

EXPLANATORY STATEMENT

Issued by the Assistant Minister for Customs, Community Safety and Multicultural Affairs,
Parliamentary Secretary to the Minister for Home Affairs

Migration Act 1958

*Migration (Migration Agents Code of Conduct) Consequential Amendments Regulations
2021*

Migration (Migration Agents Code of Conduct) Regulations 2021

These instruments repeal the previous Migration Agents Code of Conduct from the *Migration Agents Regulations 1998* and prescribe a new Code of Conduct. The new Code of Conduct streamlines, clarifies and modernises the Code and addresses concerns expressed by industry and other stakeholders.

The *Migration Act 1958* (the Migration Act) is an Act relating to the entry into, and presence in, Australia of aliens, and the departure or deportation from Australia of aliens and certain other persons.

Subsection 504(1) of the Migration Act provides that the Governor-General may make regulations, not inconsistent with the Migration Act, prescribing matters required or permitted to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Migration Act.

Subsection 314(1) of the Migration Act provides that the regulations may prescribe a Code of Conduct for migration agents.

Subsection 314(2) of the Migration Act provides that a registered migration agent must conduct himself or herself in accordance with the prescribed Code of Conduct.

Paragraph 303(1)(h) of the Migration Act provides that the Migration Agents Registration Authority may take disciplinary action against a registered migration agent if it becomes satisfied that the agent has not complied with the Code of Conduct prescribed under section 314.

Paragraph 287(2)(i) of the Migration Act provides that the regulations may prescribe matters that are to be shown on the Register of Migration Agents kept by the Migration Agents Registration Authority.

Subsection 292B of the Migration Act provides that an applicant must not be registered as a migration agent unless the Migration Agents Registration Authority is satisfied that the applicant has professional indemnity insurance of a kind prescribed by the regulations.

The *Migration (Migration Agents Code of Conduct) Consequential Amendments Regulations 2021* (the Repeal Regulations) amend the *Migration Agents Regulations 1998* (the Migration Agents Regulations) to repeal the current Code of Conduct from

1 March 2022, and make amendments consequential to that repeal and the introduction of a new Code.

The *Migration (Migration Agents Code of Conduct) Regulations 2021* (the Code of Conduct Regulations) prescribe a new Code of Conduct from 1 March 2022.

The current Code of Conduct has been in place since 1998, with amendments from time to time. The new Code of Conduct implements a recommendation of the *Independent Review of the Office of the Migration Agents Registration Authority* (the Independent Review) in September 2014, that the Code of Conduct be revised as it was “verbose, unclear and as a result problematic” (Recommendation 18). The Independent Review also recommended that the Department of Home Affairs (the Department) undertake a detailed consultation process with interested parties to determine how best to address concerns in relation to the scope and content of the Code of Conduct.

The new Code of Conduct takes into account extensive consultations with key stakeholders, with the aim of improving the clarity and readability of the Code. In particular, the new Code includes revised provisions which:

- streamline the Code by removing duplicated provisions and clarifying content;
- group provisions dealing with similar subject matter together in the same parts of the Code;
- clarify and revise a migration agent’s obligations, including obligations to notify certain events;
- align provisions relating to fees and record keeping with consumer expectations and modern business practice; and
- enable migration agents to more clearly understand their obligations and implement best practices followed in comparable industries, including obligations relating to advertising, managing clients’ accounts, managing conflicts of interest, and working in a business with others who may not be registered migration agents.

The new Code of Conduct is complementary to the regulatory framework of the Office of the Migration Agents Registration Authority, ensuring that there is better oversight without an increase in regulation.

The matters dealt with in the Regulations are appropriate for implementation in regulations rather than by Parliamentary enactment. The Migration Act expressly provides for the regulation of the giving of immigration assistance by registered migration agents, with detailed provisions to be prescribed in regulations as can be seen in the authorising provisions listed above. In particular, subsection 314(1) provides that the regulations may prescribe a Code of Conduct for migration agents.

The current Migration Agents Regulations have been in place since 1998. Providing for these details to be in delegated legislation rather than primary legislation gives the Government the ability to adjust the detailed regulation of migration agents and to respond quickly to any concerns that may emerge over time.

Statements of Compatibility with Human Rights have been completed in respect of the Repeal Regulations and the Code of Conduct Regulations, in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessments are that the Regulations are compatible with human rights. Copies of the Statements are at [Attachment A](#) (in respect

of the Repeal Regulations) and Attachment B (in respect of the Code of Conduct Regulations).

The Office of Best Practice Regulation (the OBPR) was consulted in relation to the amendments. The OBPR consultation reference number is 42483. The OBPR assessed that the options analysed in the Independent Review, as re-certified by the Department, and the supplementary supporting analysis provided by the Department, are sufficiently relevant to the regulatory proposal to constitute a process and analysis equivalent to a Regulation Impact Statement (RIS).

Consultation in relation to the Regulations was undertaken with a wide range of stakeholders. Details of the consultations undertaken are at Attachment C. This consultation accords with subsection 17(1) of the *Legislation Act 2003* (the Legislation Act).

Amendments made by the Repeal Regulations relating to inclusion of a migration agent's registration number on the Register of Migration Agents and to the professional indemnity insurance required for registration as a migration agent commence on the day after registration, as those amendments are able to be implemented immediately. The remainder of the amendments made by the Repeal Regulations and the Code of Conduct Regulations commence on 1 March 2022, to provide sufficient time for stakeholders to update their systems, processes and educational material between the making of the regulations and their commencement.

Further details of the Repeal Regulations are set out in Attachment D.

Further details of the Code of Conduct Regulations are set out in Attachment E.

The Migration Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the Legislation Act.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

**Migration (Migration Agents Code of Conduct) Consequential Amendments
Regulations 2021**

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

The *Migration (Migration Agents Code of Conduct) Consequential Amendments Regulations 2021* amend the *Migration Agents Regulations 1998* to repeal the previous Code of Conduct (previously Schedule 2) and to make consequential amendments to remove references to the repealed Schedule and make procedural amendments to support the revised Code of Conduct.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon. Jason Wood MP,
Assistant Minister for Customs, Community Safety and Services and Multicultural
Affairs
Parliamentary Secretary to the Minister for Home Affairs**

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Migration (Migration Agents Code of Conduct) Regulations 2021

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

The *Migration (Migration Agents Code of Conduct) Regulations 2021* replaces the Code of Conduct (the Code) in Schedule 2 to the *Migration Agents Regulations 1998* with a new Code that better promotes a professional industry, protects consumers and addresses integrity issues raised by the regulator. The previous Code was repealed by the *Migration (Migration Agents Code of Conduct) Consequential Amendments Regulations 2021*.

The revised Code intends to remove duplication and outdated clauses, align thematic clauses, and improve ease of navigation. It also aims to clarify Registered Migration Agent (RMA) obligations relating to notification requirements, initial consultation sessions, assessment-ready applications, record-keeping, document return, and representations to a decision-maker.

Under section 280 of the *Migration Act 1958* (the Act), it is an offence for a person to provide immigration assistance unless registered as an RMA with the Migration Agents Registration Authority (MARA). Under section 320 of the Act the Minister may delegate any of the powers or functions given to the MARA to an employee in the Department. Currently certain officers of the Department are delegated the powers of the MARA by the Minister.¹ A person is not required to be registered by the Authority (in order to provide immigration assistance) if they are exempt under the Act.

Section 314 of the Act provides that the Regulations may prescribe a Code of Conduct for RMAs and that an RMA must conduct themselves in accordance with the prescribed Code.

The Code was prescribed in Schedule 2 to the Regulations in 1998, and has been amended from time to time since then. Failure to comply with the Code can result in sanctions from the MARA under section 303 of the Act, based on the severity of misconduct.

In September 2014, the Independent Review of the Office of the Migration Agents Registration Authority (Kendall Review) recommended that the Code be revised as it was “verbose, unclear and as a result problematic” (Recommendation 18). It also recommended that the Department undertake a detailed consultation process with interested parties to determine how best to address concerns in relation to the scope and content of the Code.

The original Code includes provisions that are oftentimes not straight-forward and cross-refer to other provisions, on occasion without context. Some provisions are also hard to follow, containing duplication and not grouped according to subject matter.

The Government committed to revising the Code in 2015. The OMARA, in the Department, conducted extensive stakeholder consultation on the Code between 2015 and 2019, including

¹. These powers are delegated to officers of the Department in the Office of the Migration Agents Registration Authority (OMARA) under the Migration (Minister) (Migration Agents Registration Authority) Delegation and Authorisation 2017 (GIDAM 24).

input from RMAs, culturally and linguistically diverse peak bodies, organisations representing vulnerable applicants including refugees and protection visa holders, and peak migration advice industry bodies. A long period of consultation was required to ensure all voices were heard and all recommendations were considered and addressed throughout each of the three rounds of consultations conducted in 2016, 2017 and 2019.

The revised Code is inclusive of extensive input received from all consultation participants, with the aim of improving its readability. Ultimately, improved readability has the potential to improve the Code's uptake and provide for increased consumer protection.

The revised Code will not expand or otherwise alter the powers available to the Authority. The Authority will maintain the same level of oversight as it currently does and there will not be any increase to its regulatory authority as a result of the revised Code.

