

Code of Conduct for registered migration agents 2022

Section 55.

A migration agent must make a contemporaneous written record of oral communications between the agent and a client in relation to immigration assistance, including:

- (a) oral instructions the client gives the agent; and
- (b) oral advice the agent gives the client.

Section 56.

(1) A migration agent for a client must ensure that a client file is created and maintained for the client.

(2) The client file must include the following:

- (a) a copy of the client's application or other immigration matter;
- (b) copies of all service agreements between the agent and the client and any variations to the agreements;
- (c) copies of all written communications (including electronic communications) between:
 - (i) the agent and the client; and
 - (ii) the agent and any other person or organisation, to the extent that the communications relate to the client;
- (d) all records made under section 55 in relation to the client;
- (e) 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;
- (f) copies of all invoices and receipts given by the agent relating to the client;
- (g) copies of all personal documents relating to the client given to the agent by, or on behalf of, the client;
- (h) evidence of the safe return of any original documents belonging to the client and given to the agent.

Duty to keep client files for 7 years

(5) A migration agent who has a duty under subsection (1) in relation to 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.

(9) A migration agent must give the Authority access to a client file that is in the possession of the agent, or a member of the agent's business, if the Authority, in writing, requests access to the client file for the purposes of the Authority carrying out its functions under paragraphs 316(1)(a) to (d) of the Act.

MIGRATION ACT 1958

Section 316 Functions of Migration Agents Registration Authority

(1) The functions of the Migration Agents Registration Authority are:

(a) to deal with registration applications in accordance with this Part; and

(b) to monitor the conduct of registered migration agents in their provision of immigration assistance; and

(c) to investigate complaints in relation to the provision of immigration assistance by registered migration agents; and

(d) to take appropriate disciplinary action against registered migration agents or former registered migration agents; and

(f) to inform the appropriate prosecuting authorities about apparent offences against this Part or Part 4; and

(g) to monitor the adequacy of any Code of Conduct; and

(h) such other functions as are conferred on the Authority by this Part.

(1A) In performing its function under paragraph (1)(c), the Authority may start, or complete, an investigation of a complaint about a person at a time when he or she is no longer a registered migration agent.

(1B) However, the Authority can investigate a complaint about a former registered migration agent only if the complaint is received within 12 months after he or she ceased to be a registered migration agent.

Section 305C Requiring registered migration agents to give information or documents

(1) This section applies if the Migration Agents Registration Authority is considering:

(a) refusing a registration application from a registered migration agent; or

(b) making a decision under section 303 to cancel or suspend such an agent's registration or to caution such an agent.

(2) The Authority may, by written notice given to the agent, require him or her to provide the Authority with prescribed information or prescribed documents within the specified period and in the specified manner.

(3) A period specified in a notice under this section must end at least 14 days after the notice was given.

Note: Section 332H sets out when the agent is taken to have been given the notice.

Offence

(4) A person commits an offence if:

(a) the person is subject to a requirement under this section; and

(b) the person contravenes the requirement.

Penalty: 60 penalty units.

(5) An offence against subsection (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the Criminal Code.

Self-incrimination

(6) A person is not excused from giving information or providing a document on the ground that the information or provision of the document may tend to incriminate the person.

(7) However:

(a) any information or document provided in response to a requirement under subsection (2); and

(b) any information or thing (including any document) obtained as a direct or indirect result of information or a document provided in response to a requirement under subsection (2);

is not admissible in evidence against the person in any criminal proceedings (except proceedings for an offence against section 137.1 or 137.2 of the Criminal Code that relates to this Act or the regulations).

Section 306D Power to obtain documents from inactive migration agent

(1) This section applies to a person who is an inactive migration agent if the Migration Agents Registration Authority has reason to believe that:

(a) before becoming an inactive migration agent and while the person was a registered migration agent the person gave, or anticipated giving, immigration assistance to one or more clients; and

(b) the inactive migration agent has in his or her possession or control documents that:

(i) are or were connected with the giving, or anticipated giving, of that immigration assistance to those clients; and

(ii) relate to the affairs of those clients.

(2) The Migration Agents Registration Authority may, by written notice given to the inactive migration agent, require him or her:

(a) to make copies of any such documents and to produce those copies to the Authority within the specified period and in the specified manner; or:

(b) to produce to the Authority, within the specified period and in the specified manner, any such documents that are owned by those clients or that were provided to the agent by, or on behalf of, those clients.

Note: An example of a document provided to a registered migration agent is a client's passport.

(3) A notice under subsection (2) must set out the effect of sections 306G and 306H.

(4) A notice under subsection (2) need not identify any particular client or clients.

(5) A period specified in a notice under subsection (2) must end at least 14 days after the notice was given.

Note: Section 332H sets out when the inactive migration agent is taken to have been given the notice.

Section 308 Requiring registered migration agents to give information

(1) The Migration Agents Registration Authority may require a registered migration agent:

(a) to make a statutory declaration in answer to questions in writing by the Authority; or

(b) to appear before an individual or individuals specified by the Authority and to answer questions; or

(c) to provide the Authority with specified documents or records relevant to the agent's continued registration.

(2) If a registered migration agent appears before one individual to answer questions, that individual must record the questions and answers and give the record to the Authority.

(2A) If a registered migration agent appears before 2 or more individuals to answer questions, one of them must record the questions and answers and give the record to the Authority.

(3) A registered migration agent is not excused from giving information or providing a document on the ground that the information or provision of the document may tend to incriminate the person.

(4) However:

(a) any information or document provided in response to a requirement under subsection (1); and

(b) any information or thing (including any document) obtained as a direct or indirect result of information or a document provided in response to a requirement under subsection (1);

is not admissible in evidence against the registered migration agent in any criminal proceedings (except proceedings for an offence against section 137.1 or 137.2 of the Criminal Code that relates to this Act or the regulations).