



Information on the Regulation of the Migration Advice Profession

This information is valid to 1 September 2004

Regulation of the migration advice profession

On 21 March 1998, the regulation of the migration agent profession passed from the Department of Immigration and Multicultural and Indigenous Affairs (the "DIMIA") and its Migration Agents Registration Board, to the Migration Agents Registration Authority (the "MARA"). Government regulation of the profession was thus replaced with a system of statutory self-regulation.

The role of the Migration Agents Registration Authority

The MARA has an important role in ensuring the effectiveness of regulatory arrangements and providing advice to Government on strategies for improving standards of education, ethics and competency in the profession and strengthening consumer protection.

The MARA is the sole body vested with the power under Part 3 of the *Migration Act 1958* (the "Act") to make decisions in relation to the registration and discipline of registered migration agents. The MARA does not however, have the power to award damages or determine compensation, impose a penalty or fine, impose criminal sanctions or give legal advice.

The core powers of the MARA are set out in section 316 of the Act and include:

- registration of new migration agents, including administration of sound knowledge requirements;
- repeat registration of continuing migration agents, including administration of the CPD scheme;
- monitoring the conduct of registered migration agents;
- investigating complaints against registered migration agents;
- applying disciplinary actions against registered migration agents;
- using mediation and other methods for alternative dispute resolution to resolve matters where appropriate; and
- monitoring the adequacy of the Code of Conduct.

The jurisdiction of the MARA is limited to Australia and those agents operating overseas who are required to be registered with the MARA. There is no requirement at present for agents both located and operating overseas to be registered with the MARA although overseas offices of registered agents are required to comply with the Code of Conduct and a registered agent is responsible for the conduct of their overseas staff.

What can you expect from a migration agent?

A migration agent is a professional service provider, who can assist you in your application. A migration agent should be knowledgeable, competent and honest, should be able to help you decide the appropriate class of visa to apply for and minimise any unnecessary delays in the processing of your application. A migration agent can also advise and assist with an application to the Migration Review Tribunal and/or Administrative Appeals Tribunal in relation to unfavourable decisions by the DIMIA.

You can expect that your migration agent will:

- be registered with the MARA and will be able to show you a copy of his/her Registration Certificate;
- maintain a sound working knowledge of the *Migration Act 1958* and *Migration Regulations 1994* and other legislation relating to migration procedure;
- display the Code of Conduct prominently and abide by it;
- be frank and candid about your prospects of success when assessing your request for assistance;
- declare any interest that may affect you and cease to act where a conflict of interest may arise;
- provide you with a written statement, before starting work, of the services to be provided, the fee, other costs and payment schedule.
 - It is best practice for your registered migration agent to obtain your written acceptance of the terms of the work to be done.
- provide timely and accurate advice;
- ensure your application is prepared correctly and submitted with all required documentation;
- act in accordance with the law, your legitimate interests and your instructions;
- act in a timely and professional manner;
- keep you informed about the status of the application and any relevant changes to policy or regulations that could affect the outcome;
- tell you in writing of the outcome of your application, within a reasonable time after it is decided; and
- charge a fee that is reasonable in the circumstances.
- maintain a clients' account. When you pay money in advance for work to be done, or when the registered migration agent offers a refund policy of some kind, the registered migration agent must have a bank account, which is solely for clients' monies. If you pay in advance or a refund policy applies, you should ask the registered migration agent for the details of the account.

What if you are dissatisfied with the service provided by your migration agent.

If you are dissatisfied with the advice or services provided by a registered migration agent you can make a complaint to the MARA.

Your first step may be contacting the registered migration agent you are dealing with and explaining the problem. Before you contact the registered migration agent you should think about what the problem is and what you would like to achieve.

When approaching your registered migration agent about your complaint, ask the agent what they are prepared to do to help you resolve your concern. It is important that you keep copies of any letters you write to your migration agent. It can be helpful if you

write the word “complaint” on the top of the letter and include any reference numbers that the registered migration agent may have given you. It is important that you clearly describe the problem. Remember to keep all communications to and from your agent.

If you are still not satisfied or don't get a response then you should contact the MARA. This service is free and acts independently of you and the registered migration agent.

Other ways to resolve your complaint.

- If your registered migration agent is a member of the Migration Institute of Australia Limited, you may wish to contact the Institute at www.mia.org.au.
- Your registered migration agent may belong to another professional association such as an accounting body, which may have dispute resolution procedures.
- If your registered migration agent is a legal professional, you may wish to contact the authority in the Australian State where the registered migration agent operates to determine whether the conduct has breached the standards of the conduct applied by that authority. The standards of conduct, which apply, may be different to those applied by the MARA.
- If you consider that the advice provided by your registered migration agent was incorrect, you may have a right to seek compensation from the registered migration agent, even if that agent *did not charge* you for the advice. Registered migration agents are not required to have professional indemnity insurance, however the MARA strongly recommends that registered migration agents have professional indemnity insurance.
- You may have contractual rights in a civil jurisdiction if you have a dispute in relation to any monies you have paid.

The MARA is not able to advise you in the above matters. You should obtain independent legal advice in relation to the above issues.

How to make a complaint

Where you are making a complaint to the MARA the complaint should be made in writing. The MARA cannot accept a complaint made by telephone.

It will assist in the processing of your complaint, if you fill out a complaint form and attach all relevant documents. Complaint forms are available from any DIMIA office. They may also be obtained from the MARA or the MARA's website (www.themara.com.au).

Your completed complaint form should be mailed to

Migration Agents Registration Authority
PO Box Q1551
QVB NSW 1230

Our fax number is: (02) 9299 8448

By calling (02) 9229 5446 and selecting option 8 you can hear recorded information on the complaints process.

If you would like to speak with a customer service officer please call our Complaints Information Service on +61 2 4942 4065 between 11am and 1pm AEST Monday to Friday excluding Public Holidays in New South Wales. Calls received outside these hours will be returned within 1 business day.

It will also assist the MARA if you ensure that you:

- provide your full name and address;
- clearly identify who the complaint is about;
- clearly state the facts regarding the complaints;
- include any documentation supporting the allegations and provide copies of any contract, statement of services or relevant correspondence;
- sign the complaint ensuring that you provide 'authority to publish' the complaint to the registered migration agent.

Legislation regulating the migration advice profession

The regulatory framework

The legislation that enables the migration agent registration scheme is Part 3 of the *Migration Act 1958*, the *Migration Agents Regulations 1998* (which includes the Code of Conduct), the *Migration Agents Registration Application Charge Act 1997* and the *Migration Agents Registration Application Charge Regulations 1998*.

This legislation can be freely accessed from the following web sites.

- SCALEplus: www.scaleplus.law.gov.au
- AustLII: www.austlii.edu.au

The Code of Conduct

The migration agents Code of Conduct (the "Code") is legally binding on all registered migration agents. It aims to establish professional standards for migration agents in relation to office administration and accounting, the obligations of a migration agent to clients, employees and other agents, and procedures for setting fees.

Migration agents are required to display a copy of this Code in any waiting room used by clients and any room where they conduct business with clients. You can ask a migration agent for a copy of the Code. They are obliged to provide any client who asks to see the Code with a copy of their own to keep.

Unregistered Practice

If you discover that the person who has given you Immigration advice and assistance is unregistered, you should immediately contact the DIMIA in your capital city or call 131 881.

With effect from 1 March 2003, it is a requirement of the Code of Conduct that your chosen registered migration agent provides a copy of this booklet to you prior to commencing activity on your behalf, or before charging a fee for advice and / or assistance. Your agent must also retain evidence that they have done so in order to comply with the Code of Conduct.