The updated Code will allow RMAs to more clearly understand their obligations and implement best practices already followed in comparable industries, including obligations around advertising, managing clients' accounts, conflicts of interest and working in a business with others who are not-registered with the regulator.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon. Jason Wood MP,
Assistant Minister for Customs, Community Safety and Services and Multicultural
Affairs
Parliamentary Secretary to the Minister for Home Affairs**

Consultations undertaken in relation to the Migration (Migration Agents Code of Conduct) Consequential Amendments Regulations 2021 and the Migration (Migration Agents Code of Conduct) Regulations 2021

Peak bodies were consulted including:

- the Migration Institute of Australia; and
- the Migration Alliance.

Views were also sought from both sole practitioners and large employers of registered migration agents, including:

- Ernst and Young;
- Newland Chase;
- Fragomen; and
- representatives of Culturally and Linguistically Diverse communities (CALD).

Other bodies and agencies were also consulted, including:

- the Administrative Appeals Tribunal;
- regulators in New Zealand and Canada;
- universities offering the Graduate Diploma of Australian Migration Law and Practice;
- the Law Council of Australia;
- the Law Society of New South Wales;
- the Legal Practice Board of WA;
- the HIV/AIDS Legal Centre;
- the Australia Iran Migration Consultants Association; and
- regulators in other industries such as the Tax Practitioners Board.

At the conclusion of the three year consultation period, stakeholders were in agreement that an update of the Code was long overdue to reflect current business practices. Stakeholders were in favour of a revised Code that clarified the professional responsibilities and obligations of migration agents, strengthened consumer protections, and simplified business management practices and record keeping requirements to align with the modern day work environment. Development of the new Code incorporated feedback obtained during consultation. Prior to conclusion of the drafting process, an exposure draft of the Code for limited circulation was shared with the Migration Institute of Australia and the Migration Alliance for feedback and their comments were also taken into consideration before the Code was finalised.

Details of the Migration (Migration Agents Code of Conduct) Consequential Amendments Regulations 2021

Section 1 – Name

This section provides that the name of the instrument is the *Migration (Migration Agents Code of Conduct) Consequential Regulations 2021* (the Repeal Regulations).

Section 2 – Commencement

This section provides the formal enabling provisions for the instrument. In particular, this section provides for the commencement of the instrument as set out in the table.

Sections 1 to 4 and anything in this instrument not elsewhere covered by the table commences on the day after the instrument is registered.

Schedule 1 commences on the day after the instrument is registered.

Schedule 2 commences on 1 March 2022.

Section 3 – Authority

This section provides that the instrument is made under the *Migration Act 1958* (the Act).

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments commencing day after registration

Migration Agents Regulations 1998

Item [1] – Before paragraph 3V(a)

This item inserts a new paragraph (aa) in regulation 3V of the *Migration Agents Regulations 1998* (the Migration Agents Regulations). The new paragraph refers to the registered migration agent's *migration agent registration number* (MARN).

Regulation 3V prescribes for the purposes of paragraph 287(2)(i) of the Act, the matters that are to be shown on the Register of Migration Agents kept by the Migration Agents Registration Authority. The effect of the new paragraph is that a migration agent's MARN is to be required to be shown on the Register.

This amendment complements the new Migration Agents Code of Conduct that is prescribed by the *Migration (Migration Agents Code of Conduct) Regulations 2021*. The new Code includes duties of a migration agent in respect of the display and use of the migration agent's MARN.

Item [2] – Regulation 6B

This item makes a technical amendment to regulation 6B, consequential to the addition of a new subregulation 6B(2) by the following item of this Schedule.

Item [3] – At the end of regulation 6B

This item adds a new subregulation 6B(2) in the Migration Agents Regulations.

Regulation 6B prescribes, for the purposes of subsection 292B(1) of the Act, the professional indemnity insurance that the Migration Agents Registration Authority must be satisfied that an applicant for registration as a migration agent has, before the person may be registered as a migration agent.

Regulation 6B prescribes professional indemnity insurance for at least \$250,000 that must be held by an individual, or held by an organisation of which the individual is a director, employee or member.

New subregulation 6B(2) provides that for the purposes of regulation 6B *employee* includes a person engaged as a consultant or as an independent contractor, and a person engaged as a volunteer.

This amendment clarifies for regulation 6B that professional indemnity insurance held by an organisation can cover contractors and volunteers, if they do not have their own insurance.

Schedule 2 – Amendments commencing 1 March 2022

Migration Agents Regulations 1998

Item [1] – Subparagraph 7A(b)(i)

Item [2] – Paragraph 7B(4)(e)

Item [3] – Subparagraph 7F(b)(i)

These items amend the relevant provisions of the Migration Agents Regulations to omit references to Schedule 2 to those regulations.

Schedule 2 contains the original Code of Conduct for migration agents which is repealed from the Migration Agents Regulations by items 4 and 5 of this Schedule, below.

Item [4] – Regulation 8

This item repeals regulation 8 (Code of Conduct) from the Migration Agents Regulations.

Currently, regulation 8 prescribes the Code of Conduct set out in Schedule 2 to the Migration Agents Regulations for the purposes of subsection 314(1) of the Act, which provides that the regulations may prescribe a Code of Conduct for migration agents.

A new Migration Agents Code of Conduct is prescribed by the *Migration (Migration Agents Code of Conduct) Regulations 2021*.

Item [5] – Schedule 2

This item repeals Schedule 2 (Code of Conduct), which is consequential to the repeal of regulation 8 by the above item. The Code of Conduct in Schedule 2 is replaced by a new Migration Agents Code of Conduct that is prescribed by the *Migration (Migration Agents Code of Conduct) Regulations 2021*.

Details of the Migration (Migration Agents Code of Conduct) Regulations 2021

Part 1 – Preliminary

Division 1 – Preliminary

Section 1 – Name

This section provides that the name of the instrument is the *Migration (Migration Agents Code of Conduct) Regulations 2021* (the Regulations).

Section 2 – Commencement

This section provides the formal enabling provisions for the instrument. In particular, this section provides for the commencement of the instrument.

The whole of the instrument commences on 1 March 2022.

Section 3 – Authority

This section provides that the instrument is made under the *Migration Act 1958* (the Act).

Section 4 – Prescription of Code of Conduct

This section provides that for the purposes of subsection 314(1) of the Act, the Code of Conduct constituted by this instrument (other than this section) is prescribed.

Subsection 314(1) of the Act provides that the regulations may prescribe a Code of Conduct for migration agents.

Division 2 – Purpose of this instrument

Section 5 – Purpose of this instrument

This section provides for the purpose of the Code of Conduct. Its purpose is to protect clients of migration agents, and to strengthen the integrity of the immigration advice industry and Australia's immigration system.

The 'immigration advice industry' is intended to include, as a subset, 'immigration assistance'. The immigration advice industry also encompasses work or services done as part of a migration agent's business. That is, participants in the industry give all types of 'immigration advice', even immigration assistance that is not 'immigration advice'.

Section 6 – Other duties of migration agents

This section clarifies that the Code of Conduct is not intended to be what is known as a statutory code. That is, it is not intended to be 'the setting out in one statute of all the law affecting a particular topic whether it is to be found in statutes or in common law'.

As such, the Code of Conduct does not “cover the field” of all the duties to which a migration agent is subject.

In addition, subsection (2) makes it clear that the Code of Conduct is not intended to apply to the exclusion of State or Territory laws that impose duties on a migration agent.

Division 3 – Definitions

Section 7 – Definitions

This section defines a number of terms for the purposes of the Code of Conduct.

The terms defined are: *Act, Authority, business, client money, consumer guide, covers, employee, engage in conduct, financial institution, fixed fee, futile, government official, immigration assistance, initial consultation, MARN, members, migration law, related by employment, responsible migration agent, service agreement, terminated, and work or services.*

Some of the above definitions are “signpost” definitions and point to sections where the terms are defined; for example, ‘related by employment’ and ‘responsible migration agent’ are signpost definitions. Of note in this section is the definition of ‘employee’, which is relevant to the requirements for professional indemnity insurance (section 27).

Section 8 – Expressions have same meaning as in Part 3 of the Act

Subsection 8(1) provides that expressions used in Part 3 of the Act (dealing with migration agents and immigration assistance) have the same meaning in the Code of Conduct. A note points out that relevant expressions include *client, registered migration agent, and review authority.*

Subsection 8(2) provides that subsection 8(1) does not limit the operation of paragraph 13(1)(b) of the *Legislation Act 2003*, which has the effect that, subject to a contrary intention, expressions used in the Code of Conduct have the same meaning as in the Act as in force from time to time.

Section 9 – Immigration assistance

This section provides that any reference in the Code of Conduct to immigration assistance includes a reference to making immigration representations, within the meaning of section 282 of the Act.

Section 282 of the Act sets out what constitutes making immigration representations, and also imposes restrictions on the charging of fees for making immigration representations.

Section 9 has the effect that a registered migration agent is bound by the Code of Conduct when making immigration representations for a client, in the same way as they are bound by the Code in respect of providing immigration assistance

Section 10 – Meaning of *client money*

This section provides the meaning of ‘client money’ in relation to a service agreement. The meaning is set out in subsection 10(1), while subsection (2) describes how – when client money is transferred (in certain circumstances) to a receiving agent – that amount is taken to have been received from the client for work or services performed, or to be performed, under the service agreement. For this reason, the amount described in subsection (2) is taken to be client money in relation to the service agreement (as mentioned in the note).

Section 11 – meaning of *related by employment*

This section sets out the meaning of *related by employment* when the term is used in the Code of Conduct.

Section 278 of the Act sets out when an individual is ‘related by employment’ to another individual for the purposes of Part 3 (Migration agents and immigration assistance) of the Act, including the situation where the first person is an employee of the other person. This section provides that the meaning in the Act applies in respect of this Code of Conduct.

