



30 May 2005

Senator the Hon. Amanda Vanstone
Minister for Immigration and Multicultural and Indigenous Affairs
Parliament House
Canberra ACT 2600

Dear Minister,

As part of the Deed entered into between the Commonwealth and the Migration Institute of Australia (the Institute) for the administration of the Migration Agents Registration Scheme, and as a function pursuant to s316(1)(g) the Institute is required to report to you on the adequacy of the Code of Conduct.

It has been a year since our last submission on the Code of Conduct and its adequacy and that submission was to The Hon Garry Hardgrave. This year we are recommending that 11 clauses be amended to better reflect the needs of clients of migration agents and the operations of migration agents. These are specifically outlined in the attached document

One of the amendments that we commend you to consider for revision relates to the provisions in section 313 of the Migration Act. The Authority recommends that s313 of the Migration Act 1958 be amended to reflect the general usage of the term "Statement of Services" by the agent community as an estimate of fees (clause 5.2 requirements) rather than a reference to services performed / rendered. It is recommended that the term be removed and the more common terms "invoices or accounts rendered" as referred to in clauses 7.2(a) and 7.4(d) of the Code of Conduct be utilised. This would also require amendments to clauses 5.5(b) and (c) of the Code of Conduct. To further clarify matters the Authority recommends that the Code of Conduct clauses referring to invoices and accounts rendered have a note added referring the reader to s313 requirements (that is clauses 7.2(a) and 7.4(d)).

We attach our other recommended changes.

We will continue to review the adequacy of the Code and look forward to making further recommendations, with a view to ensuring the Code remains relevant to the efficient regulation of the migration advice profession.

I look forward to ongoing dialogue with you as part of that process.

Yours faithfully

Len Holt
Chairman

Suggested Code of Conduct Amendments

The following amendments are recommended to the Minister.

Clause 1.10

Clause 1.10 sets out the aims of the Code of Conduct. It is recommended to the Minister that paragraph (b) of Clause 1.10 be deleted and that paragraph (a) be amended as follows

- (a) to establish a proper standard for the conduct of a registered migration agent;

Deleted: business as

Clause 2.1A

Clause 2.1A be modified so that an agent may accept as a client a person with whom they have had previous dealings in their capacity as a marriage celebrant where the dealings were concluded more than 2 years ago.

Clause 2.8(a)

A minor amendment is suggested to Clause 2.8(a) of the Code:

"2.8(a) within a reasonable time after agreeing to represent a client, confirm to the client the client's instructions in writing; and"

Clause 3.2A

The Authority recommends that clause 3.2A be amended so that the provision of the booklet relates to when the agent has agreed to start work for a client. Specifically that agents are only required to give the *Information on the Regulation of the Migration Advice Profession* to individuals whom they have actually agreed to represent.

Clause 6.2

Clause 6.2 of the Code of Conduct relates to the protection of client documents by an agent. The Authority recommends that a note be added to clause 6.2 of the Code to clarify the term "documents to which the client is entitled":

Definition:

For the purposes of the Code "documents to which the client is entitled" includes all documents given to the agent by the client and all documents for which the client has paid."

Clause 10.1

10.1 A registered migration agent must complete services as instructed by a client unless:

- a) the agent and client agree otherwise in writing; or
- b) the client terminates the agent's instructions in writing; or
- c) the agent terminates the contract in writing and gives reasonable written notice to the client.

Deleted: for just cause

Clause 10.2

The following amends to clause 10.2 are recommended to the Minister:

10.2 A client is entitled to ask a registered migration agent (in writing) to return any document to which the client is entitled. The agent must return the document to the client or the client's nominee within 7 days of the request"

Deleted: orally or

Deleted: after being asked

Clause 10.6

10.6 If the client terminates the instructions and the agent claims a lien on any documents, the agent must take action to quantify the amount claimed and tell the client in a timely manner.

Deleted: , a registered migration agent must take all reasonable steps to deliver all documents quickly to the client or any other person nominated by the client in writing. If

Section 313 of the Migration Act & Clauses 5.5, 7.2 and 7.4

The Authority recommends that s313 of the Migration Act 1958 be amended to remove the term "Statement of Services" and use the more common terms "invoices or accounts rendered" as referred to in clauses 7.2(a) and 7.4(d) of the Code of Conduct.

The Authority recommends that clause 5.5(b) and (c) be amended to reflect the proposed changes in s313.

The Authority recommends that the Code of Conduct clauses referring to invoices and accounts rendered have a note added referring the reader to s313 requirements (see clauses 7.2(a) and 7.4(d) of the Code).

The Authority makes these recommendations in light of the general usage of the term "Statement of Services" by the agent community as an estimate of fees (clause 5.2 requirements) rather than a reference to services performed/rendered.