



# Discussion Paper

for Public Comment

Draft Code of Professional Ethics and Practice  
for the Australian Migration Advice Profession

March 2009



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for the Australian Migration Advice Profession

**MIGRATION AGENTS  
REGISTRATION AUTHORITY**

“Even the most rational approach to ethics is  
defenceless if there isn’t the will to do what is right.”

Alexander Solzhenitsyn

Prepared by Michael Kah and David Prince of Kah Lawyers  
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## Introduction

The current *Code of Conduct* was introduced in 1998, and was a total re-write of the original *Code* which was first introduced in 1992. There have been several amendments to the *Code* since 1998, including but not limited to the recognition of the need for confidentiality, termination procedures, and procedures for dealing with conflicts of interest. In 2004, changes to the *Code* reflected the change from an industry to a profession but no substantive changes were made to the *Code* to reflect the higher standing and the higher expectations that flow from recognition as a profession. The drafting of a new *Code* was commissioned by MARA to take into account the evolution of the migration advice industry into a profession. It introduces a framework of principles grounded in six ethical values common to professions, which are: integrity; objectivity; professional competence and due care; confidentiality; professional behaviour; professionalism and purpose.

### The purpose of the *Code*

- to uphold the reputation and professionalism of the migration advice profession;
- to provide practical guidance to Registered Migration Agents within the profession;
- to provide consumer protection.

### Legislative basis

The legislative basis for the *Code of Conduct* is set out in section 314 of the *Migration Act 1958* (Cth) (“the Act”):

*Section 314. Code of conduct for migration agents*

- (1) *The regulations may prescribe a Code of Conduct for migration agents.*
- (2) *A registered migration agent must conduct himself or herself in accordance with the prescribed Code of Conduct.*

In the context of a legislative regime that requires compulsory compliance with the *Code* by all Registered Migration Agents, the *Code* seeks to establish minimum standards but make clear that the community expects the highest standard of ethical behaviour and practice from a professional.

The substantive changes that the new *Code* introduces are as follows;

1. Introduction of six general principles followed by practice rules which provide more specific practical interpretation of the principles. The principles are not designed to be rules in themselves but to set out the objectives of the rules that follow;
2. Proposed commentary to the rules designed to provide further practical guidance to the rules which are to include case examples and case law (to be added at the completion of the consultation process);
3. Rules that have been added to the *Code* include but are not limited to;
  - rules to allow employed Registered Migration Agents to subrogate their responsibilities to another Registered Migration Agent (employer);
  - rules with respect to appearing before and dealing with a Review Tribunal;
  - introduction of Trust responsibilities in respect to the acceptance and management of “Client monies” and the reporting and compliance responsibilities that flow from being a Trustee;

- a rule requiring a Registered Migration Agent who operates a Clients' account to undertake an annual independent financial audit;
- rules dealing with financial disclosure of referral fees;
- rules in respect of bankruptcy or insolvency/liquidation.

Rules that have been omitted from the proposed new *Code* include omission of the requirement to keep a library, omission of the requirement to display the *Code*, and omission of the requirement to provide a copy of the *Code* to a Client.

## Making a Submission

The purpose of this paper is to promote discussion with all stakeholders and to stimulate further informed input into settling the new *Code of Professional Ethics and Practice for the Australian Migration Advice Profession*. It invites submissions from all key stakeholders from the public, private, community and voluntary sectors, employer and employee associations and Registered Migration Agents. Once submissions are received, any amendments to the draft *Code* will be considered and the draft *Code* submitted to the Minister for Immigration and Citizenship for final approval in mid-2009.

Submissions can be forwarded to [submissions@mara.com.au](mailto:submissions@mara.com.au), by 30 April 2009.

## **CODE OF PROFESSIONAL ETHICS AND PRACTICE FOR THE AUSTRALIAN MIGRATION ADVICE PROFESSION**

The migration advice profession is based on an ideal of honourable service.

