professional body if:

(a) the information is about the conduct of a registered migration agent or an inactive migration agent; and

(b) the recipient believes that that conduct may be of concern to the relevant professional body.

(3) For subregulation (2), relevant professional body means a professional body of which the agent is or was a member.

9C Disclosure of personal information by the Secretary

(1) For subsection 332F (2) of the Act, each of the following is a prescribed circumstance:
Regulation 9D

(a) a registered migration agent, or an inactive migration agent, is currently under investigation for possible offences under the Act;
(b) a client of a registered migration agent, or an inactive migration agent, is currently under investigation for possible offences under the Act;
(c) the Minister is considering referring a registered migration agent, or an inactive migration agent, to the Authority for mandatory sanctioning;
(d) the Department is considering making a complaint to the Authority about a registered migration agent, or an inactive migration agent;
(e) a registered migration agent, or an inactive migration agent, has been sanctioned by the Authority;
(f) the personal information is required to allow a review authority to collect information about the conduct of registered migration agents, or inactive migration agents.

(2) For subsection 332F (3) of the Act, the review authority may disclose personal information disclosed under subsection 332F (1) of the Act to a relevant professional body if:
(a) the information is about the conduct of a registered migration agent or an inactive migration agent; and
(b) the review authority believes that that conduct may be of concern to the relevant professional body.

(3) For subregulation (2), *relevant professional body* means a professional body of which the agent is or was a member.

9D Disclosure of personal information by a review authority

(1) For subsection 332G (2) of the Act, each of the following is a prescribed circumstance:
(a) a registered migration agent, or an inactive migration agent, is currently under investigation for possible offences under the Act;
(b) a client of a registered migration agent, or an inactive migration agent, is currently under investigation for possible offences under the Act;
(c) the Minister is considering referring a registered migration agent, or an inactive migration agent, to the Authority for mandatory sanctioning;

(d) the Department is considering making a complaint to the Authority about a registered migration agent, or an inactive migration agent;

(e) a registered migration agent, or an inactive migration agent, has been sanctioned by the Authority;

(f) the personal information is required to allow the Secretary or an authorised officer to collect information about the conduct of registered migration agents, or inactive migration agents.

(2) For subsection 332G (3) of the Act, the Secretary or authorised officer may disclose personal information disclosed under subsection 332G (1) of the Act to a relevant professional body if:

(a) the information is about the conduct of a registered migration agent or an inactive migration agent; and

(b) the Secretary or authorised officer believes that that conduct may be of concern to the relevant professional body.

(3) For subregulation (2), relevant professional body means a professional body of which the agent is or was a member.
Part 4 Miscellaneous

10 Repeal of Migration Agents Regulations


11 Approved forms

(1) The Authority may, in writing, approve forms for:
   (a) use in making an application for registration; or
   (b) any other purpose authorised or required by these Regulations.

(2) Each of the following is an approved form:
   (a) a paper form;
   (b) an interactive computer program that is made available at an Internet site operated under the authority of the Authority.
Schedule 1 Continuing professional development
(regulation 6)

1. A registered migration agent must, in the 12 months immediately before the date on which the agent applies for repeat registration, complete approved activities that have a value of at least 10 points.

1A. Any points attributed to any approved activity previously relied on by a registered migration agent for an application for repeat registration are not to be counted as part of any subsequent application.

2. At least 6 of the 10 points mentioned in clause 1 must relate to the completion of core activities.

3. (1) The Authority may specify approved activities by notice published on its web site.

   Note Paper copies of the notice are available from the Authority on request.

   (2) The notice may include, in relation to each activity:

      (a) the name of the activity; and
      (b) the provider (if any) of the activity; and
      (c) whether the activity is a core activity or an elective activity; and
      (d) the number of points for the activity.

   (3) The notice may set requirements for completion of the activity.

