Australian Government
Department of Home Affairs

Code of Conduct

for registered migration agents

Current from 1 March 2022

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Part 1 – Preliminary

Division 1 – Preliminary

1. Name

This instrument is the *Migration (Migration Agents Code of Conduct) Regulations 2021*.

2. Commencement

(1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
1. The whole of this instrument	1 March 2022	1 March 2022

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

(2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3. Authority

This instrument is made under the *Migration Act 1958*.

4. Prescription of Code of Conduct

For the purposes of subsection 314(1) of the Act, the Code of Conduct constituted by this instrument (other than this section) is prescribed.

Note 1: Registered migration agents must conduct themselves in accordance with the Code of Conduct: see subsection 314(2) of the Act.

Note 2: The Authority may cancel or suspend the registration of a migration agent, or caution an agent, if the Authority becomes satisfied that the agent has not complied with the Code of Conduct: see section 303 of the Act.

Division 2 - Purpose of this instrument

5. Purpose of this instrument

The purpose of this instrument is to:

(a) protect clients of migration agents; and

(b) strengthen the integrity of the immigration advice industry and Australia's immigration system.

6. Other duties of migration agents

(1) This instrument is not an exhaustive statement of the duties of migration agents under Commonwealth law.

(2) This instrument is not intended to apply to the exclusion of a law of a State or a Territory that imposes duties on a migration agent (whether in the migration agent's capacity as a migration agent or in any other capacity) to the extent to which that law is capable of operating concurrently with this instrument.

Division 3 – Definitions

7. Definitions

Note: See also section 8 (expressions have same meaning as in Part 3 of the Act).

In this instrument:	
Act	means the *Migration Act 1958.*
Authority	means the Migration Agents Registration Authority.
business	a migration agent's ***business*** consists of the following ***members***: (a) the agent; (b) any individual who is related by employment to the migration agent.
client money	see section 10.
consumer guide	has the same meaning as in the *Migration Agents Regulations 1998.*
covers	a service agreement ***covers***: (a) each client to whom immigration assistance is to be given under the agreement; and (b) the immigration assistance that is to be given under the agreement.
employee	includes: (a) a person engaged as a consultant or as an independent contractor; and (b) a person engaged as a volunteer.
engage in conduct	means: (a) do an act; or (b) omit to perform an act.
financial institution	means a body corporate that, as part of its normal activities: (a) takes money on deposit and makes advances of money; and (b) does so under a regulatory regime, governed by the central bank (or its equivalent) of the country in which it operates, that the Minister is satisfied provides effective prudential assurance.
fixed fee	see subsection 46(2).
futile	see subsection 19(3).
government official	includes the following: (a) the Minister;

In this instrument:	
	(b) a member of the Minister's staff; (c) the Department (including the Authority); (d) an officer of the Department; (e) a review authority; (f) a member of a review authority's staff; (g) any other person performing functions or exercising powers under the migration law
immigration assistance	see section 9.
initial consultation	see subsection 43(4).
MARN	is short for migration agent registration number.
members	see the definition of ***business***
migration law	means any of the following: (a) the Act; (b) regulations made under the Act (including this instrument); (c) any other instrument made under the Act or those regulations.
related by employment	see section 11.
responsible migration agent	see section 12.
service agreement	means an agreement for the giving of immigration assistance by a migration agent to a client. Note: A service agreement must provide for the giving of immigration assistance, but may also provide for the performance of other work or services.
terminated	to avoid doubt, a reference to a service agreement being ***terminated*** does not include a reference to the agreement being brought to an end by the fulfilment of the obligations under the agreement.
work or services	includes immigration assistance.

8. Expressions have same meaning as in Part 3 of the Act

(1) Subject to this Division, an expression used in this instrument and in Part 3 of the Act has the same meaning in this instrument as it has in that Part.

Note: Relevant expressions include the following:
(a) client;
(b) registered migration agent;
(c) review authority.

(2) Subsection (1) does not limit paragraph 13(1)(b) of the *Legislation Act 2003*.

9. Immigration assistance

A reference in this instrument to giving immigration assistance includes a reference to making immigration representations (within the meaning of section 282 of the Act).

Note: See also section 276 of the Act.

10. Meaning of *client money*

(1) ***Client money***, in relation to a service agreement, is an amount (including a fee or an amount for disbursements) that:

(a) a responsible migration agent in relation to the agreement; or

(b) a member of the business of a responsible migration agent in relation to the agreement;

receives from a client covered by the agreement for work or services performed, or to be performed, under the agreement.

