



Is your client agreement clear?

Are the clauses in your client agreement clear enough?

Registered Migration Agents (RMAs) will no doubt be aware of their obligation under the Code of Conduct for registered migration agents to enter into an Agreement for Services and Fees with their clients once they have confirmed their instructions in writing. This agreement will underpin their relationship with a client and serves to protect both parties. The agreement sets out the services to be performed along with the associated fees and disbursements to be paid. The importance of getting the terms of this agreement right cannot be overstated. It can avoid time consuming disputes with clients and complaints to the Office of the Migration Agents Registration Authority (OMARA).

The Professional Standards and Integrity section routinely deals with complaints that arise because of a lack of clarity in the agreement between an RMA and his or her client. Two of the most common areas are discussed below. RMAs are encouraged to take the time to review their precedent agreement to see if it could be improved in these areas.

Services and associated fees

Often the services to be provided and the associated fees are not set out in sufficient detail which can give rise to disputes, particularly where the agreement is terminated before services have been completed (see below). Simply specifying the services in a general way e.g. 'preparation and lodgement of a visa application' is not sufficiently detailed, particularly where the services often include assistance with lodging an application for a skills assessment and an application for a specific subclass of visa.

The agreement should also be clear as to when payments are to be made by the client – are the fees required up front, in instalments, or on the lodgement or grant of the visa? Be clear and be specific. Requiring payment, for example, on 'completion of the visa' is ambiguous. It could mean when the visa application is ready to be lodged or when the visa is granted.

Another area where lack of clarity around the services to be provided has led to disputes is where the client is applying for a sponsored visa and expects the RMA to deal with the sponsor but the services relating to this are not set out in the agreement. If the RMA is in effect acting for both the visa applicant and the sponsor and is expected to lodge the sponsorship application or nomination, then the agent should have a separate agreement with each of them.

Termination and effect of termination

If a client wants to cease using an RMA or the RMA wants to cease acting for a client prior to completion of the services, disputes can arise where the client agreement is silent as to termination. The OMARA recommends that RMAs consider including a termination clause that sets out the circumstances in which the agreement can be terminated and by whom. The Code requires that in the event of termination, the agent must ensure that within seven days of receiving written notice of the termination that 'all financial matters have been dealt with as specified in the contract'. An 'effect of termination' clause should therefore be included which sets out what proportion of the fees the agent is entitled to keep in the event of termination.

In drafting an effect of termination clause, RMAs should bear in mind that it is generally only reasonable for an RMA to retain fees for services that were actually completed at the date the agreement was terminated. Note that to be entitled to payment, the RMA must still issue a statement of services detailing all of the work performed and the associated charges up to the date of termination.

Dispute resolution clauses

The OMARA encourages RMAs to consider including a dispute resolution clause in their agreements. These may be invoked to resolve a dispute with a client before it gets to complaint stage.

More information on Agreements for Services and Fees can be found in the Client Monies Toolkit (Chapter 4 in particular) and Practice Guide on Fees and Charges and Practice Guide on Financial Duties.
[Client monies toolkit](#)