Additionally, paragraph 11(b) has the effect that for the purposes of the Code of Conduct, a volunteer can be ‘related by employment’ to another individual.

The term ‘related by employment’ is used in the definition of ‘business’ in section 7. It covers the following employment scenarios (but is not limited to these):

- where a registered migration agent supervises staff (not also registered migration agents) in their business; and
- registered migration agents who work in the same business.

Section 12 – Meaning of *responsible migration agent*

This section sets out the meaning of *responsible migration agent* for the Code of Conduct.

The section provides that in relation to a service agreement to provide immigration assistance to a client the term applies to each migration agent who gives, or has given, immigration assistance under the agreement, or if no immigration assistance has yet been given, to each migration agent who signs the agreement.

Certain provisions of the Code of Conduct refer to a responsible migration agent and it is particularly relevant in relation to service agreements. For example, see section 45 below (Duty to ensure work or services specified in service agreements are completed); and Division 3 of Part 3, concerning duties of responsible migration agents in relation to fees and disbursements. The effect of these and similar provisions is to make clear that the relevant duties are imposed individually on all migration agents who are responsible migration agents in relation to a particular service agreement and not only on any one particular migration agent. That is, any migration agent who has been involved in a client’s matter is a responsible migration agent. Even an agent who gives input toward a matter would be a responsible migration agent, despite not having signed the relevant service agreement.

Part 2 – General duties

Division 1 – General duties

Section 13 – General duty to act professionally, ethically etc.

Subsection 13(1) imposes a general duty on a migration agent to act professionally, competently, diligently, ethically, honestly and with integrity.

A note clarifies that the other provisions of the Code of Conduct supplement, but do not limit, the general duties above.

Subsection 13(2) imposes an additional duty that a migration agent must not engage in conduct (whether acting as a migration agent or otherwise) that is reasonably likely to damage the reputation of migration agents or the immigration advice industry (noting that this extends beyond the provision of immigration assistance).

Acting in breach of this provision could be by way of engaging in unlawful conduct or serious unprofessional conduct.

Section 14 – Duty to treat all persons with appropriate respect

Subsection 14(1) imposes a general duty on a migration agent to treat all persons with appropriate respect.

Subsection 14(2) provides that in particular a migration agent must not harass or coerce any person, or engage in unconscionable conduct targeted at another person (which may include but is not limited to victimising a person on the basis of the person's status under migration law).

Subsection 14(3) clarifies that it does not matter whether the unconscionable conduct is targeted at another person directly or indirectly.

For example, if a migration agent threatens to 'dob-in' a client or their family member on the basis of their visa status or underpay an employee because they are on a temporary visa, this would be in breach of subsection 14(3).

Section 15 – Duty not to make false or misleading statements

This section imposes a general duty on a migration agent not to make a false or misleading statement.

A note advises the reader to see also section 20 (Duty to avoid making false and misleading statements etc. to government officials) and section 26 (Duties not to make false or misleading statements in promoting business etc.)

Section 16 – Duty not to threaten to contravene this instrument

This section imposes a general duty on a migration agent not to threaten to engage in conduct that contravenes the Code of Conduct.

For example, an agent must not threaten that they will not return a client's documents unless a certain amount of money is paid to the agent (noting that a registered migration agent cannot claim a lien on documents unless they are a restricted legal practitioner who is eligible – see subsection 54(2)).

Division 2—Duties relating to Australia's immigration system

Section 17 – Duty to comply with migration law

This section imposes a general duty on a migration agent to comply with the migration law (see definition of “migration law” in section 7).

Section 18 – Duty not to undermine the migration law

This section imposes a general duty on a migration agent not to undermine the migration law in the ways set out in the section.

Subsection 18(1) imposes a duty not to act in a way that is intended to defeat the purpose of the migration law or to evade a requirement of the migration law, for the purpose of obtaining a benefit or advantage for the migration agent, a client, or any other person.

For example, an agent who advised a client to apply for a protection visa as a means to extend the client's stay in Australia when the client does not have genuine protection visa claims would be breaching this provision.

Subsection 18(2) imposes a duty on migration agents not to withhold relevant information or documents from a government official for the purpose of causing delay when making an application or giving other immigration assistance.

For example, an agent who did not provide a “decision ready” application to the Department in the first instance where relevant information or documents were available would be in breach of this provision. Similarly, not providing all the documents required in response to a request for further information made under section 56 of the Act or in relation to a request for the same by the Administrative Appeals Tribunal (e.g., under section 359 or 424 of the Act) would be in breach of this provision if the aim was to charge the client for subsequent submissions when the documents or information could have been reasonably submitted in the first instance.

Subsection 18(3) imposes a duty not to act in a way that is intended to frustrate the proper disposition of any review or appeal process in relation to a decision made under the migration law, or to delay or abuse a review or appeal process.

For example, submitting a large volume of documents to the Administrative Appeals Tribunal close to the hearing with the intention of causing the tribunal to postpone the hearing (as a deliberate strategy to garner more time either for the registered migration agent or the review applicant) would breach this provision.

Section 19 – Duty not to give futile immigration assistance

Subsection 19(1) provides that a migration agent has a duty not to give immigration assistance to a client if the agent reasonably believes that giving the immigration assistance would be futile.

Subsection 19(2) provides that this duty does not apply if:

- the migration agent is satisfied that giving the immigration assistance would not breach the agent’s duties under section 13 (duty to act professionally, ethically etc.), section 17 (duty to comply with migration law), section 18 (duty not to undermine migration law), and section 33 (general duties);
- the migration agent has advised the client that giving the immigration assistance would be futile; and
- the client has given the migration agent a written statement that the client has been advised that the immigration assistance would be futile but still wishes to proceed.

Subsection 19(3) provides that for the purposes of the Code of Conduct, the circumstances when giving immigration assistance would be futile include, but are not limited to, circumstances where the purpose of the immigration assistance would be to achieve a particular result and there is little or no prospect of achieving that result.

For example, immigration assistance would be futile if the migration agent prepared a visa application with little or no prospect of the visa being granted.

However, a situation where there was an intention to seek ministerial intervention (with genuine potential for success) but where lodgement of a review application with the review authority would seem to be futile, would not necessarily be in breach of this section.

Section 20 – Duty to avoid making false or misleading statements etc. to government officials

This section sets out a migration agent’s general duty to avoid making false and misleading statements, etc., to government officials.

‘Government official’ is defined in section 7, and includes a review authority, etc. As such, it would be a breach of the Code of Conduct for a migration agent to make a false or misleading statement to the Administrative Appeals Tribunal (amongst other government officials).

In particular:

Documents migration agent knows are false or misleading

Subsection 20(1) provides that a migration agent must not give a government official a document that the agent knows is false or misleading, unless the agent discloses that it is false or misleading.

Statements and documents migration agent suspects are false or misleading

Subsection 20(2) provides that a migration agent must not make a statement to a government official if the agent suspects, or reasonably ought to suspect (but does not know), is false or

misleading, unless the agent has taken all reasonable steps to determine whether the statement is false or misleading.

Subsection 20(3) provides that a migration agent must not give a document to a government official if the agent suspects, or reasonably ought to suspect (but does not know) the document is false or misleading, unless the agent discloses that the agent suspects that the document is false or misleading, or has taken all reasonable steps to determine whether the document is false or misleading.

Statements and documents about endorsement etc.

Subsection 20(4) provides that a migration agent must not make a statement to a government official that a person is endorsed, nominated or sponsored by another person under or for the purposes of migration law, unless the agent has taken all reasonable steps to verify the statement.

Subsection 20(5) provides that a migration agent must not give a government official a document that states that a person is endorsed, nominated or sponsored by another person under or for the purposes for the migration law, unless the agent has taken all reasonable steps to verify the statement.

Third party documents

Subsection 20(6) provides that a migration agent must not state to a government official that a particular document originated from a specified person other than the agent or a client of the agent, unless the agent has taken all reasonable steps to verify the origin of the document.

Subsection 20(7) provides that a migration agent must not give to a government official a document that purports to have originated from a particular person other than the agent or a client of the agent, unless the agent has taken all reasonable steps to verify the origin of the document.

Section 21 – Duty relating to correcting false or misleading statements etc.

This section imposes a general duty on a migration agent relating to the correction of false or misleading statements and documents and concealed information.

The section applies if a migration agent becomes aware that a client, the migration agent acting on behalf a client, or a third person acting on behalf of a person who is now a client of the migration agent, made a false or misleading statement or gave a false or misleading document to a government official in relation to an immigration matter.

The section also applies if a migration agent becomes aware that a client of the agent has concealed relevant information relating an immigration matter from a government official.

If the above circumstances apply, the migration agent must not give immigration assistance to the client unless the agent has informed the client about the potential consequences of the false or misleading information or document or the concealed information, has discussed with the client how the matter may be corrected, and the client agrees to the matter being corrected and takes all reasonable steps to correct it.

Division 3 – Duty to maintain skills and knowledge

Section 22 – Duty to maintain skills and knowledge

This section imposes a duty on a migration agent to maintain sufficient knowledge and skills to give immigration assistance professionally and competently, and to maintain or have access to a professional library that includes up-to-date material relevant to immigration assistance.

An example of material relevant to giving immigration assistance would include the Act and regulations made under the Act.

A note advises the reader to see also section 290A of the Act, which relates to prescribed requirements for continuing professional development of registered migration agents.

Division 4 – Duties relating to practice management

Section 23 – Duty to ensure that immigration assistance is given only by registered migration agents

This section imposes a duty on a migration agent to take all reasonable steps to ensure that no member of the agent's business contravenes Division 2 of Part 3 of the Act.