The profession acknowledges the privileged role of Registered Migration Agents in serving our community in the administration of the Australian immigration law system. The profession understands that each of its members is personally responsible to the community to observe high standards of conduct and behaviour when accepting a Client and to provide services to their Clients and colleagues for the benefit of the Australian community.

Registered Migration Agents accept that their conduct and behaviour should reflect the character they individually and corporately aspire to have, as a recognised profession in the Australian community, which is as follows:

### **Ethical Framework**

1. **Integrity** - being straightforward and honest in all professional and business dealings.
2. **Objectivity** - not allowing professional judgment to be compromised by bias or conflict of interest.
3. **Professional competence and due care** - maintaining professional knowledge and professional service, and acting diligently in accordance with applicable standards.
4. **Confidentiality** - respecting and preserving the confidentiality of information acquired and not releasing any such information to third parties without proper authority.
5. **Professional behaviour** - complying with relevant laws and regulations.
6. **Professionalism and purpose** - acting in a manner that will serve the interests of Clients and the wider society even at the expense of self-interest; recognising that dedication to these principles is the means by which the profession can earn the trust and confidence of stakeholder groups (individual Clients, the public, business and government).

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### **Definitions**

**Agent:** A person who has been registered by the Migration Agents Registration Authority pursuant to Section 290 of the *Migration Act 1958* (Cth) to provide immigration assistance.

**Agencies:** Includes Regional Certifying Bodies as prescribed under the *Migration Regulations*.

**Agent's Migration Business:** Includes the Agent's migration business, owned (whether wholly or in part), operated or controlled either directly or indirectly by the Agent.

**Application:** Refers to a visa application, sponsorship application or nomination application that is to be, or has been, lodged with the Department of Immigration and Citizenship and includes all supporting documents filed in support of the application.

**Associate:** A reference to an Associate of an Agent is a reference to -

- (a) a partner, employee, or consultant of the Agent in respect of the Agent's Migration Business;
- (b) a corporation or partnership in which the Agent has a significant beneficial interest.

**Australian Lawyer:** A person who holds a current and valid State or Territory practising certificate allowing practice as a solicitor and/or a barrister in that jurisdiction.

**Auditor:** A qualified accountant who has been certified as an auditor by valid membership of one of the professional accounting bodies of Australia.<sup>1</sup>

**Bankrupt:** Means a person on whose estate a sequestration order has been made or who has become a bankrupt by the presentation of a debtor's petition.

**Client:** A person to whom the Agent agrees (whether or not in writing) to provide immigration assistance.<sup>2</sup>

**Contact Details:** Includes the Agent's full physical and electronic business address and business telephone number.

**Code:** *Code of Professional Ethics and Practice for the Australian Migration Advice Profession*.

**Date of Bankruptcy:** Date of appointment of the Trustee in Bankruptcy.

**Dealing:** Refers to any communication or transaction undertaken while in the course of providing immigration assistance.

**Department:** The Commonwealth Department responsible for the administration of the *Migration Act 1958* (Currently Department of Immigration and Citizenship, "DIAC").

**Disbursement:** Any fees or charges paid by the Agent on behalf of the Client in the provision of immigration assistance.

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<sup>1</sup> *Corporations Act 2001* s 88B(2)

<sup>2</sup> *Migration Act 1958* s 276(1)

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**Financial Year:** The Australian financial year, being the period running from 1 July to 30 June, or other period agreed upon in advance with the Australian Taxation Office.

**Migration Act:** *The Migration Act 1958* (Cth).

**Migration Practice:** Any legal entity or business providing immigration assistance.

**Review Tribunal:** Migration Review Tribunal, Refugee Review Tribunal or Administrative Appeals Tribunal.

**The Authority:** The Migration Agents Registration Authority.

**Trustee:** A person who holds Client money on trust for the benefit of the Client.

**Written Records:** Includes written and electronic documents.

## **Relations with Clients – Rules 1–11**

### **Statement of principle for Rules 1-11:**

Agents should serve their Clients competently and diligently, acknowledging the potential vulnerability and dependence of the Client on the Agent's advice and assistance. The Agent should always deal with Clients fairly, and free of the influence of any interest that may conflict with a Client's best interests. Agents should maintain the confidentiality of their Clients' affairs, but give their Clients the benefit of all information relevant to their Clients' affairs of which they have knowledge.

