



# Code of Conduct

## Questions and Answers

### When do the changes take effect?

From 1 January 2012 changes to the Code of Conduct<sup>1</sup> (the Code) for registered migration agents will commence operation. The changes allow for the implementation of certain consumer protection measures consistent with recommendations made by the 2007-2008 Review<sup>2</sup>.

On 15 December 2011 registered migration agents were notified of the provisions of the Code that have been amended:

<http://e7-www.immi.gov.au/legislation/amendments/2012/120101/lc01012012-04.htm>

### What are the key changes?

The changes seek to clarify certain elements of the code and align others for consistency. The key changes are:

- Extension of the existing requirement that agents demonstrate that they are of good character to include that they are fit and proper to provide immigration assistance and are a person of integrity (Paragraph 1.10(b)).
- Clarifying that professional indemnity insurance must be maintained for the entire period of registration (Clause 2.3A).
- Confirming that certain things must be done in writing. Such as providing advice to a client regarding their prospects of success (Clause 2.7); the amount of visa application and other fees and charges (Clause 2.20(b); and the method of payment (Clause 5.4).
- Consider their actions rather than intentions, when making statements in support of an application that may be false, misleading or inaccurate (Clauses 2.9 and 2.9A).
- Extending the requirement to provide sufficient relevant information to allow a full assessment of all of the facts against the relevant criteria to a review authority not just the department (Clause 2.19).
- Extending the notification period of changes to any registration or contact details from 7 to either in advance or no later than 14 days after the change (Clauses 2.22B and 3.5(b)).
- Clarifying that a statement of services may be an itemised invoice or account and what this should contain (Clause 5.2, paragraphs 5.5 (a) and 7.2(b) and Clause 7.4).

The Agent Information section provides full details of the effect of each amendment to the Code.

<sup>1</sup> As prescribed in Schedule 2, Regulation 8 of the *Migration Agents Regulations 1998*

<sup>2</sup> 2007-2008- *Review of Statutory Self-regulation of the Migration Advice Profession*

## Will the changes be applied retrospectively?

No. The changes will take effect from 1 January 2012 and all registered migration agents must ensure that their practices are amended (where required) to comply with their obligations under the new Code from this date.

## Will any further changes to the Code be considered?

Yes. Following a period of public consultation, further changes to the Code will be considered.

## My professional indemnity insurance expires part way through my registration. What is the purpose of the new Clause 2.3A of the Code?

The purpose of the amendment is to ensure that registered migration agents hold professional indemnity insurance for the full duration of their registration period, to provide better protection to consumers. Please contact your professional indemnity provider to ensure that the policy schedule you provide to our Registration Section covers the period of your registration.

## Can I charge my clients for services that I have not yet performed? What should I do to comply with the new provisions under Parts 5 and 7 of the Code?

Under the existing Code as at 1 October 2006 an agent may obtain client moneys on account of services to be provided (Clause 7.2). However, Clause 7.2 of the Code requires that money paid by a client in advance of the service/s being completed must be held in the clients' account until the services that comprise the block of work have been completed, and an invoice has been issued to the client.

The Code serves to remind agents that Section 313 of the *Migration Act 1958* provides that an agent is not entitled to be paid a fee or other reward unless a statement of services has been issued to a client for the immigration assistance provided. The Code also requires an agent to provide a client with an estimate of fees prior to commencing work, and to provide to the client written confirmation of the terms agreement (the services to be rendered) (Clause 5.2).

The new provisions that will commence on 1 January 2012 have been designed to provide greater clarity in applying the provisions of Parts 5 and 7 of the Code. Specifically, the new Clause 5.2 (c) requires an agent to provide a client with written confirmation of the services to be performed by way of an "Agreement for Services and Fees." The statement of services mentioned in Clause 5.5(a) is to be consistent with the Agreement for Services and Fees mentioned in Clause 5.2 and may be an itemised invoice or account as mentioned in Clauses 7.2 and 7.4 of the Code.

The practical effect of the changes therefore means that whilst an agent is not prevented from asking clients for payment in advance of services to be performed, an agent must ensure that prior to transferring monies from the clients' account, the agreed services have been completed, and that they have provided the client with an itemised invoice or account.

## Some costs are difficult to estimate. What should I do?

According to the individual circumstances of a client's case and the type of visa application that an agent is providing assistance with, a range of fees may be provided as an estimate to the client. These fees are expected to cover necessary requirements that are associated with the visa application such as translations, medical checks, skills assessments and police clearances. In the event that the fees exceed the estimated range, the Agreement for Services and Fees mentioned in Clause 5.2 must be updated to reflect the additional costs and the client provided with an opportunity to respond to the agent's estimate of services to be provided, including any related fees and disbursements.

## What are my obligations to confirm oral advice in writing to a client? What should I do to comply with the new Clause 2.7 of the Code?

The existing Code as at 1 October 2006 prescribes that an agent must not hold out unsubstantiated or unjustified prospects of success when asked by a client for an opinion about the probability of a successful outcome for their application.

The substituted Clause 2.7 of the new Code retains the existing requirement of Clause 2.7 (specifically at Clause 2.7(c)). The practical effect of the additional clauses of 2.7(a) and 2.7(b) requires advice on prospects to be provided in writing, within a reasonable time, and oral advice to the extent that it is the same as the written advice.

It is also important to note that Clause 2.7 of the Code refers to circumstances where a client asks an agent for their opinion about the probability of a successful outcome for their application. Accordingly, in these circumstances an agent is required to confirm their oral advice to the client in writing.