A note advises the reader that Division 2 of Part 3 of the Act provides that generally only registered migration agents may give immigration assistance.

Section 24 – Duties relating to work or services performed by persons other than registered migration agents

Subsection 24(1) imposes a duty on a migration agent to take all reasonable steps to ensure the quality, accuracy and timeliness of any work or services performed by another person (including a person from the migration agent's business) for the purpose of assisting the agent to give immigration assistance, or under a service agreement in relation to which the agent is a responsible migration agent..

Subsection 24(2) provides that subsection 24(1) does not apply to work or services performed by another registered migration agent.

This section therefore relates to a migration agent's supervision of others assisting the migration agent in providing immigration assistance. As subsection 24(2) excludes the work of other registered migration agents from the requirement for supervision, the provision therefore focusses on those providing assistance that is not immigration assistance. This is likely to be clerical or administrative work. In particular, this section recognises that immigration assistance cannot be disguised as clerical assistance. Only registered migration agents and certain others (e.g., legal practitioners) are permitted to provide immigration assistance. This section ensures the migration agent is aware of the type of assistance being provided, and imposes a duty upon the migration agent in relation to overseeing the quality of the work or services provided by a person in assisting the migration agent in the provision of immigration assistance.

Section 25 – Duties relating to MARN

Subsection 25(1) imposes a duty on a migration agent to ensure that the agent's migration agent registration number (MARN) appears on the agent's correspondence and business cards.

Subsection 25(2) imposes a duty on a migration agent to take all reasonable steps to ensure that the MARN of at least one member of the agent's business who is a registered migration agent appears on the business's website and social media, and in any advertisement relating to the giving of immigration assistance by the members of the business who are registered migration agents.

Subsection 25(3) imposes a duty on a migration agent to take all reasonable steps to ensure that the agent's MARN is not used in a way that suggests that the immigration assistance given by another person is given by the agent.

Subsection 25(4) requires that a migration agent must give written notice to the Authority within 14 days after becoming aware that the agent's MARN is being, or has been, used by another person as if it were their MARN, or by another person in a way that is reasonably likely to have been intended to represent the conduct of that person or another person as being the conduct of the migration agent.

This section is, in part, intended to avoid situations where:

- a registered migration agent actively allows their MARN to be used by someone who is not a registered migration agent (e.g., for commission); or
- where someone has effectively stolen a registered migration agent's MARN and that person is pretending to be either a registered migration agent (i.e., not directly trying to identify as the agent whose MARN they are using) or they are imitating the particular registered migration agent (whose MARN they have stolen).

Section 26 – Duties not to make false or misleading statements in promoting business etc.

Subsection 26(1) imposes a duty on a migration agent not to make a false or misleading statement about the agent's qualifications, immigration opportunities or risks, or migration procedure. An agent must also not state that the agent's status as a registered migration agent involves a special or privileged relationship with any government official, or that the agent can procure a particular decision for a client under migration law.

Subsection 26(2) imposes a duty on a migration agent to take all reasonable steps to ensure that no member of the agent's business makes a statement of a type mentioned in subsection 26(1) in relation to the agent or to migration agents in the agent's business.

Subsection 26(3) imposes a duty on a migration agent to take all reasonable steps to ensure that no person publishes or broadcasts an advertisement that makes statement of a type mentioned in subsection 26(1) in relation to the agent; a class of migration agents in the migration agent's business (that includes the migration agent); or to migration agents in the agent's business.

‘Class of migration agents’ is a term referring to a subset of agents within an organisation, for example agents who specialise in a specific type of immigration assistance.

Section 27 – Duty to hold professional indemnity insurance

This section imposes a duty on a migration agent to hold professional indemnity insurance of a kind mentioned in regulation 6B of the *Migration Agents Regulations 1998* (the Migration Agents Regulations), unless the migration agent is a director, employee or member of an organisation that holds professional indemnity insurance of such a kind (that covers the migration agent).

For the purposes of this section, *employee* has the same meaning as in regulation 6B of the Migration Agents Regulations.

It should be noted that regulation 6B of the Migration Agents Regulations is amended by the *Migration (Migration Agents Code of Conduct) Consequential Amendments Regulations 2021*, to include consultants, contractors and volunteers in the definition of ‘employee’ for the purposes of that section.

This means that, under paragraph 27(b), the coverage of an organisation’s professional indemnity insurance is extended to migration agents who are consultants, contractors and volunteers.

The requirement to hold professional indemnity insurance under this section is not limited to the time of registration or re-registration. It is a continuing duty that applies while the migration agent is registered.

Division 5 – Duties relating to keeping Authority, clients, Department and review authority informed of matters relating to migration agent

Section 28 – Duty to notify Authority of changes in circumstances relevant to agent’s continued registration

This section imposes a duty on a migration agent to give written notice to the Authority and all current clients of the agent within 14 days of the agent becoming aware of any material change in a matter shown on the Register of Migration Agents in respect of the migration agent.

Section 29 – Duty to notify Authority of changes in circumstances relevant to agent’s continued registration

This section imposes a duty on a migration agent to inform the Authority within 14 days of becoming aware of any changes in the agent’s personal circumstances that would be reasonably likely to have a negative impact on the agent’s ability to give immigration assistance, or of any criminal or disciplinary investigation or proceeding in relation to the agent that it is reasonably possible will have a negative impact on the Authority’s opinion that the agent is a person of integrity or is otherwise a fit and proper person to give immigration assistance.

Two notes explain the provisions of the Act relevant to this section.

A first note refers to subsection 290(2) of the Act, which specifies things that must be taken into account by the Migration Agents Registration Authority in considering whether it is satisfied that the applicant is not fit and proper or not a person of integrity.

A second note refers to the Authority's functions under subsection 303(1) of the Migration Act to take disciplinary action against registered migration agents in certain circumstances including if the Authority becomes satisfied that the agent is not a person of integrity or is not otherwise a fit and proper person to give immigration assistance.

Section 30 – Duty to notify clients, Department and review authority if registration suspended

This section imposes a duty on a migration agent to give written notice to all current clients, the Department (if the agent has a matter on which the agent is giving immigration assistance is pending before the Department) and a review authority (if a matter on which the agent is giving immigration assistance is pending before a review authority) within 14 days after the Authority notifying the agent that the Authority has decided to suspend the agent's registration.

The notice must state the period of suspension.

When a migration agent has their registration suspended, they are not allowed to practise as a migration agent for the duration of the suspension. However, they remain listed on the Register of Migration Agents kept under section 287 of the Act.

If notice is given to a client and an immigration matter in respect of the client is pending (i.e., during the period of suspension), the notice must include details of matters specified in the section relating to factors including the status of the matter, allocation of the matter to another registered migration agent or if the matter will not be allocated to another agent, details of how the client may obtain further immigration assistance.

If the agent or a member of the agent's business holds client money in relation to a service agreement that covers the client and for which the suspended agent is a responsible migration agent (as defined), the notice must include a statement setting out certain financial matters. Importantly, unless the client instructs otherwise, the notice must state that in the absence of instructions from the client, the amount remaining will be refunded to the client. Client money cannot be transferred to another agent in the absence of instructions from the client.

The notice must also include a statement setting out the effect of section 54, below.

Note 1 indicates that section 54 below relates to the return of documents. Note 2 advises the reader to see also section 57 below (relating to termination notices). Where an agent is suspended, a situation could arise where there are no other responsible migration agents to take a matter over. Note that under paragraph 12(a), a migration agent who gives, or has given, immigration assistance under the service agreement is not required to be a signatory to the agreement. Therefore, it will only be necessary for an agent to terminate a service agreement where there are no responsible migration agents (as defined in section 12) able to continue with the agreement.

Section 31 – Duty to notify clients, Department and review authority if registration expected to lapse

This section imposes a duty on a migration agent to give written notice to all current clients, the Department (if a matter on which the agent is giving immigration assistance is pending before the Department) and a review authority (if a matter on which the agent is giving immigration assistance is pending before a review authority) if their registration as a migration agent is expected to lapse. If so, the period within which they must give notice is no later than 14 days before their registration will lapse, or as soon as practicable if the expected cessation of registration will occur in less than 14 days' time.

A migration agent might decide to allow their registration to lapse for various reasons, one of which might be because they intend to retire.

A notice must state the day on which it is reasonably likely that the agent will cease to be a registered migration agent.

If notice is given to a client and it is reasonably likely that an immigration matter in respect of the client will be pending on the date required to be stated under subsection (3), the notice must include details of matters specified in the section relating to factors including the status of the matter, allocation of the matter to another registered migration agent or if the matter will not be allocated to another agent, details of how the client may obtain further immigration assistance.

If the agent or a member of the agent's business holds client money in relation to a service agreement that covers the client and for which the agent is a responsible migration agent (as defined), the notice required under subsection (1) must include a statement setting out certain financial matters. Importantly, unless the client instructs otherwise, the notice must state that in the absence of instructions from the client, the amount remaining will be refunded to the client. Client money cannot be transferred to another agent in the absence of instructions from the client.

The notice must also include a statement setting out the effect of section 54.

Note 1 indicates that section 54 below relates to the return of documents. Note 2 advises the reader to see also section 57 below (relating to termination notices). Where an agent's registration lapses, a situation could arise where there are no other responsible migration agents to take a matter over. Note that under paragraph 12(a), a migration agent who gives, or has given, immigration assistance under the service agreement is not required to be a signatory to the agreement. Therefore, it will only be necessary for an agent to terminate a service agreement where there are no responsible migration agents (as defined in section 12) able to continue with the agreement.