### **1. Acceptance of instructions to act**

- 1.1 An Agent must act honestly, fairly and with competence and diligence in the service of a Client, and should accept instructions only when the Agent can clearly communicate with the Client, reasonably expect to serve the Client in a professional manner, and attend to the immigration assistance work required with reasonable promptness and within all statutory deadlines.
- 1.2 An Agent must not seek to retain instructions for the provision of immigration assistance in a manner likely to oppress or harass a person who by reason of age, language, ethnicity, trauma or other circumstance is, or might reasonably be expected to be, at a significant disadvantage in dealing with the Agent at the time when the instruction is sought or at any time during the provision of immigration assistance.
- 1.3 An Agent should take direct instructions from a Client to ensure effective communication, unless there are exceptional circumstances.

### **2. Responsibility to advise Clients**

- 2.1 An Agent must provide to the Client frank and candid advice on the prospects of success of any proposed Application.
- 2.2 An Agent must make a written record for the Client file of any substantive advice provided to the Client and keep the Client fully informed of the progress and result of any Application.
- 2.3 An Agent must be honest and open in dealing with the Client and must never knowingly assist in or encourage any dishonesty regarding the Client's personal information, any criminal or illegal conduct, or advise the Client how to violate the law or avoid lawful punishment in Australia.
- 2.4 An Agent must advise a Client promptly and fully in respect of a significant or serious error or omission, whether intentional or inadvertent, that has occurred while providing immigration assistance to the Client and that is or may be damaging in any way to the Client.
- 2.5 An Agent's advice should confirm the independence of the Agent and the profession from the Department and the Authority and must not suggest any significant relationship that may be relied upon to affect the outcome of any Application or the processing times of any Application.
- 2.6 An Agent must not lodge (in the absence of specific instructions in writing) a vexatious or grossly unfounded Application with no prospects of success under the *Migration Act*.



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### **3. Responsibility to be fair with costs**

- 3.1 Subject to Rule 11.1, an Agent may only charge a fee for the immigration assistance provided to the Client that is fair and reasonable in the circumstances of the case.
- 3.2 Subject to Rule 11.1, before providing immigration assistance or within a reasonable period of receiving instructions, an Agent must provide to the Client a Client services agreement in writing which:
- 3.2.1 confirms the instructions and services to be provided by the Agent; and
  - 3.2.2 discloses the amount of total costs to be charged (if known) or an estimate of costs if total costs cannot reasonably be calculated at the commencement of providing immigration assistance; and
  - 3.2.3 discloses the basis of calculating the costs; and
  - 3.2.4 discloses all anticipated Disbursements, Department fees and charges; and
  - 3.2.5 discloses the billing arrangement; and
  - 3.2.6 discloses the name(s) of the Agent(s) individually or collectively responsible for providing the immigration assistance.
- 3.3 Subject to Rule 11.1, an Agent may accept monies on behalf of a Client in advance of the provision of services or payment of monies on behalf of a Client. Such monies are to be held by the Agent as Trustee for the Client and the Agent is and remains the Trustee of the monies until such time that the Agent is entitled to the monies or directed to pay monies pursuant to the Agent's agreement with the Client or by operation of law. In either case full financial records must be kept.<sup>3</sup>

### **4. Responsibility to provide Contact Details**

- 4.1 An Agent should keep a Client informed of the Agent's current Contact Details to allow a Client to contact the Agent during normal business hours for the duration of the provision of immigration assistance to the Client.
- 4.2 If an Agent changes business address, telephone number or any other details that are recorded on the Authority's Register of Migration Agents, the Agent must give notice to all current Clients of the Agent in advance, or not later than 7 days after the change or changes if advance notice would be unreasonable in the circumstances.

