



If a complaint is made against you

What happens if the Office of the Migration Agents Registration Authority (OMARA) receives a complaint against you?

The Procedural Instruction 'Working with the migration advice industry', available on *LEGENDcom*, explains how complaints are handled by the OMARA. The purpose of this practice guide is to provide some further explanation of this process.

Complaints are processed either informally or through a formal investigation. The approach used depends on the complexity and seriousness of the issues raised in the complaint or complaints.

However, a complaint may not be processed if:

- the OMARA has no jurisdiction
- the person making the complaint does not agree to providing the details of the complaint to the agent
- there is no merit to the complaint.

Whether a complaint is processed informally or formally, the agent will always be given an opportunity to respond.

Informal action

When the only concern may be that the agent is not contactable or has not returned a client's documents, the agent may be contacted directly, usually by phone, to try to resolve the matter. If appropriate, the agent may be reminded of their obligations under the Code of Conduct for registered migration agents (the Code) about being contactable and the return of documents. The practice guide 'Returning documents to clients' provides guidance on an agent's obligations to return documents.

When it is considered that a complaint is unlikely to warrant a sanction decision but merits a written response, the agent will be sent a copy or summary of the complaint and asked to provide a response. This is generally done by email however a more formal notice under section 308 of the *Migration Act 1958* (the Act) may be issued. It is generally in the agent's interests to provide relevant evidence to support their response, whether this has been asked for or not.

Following the agent's response to the complaint, an assessment will be made of all of the available information, including relevant records of the Department of Home Affairs, to find whether the agent has breached or has not breached the Code, or possibly that there was no merit in the complaint. Both the agent and complainant will be notified of the decision. The agent may also be advised if any deficiencies in their practices were identified. No details of the complaint including the outcome are made public by the OMARA.

Formal investigations

A formal investigation may be undertaken where there is evidence to support allegations of more serious breaches of the Code concerning one or more complaints.

The details of the complaint or complaints will be sent to the agent in a notice under Section 308 of the Act. The agent is required to answer specific questions in the form of a statutory declaration, and may also be required to provide specific documents.

If following the agent's response, or if no response is received, it is considered that a disciplinary decision under section 303 of the Act may be warranted, the agent will be informed of the reasons for this consideration in a notice under section 309 of the Act. This notice will invite the agent to make a submission on this matter, as a statutory declaration or written argument, usually within 28 days.

Once the due date for a written submission has passed, an assessment of all the available evidence will be made to determine whether a decision will be made to sanction the agent, that is, to caution the agent, or suspend or cancel the agent's registration. The agent will be notified of the decision. All sanction decisions are published on the OMARA website under 'Disciplinary decisions'.

Appeals against sanction decisions can be made to the Administrative Appeals Tribunal (AAT) within the prescribed time.

Complaints against a former agent

A complaint can be considered against a former agent if it is made within 12 months of the former agent's registration ceasing. The complaint must also relate to the provision of immigration assistance while the former agent was registered.

The processing of the complaint or complaints is similar to that described above under formal investigations, though different sections of the Act apply. A former agent is notified under section 311A of the Act that a disciplinary decision is being considered to bar the former agent from being registered again. The former agent will be invited to make a written submission within 28 days. Decisions to bar a former agents are published on the OMARA website. Appeals against decisions to bar former agents can be made to the AAT.

Complaint processing times

The time it takes for the OMARA to process a complaint will vary considerably depending on the complexity and nature of a complaint or complaints. A straightforward matter such as the return of documents might be resolved in a few days. However, a more serious complaint may take six to 12 months and one leading to a sanction decision may take more than 12 months.