



## Fees and charges

The Code of Conduct for registered migration agents (the Code) requires a registered migration agent (RMA) to set and charge a fee that is reasonable in the circumstances of a case. There is no statutory scale of fees. The fees that agents charge vary and these variations can be reasonable.

There are a number of factors that influence the fees charged by RMAs. Some of these factors are:

- a. the level of experience of an RMA
- b. the complexities of a particular case
- c. the costs associated with running a larger business or practice.

In setting and charging a fee, an RMA must properly account for and manage money received by their clients from the date of the initial agreement to the date of completion of the agreed services.

### How fees are charged

There are a number of ways that RMAs charge fees.

#### 1) Charging after work is performed

Under this model, an RMA does not charge a client upfront and instead, provides their professional services prior to payment. They may also use their own business operating account to pay for disbursements associated with the visa application on behalf of their client.

#### 2) Charging in advance

Under this model, an RMA charges clients all or part of the total fees in advance, with any balance payable at a later date, usually when the application is lodged. The advance payment must be deposited into the clients' account. Where an agent or a client terminates the agreement, any monies that have been paid in advance must be refunded to the client.

Where an advance payment is made, an RMA must deposit the money into the clients' account, and can withdraw money from the clients' account for:

- a. **Disbursements**  
The RMA may use the advance payment to process disbursements. Appropriate records must be kept and provided to the client before money is transferred from the clients' account.
- b. **An agreed block of work**  
The Agreement for Services and Fees must set out the agreed blocks of work for which payment must be made. When an agreed block of work has been completed, the RMA must issue an invoice for those services. Following this the RMA may transfer the invoiced amount from the clients' account into the RMA's operating account.

#### 3) "No win no fee"

Some agents offer a "no win no fee" basis for their fees. Under this model, the RMA charges clients up-front, and they are required to keep sufficient funds available in the event that the RMA is required to refund client monies. This may occur if the visa application is not successful.

Irrespective of the business model, an RMA must comply with the requirements of the Code, in setting and charging a fee that is reasonable in the circumstances and to maintain separate accounts with a financial institution for managing client funds.

## **How do I comply with the provisions of the Code?**

### **Initial consultation – providing a fee estimate**

At the initial consultation, an RMA must provide a written estimate to their client before commencing work and before a contract or written agreement is signed. That estimate must include:

- the fee or hourly rate for each service to be performed
- each disbursement that the RMA is likely to incur including visa application charges
- the time likely to be taken in performing the services.

A client must be given the opportunity to consider the estimate and make an informed decision about whether or not they wish the RMA to represent them or provide professional services.

### **Client instructions to proceed**

If a client is satisfied with the estimate and wants the RMA to represent him or her, the client will instruct the RMA to perform the services.

Once the RMA receives the client's instructions to proceed with the services, the RMA is to, if possible, obtain written acceptance by the client of the estimate of fees and likely time to be taken to perform the services.

### **Agreement for Services and Fees**

Once the client agrees to engage the RMA, the RMA is to give the client written confirmation, that is, an Agreement for Services and Fees, for:

- the services to be performed
- the fees for the services
- the disbursements that the RMA is likely to incur in providing the services.

It is common practice for agents to include in the Agreement for Services and Fees, all disbursements, even if this is provided on an estimate basis only.

As a matter of best practice the RMA should ensure the client has signed and dated the Agreement for Services and Fees document.

There are circumstances where more than one RMA may work on a client's case, particularly RMAs employed in the same business. In such cases the Agreement for Services and Fees should clearly set out the details of the RMA who has the carriage and responsibility for the case.

### **Material change to the estimated cost**

During the course of the engagement, it is possible that the cost of performing the services, or other costs will change. In these circumstances, the RMA must give the client written notice of any material change to the estimated cost of providing a service, and the total likely cost because of the change. This may include:

- changes in the visa application charge
- changes in the cost of a skills assessment
- any additional professional fees that might be incurred.

An RMA must not incur any additional costs until the client has agreed to the increased cost.