### **5. Responsibility to provide clear communication (interpreters)**

- 5.1 An Agent must ensure that communication between the Agent and the Client is clear and accurate and to that end should ensure that a Client has access to a qualified interpreter (if necessary at the Client's cost) in respect of the provision of immigration assistance and explanations of any document(s) requiring the Client's understanding and signature.
- 5.2 Any document prepared with the assistance of an interpreter must include an interpreter's annotations at the end of the document confirming that the document has

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<sup>3</sup> Refer Rule 17 under Relations with the Authority

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been interpreted for the benefit of the Client and disclosing the identity of the interpreter.

5.3 An Agent must, when providing translating services as part of an Application, include on a prominent part of the translated documents the following information:

5.3.1 the name of the Agent;

5.3.2 followed by the words Migration Agents Registration Number;

5.3.3 followed by the Agent's registration number.

### **6. Responsibility to maintain Client confidentiality and privacy**

6.1 An Agent must not during or after the provision of immigration assistance, disclose to any person (excluding Associates who are engaged in the Agent's Migration Business or have a significant beneficial interest) any information, which is confidential to a Client of the Agent and acquired by the Agent, unless:

6.1.1 the Client authorises the disclosure; or

6.1.2 the Agent is permitted or compelled by law to disclose the confidential information.

### **7. Responsibility to ensure document security**

7.1 Subject to Rule 11.1, an Agent must retain, securely and confidentially, documents to which a Client is entitled for the duration of the provision of immigration assistance and for at least five years after the date of the last action on the file; or

7.1.1 until such time as the Agent gives them to the Client or another person authorised by the Client to receive them; or

7.1.2 until the Client asks for the return of the documents or the Client instructs the Agent to deal with them in some other manner.

### **8. Responsibility to keep file records**

8.1 Subject to Rule 11.1, an Agent must maintain a comprehensive record of Dealings with a Client including but not limited to a copy of the Client services agreement, copies of all written advices, copies of file notes, faxes and emails recording all communications between the Agent and the Client and third parties connected with any Application, copies of all Application forms and supporting documentation submitted or prepared for submission, and copies of Client documents for a period of five years after the date of the last action on the file (in the absence of specific instructions in writing).

### **9. Responsibility to avoid actual or perceived conflicts**

9.1 Subject to Rule 9.2, an Agent should not accept a Client if, in providing immigration assistance to the prospective Client, the Agent may be obliged to act in a manner contrary to the interests of any existing Client of the Agent.

9.2 An Agent who accepts instructions from both a sponsor and a visa Applicant ("the parties") must be satisfied before accepting the instruction to act, that the parties are

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aware that the Agent is to act for the parties and consents to the Agent doing so in the knowledge that the Agent:

- (a) may thereby be prevented from:
  - (i) disclosing to either the sponsor or the visa Applicant all information, relevant to the Application, within the Agent's knowledge, or
  - (ii) giving advice to either the sponsor or the visa Applicant which is contrary to the interests of the other; and
- (b) may be required to cease to act for either or both of the parties in that matter if the Agent would be obliged to act in a manner contrary to the interests of one or more of them.

9.2.1 If an Agent acting for both the sponsor and the visa Applicant to any migration Application determines that the Agent cannot continue to act for the parties without acting in a manner contrary to the interests of one or more of them, the Agent must cease to act for the parties immediately in respect to the matter.

9.3 An Agent must not in any Dealings with a Client:

- 9.3.1 allow the interests of the Agent, Associates or the Agent's business or corporation<sup>4</sup>, to conflict with those of the Client;
- 9.3.2 exercise any undue influence on the Client intended to benefit the Agent;
- 9.3.3 act or continue to act if the Agent is aware that a Client's interest in a Dealing is or would be in conflict with the Agent's own interests, the interests of Associates or the Agent's business.

9.4 An Agent cannot accept a person as a Client if:

- 9.4.1 the Agent has had previous Dealings with the person or intends to assist the person in the Agent's capacity as a marriage celebrant; or
- 9.4.2 the Agent is, or intends to be, involved with a business activity that is relevant to the assessment of a person's visa Application.