   Examples of requirements
   • a minimum mark for an examination
   • a requirement that the quality of a presentation be certified by qualified persons
   • journals in which a publication must appear
   • a requirement that the quality of work for an activity be assessed in a particular way
   • a requirement dealing with work for an activity undertaken jointly with another person.
3A. (1) In deciding whether or not to specify an activity under clause 3, the Authority may take into account:
   (a) whether it is satisfied that:
      (i) the activity will help improve each participant’s professionalism as a registered migration agent, including the participant’s knowledge of migration procedures, professional ethics and relevant skills; and
      (ii) the activity provider has a way of ensuring that the activity will achieve the outcome mentioned in subparagraph (i); and
      (iii) the delivery of the activity is focussed on the achievement of the outcome mentioned in subparagraph (i); and
   (b) whether the provider of the activity has complied with the requirement to give information under subregulation 6 (2) in relation to other activities; and
   (c) the character and reputation, or a doubt about the character and reputation, of a person connected with the activity.

(2) Without limiting subclause (1), the following persons are connected with an activity:
   (a) a person who conducts the activity or produces, writes or presents material for it;
   (b) a person concerned in the management of a company or body of persons that conducts the activity or produces, writes or presents material for it;
   (c) a person who has been appointed as a consultant to advise a person mentioned in paragraph (a) or (b) about the activity.

4. Withdrawal of approval of an activity does not affect its approval for a registered migration agent who started the activity before the withdrawal.

5. An activity may be approved if it meets the requirements for registration to practise in another profession, including:
   (a) mandatory continuing legal education for legal practitioners; or
   (b) continuing professional education for accountants.
6. An approved activity may include:
   (a) a program of education, conducted by a person who is, or persons who are, qualified by practical experience or academic qualifications in the subject matter of the course, that is comprehensive or refresher training;
   (b) private study of audio, video or written material, for example recordings of approved activities;
   (c) attendance at a seminar, workshop, conference or lecture that is conducted by a person who is, or persons who are, qualified by practical experience or academic qualifications in the subject matter of the activity;
   (d) authorship and publication of an article of at least 1000 words;
   (e) preparation or presentation of written or oral material for the purposes of paragraph (a), (b) or (c), or for use in an examination mentioned in clause 8;
   (f) authorship, shared authorship or editorship of a book.

7. A core activity must relate specifically to:
   (a) the Migration Act 1958; or
   (b) the Migration Regulations 1994; or
   (c) other legislation relating to migration procedure; or
   (d) portfolio policies and procedures; or
   (e) the application of paragraphs (a), (b), (c) and (d) to the registered migration agent’s practice.

7A. The Authority may declare that specified activities up to the value of 4 points are mandatory for:
   (a) certain registered migration agents in a particular year of registration; or
   (b) all registered migration agents in any year of registration.

7B. The Authority may declare that activities up to the value of 7 points undertaken by a registered migration agent in any year of registration must be assessable.

8. A core activity may include passing an examination that demonstrates competency as a registered migration agent.
9. An elective activity is an activity that relates to a topic of a legal or business nature that is relevant to a registered migration agent’s practice as a registered migration agent.

10. An elective activity may include providing immigration assistance without charge for a voluntary organisation, for example a non-profit immigration advice organisation, a migrant resource centre or an ethnic community organisation.

11. A registered migration agent who claims an activity under clause 10 must comply with the following conditions:
   (a) the agent must obtain a statement by a person in the organisation, authorised by the Migration Agents Registration Authority:
      (i) that the work has been completed; and
      (ii) setting out the number of hours worked;
   (b) the agent must show the statement to the Authority on request;
   (c) if the agent is employed by a voluntary organisation, the agent may claim an activity under clause 10 if it occurs outside the agent’s normal hours of employment.

12. A registered migration agent applying for registration, or an individual who had been registered at any time in the 12 months immediately before making an application for repeat registration, must:
   (a) give the Authority a written statement made by the agent that:
      (i) states that the agent has met the requirements of this Schedule; and
      (ii) includes a list of the activities that the agent has completed for which the Agent claims points; and
   (b) have kept written records about each activity for which the agent claims points, including any documents given to the agent by the provider of the activity (if any) confirming that the activity was completed.

13. For paragraph 12 (b), records must:
   (a) enable an assessment of the activity to confirm that the activity meets the requirements of this Schedule; and
(b) be shown to the Authority on request; and
(c) be kept:
   (i) in English; and
   (ii) until 2 years after the end of the registration period during which the activity was completed.
Schedule 2  Code of conduct
(regulation 8)

Migration Act 1958, subsection 314 (1)

THIS CODE OF CONDUCT SHOULD BE DISPLAYED PROMINENTLY IN THE REGISTERED MIGRATION AGENT’S OFFICE.