As a matter of best practice, variations to the services to be provided or the fees charged should be recorded in the Agreement for Services and Fees, and accepted by the client (by similarly dating and signing the revised agreement) before any additional services are commenced and fees are incurred. This practice will assist to minimise disputes with clients in relation to fees.

### **Method of payment of fees**

An RMA must disclose to a client in writing the method of payment of fees and charges including, departmental fees and charges. This information should be included in the Fee Estimate and the Agreement for Services and Fees. An RMA may also wish to separately disclose this information to their client in writing.

To avoid any confusion or misunderstanding with a client regarding departmental fees and charges, an RMA should ensure that:

- the fee estimate is in accord with the Agreement for Services and Fees
- the Agreement for Services and Fees clearly sets out the charges for professional fees, the disbursements and departmental charges, and the method of payment for each of the fees to be charged.

Where a client will directly pay a visa application charge or other fee to the Department of Home Affairs, the RMA is not obliged to give the client written advice of the method of payment.

However, as a matter of best practice, a statement that the client is paying the charge or fee directly should be recorded in the Agreement for Services and Fees, stating the date that the payment is due to be made by the client.

It is also good practice to provide a clear explanation to the client of how and where the charge or fee should be paid and the due date.

### **Entitlement to be paid**

An RMA is not entitled to be paid a fee for giving immigration assistance unless the RMA gives the client a Statement of Services. The Statement of Services must be consistent with the Agreement for Services and Fees.

A Statement of Services is an itemised invoice or account.

If the Agreement for Services and Fees provides for payment for blocks of work; then an invoice is required to be issued on completion of each block of work.

The most practical effect of this requirement is that an RMA should provide a final account to the client, setting out:

- all the services performed
- the fees for the services
- the disbursements paid.

An RMA cannot transfer funds from the clients' account to the operating account until a Statement of Services has been issued.

If a Statement of Services is not issued to the client within 28 days of the migration/visa application decision, then the fees paid by the client are recoverable as a debt through the relevant fair trading agency or tribunal.

Where a client has paid an RMA for their services upfront, and decides to terminate the agreement:

- the client in most instances will be entitled to a refund
- an RMA is entitled to retain fees for services completed up to the date of termination and must produce a final account to the client, detailing all of the work performed

- the RMA must refund any remaining monies which are held in the clients' account.

Please refer to Termination of Services in the Code.

## What happens if there has been a breach of the Code?

If the OMARA is satisfied (following the investigation of a complaint or the conduct of an audit of an RMA's clients' account) that there has been a breach of the Code, the OMARA may take the following action:

- a. advise the RMA of their obligations under the Code, and request the RMA to properly account for and manage client monies at all times:
  - if this is the first time a breach has occurred
  - the RMA has provided a reasonable explanation for the breach
  - the RMA has taken steps to rectify their practice to ensure the breach will not occur again.
- b. recommend that the RMA complete relevant Continuing Professional Development (CPD) activities on financial accounts management:
  - if the breach has occurred on more than one occasion (i.e. the RMA has previously been reminded of their obligations under the Code)
  - the OMARA is satisfied that the RMA is committed to improving their skills and knowledge
- c. decide to take disciplinary action against the RMA in accordance with Section 303 of the *Migration Act 1958* if the breach:
  - has occurred on more than one occasion
  - is reflective of a pattern of conduct
  - has resulted in financial loss to the client (for example: if the RMA has inappropriately used monies paid by a client for a visa application charge or payment of a bond).

The OMARA may also impose specific conditions to a disciplinary decision, requiring the RMA to complete relevant CPD activities or private tuition on financial accounts management, to improve their practices.

Where the OMARA has made a finding that an RMA has breached the Code and is not entitled to be paid a fee or other reward for giving immigration assistance, the client may seek financial redress through the relevant consumer fair trading agency or tribunal.

In circumstances where an RMA agrees to voluntarily provide a refund to a client, and there are conduct issues under investigation, the OMARA may take into account the payment of a refund as a mitigating factor, in reaching a final decision.