### **10. Termination of instructions to act**

10.1 Subject to Rule 11.1, an Agent must complete the agreed immigration assistance unless the Agent and the Client have otherwise agreed; or

- 10.1.1 The Agent's services are terminated by the Client; or
- 10.1.2 There is or arises a conflict of interest; or
- 10.1.3 The Agent terminates the immigration assistance for just cause, and on reasonable written notice to the Client. The written notice must state that the Agent will cease to act for the Client, the date from which the Agent will cease to act; comprehensive details of any critical dates and outstanding issues that need to be addressed urgently; and the terms of any arrangements made in respect of appointing another Agent.

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<sup>4</sup> The interests of the Agent's business or corporation or any related body corporate are taken to be those of the Agent.

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- 10.2 Upon termination, subject to Rule 11.1, the Agent must: update the Client's file to reflect the current status of each matter or Application undertaken by the Agent; notify DIAC and any other relevant Tribunal or government or government agency with a record of the Agent's authority to act that the Agent is ceasing to act; and deliver all documents to which the Client is entitled to the Client or as the Client directs.
- 10.3 Subject to Rule 11.1, when requested to do so by the Client, upon completion of the immigration assistance, the Agent must promptly give to the Client or another person authorised by the Client, all documents to which the Client is entitled. The documents to which a Client is entitled will include:
- 10.3.1 documents that are provided by, or on behalf of, the Client including photographs, qualifications and birth certificates;
  - 10.3.2 documents paid for by or on behalf of the Client including documents received by the Agent from a third party in the course of providing immigration assistance for or on behalf of the Client including medical reports, skills assessments and criminal penal clearances;
  - 10.3.3 documents including an Application, submissions, declarations, affidavits and statutory declarations prepared by the Agent and paid for by the Client; and
  - 10.3.4 the Client's travel documents.
- 10.4 Subject to Rule 11.1, an Agent must not withhold a document belonging to a Client as part of claim that the Agent has an alleged lien over it, unless the Agent is an Australian Lawyer.<sup>5</sup>

### **11. Subrogation of duties of Agents who are employees**

- 11.1 An Agent who provides immigration assistance on behalf of a Migration Practice in the capacity of officer or employee (whether voluntary or paid), is not excused from compliance with the Code unless the Agent can demonstrate that an approved person has accepted full responsibility for compliance with the Code in respect of the immigration assistance provided by the Agent and the Agent has made the Client aware of the identity and Contact Details of the approved person. An approved person is:
- (a) a registered Agent who is an officer of a business/corporation/unincorporated association who has effective control over the financial and administrative affairs of a legal body; or
  - (b) a registered Agent.

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<sup>5</sup> An Agent who holds a current legal practising certificate issued by an Australian body authorised by law to issue it is able to claim a lien on any Client documents.

## **Relations with Australian Federal, State and Territory governments and agencies – Rule 12**

### **Statement of Principle for Rule 12**

Agents should act with honesty and respect in all their Dealings with all levels of the Australian and State governments and their agencies.

### **12. Respectful Dealings with the government**

- 12.1 An Agent must act with competency, honesty, and courtesy and represent the Client's best interests within the limits of the law.
- 12.2 An Agent must not lodge an Application under the *Migration Act* or *Migration Regulations* which contains statements or information that the Agent knows or reasonably suspects are misleading or inaccurate or which reasonably convey a misleading or inaccurate meaning (whether by commission or omission).
- 12.3 An Agent must keep the Australian and State governments and all agencies with which an Agent interacts for a Client informed of the Agent's current Contact Details.

## **Relations with Review Tribunals – Rule 13**

### **Statement of principle for Rule 13**

Agents should act with honesty and respect in all Dealings with Review Tribunals.