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
PO BOX Q1551
QVB NSW 1230

Part 1  Introduction

1.1 This Code of Conduct (the Code) is intended to regulate the conduct of registered migration agents.

1.2 The Migration Agents Registration Authority (the Authority) is responsible for administering the Code.

1.3 A person who wants to operate as a registered migration agent must register with the Authority.

1.4 The Code applies to an individual who is listed in the Register of Migration Agents kept by the Authority under section 287 of the Migration Act 1958 (the Migration Act).

1.5 To ensure compliance with the Code, the Authority may impose an administrative sanction if a breach of the Code is found to have occurred.

1.6 An administrative sanction may range from a caution through to suspension of registration or the ultimate sanction of cancellation of registration.
1.7 Accordingly, the Code does not impose criminal sanctions.

1.8 However, there are a number of offences under the Migration Act and the Migration Regulations 1994 (the Migration Regulations) that also deal with the kind of activity covered by the Code. These activities include misleading statements and advertising, practising when unregistered and misrepresenting a matter. Provisions of the Crimes Act 1914, the Criminal Code Act 1995 and the Trade Practices Act 1974 may also apply to these activities.

1.9 The Code is not intended to displace any duty or liability that a registered migration agent may have under the common law, or the statute law of the Commonwealth, a State or a Territory, in relation to a matter covered by the Code. The provisions of the Code should be read in the light of this principle.

1.10 The aims of the Code are:

(a) to establish a proper standard for the conduct of business as a registered migration agent;

(b) to set out the minimum attributes and abilities that a person must demonstrate to perform as a registered migration agent under the Code, including:

(i) being of good character;

(ii) knowing the provisions of the Migration Act and Migration Regulations, and other legislation relating to migration procedure, in sufficient depth to offer sound and comprehensive advice to a client, including advice on completing and lodging application forms;

(iii) completing continuing professional development as required by the Migration Agents Regulations 1998;

(iv) being able to perform diligently and honestly;

(v) being able and willing to deal fairly with clients;

(vi) having enough knowledge of business procedure to conduct business as a registered migration agent, including record keeping and file management;

(vii) properly managing and maintaining client records;
(c) to set out the duties of a registered migration agent to a client, an employee of the agent, and the Commonwealth and its agencies;
(d) to set out requirements for relations between registered migration agents;
(e) to establish procedures for setting and charging fees by registered migration agents;
(f) to establish a standard for a prudent system of office administration;
(g) to require a registered migration agent to be accountable to the client;
(h) to help resolve disputes between a registered migration agent and a client.

1.11 The Code does not list exhaustively the acts and omissions that may fall short of what is expected of a competent and responsible registered migration agent.

1.12 However, the Code imposes on a registered migration agent the overriding duty to act at all times in the lawful interests of the agent’s client. Any conduct falling short of that requirement may make the agent liable to cancellation of registration.

1.13 If a registered migration agent has a contract in force with a client that complies with this Code, but the Code is amended in a way that relates to the content of the contract:
(a) the agent is not in breach of this Code solely because the contract does not comply with the amended Code; but
(b) the agent must do everything practicable to vary the contract to ensure that it complies with the amended Code.

Part 2 Standards of professional conduct

2.1 A registered migration agent must always:
(a) act in accordance with the law and the legitimate interests of his or her client; and
(b) deal with his or her client competently, diligently and fairly.
2.1A A registered migration agent must not accept a person as a client if the agent would have any of the following conflicts of interest:

(a) the agent has had previous dealings with the person, or intends to assist the person, in the agent’s capacity as a marriage celebrant;
(b) the agent is, or intends to be, the employer, sponsor or nominator of the person in a visa application or cancellation review application;
(c) the agent is, or intends to be, involved with the person in a business activity that is relevant to the assessment of a visa application or cancellation review application;
(d) there is any other interest of the agent that would affect the legitimate interests of the client.

2.1B If it becomes apparent that a registered migration agent has a conflict of interest mentioned in clause 2.1A in relation to a client, the agent must, as soon as practicable taking into account the needs of the client, but in any case within 14 days:

(a) tell the client about the conflict of interest; and
(b) advise the client that, under the Code, the agent can no longer act for the client; and
(c) advise the client about appointing another registered migration agent; and
(d) cease to deal with the client in the agent’s capacity as registered migration agent.