Division 6 – Duty to respond to requests from Authority for information or documents

Section 32 – Duty to respond to requests from Authority for information or documents

This section applies if the Authority requests a migration agent to provide information or a document for the purposes of the Authority carrying out its functions under paragraph 316(a) to (d) of the Act. Those paragraphs relate to the functions of the Authority to deal with

applications for registration as a migration agent in accordance with the relevant provisions of the Act, to monitor the conduct of registered migration agents in providing immigration assistance, to investigate complaints in relation to the provision of immigration assistance by migration agents, and to take appropriate disciplinary action against registered migration agents or former registered migration agents.

If this section applies to a request to a migration agent by the Authority for information or a document, the section imposes a duty on the migration agent to respond to the request promptly and, without limiting the duty to respond promptly, if the Authority specifies a reasonable time within which the agent must respond, to respond by that time.

The section further requires that the response must deal with each matter raised by the request, must answer any questions in the request, and must include all requested information or documents.

A note advises the reader that other provisions of the migration law under which a migration agent can be required to provide documents to the Authority include subsection 56(9) of the Code of Conduct (dealing with access to client files), above, and sections 305C (requiring registered migration agents to give information or documents), 306D (powers to obtain documents from inactive migration agents), and 308 (requiring registered migration agents to give information) of the Act.

Part 3 – The agent-client relationship

Division 1 – General duties

Subdivision A – General duties

Section 33 – General duties

This section imposes general duties on a registered migration agent in regard to the client-agent relationship. These duties are to:

- act (subject to the Code of Conduct and any other relevant law) in the legitimate interests of the client, in accordance with the client’s instructions, and in accordance with the relevant service agreement if there is one (section 43 provides for where a service agreement is not required);
- have regard to the client’s dependence on the agent’s knowledge and experience;
- respond to the client in a timely manner;
- be aware of the times by which, under law, any relevant application must be made, any relevant response must be given, or any other relevant thing must be done; and
- have regard to the consequences of an application not being made, a response not being given, or any other thing not being done by the relevant time.

The duties are specified to be in the context of giving immigration assistance to a client or in performing other work or services for a client under a service agreement, noting that some of the work provided or services performed may be additional to the provision of immigration assistance. Such work or services could include administrative or clerical work or services.

Section 34 – Duty to inform clients of conflicts of interest

This section imposes a duty on a migration agent to the effect that if the agent has an interest, pecuniary or otherwise, that conflicts or could conflict with the proper performance of the agent's duties in relation to a client, the agent must not give immigration assistance to the client unless the agent gives written notice to client in accordance with subsection (2), and the client gives the agent a written statement confirming that the client has been given notice of the conflict and still wishes the agent to give the client immigration assistance.

A notice required under paragraph (1)(a) to be given to a client by an agent must include:

- details of the nature of the interest and how the interest conflicts, or could conflict, with the proper performance of the agent's duties in the relation to the client;
- if relevant, the name of the person or body providing the interest, and the reason the interest is being or has been provided; and
- if the interest is pecuniary, the amount or reasonable estimate of the amount of the pecuniary interest.

If a notice is required to be given under this section and a written statement must be obtained from the client before immigration assistance may be given by the agent, the notice and the statement may be included in a service agreement that covers the immigration assistance.

Actual conflicts

The section further requires that if a migration agent has an actual conflict of interest, pecuniary or otherwise, the agent must not give immigration assistance to a client (even with the client's consent) if – as a result of the conflict of interest – the agent's objectivity, or the relationship of confidence and trust between the agent and the client, would be compromised, or if the agent is reasonably likely to breach the confidentiality of the client.

For example, this might occur if the migration agent is engaged by a client (the applicant) to lodge a partner visa for the applicant, whose wedding has been solemnised by the migration agent's spouse.

Interests of family members

The section also provides, to put it beyond doubt, that for the purposes of the Code of Conduct, a conflict of interest may arise in relation to a migration agent or client because of an interest of a relative of the agent or client (see example above).

Section 35 – Duty of confidentiality

This section provides that except as required by law, a migration agent must not disclose, or allow to be disclosed, to a third person any personal information relating to a client or former client, or a client or former client's affairs, without the written consent of the client or former client.

Subdivision B – Preliminary requirements for giving immigration assistance

Section 36 – Duty to know clients etc.

This section imposes a duty on a migration agent not to give immigration assistance unless the agent has taken all reasonable steps to verify the identity of the client, and is reasonably satisfied of the identity of the client.

Therefore, in addition to having to take all reasonable steps to verify the identity of the client, the agent must have formed a reasonable satisfaction as to the client's identity.

This duty does not apply to giving immigration assistance mentioned in paragraphs 276(1)(b), (2)(b) or (2A)(b) of the Act, which refer to giving advice about certain matters, during an initial consultation.

The section also requires that a migration agent must not deal with a client through another agent or other intermediary representing the client unless the migration agent has taken all reasonable steps to verify the identity of the agent or other intermediary; and is reasonably satisfied of the identity of the agent or other intermediary and that the client has agreed in writing to the other agent or intermediary dealing with the migration agent on the client's behalf.

Subsections (5) and (6) apply to a migration agent giving immigration assistance to a client on the basis that a third person has endorsed, nominated or sponsored the client under or for the purposes of the migration law or intends to do so.

Subsection (5) not only ensures that a migration agent must know the identity of a person who is said to have endorsed, nominated or sponsored the client (or who intends to do so), but also ensure that the agent knows that the person actually *has* endorsed, nominated or sponsored the client. The migration agent must not provide immigration assistance unless this is satisfied.

In order to have the requisite knowledge mentioned above, it is sufficient that the agent takes all reasonable steps to verify, and is reasonably satisfied of, the identity of the third person and that the third person has actually endorsed, nominated or sponsored the client (or intends to do so).

Subsection (6) deals with the situation where the migration agent deals with the third person through an intermediary (i.e., an agent or other intermediary). In this case, the agent must not only satisfy subsection (5), but they also must not provide immigration assistance unless the agent knows the identity of the agent or other intermediary who represents the third person.

In order to have knowledge of the above, it is sufficient that the agent takes all reasonable steps to verify, and is reasonably satisfied of, the identity of the agent or other intermediary and that the agent or other intermediary has agreed in writing to the agent or other intermediary dealing with the agent on the third person's behalf. The aim here is to ensure that the intermediary legitimately represents the third person.

For example, a migration agent could be engaged by an intermediary on behalf of an employer for the purposes of lodging a nomination or visa application for an individual. A

brief investigation into whether the applicant is actually sponsored by the employer might prove that the employer has no knowledge of the applicant whatsoever or that their organisational documents (for example financial statements, letter of support etc.) are being used without their knowledge by the intermediary to support the applicant's application.

Section 37 – Duty to arrange access to interpreters

This section imposes a duty on a migration agent to arrange for an appropriately qualified interpreter to assist a client in the client's dealings with the agent, if the client requests an interpreter.

The section also provides that, to avoid doubt, this duty does not prevent the client from being required to pay for an interpreter's assistance.

Section 38 – Duty to give consumer guide to clients

This section imposes a duty on a migration agent not to give immigration assistance unless a copy of the consumer guide has been given to the client.

A note advises that the Authority arranges for the production of the consumer guide, in accordance with regulation 9A of the *Migration Agents Regulations 1998*.

Subdivision C – Other duties

Section 39 – Duty to keep clients informed about progress of immigration matters

This section imposes a duty on a migration agent to advise a client in writing when any application, submission or representation that the agent makes for the client is lodged with a government official. The client must also be given a copy of the application, submission or representation, and must be promptly advised on any material developments that occur in relation to the application, submission or representation.

Section 40 – Duty not to act in a way that causes unnecessary expense or delay

This section imposes a duty on a migration agent not to act in a way that causes, or is reasonably likely to cause, unnecessary expense or delay when dealing with an application, submission or representation for a client (including when lodging the application, submission or representation with the Department or a review authority).

This section, in part, requires agents not to act in a way contrary to procedures regarding timing for a review authority (e.g., document lodgement requirements under the practice directions of the Administrative Appeals Tribunal), and it also addresses issues of over-charging a client for work or undergoing processes that are not actually required for the particular visa application. For example, a migration agent must not charge the client for multiple or extended submissions (to the Department or the Administrative Appeals Tribunal) for a related matter, where a reasonable person could argue that a single submission could appropriately address all the issues raised.

Section 41 – Duty not to give false or misleading documents to clients

This section imposes the following duties on a migration agent:

- not to give a client a document that the agent knows is false or misleading, unless the agent discloses to the client that the document is false or misleading;
- not to give to a client a document that the agent suspects, or reasonably ought to suspect (but does not know) is false or misleading unless the agent discloses to the client that the agent suspects that the document is false or misleading, or has taken all reasonable steps to determine whether the document is false or misleading.

A note refers the reader to section 15 (duty not to make false or misleading statements), above.

For example, a migration agent might provide a client with a visa grant letter that is fake. The reason an agent could provide this might be due to the agent covering up their mistake for not having lodged documentation on time. The client may not find out that their visa grant letter is fake until sometime in the future, at which point the client may have missed out on the window of application (for example due to exceeding the age requirement for the visa or other legislative deadlines).

Division 2 – Service agreements

Section 42 – Service agreements

This section requires that, subject to section 43, a migration agent must not give immigration assistance to a client unless there is a service agreement in force that covers the immigration assistance, authorises the agent to act on the client's behalf (either as a particular migration agent, a class of migration agents in the agent's business, or all migration agents in the agent's business), and complies with this Division. It is also a requirement that if the service agreement has been varied, the variation must meet the requirement of section 44 (Written notice of variations to service agreements), see below.