### **13. Respectful Dealings with the tribunal**

- 13.1 When representing a Client before a Review Tribunal (whether those Dealings involve obtaining or presenting evidence, preparing and filing documents, or acting or appearing as advocate), Agents should act with competence, honesty and candour and resolutely represent the Client's interests within the limits of the law, while treating tribunal Members and tribunal staff with courtesy and respect.
- 13.2 An Agent must ensure that the immigration assistance that the Agent is to provide is carried out in a timely manner, in sufficient time to ensure compliance with all tribunal orders, directions and rules and in accordance with the practice notes of the tribunal.
- 13.3 Subject to specific instructions by the Client, an Agent should seek to ensure that work that an Agent is retained to do in relation to an appeal is done so as to:
- 13.3.1 confine the case to identified issues which are in dispute;
  - 13.3.2 have the case ready to be heard as soon as practicable; and
  - 13.3.3 present the identified issues in dispute in clear written submissions or as the tribunal directs.
- 13.4 In the event that a tribunal sets down a matter for an oral hearing, an Agent must notify the tribunal whether or not the Agent will appear at any oral hearing.
- 13.5 An Agent must keep the Review Tribunal in which an Agent acts for a Client informed of the Agent's Contact Details.

## **Relations with other practitioners – Rule 14**

### **Statement of principle for Rule 14**

In all Dealings within the profession, Agents should act with respect, honesty and courtesy towards one another in order to provide the immigration assistance which they undertake for their Clients in a manner that is consistent with the Clients' or former Clients' best interest and does not undermine public confidence in the professionalism and integrity of the profession.

### **14. Courteous and respectful communication**

14.1 In all of the Agent's Dealings with other Agents, an Agent must take all reasonable care to maintain the integrity and reputation of the migration advice profession by ensuring that the Agent's communications with colleagues are courteous and respectful and that the Agent avoids offensive or provocative language or conduct.

### **14.2 Taking over matters**

14.2.1 An Agent must not take over the provision of immigration assistance from another Agent until the Client provides to the Agent a copy of a written notice to the former Agent that the former Agent's services are no longer required.

14.2.2 Where an Agent's services are terminated before the completion of the Client's business, the first Agent must promptly deliver to the second Agent appointed under written direction from the Client, all documents to which the Client is entitled and any information which is necessary for the Client's Application or review.

## **Relations with the community – Rule 15**

### **Statement of principle for Rule 15**

Agents should conduct their business and Dealings with other members of the community, and the affairs of their Clients that affect the rights of others, with honesty and fairness in a manner that will instil confidence and respect for the profession within the community, and by means that are compatible with the integrity of the profession.

### **15. No misleading advertising**

- 15.1 An Agent should make immigration assistance services available to the public in a clear and honest manner that will instil confidence and respect for the profession within the community, and by means that are compatible with the integrity of the profession.
- 15.2 An Agent must not hold himself or herself out as an Australian Lawyer or allow a Client to believe that he or she is an Australian Lawyer, unless he or she is an Australian Lawyer.
- 15.3 An Agent must not refer to himself or herself as a “lawyer”, “solicitor” or “barrister” unless he or she is an Australian Lawyer.



## **Relations with the Migration Agents Registration Authority - Rules 16-20**

### **Statement of principle for Rules 16-20**

Agents should act with honesty and respect in all their Dealings with the Authority, recognising the regulatory, educational and consumer protection role of the Authority, and respond within a reasonable time in a professional manner to any recommendation, request or direction by the Authority.

### **16. Professional manner**

16.1 An Agent must respond in a professional manner to any lawful direction, inquiry or request by the Authority within the time frame prescribed by the Authority, including but not limited to mediation.