2.1C Part 10 of the Code then applies as if the client had terminated the registered migration agent’s instructions.

2.1D A registered migration agent who has ceased to act for a client in accordance with paragraph 2.1B (d), must, as soon as practicable, but in any case within 14 days, inform the Department that he or she is no longer acting for the client.

2.2 If a registered migration agent:

(a) gives advice of a non-migration nature to a client in the course of giving immigration assistance; and
(b) could receive a financial benefit because of the advice;
the agent must tell the client in writing, at the time the advice is requested or given, that the agent may receive a financial benefit.

2.3 A registered migration agent’s professionalism must be reflected in a sound working knowledge of the Migration Act and Migration Regulations, and other legislation relating to migration procedure, and a capacity to provide accurate and timely advice.

2.3A A registered migration agent’s professionalism must be reflected in the making of adequate arrangements to avoid financial loss to a client.

2.4 A registered migration agent must have due regard to a client’s dependence on the agent’s knowledge and experience.

2.5 A registered migration agent must:
(a) take appropriate steps to maintain and improve his or her knowledge of the current versions of:
   (i) the *Migration Act 1958*; and
   (ii) the *Migration Regulations 1994*; and
   (iii) other legislation relating to migration procedure; and
   (iv) portfolio policies and procedures; and
(b) either:
   (i) maintain a professional library that includes those materials; or
   (ii) if the agent’s employer, or the business in which he or she works, maintains a professional library that includes those materials — take responsibility for ensuring that he or she has access to the library.

*Note 1* A comprehensive list of the materials mentioned in subparagraphs (a) (iii) and (iv) may be obtained from the Professional Library page of the Authority’s web site (http://www.themara.com.au).

*Note 2* A registered migration agent must satisfy the requirements for continuing professional development set out in Schedule 1.
2.6 To the extent that a registered migration agent must take account of objective criteria to make an application under the Migration Act or Migration Regulations, he or she must be frank and candid about the prospects of success when assessing a client’s request for assistance in preparing a case or making an application under the Migration Act or Migration Regulations.

2.7 A registered migration agent who is asked by a client to give his or her opinion about the probability of a successful outcome for the client’s application must not hold out unsubstantiated or unjustified prospects of success when advising clients on applications under the Migration Act or Migration Regulations.

2.8 A registered migration agent must:
   (a) within a reasonable time after agreeing to represent a client, confirm the client’s instructions in writing to the client; and
   (b) act in accordance with the client’s instructions; and
   (c) keep the client fully and regularly informed in writing of the progress of each case or application that the agent undertakes for the client; and
   (d) within a reasonable time after the case or application is decided, tell the client in writing of the outcome of the client’s case or application.

2.9 While a registered migration agent cannot be responsible for misinformation provided by a client, a registered migration agent must not make statements in support of an application under the Migration Act or Migration Regulations, or encourage the making of statements, which he or she knows or believes to be misleading or inaccurate.

2.10 A registered migration agent must not engage in false or misleading advertising, including advertising in relation to:
   (a) the agent’s registration as a registered migration agent; or
   (b) the implications of Government policy for the successful outcome of an application under the Migration Act or Migration Regulations; or
   (c) guaranteeing the success of an application.

Note Advertising includes advertising on the Internet.
2.11 A registered migration agent must, when advertising:

(a) include in the advertisement the words “Migration Agents Registration Number” or “MARN”, followed by the agent’s individual registration number; and

(b) if the agent is advertising in a language other than English — include in the advertisement words in that other language equivalent to “Migration Agents Registration Number” or “MARN”, followed by the agent’s individual registration number.

Note 1 Advertising includes advertising on the Internet.

Note 2 Clause 2.12, which relates to implying a relationship with DIMIA or the Authority, also applies to the registered migration agent’s advertising mentioned in clause 2.11.

2.12 A registered migration agent must not, when advertising, imply the existence of a relationship with the Department of Immigration and Multicultural and Indigenous Affairs (the Department) or the Authority, for example by using terms such as:

(a) Australian Government registered; or

(b) Migration Agents Registration Authority registered; or

(c) DIMIA registered.

Note Advertising includes advertising on the Internet.

2.13 A registered migration agent may indicate that he or she is registered, and may describe what the registration process involves.