The section also requires that a service agreement must be in writing, must be signed by the client, and must be signed by the migration agent or by another migration agent in the agent's business.

Further requirements for a service agreement are that it must include:

- the name, date of birth, email address (if any) and residential address of each client to whom immigration assistance is to be given under the agreement;
- the name, migration agent registration number and contact details of the migration agent who signs the agreement and each migration agent who is expected (at the time of the signing of the agreement) to give immigration assistance under the agreement;
- details of the work or services to be performed under the agreement;
- a statement that a copy of the consumer guide has been given to the client (see section 38 (Duty to give consumer guide to clients), see above);
- an explanation of what will happen to the client's file if the service agreement is terminated by any party to the agreement, or on completion of the work or services covered by the agreement; and

- the matters required by Division 3 of the Code of Conduct (about fees and disbursements), see below.

The section provides that a service agreement may be expressed to cover more than one client.

Section 43 – Service agreements not required for initial consultations

This section provides that, despite section 42 (Service agreements), above, a migration agent may give immigration assistance of a kind mentioned in paragraph 276(1)(b), 276(2)(b) or 276(2A)(b) of the Act at an initial consultation with a client or potential client without a service agreement that covers the immigration assistance being in force.

An initial consultation would generally be an opportunity for an agent to find out the potential client's circumstances, and to advise what they would be able to do for the potential client, including steps, costs, etc. Generally, the agent would not at this point need to be satisfied of the identity of the potential client, as communication with the Department or review authorities would generally only occur after a service agreement has been entered into. An initial consultation would be a single consultation where the agent would normally find out the facts of the potential client's situation and would either give the client basic advice or would outline processes and costs for the potential client.

Section 43 also requires that if a migration agent conducts an initial consultation with a client or potential client other than under a service agreement, the agent must ensure that any fee charged for the initial consultation is reasonable.

Further, the section requires that if a migration agent conducts an initial consultation with a client or potential client other than under a service agreement, the following requirements must be met:

- the agent must notify the client or potential client of the agent's migration registration number;
- section 49 (invoices and receipts), below, applies in relation to immigration assistance given as part of the initial consultation or other work or services performed as part of the initial consultation, as if the immigration assistance were or given, or the other work or services were performed, under a service agreement; and
- if the agent or the agent's business receives amounts (including for fees or disbursements) from a client for immigration assistance or other work or services performed as part of an initial consultation, then this instrument (other than section 51) applies to those amounts in the same way as it applies to client money in relation to a service agreement in relation to which the migration agent is a responsible migration agent, and the migration agent must ensure that sufficient funds are available to cover any refunds of those amounts that may become payable and that any refunds are paid promptly and in any case no later than 14 days after they become payable.

The section also provides that, to avoid doubt, only the first consultation between a migration agent and a client or potential client in relation to a particular immigration matter is an *initial consultation*, and if the consultation consists of a series of sessions conducted on one of more than one day, sessions conducted on a day after the first day are taken not to be part of an *initial consultation*.

Section 44 – Written notice of variations to service agreements

This section sets out the requirements for a variation of a service agreement for the purposes of paragraph 42(1)(b), above. That paragraph provides that a migration agent must not give immigration assistance unless there is a service agreement in force and, if the service agreement has been varied, the variation must meet the requirements of this section.

The section requires that before a service agreement is varied, each client covered by the service agreement must be given written notice of the proposed variation and the reasons for the proposed variation, and of the matters required by subsection 46(5), if relevant. Subsection 46(5) provides that a service agreement must provide that an hourly rate or fixed fee specified in the agreement must not be varied except in specified circumstances. See further notes about the subsection, below.

The section further requires that a variation of a service agreement must not take effect unless each client covered by the agreement agrees in writing to the variation or, if the agreement provides that the agreement of each client is not required for the variation, at least one of the clients agrees to the variation, and any other conditions specified in the agreement are satisfied.

Section 45 – Duty to ensure work or services specified in the service agreement are completed

This section provides that a responsible migration agent (see definition in sections 7 and 12) must take all reasonable steps to ensure that the work or services specified in the agreement are completed. However, this requirement ceases if the agreement is terminated.

Division 3 – Fees and disbursements

Section 46 – Fees

This section provides that a responsible migration agent (see definition in sections 7 and 12) must not charge fees, and must ensure that fees are not charged, for work or services performed under a service agreement except in accordance with this section and section 48 (Payment of fees and disbursements), below.

The section requires that if fees are to be charged for work or services under a service agreement, the agreement must include details of the fees specified as either an hourly rate or a fixed amount including any relevant GST or other tax, and if the agreement specifies an hourly rate it must give a reasonable estimate of the time that will be spent in performing the work or services.

The section also requires that an hourly rate or fixed fee specified in a service agreement as mentioned in paragraph (2)(a) must be fair and reasonable.

Further, the section requires that if the service agreement specifies an hourly rate with an estimate of time, the agreement must provide that the clients covered by the agreement will not be charged for time spent performing work or services under the agreement in excess of that estimate (or the latest updated estimate under subsection 46(4), if any), unless:

- there are exceptional circumstances that arise after the agreement is signed that make it impracticable to perform some or all of the work or services at the hourly rate within the estimated time; and
- each client covered by the agreement is given an updated reasonable estimate of the time that will be spent performing the work or services, and either agrees in writing for the work or services to continue to be performed under the agreement, or, if the agreement provides that the agreement of each client is not required, at least one client covered by the agreement agrees in writing for the work or services to continue to be performed and any other conditions specified in the agreement are satisfied.

The section also requires that a service agreement must provide that an hourly rate or a fixed fee specified in the agreement must not be varied unless there are exceptional circumstances that arise after the agreement is signed and those circumstances make it impracticable to perform some or all of the work or services at the hourly rate within the estimated time, or at the fixed fee, specified in the agreement.

Section 47 – Disbursements

This section provides that a migration agent must not unreasonably incur disbursements in relation to work or services performed under a service agreement, and must not require a client to pay, and must ensure that a client is not required to pay, for a disbursement that will be incurred other than in accordance with specified provisions of this section, or provisions in the agreement in accordance with section 48 (Payment of fees and disbursements), below.

The section makes the following provisions in relation to disbursements.

Clients must agree to disbursements

The section provides that a service agreement must include details of the likely disbursements that will be incurred in relation to work or services performed under the agreement and for which the client will be required to pay, including either the amount of each disbursement or a reasonable estimate of each disbursement including GST or other tax, and whether the disbursement is to be paid directly by the client or on the client's behalf.

The section further provides that a client must not be charged for a disbursement unless the details of the disbursement are included in the service agreement (as required by the above provisions), those provisions of the service agreement are complied with, and the requirements in subsection 47(4) are complied with if applicable (see below); or when the agreement was signed the disbursement was not reasonably likely, each client covered by the agreement is given details of the disbursement in writing, including the amount of the disbursement or a reasonable estimate of the amount of the disbursement, and subsection 47(5) is complied with (see below).

Subsection 47(4) must be complied if the amount of the disbursement or a reasonable estimate of the disbursement was specified in the service agreement when it was signed. The subsection requires that a client must not be required to pay an amount for a disbursement that is greater than the amount specified in the agreement unless each client covered by the agreement is given written notice of the actual amount of the disbursement and the reason the actual amount of the disbursement is greater than the specified amount, and either each client covered by the agreement agrees in writing to incurring the increased cost, or if the

agreement provides that the agreement of each client is not required for the increased cost to be incurred, at least one client agrees in writing to incurring the increased cost and any other conditions specified in the agreement are satisfied.

Subsection 47(5) must be complied with if a disbursement was not reasonably likely when the agreement was signed and each person covered by the agreement has been given written details of the disbursement including the amount or a reasonable estimate of the amount. The subsection requires that each client covered by the agreement agrees in writing to the disbursement, or if the agreement provides that the agreement of each client is not required, at least one client covered by the agreement agrees in writing to the disbursement and any other conditions of the agreement are satisfied.

The section also provides that, despite anything in the service agreement, for a disbursement in relation to work or services provided under the agreement, a client must not be charged more than the actual amount of the disbursement if the actual amount is known at the time the client is charged, or otherwise, a reasonable estimate of the amount of the disbursement.

For example, a migration agent must only quote their client the exact amount of disbursements, for fees that are generally known (like visa application fees, Administrative Appeals Tribunal hearing fees etc. – which are publicly available). If fees are not known (such as for a police clearance in a foreign country, or if the agent is charging fees in June and the fees are expected to go up in July), the migration agent should only charge an educated estimate of the fees, and not an exorbitant amount.

Refund of excess charged

Section 47 also provides that if a client is charged for a disbursement in relation to work or services performed under a service agreement and a responsible migration agent (i.e., any agent listed in the agreement or who has provided immigration assistance under the agreement) becomes aware that the amount charged was greater than the actual amount of the disbursement (including because of any refunds), the migration agent must ensure that the excess is refunded to the client in accordance with section 52 (Refunds), below.

Section 48 – Payment of fees and disbursements etc.

This section requires that a service agreement must include the terms and conditions for the payment of fees for, and disbursements in relation to, work or services performed under the agreement, and the interest, if any, to be charged on unpaid fees and disbursements.

