



## Exercising a lien over client documents

This practice guide discusses liens, and whether a registered migration agent or a solicitor is entitled to exercise a lien over his or her clients' documents.

Prior to 1 October 2006, there was a general prohibition on the exercise of liens by both registered migration agents and legal practitioners. This changed on 1 October 2006 and remains applicable to the current Code of Conduct for registered migration agents (the Code) at 18 April 2017.

The Code provides that a registered migration agent can exercise a lien **if the agent holds a current legal practising certificate**. This is so even if they were not acting in their capacity as a solicitor in providing immigration assistance.

*Note 1: Only registered migration agents who hold a current legal practising certificate issued by an Australian body authorised by law to issue it are able to claim a lien on any client documents.*

Therefore, the previous principle from the decision of *Narayanan v Migration Agents Registration Authority* [2006] AATA 353 (30 March 2006), which stated that a person engaged and acting as a registered migration agent could not exercise a lien, does not universally apply.

### In summary:

- If a registered migration agent does not hold a current legal practising certificate, then the agent is not entitled to exercise a lien, as the Code specifically ousts any right to do so.

A lien may be exercised where it is appropriate to do so, only if the registered migration agent holds a current legal practising certificate.