2.14 However, a registered migration agent must not portray registration as involving a special or privileged relationship with the Minister, officers of the Department or the Authority, for example to obtain priority processing, or to imply that the agent undertakes part or full processing for the Department.

2.14A A registered migration agent must not represent that he or she can procure a particular decision for a client under the Migration Act or the Migration Regulations.
2.15 A registered migration agent must not intimidate or coerce any person for the benefit of the agent or otherwise. For example, a registered migration agent must not engage in any of the following:
(a) undue pressure;
(b) physical threats;
(c) manipulation of cultural or ethnic anxieties;
(d) threats to family members in Australia or overseas;
(e) untruthful claims of Departmental sanctions;
(f) discrimination on the grounds of religion, nationality, race, ethnicity, politics or gender.

2.16 A registered migration agent with operations overseas may indicate that he or she is registered in Australia, but must not create an impression that registration involves accreditation by the Commonwealth Government for work overseas for the Commonwealth or for a client.

2.17 If an application under the Migration Act or the Migration Regulations is vexatious or grossly unfounded (for example, an application that has no hope of success) a registered migration agent:
(a) must not encourage the client to lodge the application; and
(b) must advise the client in writing that, in the agent’s opinion, the application is vexatious or grossly unfounded; and
(c) if the client still wishes to lodge the application — must obtain written acknowledgment from the client of the advice given under paragraph (b).

Note  Under section 306AC of the Act, the Minister may refer a registered migration agent to the Authority for disciplinary action if the agent has a high visa refusal rate in relation to a visa of a particular class.

2.18 A registered migration agent must act in a timely manner if the client has provided all the necessary information and documentation in time for statutory deadlines. For example, in most circumstances an application under the Migration Act or Migration Regulations must be submitted before a person’s visa ceases to be in effect.
2.19 Subject to a client’s instructions, a registered migration agent has a duty to provide sufficient relevant information to the Department to allow a full assessment of all the facts against the relevant criteria. For example, a registered migration agent must avoid the submission of applications under the Migration Act or Migration Regulations in a form that does not fully reflect the circumstances of the individual and prejudices the prospect of approval.

2.20 A registered migration agent must:
(a) find out the correct amount of any visa application charge and all other fees or charges required to be paid for a client’s visa application under the Migration Act or the Migration Regulations; and
(b) tell the client the amount of each fee and charge; and
(c) if the agent is to pay an amount for the client — tell the client the date by which the amount must be given to the agent so that the interests of the client are not prejudiced; and
(d) give the client notice of each amount paid by the agent for the client.

2.21 A registered migration agent must not submit an application under the Migration Act or Migration Regulations without the specified accompanying documentation. For example, in a marriage case, threshold documentation would include a marriage certificate and evidence that the sponsor is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen, without which assessment of the case could not proceed (unless the agent has a reasonable excuse or the client has requested the agent to act despite incomplete documentation).

2.23 A registered migration agent must take all reasonable steps to maintain the reputation and integrity of the migration advice profession.

2.24 This Code is a responsive document that will change from time to time to meet the needs of clients and to ensure the delivery of relevant, up to date advice.
Part 3  Obligations to clients

3.1 A registered migration agent has a duty to preserve the confidentiality of his or her clients.

3.2 A registered migration agent must not disclose, or allow to be disclosed, confidential information about a client or a client’s business without the client’s written consent, unless required by law.

3.2A Before starting to work for a client, a registered migration agent must:

(a) provide the client with a copy of Information on the Regulation of the Migration Advice Profession; and

(b) make a record that the copy has been provided.

Note Information on the Regulation of the Migration Advice Profession is a document produced by the Authority with information about the migration advice profession, the functions of the Authority, the legislation regulating the profession, what a client can reasonably expect from a registered migration agent, and complaint procedures.

3.3 A registered migration agent must inform clients that they are entitled to receive copies of the application under the Migration Act or Migration Regulations and any related documents if they want copies. The agent may charge a reasonable amount for any copies provided.

3.4 A registered migration agent must have an address and telephone number where the agent can be contacted during normal business hours.

3.5 If a registered migration agent changes his or her address, telephone number or any other details that are recorded on the Register of Migration Agents, the agent must give notice to the Department, the Authority, any review authority and all current clients of the agent:

(a) in advance; or

(b) not later than 7 days after the change or changes if advance notice would be unreasonable in the circumstances.