Section 49 – Invoices and receipts

This section requires that a responsible migration agent (see definition in sections 7 and 12) must not charge a client, and must ensure that a client is not charged, a fee for work or services performed under the service agreement or an amount for a disbursement in relation to work or services performed under the agreement, unless the client is given an itemised invoice containing details of the work or services to which the fee or disbursement relates.

The section also requires that a migration agent must ensure that, after the client pays the fee or amount of disbursement, the client is given a receipt that identifies the work or services to which the payment relates and the invoice, if any, to which the payment relates.

A note reminds the reader that under section 313 of the Act, a registered migration agent is not entitled to be paid a fee or other reward for giving immigration assistance unless the agent gives the assisted person a statement of services that sets out particulars of each service performed and the charge made in respect of each service.

Section 50 – Duty in relation to client’s money

This section requires a responsible migration agent in relation to a service agreement to ensure certain things are complied with in relation to client money (in relation to the agreement that is received by the agent or by a member of the agent’s business). The agent must ensure that:

- client money must be paid into an account with a financial institution;
- amounts other than client money must not be paid into the same account, including interest on the account;
- an amount must not be paid out of the account other than to pay the agent, or the agent’s business, entitled to be paid the amount (noting that under section 313 of the Act a migration agent is not entitled to be paid a fee or other reward for giving immigration assistance unless the agent gives the client a statement including particulars of services performed and the charge for each service), to pay amounts required to be paid to the Department or a review authority, to pay disbursements in accordance with the service agreement, or to refund client money to a client or by transferring amounts to other registered migration agents, or to members of the businesses of other registered migration agents, at the instruction of a client;
- an amount must not be paid out of the account to pay fees or costs associated with opening or maintaining the account; and
- the total amount paid out of the account for a particular purpose must not exceed that total amount paid into the account for that purpose.

The section also requires that a migration agent must, if requested by the Authority, demonstrate to the Authority that the section is being complied with.

It should be noted that client money cannot be transferred to a third party without the client’s consent.

Section 51 – Duty not to receive amounts from clients before entering into service agreements

This section imposes a duty on a migration agent not to receive amounts (including fees or amounts for disbursements) from a client if the amounts relate to the agent or another registered migration agent in the agent’s business giving immigration assistance to the client and there is no service agreement in force that covers the immigration assistance.

The section also imposes a duty on a migration agent to take all reasonable steps to ensure that a member of the agent’s business, other than another registered migration agent, does not receive amounts (including fees or amounts for disbursements) from a client if the amounts relate to the agent or another registered migration agent in the agent’s business, giving immigration assistance to the client, and there is no service agreement that covers the immigration assistance in force.

This provision does not apply to a fee charged for an initial consultation which was not conducted under a service agreement, in accordance with section 43 (Service agreement not required for initial consultation), above. A note refers to paragraph 43(3)(c), which outlines certain obligations in relation to money received for an initial consultation that is not under a service agreement.

Section 52 – Refunds

This section requires that a service agreement must include a refund policy in relation to fees and disbursements. The refund policy must be fair and reasonable.

The section also requires that a registered migration agent in relation to a service agreement must ensure that sufficient funds are available to cover any refunds that become payable under the agreement, and any refunds payable under the agreement are paid in accordance with the agreement and paid promptly and in any case no later than 14 days after they become payable.

Division 4 – Client documents

Section 53 – Duty to keep documents securely

This section imposes a duty on a migration agent to ensure that any documents belonging, or relating, to a client or former client of the agent that are in the possession of the agent or a member of the agent's business are kept securely.

Section 54 – Duty to return client documents

This section imposes a duty on a migration agent, if requested in writing by a client or former client, or a new registered agent migration representing a former client, to return to the client or new agent all documents to which the client – or former client, both of which are referred to as “the client” – is entitled within 14 days of receiving the request.

The section also provides that a migration agent is not entitled to claim a lien on documents to which the client or former client is entitled unless the agent is a restricted legal practitioner who is eligible. A note explains that a person cannot be registered as a migration agent if the person is an unrestricted legal practitioner or a restricted legal practitioner who is not eligible: see section 302A of the Act.

The section further provides that for the purposes of the section, and without limiting it, a client or former client of a migration agent is taken to be entitled to documents that are given to the agent, or a member of the agent's business, by or on behalf of the client, or paid for by, or on behalf of the client. A note explains that documents that are commonly given to migration agents by, or on behalf of, clients include passports, birth certificates, qualifications, photographs and business financial statements.

Division 5 – Record keeping

Section 55 – Duty to make records of oral communications with clients

This section imposes a duty on a migration agent to make a contemporaneous written record of oral communications between the agent and a client in relation to immigration assistance, including oral instructions the client gives the agent and oral advice the agent gives the client.
Section 56 – Duty to maintain client files

This section imposes a duty on a migration agent to ensure that a client file is created and maintained for clients as follows:

- if members of the same family unit are all clients of the agent, a client file for the members of family unit (except, as stated below, where a member of the family unit asks for a separate file); and
- if a member of the family unit requests the agent to create and maintain a separate client file for the member, a client file for the member; and
- if the client is not a member of a family unit, a client file for the client.

The section requires that a client file must include:

- a copy of the client's application or other immigration matter;
- copies of all service agreements between the agent and the client and any variations to the agreements;
- copies of all written communications (including electronic communications) between the agent and the client, and the agent and any other person or organisation, to the extent that the communications relate to the client;
- all records made under section 55 (Duty to make records of oral communications with clients), above;
- records of material oral communications between the agent and any person or organisation other than the client, to the extent that the communications relate to the client;
- copies of all invoices and receipts given by the agent relating to the client;
- copies of all personal documents relating to the client given to the agent by or on behalf of the client; and
- evidence of the safe return of any original documents belonging to the client and given to the agent.

The section provides that a client file may be kept in written or electronic form, or partly written and partly electronic form.

The section also requires that a migration agent who has a duty under the section to create and maintain a client file must take all reasonable steps to ensure that the client file is kept for a period of 7 years after the last action on the file for the relevant client.

The section provides that this requirement would not prevent the agent from transferring possession of a client file to another migration agent, but the section further requires that if a client file is transferred by a migration agent to another migration agent, the receiving migration agent must take all reasonable steps to ensure that the client file is kept for a period 7 years after the date of the last action on the client file and, except as required or authorised by law, the receiving agent must not disclose or allow to be disclosed to a third person any personal information on the client file relating to the client or the client's affairs, except with the written consent of the client.

The receiving migration agent's duties under this section are in addition to the original agent's duties under section 35 (Duty of confidentiality), above, and the original agent's duty under this section to take all reasonable steps to ensure that a client file is kept for a period of 7 years after the date of the last action on the file.

Duty to give Authority access to client files on request

This section imposes a further duty to require a migration agent to give the Authority access to a client file in the possession of the agent or a member of the agent's business, if the Authority makes written request for access to the client file for the purpose of the Authority carrying out its functions under paragraphs 316(1)(a) to (d) of the Act. Those paragraphs relate to the Authority's functions of dealing with applications for registration as a migration agent, monitoring the conduct of registered migration agents in providing immigration assistance, investigating complaints against registered migration agents, and taking appropriate disciplinary action against registered migration agents or former registered migration agents.

Division 6 – Ending agent-client relationship

Section 57 – Termination notices

Notices to clients

The section requires that a responsible migration agent in relation to a service agreement must ensure that each client covered by the agreement is given a written notice in accordance with the section before any termination of the agreement takes place.

This requirement does not apply where there are exceptional circumstances where it would be reasonable for the agreement to be terminated with the client having been given notice before the termination, or the agreement is terminated unilaterally by the client. Instead, the responsible migration agent must ensure that each client covered by the agreement is given a written notice in accordance with subsection (3) no later than 14 days after the termination takes effect.

The section requires that a written notice of termination must include:

- the date from which the agreement is terminated;
- if an immigration matter in respect of the client is pending, the status of the immigration matter, and also if the matter is to be allocated to another registered migration agent, the name and contact details of that agent, and a statement that the client may choose not to have the matter allocated to another agent and may cease receiving the responsible migration agent's services at any time before the agent terminates the agreement if the client wishes to do so or alternatively, if the matter is not to be allocated to another agent, details of how the client may obtain further immigration assistance;
- if the responsible migration agent, or a member of the migration agent's business, holds any client money in relation to the service agreement, a statement setting out the amounts of money, amounts paid out in accordance with paragraph 50(1)(d) above and the amount remaining, and a statement that, in the absence of instructions from the client, any amount remaining will be refunded to the client; and
- a statement setting out the effect of section 54 (Duty to return client documents), above; a note explains that section 54 requires a migration agent to return

documents to which a client is entitled, if requested to do so by the client or a new migration agent representing the client.

Notices to Department and review authorities

The section also requires that the Department or a review authority must be given written notice no later than 14 days after a termination of the service agreement takes effect if, at that time, an immigration matter in relation to which immigration assistance has been provided under the service agreement is pending before the Department or review authority.

Section 58 – Duty to forward correspondence relating to former clients

This section requires that if a migration agent ceases to be a migration agent of a client and the agent later receives correspondence from a government official that is addressed to the client or it is reasonable to assume was addressed to the agent in the belief that the agent was still a current migration agent of the client, the agent must take all reasonable steps to forward the correspondence to the former client or to a current migration agent of the former client.

However, this requirement does not apply to correspondence the migration agent receives more than 28 days after the agent gives written notice to the Department or to a review authority (where an immigration matter relating to the former client is still pending) that the agent has ceased to be a migration agent of the client.

