



Obligations regarding private information

This practice guide discusses the obligation of registered migration agents to ensure they do not submit false and/or misleading information in support of an application under the *Migration Act 1958* (the Act) and the *Migration Regulations 1994* (the Regulations).

The Code of Conduct for registered migration agents (the Code) places an obligation on agents to ensure they do not provide false and/or misleading information (either by way of documents or statements) to the Department of Home Affairs (the Department) or to review authorities in support of applications made under the Act or the Regulations.

The Code provides:

A registered migration agent must not make statements in support of an application under the Migration Act or Migration Regulations, or encourage the making of statements, which he or she knows or believes to be misleading or inaccurate.

What obligations does this clause place on a registered migration agent?

Registered Migration Agents (RMAs) cannot be discharged of their responsibility to ensure that false and/or misleading information is not submitted in support of an application under the Act or the Regulations, even if the information was supplied by the client. Prior to 1 January 2012, the Code included the wording “cannot be responsible for misinformation provided by a client”. The practical effect of this was that a registered migration agent could discharge their responsibility on the basis that the client had provided the information. **This is no longer the current position.**

When a registered migration agent has concerns with the genuineness of the information provided by a client, or is not satisfied of the veracity of the documents or information provided by their client, they have a professional responsibility to conduct further reasonable checks before submitting the information in support of the application under the Act and/or the Regulations.

If a client insists that the information is genuine, registered migration agents have a right, and a professional obligation, to test their client’s claims. If the agent is not satisfied with the veracity of the client’s claims, an agent should terminate their agreement with the client as it is no longer appropriate to continue to represent the client in the circumstances. It is likely that if the agent continues to act in the matter, and submits the information in support of the client’s application, the agent is acting in breach of the Code. A conflict of interest may arise if the agent continues to act for their client on the one hand but in doing so is breaching their ethical obligations under various clauses of the Code. These include to:

- act in accordance with the law
- act in the legitimate interests of their client
- maintain their overriding duty to act at all times in the lawful interests of their client

- maintain the integrity of the migration advice profession
- be persons of integrity and therefore deal with the Department with honesty (reflected also in section 303(1)(f) of the Act).

What should an agent do if the client has already provided the information in support of the application under the Act and the Department has sent them a natural justice letter in relation to Public Interest Criterion (PIC) 4020?

An agent may be approached by a client who has already provided documents and/or information in support of their visa application, and who has received from the Department a notice indicating that they may not satisfy **Public Interest Criterion 4020 in Schedule 4 of the Regulations**.

RMA's who are engaged by clients in this circumstance need to ask themselves the following questions:

1. Have clear instructions been obtained from the client regarding the genuineness of the documents or information in question?
2. Is the agent satisfied, on the basis of their reasonable enquiries, that the document or information is genuine?

If the agent is not satisfied and the client insists that the documents or information are genuine, the agent should cease to represent that client and advise the client of the risks associated with having provided this information to the Department.

3. If the agent follows client instructions and advises the Department that the information is genuine, will the agent be in breach of the Code and of their professional and ethical obligations?
4. Has the agent been frank and candid about the prospects of success to the client in compliance with the Code, if they pursue this application on the basis of the information they have provided to the Department?
5. Should the client be advised to seek legal assistance in the matter, as they may be at risk of prosecution?

PIC 4020 in the Family stream

Agents should be aware that the Public Interest Criterion (PIC) 4020 was introduced into the family stream on 1 July 2013. This allows a visa to be refused where a bogus document or false or misleading information is provided in a visa application. From 1 July 2013, PIC 4020 will apply to all new applications as well as applications lodged prior to that date not finally determined and applications under review.

The Ethics Toolkit, which is available on the OMARA website, can be used as a guide to help agents make the best ethical decision.

[Ethics toolkit](#)