



Information on the Regulation of the Migration Advice Profession

This information is valid to 1 October 2005

Regulation of the migration advice profession

This brochure has been prepared to assist clients of migration agents and has been produced by the Migration Agents Registration Authority. It sets out information about the migration advice profession, the functions of the Authority, the legislation regulating the profession, what a client can reasonably expect from a migration agent and complaint procedures.

Persons practicing in **Australia** as migration agents are required to meet certain standards relating to ethical and professional conduct and are required to register annually with the Migration Agents Registration Authority.

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 functions of the Migration Agents Registration Authority (MARA)

The MARA has an important role in ensuring the effectiveness of the statutory self-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 professional conduct of registered migration agents. The MARA does not 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.

The MARA strives to ensure that registered migration agents maintain exacting standards of both knowledge and integrity.

What can you reasonably expect from a registered migration agent?

A migration agent is a professional service provider, who can assist you in your immigration matter. A migration agent should be knowledgeable, competent and honest, 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. Those services may include approaches to the DIMIA, the Migration Review Tribunal, the Refugee Review Tribunal and / or Administrative Appeals Tribunal in relation to decisions by the DIMIA. Whilst a migration agent can appear on your behalf before a tribunal they are not eligible to appear at a court of law unless they hold appropriate legal qualifications.

Your registered migration agent must:

- be registered with the MARA and able to show you a current 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, abide by it and provide you with a copy if you request 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;
- charge a fee that is reasonable in the circumstances; and
- 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 migration agent was incorrect, you may have a right to seek compensation from the migration agent, even if that agent *did not charge* you for the advice. Registered migration agents are encouraged to hold 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) 9299 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 (02) 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.

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 in person or by telephone on 131 881.

It is a requirement of the Code of Conduct that before starting to work for you, your registered migration agent provides you with a copy of this booklet. Your agent must also retain evidence that they have done so in order to comply with the Code of Conduct.

This document conforms with the requirements of Regulation 9A of the Migration Agents Regulations 1998.