3.6 A registered migration agent must ensure that clients have access to an interpreter if necessary.
Part 4  Relations between registered migration agents

4.1 Before accepting immigration work, a registered migration agent must consider whether he or she is qualified to give the advice sought by the client. If the agent is unsure, he or she must seek the appropriate advice or assistance, or refer the matter to another registered migration agent.

4.2 A referral may be made, for example, if a registered migration agent is asked for advice on matters for which he or she does not regularly provide immigration assistance.

4.3 A registered migration agent must not encourage another agent’s client to use the first agent’s services, for example by denigrating other agents or offering services that the first agent cannot, or does not intend to, provide.

4.4 A registered migration agent must not take over work from another registered migration agent unless he or she receives from the client a copy of written notice by the client to the other agent that the other agent’s services are no longer needed.

4.5 A registered migration agent must act with fairness, honesty and courtesy when dealing with other registered migration agents.

4.6 A registered migration agent who gives a written undertaking to another registered migration agent must make sure the undertaking is performed within a reasonable time, if possible.

Part 5  Fees and charges

5.1 There is no statutory scale of fees. However, a registered migration agent must set and charge a fee that is reasonable in the circumstances of the case.

5.2 A registered migration agent must:
(a) before starting work for a client, give the client:
(i) an estimate of fees in the form of charges for each hour or each service, and disbursements that the agent is likely to incur as part of the work; and

(ii) an estimate of the time likely to be taken in performing a service; and

(b) as soon as possible after receiving instructions, obtain written acceptance by the client, if possible, of the terms of the work to be done; and

(c) give the client written confirmation of the terms of the service to be rendered; and

(d) give the client written notice of any material change to the estimated cost of providing a service, and the total likely cost because of the change, as soon as the agent becomes aware of the likelihood of a change occurring.

5.3 A registered migration agent:

(a) must not carry out work in a manner that unnecessarily increases the cost to the client; and

(b) must, if outside expertise is to be engaged and the client agrees, fully inform the client of the likely extra cost; and

(c) must, especially if a solicitor or barrister, warn clients of possible delays and likely cost involved in pursuing a particular course of action before tribunals and in the courts, for example:

(i) any need to engage and pay expert witnesses;

(ii) the need to meet legal costs if a case were lost;

(iii) the need to pay Departmental fees and charges;

(iv) the need to pay translation and interpreter fees and charges.

5.4 A registered migration agent must advise clients of the method of payment of fees and charges, including Departmental fees and charges.

5.5 A registered migration agent must be aware of the effect of section 313 of the Act, and act on the basis that:

(a) the agent is not entitled to be paid a fee or other reward for giving immigration assistance to a client unless the agent gives the client a statement of services; and
(b) a statement of services must set out:
   (i) particulars of each service performed; and
   (ii) the charge made in respect of each such service; and
(c) a client is entitled by the Act to recover the amount of a payment as a debt due to him or her if he or she:
   (i) made the payment to the agent for giving immigration assistance; and
   (ii) did not receive a statement of services before making the payment; and
   (iii) does not receive a statement of services within 28 days after a final decision is made about the visa application, cancellation review application, nomination or sponsorship to which the immigration assistance related.

Part 6 Record keeping and management

6.1 A registered migration agent must maintain proper records that can be made available for inspection on request by the Authority, including files containing:
   (a) a copy of each client’s application; and
   (b) copies of each written communication between:
      (i) the client and the agent; and
      (ii) the agent and any relevant statutory authority; and
   (c) file notes of every substantive or material oral communication between:
      (i) the client and the agent; and
      (ii) the agent and an official of any relevant statutory authority.

6.1A A registered migration agent must keep the records mentioned in clause 6.1 for a period of 7 years after the date of the last action on the file for the client.

6.2 A registered migration agent must keep all documents to which a client is entitled securely and in a way that will ensure confidentiality while the agent is giving services to the client and until the earlier of:
(a) 7 years after the date of the last action on the file for the client; or
(b) when the documents are given to the client or dealt with in accordance with the client’s written instructions.

Note  On the completion or termination of services, all documents to which a client is entitled are to be dealt with in accordance with Part 10.