### **17. File and financial record keeping**

17.1 Subject to Rule 11.1, an Agent must maintain proper file and financial records (either written or electronic) that can be made available for inspection on request by the Authority for a minimum period of five years from the date of performance of the last action on the file, including but not limited to:

17.1.1 a copy of each Client's Application along with the Client service agreement; and

17.1.2 copies of each written communication between:

- a. the Client and the Agent;
- b. the Agent and any government authority;
- c. the Agent and the Department regarding the Client; and

17.1.3 file notes of every substantive or material oral communication between:

- a. the Client and the Agent;
- b. the Agent and any government authority;
- c. the Agent and the Department regarding the Client; and

17.1.4 the Agent's operating account including:

- a. each Client tax invoice;
- b. internal and external financial records that record the date and amount of each payment made by a Client or on behalf of a Client including details of the purpose of the payment and the Client on whose behalf the payment is made;
- c. receipts for any payments made by a Client or on behalf of a Client; and

17.1.5 the Agent's Clients' account including:

- a. internal and external financial records that record the date and amount of each deposit made to a Clients' account including details of the purpose

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of the deposit, how the funds were deposited, the receipt number and the Client on whose behalf the deposit was made;

- b. internal and external financial records that record the date and amount of each payment and how the payment was made in relation to each Client and a brief explanatory narration to whom the payment was made and an audit identifier such as cheque number or tax invoice number;
- c. receipts for any payments made by a Client or on behalf of a Client; and
- d. copies of tax invoices or accounts for each Client.

17.2 Subject to Rule 11.1, an Agent must keep separate accounts with a financial institution for:

17.2.1 the Clients' trust money (the Clients' account); and

17.2.2 the Agent's money (the operating account).

17.3 The words "Clients' account" must appear in the title to the account in 17.2.1.

17.4 Subject to Rule 11.1, if an Agent operates a Clients' account, the Agent must:

17.2.1 as soon as practicable after receipt of trust monies, deposit the monies into the Clients' account;

17.2.2 keep detailed accounts including the issue of receipts for all monies that the Agent holds in the Clients' account and of Disbursements paid or other Dealings with the money in the Clients' account; and

17.2.3 comply with any directions by the Authority or Auditor as to the day-to-day management of the Clients' account.

17.5 Subject to Rule 11.1, if an Agent is operating as an Agent in a country other than Australia that does not allow, under its law, the use of a Clients' account as described in 17.3:

17.5.1 the Agent is not required to keep a separate account of that name; but

17.5.2 the Agent must:

a. keep an account for money paid by Clients to the Agent for fees and Disbursements in a way that is as similar as practicable to the requirements under this Code; and

b. comply with this Code as far as practicable in relation to keeping records of the account and making the records available for inspection by the Authority.

17.6 Subject to Rule 11.1, if an Agent provides a service to a Client on the basis of a conditional refund policy, a no win, no fee policy or an undertaking to similar effect:

17.6.1 the Agent must have sufficient funds available to cover any amount that the Agent may become liable to pay to the Client under the policy or undertaking; and

17.6.2 the Agent must meet that obligation by:

a. keeping funds in the Clients' account; or

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- b. keeping a security bond; or
- c. maintaining adequate insurance.

17.7 Nothing in Rules 17.1 to 17.6 affects the duty of an Agent, who is also an Australian Lawyer and who acts in that capacity, to deal with Client funds in accordance with the relevant law relating to Australian Lawyers.

17.8 Subject to Rule 11.1, an Agent, upon direction by the Authority, must make available the operating and Clients' account records for inspection by the Authority.

17.9 Subject to Rule 11.1, an Agent who operates a Clients' account must at least once in each Financial Year that a Clients' account has been opened or operated, have its Clients' account externally examined by an Auditor accredited by the Authority and provide the Auditor's signed audit report to the Authority as the Authority directs.

### **18. Registration details**

18.1 An Agent must notify the Authority within 14 days of any changes to the registration details of an Agent as recorded on the Authority's Register of Agents.

### **19. Bankruptcy**

19.1 An Agent must notify the Authority as soon as is reasonably practicable and no later than 7 days from the date of bankruptcy if an Agent becomes Bankrupt.

### **20. Insolvency of Agent's Migration Business**

20.1. Subject to Rule 11.1, an Agent must notify the Authority as soon as is reasonably practicable and no later than 7 days from the date of appointment of a liquidator or administrator if the Agent's Migration Business becomes insolvent or enters into any scheme of arrangement or administration.

