



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

Who is your client?

Section 36 of the *Migration (Migration Agents Code of Conduct) Regulations 2021* (the Code) places a duty on Registered Migration Agents (RMAs) to know their clients. Determining who your client is may seem simple, but is often a source of misunderstanding and confusion among RMAs. *The Migration Act 1958* defines a client as: “a person to whom the agent has given, or has agreed to give (whether or not in writing) immigration assistance” (subsection 306C(1)).

Deciding who the recipient of your immigration assistance will be is often the first critical question to be answered. Getting this right will help set you on the right path. Getting this wrong, or not taking the time to consider it, may lead to potential confusion, misunderstanding and disputes. Each year the Office of the Migration Agents Registration Authority (OMARA) receives a number of complaints and queries which may not have arisen had this question been considered carefully by the RMA.

When you provide, or agree to provide, a person with immigration assistance, that person becomes your client and your professional obligations under the Code arise. The obligation in section 36 of the Code requires you to verify the identity of your client. You must not provide immigration assistance after the initial consultation unless you are reasonably satisfied of the client’s identity.

In circumstances where you are dealing with a client through an agent or other intermediary, you must also be reasonably satisfied of identity of the agent or other intermediary and that the client has agreed in writing to be represented by that person. This may occur, for example, where an overseas client is dealing with you through an Australian relative.

An RMA must have a Service Agreement in place with each client to whom immigration assistance is provided. The Service Agreement can be expressed to cover more than one client. Some common examples of where an RMA establishes an agent-client relationship with more than one person include where an RMA is acting for multiple members of a family, where one applicant is the primary applicant and the others are secondary applicants. It also occurs when representing both the visa applicant and sponsor in relation to a partner visa application or Employer Nomination Scheme (ENS) visa application. In all these circumstances, all parties are the clients of the RMA, and the RMA will have obligations to each of them.

This also means that should the circumstances of one or more of the clients change, the RMA must be aware of conflicts of interest that might arise. The obligations of an RMA when managing a conflict of interest are set out in section 34 of the Code.

An RMA’s relationship with a client is a fiduciary one, which carries with it both legal and professional conduct obligations. An RMA has the obligation to act in the clients’ legitimate interests at all times. A fundamental element in providing a high standard of service is understanding who your “client” is.