6.2A For clause 6.2, the documents to which a client is entitled include (but are not limited to) documents that are:
(a) provided by, or on behalf of, the client; and
(b) paid for by, or on behalf of, the client; such as passports, birth certificates, qualifications, photographs and other personal documents.

6.3 A registered migration agent must respond to a request for information from the Authority within a reasonable time specified by the Authority.

6.4 A registered migration agent must act on the basis that the agent’s electronic communications are part of the agent’s records and documents.

Part 7  Financial duties

7.1 A registered migration agent must keep separate accounts with a financial institution for:
(a) the agent’s operating expenses (the operating account); and
(b) money paid by clients to the agent for fees and disbursements (the clients’ account).

7.1A The words ‘clients’ account’ must be included in the name of the financial institution account mentioned in paragraph 7.1 (b).

7.2 A registered migration agent must hold, in the clients’ account, an amount of money paid by a client for an agreed block of work until:
(a) the agent has completed the services that comprise the block of work; and
7.3 The registered migration agent may, at any time, withdraw money from the clients’ account for disbursements that are required to be paid to the Department, or any other agency, for the client.

7.4 A registered migration agent must keep records of the clients’ account, including:

(a) the date and amount of each deposit made to the clients’ account, including an indication of the purpose of the deposit and the client on whose behalf the deposit is made; and

(b) the date and amount of each withdrawal made in relation to an individual client, and the name of each recipient of money that was withdrawn; and

(c) receipts for any payments made by the client to the agent; and

(d) copies of invoices or accounts rendered in relation to the account.

7.5 A registered migration agent must make available for inspection on request by the Authority:

(a) records of the clients’ account; and

(b) records of each account into which money paid by a client to the agent for fees and disbursements has been deposited.

7.6 If a registered migration agent provides a service to a client on the basis of a conditional refund policy, a ‘no win, no fee’ policy or an undertaking to similar effect:

(a) the agent must have sufficient funds available to be able to cover any amount that the agent may become liable to pay to the client under the policy or undertaking; and

(b) the agent must meet that obligation by:

(i) keeping funds in the clients’ account; or

(ii) keeping a security bond; or

(iii) maintaining adequate insurance.
7.7 Nothing in clause 7.1, 7.1A, 7.2, 7.3, 7.4 or 7.6 affects the duty of a registered migration agent, who is also a legal practitioner and who acts in that capacity, to deal with clients’ funds in accordance with the relevant law relating to legal practitioners.

**Part 8  Duties of registered migration agents to employees**

8.1 A registered migration agent has a duty to exercise effective control of his or her office for the purpose of giving immigration advice and assistance.

8.2 A registered migration agent must properly supervise the work carried out by staff for the agent.

8.3 All immigration assistance must be given by a registered migration agent unless the assistance is permitted under section 280 of the Migration Act.

8.4 A registered migration agent must make all employees, including those not involved in giving immigration assistance (for example receptionists and typists), familiar with the Code, for example by:
   (a) displaying the Code prominently in the agent’s office;
   (b) establishing procedures to ensure that employees become familiar with the Code including supplying employees with copies of the Code.

8.5 A registered migration agent must ensure that his or her employees are of good character and act consistently with the Code in the course of their employment.

**Part 9  Complaints**

9.1 A registered migration agent must respond properly to a complaint by a person (whether or not the person is a client) about the work or services carried out by the agent or the agent’s employee.

9.2 A registered migration agent must submit to the procedures for mediation as recommended by the Authority about handling and resolving complaints by the client against the agent.
Part 10 Termination of services

9.3 If the Authority gives a registered migration agent details of a complaint made to the Authority about:
(a) the work or services carried out by the agent or the agent’s employees; or
(b) any other matter relating to the agent’s compliance with this Code —
the agent must respond properly to the Authority, within a reasonable time specified by the Authority when it gives the details to the agent.

10.1 A registered migration agent must complete services as instructed by a client unless:
(a) the agent and client agree otherwise; or
(b) the client terminates the agent’s instructions; or
(c) the agent terminates the contract for just cause and gives reasonable written notice to the client.

10.1A For paragraph 10.1 (c), a written notice must state:
(a) that the agent ceases to act for the client; and
(b) the date from which the agent ceases to act; and
(c) the terms of any arrangements made in respect of appointing another registered migration agent.