## **Practice management/standards of professional practice – Rules 21–25**

### **Statement of Principle for Rules 21-25**

An Agent should endeavour to manage and exercise effective control of his or her practice to best serve the interests of the Client.

### **21. Management and control**

- 21.1 An Agent has a duty to exercise effective control of his or her office for the purpose of giving immigration assistance.
- 21.2 Subject to Rule 11.1, an Agent must properly supervise work carried out by staff and Associates.
- 21.3 All immigration assistance must be given by a Registered Migration Agent unless the assistance is permitted under section 280 of the *Migration Act*.
- 21.4 An Agent should ensure that his or her employees who are either directly or indirectly providing immigration assistance are of good character and act consistently with the Code in the course of their employment.
- 21.5 An Agent should make all employees of the Migration Practice including those not involved with the direct giving of immigration assistance familiar with Code.

### **22. Sharing of premises**

- 22.1 If an Agent conducts the Migration Practice in circumstances in which the Agent shares premises, services or other facilities with another Agent(s) or other service providers not otherwise associated with the Agent's Migration Business, the Agent must maintain Client files, records and company stationery securely and separately from those of any other occupant of the shared premises and ensure the Agent's Associates can be properly identified from those of any other of the occupants of the premises.

### **23. Conducting a branch office**

- 23.1 An Agent must exercise effective control of each office maintained by the Agent for the purpose of conducting the Agent's Migration Business and, in particular, the Agent must ensure that at each office:
  - 23.1.1 the Agent personally undertakes or effectively supervises the work done and services provided to the Client;
  - 23.1.2 all work undertaken and all communication received are given prompt attention;
  - 23.1.3 any Associate who carries out the Agent's work is registered in accordance with the *Migration Act* and is suitably experienced to undertake the work and tasks assigned to them; and
  - 23.1.4 the qualifications and status of any Associates engaged in the Agent's Migration Business are represented accurately to any persons who have Dealings with the Agent's Migration Business.

## ***Draft Code of Professional Ethics and Practice***

### **24. Referral fees**

- 24.1 An Agent should not accept a retainer or instructions to provide immigration assistance to a person who has been introduced or referred by a third party who receives a fee or benefit for referrals, unless the Agent has first disclosed in writing to the person referred, the Agent's business and financial arrangement with the third party.
- 24.2 An Agent should not act for a Client in any Dealing with a third party from whom the Agent may receive, directly or indirectly, any fee, benefit or reward in respect of that Dealing unless:
- 24.2.1 the Agent advises the Client free of any constraint or influence which might be imposed on the Agent by a third party;
  - 24.2.2 the Agent's advice is fair and free of any bias caused by the Agent's relationship with the third party; and
  - 24.2.3 the nature and value of any fee, benefit or reward which may be received by the Agent are fair and reasonable having regard to objective commercial standards and are disclosed in writing to the Client before the Dealing is commenced.

### **25. Advertising and stationery**

- 25.1 An Agent should place in legible form on any letterhead and business card of the Agent's business:
- (a) the name and Migration Agent Registration Number under which the Agent practises;
  - (b) the street address of the principal place of business and postal address; and
  - (c) the Agent's telephone number and facsimile transmission number.
- 25.2 An Agent's marketing material must include the name, business address and the words "Migration Agents Registration Number" or "MARN" followed by the registration number.
- 25.3 An Agent should not conduct the Agent's Migration Business solely or in association with another service provider under a business name which might reasonably be expected to mislead or deceive a person seeking the provision of immigration assistance as to the nature and identity of the provider or as to the nature and quality of the services offered or as to any implied relationship with the Australian government or the Authority.
- 25.4 An Agent should not, in connection with the Agent's Migration Business, display on the premises at which the business is conducted, or on any stationery or other material distributed by the Agent to Clients or potential Clients including the Agent's website, a business name, title or description of the Agent's business which:
- 25.4.1 suggests that the Agent is an Australian Lawyer (unless the Agent is also an Australian Lawyer); or
  - 25.4.2 includes words which might reasonably imply that the Agent's Migration Business is a government or semi government body.