The section further provides that for the purposes of the above provision, if the client gave the Minister notice under section 494D(1) of the Act that the agent was authorised to receive documents under the Act and the client varies or withdraws the notice so that the agent is no longer the client's authorised recipient, the agent is taken to have given written notice at the later of the time the client varies or withdraws the notice and the time the client ceases to be the client of the agent.

Part 4 – Miscellaneous

Section 59 – Legal professional privilege

This section makes it clear that nothing in the Code of Conduct affects the right of a person to refuse to answer a question, give information, or produce a document, on the ground that the answer to the question or the information would be privileged from being given on the ground of legal professional privilege, or the document would be privileged from being produced on the ground of legal professional privilege.

Part 5 – Application and transitional provisions

Division 1 – Application of this instrument

Section 60 – Application of this instrument – general duties

Duty not to give futile immigration assistance

Paragraph 19(2)(b) provides one facet of an exception to the requirement not to give immigration assistance if the agent reasonably believes that giving the immigration assistance

would be futile. The exception is where a migration agent has advised the client that giving the immigration assistance would be futile (along with the other requirements in section 19).

Under subsection 60(1), it would not matter if the advice to a client (that giving the immigration assistance would be futile) was given before, on or after 1 March 2022. Therefore, if an agent has already cautioned a client, prior to 1 March 2022, that giving the immigration assistance would be futile, the agent need not reiterate this advice to the client on or after 1 March 2022.

Similarly, under subsection 60(2) it does not matter if a written statement given to the agent by a client under paragraph 19(2)(c), stating that the client has been advised of the matter in paragraph 19(2)(b) and that the client still wishes to be given immigration assistance, is given to the agent prior to 1 March 2022. That is, a client would not be required to provide another written statement (due to the commencement of this Code of Conduct) agreeing to proceed despite the immigration assistance being futile if the client has already provided one to the agent.

Duty relating to correcting false or misleading statements etc.

Subsection 60(3) provides that for the purposes of section 21 (Duty relating to correcting false or misleading statements etc.), above, it does not matter whether a false or misleading statement was made to, a false or misleading document was given to, or information was concealed from a government official before, on or after 1 March 2022. That is, the duty to make a correction in accordance with section 21 of the new Code of Conduct applies irrespective of when the relevant false or misleading statement or document was provided or the information was concealed.

Duty to notify Authority of misuse of MARN

Subsection 60(4) provides that subsection 25(4), above, applies to a migration agent becoming aware, on or after 1 March 2022, of a use of the migration agent's migration agent registration number, whether the use occurred before, on or after 1 March 2022. That is, a migration agent has a duty to inform the Authority within 14 days after becoming aware on or after 1 March 2022 that the agent's migration agent registration number is being or was used by another person, irrespective of whether the use occurred before, on or after 1 March 2022.

Duties to notify Authority and clients of certain matters

Subsection 60(5) provides that section 28 (Duty to notify Authority and clients of material changes in matters shown in Register), above, applies to a change that occurs on or after 1 March 2022. That is, a migration agent does not have a duty under section 28 of the new Code of Conduct to give written notice of a material change in a matter shown in the Register of Migration Agents in respect of the agent, unless the change occurred on or after 1 March 2022.

Subsection 60(6) provides that for the purposes of section 29 (Duty to notify Authority of changes in circumstances relevant to agent's continued registration), above, if a migration agent is aware on 1 March 2022 of a relevant change in circumstances or relevant investigation or proceeding and the agent had not given written notice of the matter before 1 March 2022, the agent is taken to have become aware of the matter on 1 March 2022. The

effect of this provision is that if a migration agent is aware on 1 March 2022 of a relevant change in circumstances, the agent must notify the Authority of the matter within 14 days of that date.

Subsection 60(7) provides that subsection 30(5), above (which deals with notifying a client if registration is suspended, including a statement about the amount of a client's money held and what is to happen to the money) does not apply in relation to client money received by a migration agent, or a member of a migration agent's business, before 1 March 2022 under a service agreement that requires the client money to be refunded or transferred if the agent's registration is suspended.

Duty to notify clients, Department and review authority if registration expected to lapse

Subsection 60(8) provides that if on 1 March 2022 a migration agent is aware that it is reasonably likely that the agent will cease to be a registered migration agent on a day after 1 March 2022, and the agent has not given written notice to the persons required to be notified under section 31, above, before 1 March 2022, the migration agent is taken to have become aware of likely cessation as a registered migration agent on that date. The effect of this provision is that the agent has 14 days after 1 March 2022 to notify a client, the Department or a review authority that cessation of registration is reasonably likely, or if cessation is likely to occur within 14 days, as soon as practicable after 1 March 2022.

Subsection 60(9) provides that subsection 31(5), above (which deals with notifying a client if registration is reasonably likely to lapse, including a statement about the amount of a client's money held and what is to happen to the money), does not apply in relation to client money received by a migration agent, or member of a migration agent's business, before 1 March 2022 under a service agreement that requires the client money to be refunded or transferred if the agent's registration ceases.

Duty to respond to requests from the Authority

Subsection 60(10) provides that section 32 (Duty to respond to requests from Authority for information or documents), above, applies to requests made by the Authority on or after 1 March 2022. Section 32 provides for the Authority to request information or a document from a migration agent for the purposes of the Authority carrying out its functions under paragraphs 316(1)(a) to (d) of the Act.

Section 61 – Application of this instrument – the agent-client relationship

Subsection 61(1) provides that for the purposes of subsection 34(1), above (which deals with a migration agent's duty to inform a client of conflicts of interest), a written notice of a conflict of interest or potential conflict of interest that was given to a client before 1 March 2022 and meets the requirements of subsection 34(2), is taken to have been given the client under paragraph 34(1)(a).

Subsection 61(2) provides that for the purposes of subsection 34(1), above, a written statement that was given to a migration agent by a client before 1 March 2022, that the client was given notice by the agent of a conflict of interest and the client still wishes the agent to give immigration assistance, is taken to have been given by the client under paragraph 34(1)(b).

This ensures that these notices and statements do not have to be given again on or after 1 March 2022 due to the commencement of the Code of Conduct if they were already provided prior to that date.

Duty of confidentiality

Subsection 61(3) provides that section 35 (Duty of confidentiality), above, applies to disclosing information on or after 1 March 2022, whether the information was obtained before, on or after 1 March 2022.

Duty to give consumer guide to clients

Subsection 61(4) provides that for the purposes of section 38 (Duty to give consumer guide to clients), above, if a copy of the consumer guide has been given to a client, it does not matter whether the copy was given before, on or after 1 March 2022.

Without this provision, the requirement to provide a new consumer guide to every existing client of all registered migration agents would be too onerous.

Service agreements

Subsection 61(5) provides that if a service agreement was in force immediately before 1 March 2022 and met all applicable requirements of Schedule 2 to the *Migration Agents Regulations 1998* as in force immediately before 1 March 2022, then:

- for the purposes of subparagraph 42(1)(a)(iii), above (which requires a service agreement to comply with the requirements of Division 2 of Part 3 of the Code of Conduct), the service agreement is taken to comply with the requirements of the Division;
- paragraph 42(1)(b), above (which deals with variations to a service agreement) does not apply to a variation that occurred to the service agreement before 1 March 2022;
- sections 46 (Fees), 47 (Disbursements) and 48 (Payment of fees and disbursements etc.), above, apply to the service agreement only to the extent that:
 - a responsible migration agent (see meaning in section 12) must not charge fees for work performed under the service agreement other than as provided for by the agreement;
 - a responsible migration agent must not unreasonably incur disbursements in relation to work or services performed under the agreement;
 - a responsible migration agent must not require a client to pay for a disbursement that will be incurred in relation to work or services, other than in accordance with the agreement; and
- subsection 52(1), above (requiring a service agreement to include a refund policy in relation to fees and disbursements), and subsection 52(2), above (requiring that the refund policy must be fair and reasonable), do not apply to a service agreement in force immediately before 1 March 2022 as such agreements were made under the original Code of Conduct, which does not have these requirements.

Subsection 61(6) provides that subsection 61(5) ceases to apply to a service agreement in force immediately before 1 March 2022 from the first time (if any) that the service agreement is varied on or after 1 March 2022.

Therefore, if a service agreement is varied on or after 1 March 2022, it needs to be brought up to the standard required by the propose Code of Conduct.

Invoices and receipts

Subsection 61(7) provides that for the purposes of paragraph 49(a), above, which requires that a client must not be charged for fees or disbursements unless given an itemised invoice, it does not matter whether an itemised invoice given to a client was given before, on or after 1 March 2022.

Duty in relation to client's money

Subsection 61(8) provides that section 50 (Duty in relation to client's money), above, applies to client money received by a migration agent, or by a migration agent's business, on or after 1 March 2022.

While there are similar requirements in the original Code of Conduct, this duty in subsection 61(8), for example, no longer requires migration agents to name their client account "clients' account".

Duty to maintain client files

Subsection 61(9) provides that subsections 56(1) to (3), which require creating and maintain a client file, to the extent that they relate to maintaining a client file, apply in relation to a client file created before 1 March 2022 if action on the file occurs on and after 1 March 2022, and to a client file created on and after 1 March 2022.

Termination notices

Subsection 61(10) provides that subsection 57(5), above, which requires a statement to be given to a client on termination of a service agreement including details of a client's money held by a migration agent, does not apply in relation to client money paid to a migration agent, or a member of a migration agent's business, before 1 March 2022.

Duty to forward correspondence relating to former client

Subsection 61(11) provides that section 58 (Duty to forward correspondence relating to former clients), above, applies in relation to a migration agent ceasing to be a migration agent of a client on or after 1 March 2022.