



Office of the Migration Agents Registration Authority
Practice guide for registered migration agents

Is your Service Agreement clear?

Are the clauses in your Service Agreement clear enough?

Section 42 of the *Migration (Migration Agents Code of Conduct) Regulations 2021* (the Code) prevents Registered Migration Agents (RMAs) from providing immigration assistance unless a written Service Agreement is in place (other than at an initial consultation). This Service Agreement will underpin their relationship with a client and serves to protect both parties. Under subsection 42(2) of the Code, the Agreement must be:

- in writing
- signed by the client
- signed by the registered migration agent.

The Agreement must contain important information as outlined in section 42 of the Code, including:

- details of each client to whom immigration assistance is to be given under the Service Agreement, including name, date of birth, email address (if any) and residential address
- the name, migration agent registration number (MARN) and contact details of the RMA signing the Agreement and of each RMA who is expected to provide immigration assistance under the Agreement
- the details of work or services to be performed
- a statement that a copy of the consumer guide has been given to the client (see section 38);
- an explanation of what will happen to the client's file if the Service Agreement is terminated, or on completion of work or services covered by the Agreement
- details of fees and disbursements to be paid (as outlined in Division 3 of the Code)
- terms and conditions for the payment of fees and disbursements (see section 48)
- a fair and reasonable refund policy (section 52).

Getting the terms of the Service Agreement right is very important. 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 of the OMARA routinely deals with complaints that arise due to a lack of clarity in the Service Agreement between an RMA and their client. Two of the most common areas are discussed below. RMAs are encouraged to take the time to review their Service Agreement template to see if it could be improved in these areas.

Agreement template

A Service Agreement is a legal document and is fundamental to the relationship you have with your clients. It can be your best defence if there are disputes in relation to the services you have agreed to provide or the fees you charge.

Given how important a Service Agreement is, it is recommended you obtain a template for your Service Agreement from a suitably qualified party.

Tip: contact your professional body to see if they can provide you with assistance on best practice.

Services and associated fees

An RMA may only charge fees for services performed and provided for under the Service Agreement and in accordance with the terms and conditions set out in the Service Agreement. The key requirements in respect of fees and disbursements, including invoices, receipts and refunds, are outlined in Division 3 of the Code, sections 46 to 52.

Where the services to be provided and the associated fees are not set out in sufficient detail in the Service Agreement, there is potential for disputes to arise. This will be particularly so where the Service Agreement is terminated before services have been completed (see below). Simply specifying the services in a general way e.g. 'preparation and lodgment of a visa application' is not sufficiently detailed, particularly where the services include assistance with lodging an application for a skills assessment and an application for a specific subclass of visa.

The Service Agreement should clearly state when payments are to be made by the client, for example, whether payment of fees is required up front, in instalments, or upon lodgment or approval of the visa application. The terms of the service agreement should be clear and 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 application is decided.

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 also represent the sponsor. If the RMA is acting for both the visa applicant and the sponsor and is expected to lodge the sponsorship application or nomination, then the RMA must either have separate Service Agreements with each of them, or have a Service Agreement that is expressed to cover both of them.

Termination and effect of termination

The Service Agreement must include an explanation of what will happen to the client's file if the agreement is terminated or when the work or services covered by the Service Agreement are completed (see section 42(3)(e)).

The Code requires that any documents to which the client is entitled must be returned to the client within 14 days of an RMA receiving a written request for such documents (section 54). Documents that a client is entitled to include documents:

- that were given to the agent by, or on behalf of the client; or
- paid for by, or on behalf of, the client.

Examples include (but are not limited to) client identity documents, qualifications, employment reference letters, documents relating to evidence of a relationship, photographs, business financial statements or other business documents.

An RMA is not entitled to claim lien on documents that a client is entitled to, unless the agent is a restricted legal practitioner who is eligible to do so.

To terminate the Service Agreement, an RMA must ensure that each client covered by the Agreement is given written notice of termination (see section 57). This notice must include:

- the date from which the Agreement is terminated
- the status of the client's immigration matter (if applicable)
- if matter is being allocated to another RMA, details of that RMA and a statement to the effect that the client may choose not to have the matter allocated to another RMA and may cease the responsible agent's services at any time before the agent terminates the agreement
- if the matter is not being allocated to another RMA, details of how the client may obtain further immigration assistance

- if the RMA or their business holds any client money in relation to the Service Agreement, a statement setting out each amount of client money received, the amount remaining and that in the absence of instructions from the client the amount remaining will be refunded to the client;
- a statement in respect of return of client documents.

Termination notices are not required where a client unilaterally terminates the Agreement (section 57(2)(b)).

No later than 14 days after the termination of a Service Agreement takes effect, the migration agent must notify the Department or the review authority of the termination (section 57(6)).

Please note that an RMA has a duty to take all reasonable steps to forward correspondence received from a government official relating to a former client for 28 days after the RMA has given notice to the Department or review authority that they have ceased to represent that client (section 58). Despite giving notice, the Department may still be legally required to send correspondence for the client to the RMA's address until the client advises the Department to terminate that arrangement.

Refunds

A Service Agreement must include a fair and reasonable refund policy in relation to fees and disbursements (see section 52). To avoid fee and refund disputes, it is important to ensure that the client understands your fee structure, and when they may be eligible for a refund.

Any refunds payable to the client must be paid as soon as possible and no later than 14 days after they become payable. Refunds are payable in accordance with the Service Agreement, as well as in accordance with the Code. For example, subsection 47(7) of the Code requires that where an RMA becomes aware that they charged a disbursement amount greater than the actual amount of the disbursement, the excess must be refunded to the client. Similarly, pursuant to section 57 of the Code, any amount of client money held by the RMA in relation to the Service Agreement for services not yet rendered must be refunded to the client in the absence of the client's instructions otherwise.

An 'effect of termination' clause should therefore be included in a Service Agreement, which sets out what proportion of the fees the RMA 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 Service 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 Agreements. These may be invoked to resolve a dispute with a client before it results in a complaint.