10.1B Within 7 days of giving the written notice, the agent must:
(a) update the client’s file to reflect the current status of each case or application undertaken by the agent for the client; and
(b) deliver all documents to which the client is entitled to the client or to the appointed registered migration agent; and
(c) ensure that all financial matters have been dealt with as specified in the contract.

10.2 A client is entitled to ask a registered migration agent (orally or in writing) to return any document that belongs to the client. The agent must return the document within 7 days after being asked.
10.3 Australian passports, and most foreign passports, are the property of the issuing Government and must not be withheld.

10.4 A registered migration agent must not withhold a document that belongs to a client, as part of a claim that the agent has a right to withhold a document by a lien over it, unless the agent holds a current legal practising certificate issued by an Australian body authorised by law to issue it.

10.5 On completion of services, a registered migration agent must, if asked by the client, give to the client all the documents:
(a) given to the agent by the client; or
(b) for which the client has paid.

10.6 If the client terminates the instructions, a registered migration agent must take all reasonable steps to deliver all documents quickly to the client or any other person nominated by the client in writing. If the agent claims a lien on any documents, the agent must take action to quantify the amount claimed and tell the client in a timely manner.

Note 1 Only registered migration agents who hold a current legal practising certificate issued by an Australian body authorised by law to issue it are able to claim a lien on any client documents.

Note 2 A document includes an application, nomination, sponsorship, statement, declaration, affidavit, certificate or certified copy. See Acts Interpretation Act 1901 s 25, Migration Regulations regulation 5.01

Part 11 Client awareness of the Code

11.1 A registered migration agent must ensure that at least 1 copy of the Code is displayed prominently in:
(a) any waiting room or waiting area that is:
   (i) at the agent’s place of business; and
   (ii) used by clients; and
(b) any office or room in which the agent conducts business with clients.

11.2 A registered migration agent must ensure that a client who asks to see the Code can be supplied immediately with 1 copy for the client to keep.
11.3 Each contract made between a registered migration agent and a client must:
   (a) include a statement about the existence and purpose of the Code; and
   (b) guarantee that the client can obtain a copy of the Code, on request, from the agent.

11.4 A registered migration agent who has an Internet web site must provide a link to the copy of the Code that is displayed on the Authority’s web site.
Notes to the *Migration Agents Regulations 1998*

**Note 1**

The *Migration Agents Regulations 1998* (in force under the *Migration Act 1958*) as shown in this compilation comprise Statutory Rules 1998 No. 53 amended as indicated in the Tables below.

Under the *Legislative Instruments Act 2003*, which came into force on 1 January 2005, it is a requirement for all non-exempt legislative instruments to be registered on the Federal Register of Legislative Instruments. From 1 January 2005 the Statutory Rules series ceased to exist and was replaced with Select Legislative Instruments (SLI series). Numbering conventions remain the same, ie Year and Number.

For all relevant information pertaining to application, saving or transitional provisions see Table A.

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ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

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Note 2

Migration Agents Amendment Regulations 2005 (No. 1) (2005 No. 131)

The following amendment commences on 1 July 2006:

[1] Subregulations 6B (2) and (3), including the notes

(2) An individual is taken to have complied with subregulation (1) if he or she:

(a) is:

   (i) a member or employee of a partnership; or

   (ii) a director or employee of an incorporated legal practice; or

   (iii) a sole legal practitioner or an employee of a sole legal practitioner; and

(b) has satisfied the Authority that he or she has a current legal practising certificate.

Note An individual described in subregulation (2) would already hold professional indemnity insurance for at least $250,000 as part of the requirements for their current legal practising certificate. The individual would not need to provide evidence of professional indemnity insurance to the Authority once the Authority is satisfied that the individual has the certificate.

An individual who is not mentioned in subregulation (2) will need to provide evidence to satisfy the Authority that the individual has professional indemnity insurance for at least $250,000.

As at 1 July 2005 the amendment is not incorporated in this compilation.
### Table A  
**Select Legislative Instrument 2005 No. 131**

#### 4  
**Transitional**

Regulation 6C of the *Migration Agents Regulations 1998*, inserted by item [8] of Schedule 1, applies to an application for registration:

- (a) made, but not decided by the Migration Agents Registration Authority, before 1 July 2005; or
- (b) made on or after 1 July 2005.