(2) If:

(a) either:

(i) a registered migration agent (the ***original agent***); or

(ii) a member of the business of a registered migration agent (the ***original agent***);

receives client money in relation to a service agreement; and

(b) the original agent, or a member of the original agent's business, refunds some or all of that client money at the instruction of a client or former client of the original agent by transferring an amount to:

(i) another migration agent (the ***receiving agent***); or

(ii) a member of the business of another migration agent (the ***receiving agent***); and

(c) the receiving agent is or becomes a responsible migration agent in relation to a service agreement that covers the client;

the amount is taken to have been received by the receiving agent, or the member of the receiving agent's business mentioned in subparagraph (b)(ii), from the client for work or services performed, or to be performed, under the service agreement mentioned in paragraph (c).

Note: An effect of subsection (2) is that the amount is taken to be client money in relation to the service agreement mentioned in paragraph (c).

11. Meaning of *related by employment*

For the purposes of this instrument, an individual is ***related by employment*** to another individual if the first individual:

(a) is related by employment to the other individual for the purposes of Part 3 of the Act; or

(b) would be related by employment to the other individual for the purposes of that Part if, in section 278 of the Act, ***employee*** included a person engaged as a volunteer.

12. Meaning of *responsible migration agent*

Each of the following is a ***responsible migration agent*** in relation to a service agreement:

(a) each migration agent who gives, or has given, immigration assistance under the agreement;

(b) if no immigration assistance has yet been given under the agreement—each migration agent who signs the agreement.

Part 2 - General duties

Division 1 - General duties

13. General duty to act professionally, ethically etc.

(1) A migration agent must act:

(a) professionally; and

(b) competently; and

(c) diligently; and

(d) ethically, honestly and with integrity.

Note: The other provisions of this instrument supplement, but do not limit, the general duties in this subsection.

(2) A migration agent must not engage in conduct (whether in the agent's capacity as a migration agent or in any other capacity) that is reasonably likely to damage the reputation of migration agents or the immigration advice industry.

14. Duty to treat all persons with appropriate respect

(1) A migration agent must treat all persons with appropriate respect.

(2) In particular, a migration agent must not:

(a) harass or coerce any person; or

(b) engage in unconscionable conduct targeted at another person; or

(c) without limiting paragraph (b), victimise a person on the basis of the person's status under the migration law.

(3) For the purposes of paragraph (2)(b), it does not matter whether conduct is targeted at another person directly or indirectly.

15. Duty not to make false or misleading statements

A migration agent must not make a false or misleading statement.

Note: See also sections 20 and 26.

16. Duty not to threaten to contravene this instrument

A migration agent must not threaten to engage in conduct that would contravene this instrument.

Division 2 - Duties relating to Australia's immigration system

17. Duty to comply with migration law

A migration agent must comply with the migration law.

18. Duty not to undermine the migration law

(1) A migration agent must not act in a way that is intended to:

(a) defeat the purpose of the migration law; or

(b) evade a requirement of the migration law;

for the purpose of obtaining a benefit or advantage for the agent, a client of the agent or any other person.

(2) A migration agent must not, in making an application or giving other immigration assistance, withhold relevant information or documents from a government official for the purpose of causing delay.

(3) A migration agent must not:

(a) act in a way that is intended to frustrate the proper disposition of any review or appeal process in relation to decisions made under the migration law; or

(b) delay such a review or appeal process for any purpose other than ensuring the proper disposition of the process; or

(c) abuse such a review or appeal process.

19. Duty not to give futile immigration assistance

(1) A migration agent must not give immigration assistance to a client if the agent reasonably believes that giving the immigration assistance would be futile.

(2) Subsection (1) does not apply if:

(a) the migration agent is satisfied that giving the immigration assistance would not be in breach of the agent's duties under sections 13, 17, 18 and 33; and

(b) a migration agent (whether or not the migration agent mentioned in subsection (1) of this section) has advised the client that giving the immigration assistance would be futile; and

(c) the client has given to a migration agent (whether or not the migration agent mentioned in subsection (1) of this section or paragraph (b) of this subsection) a written statement that the client:

(i) has been advised of the matter mentioned in paragraph (b); and

(ii) still wishes to be given the immigration assistance.

(3) Without limiting when giving immigration assistance is taken to be futile, for the purposes of this instrument it is ***futile*** for a migration agent to give immigration assistance if:

(a) the purpose of the immigration assistance is to achieve, or to assist with the achieving of, a particular result; and

(b) there is little or no prospect of that result being achieved.

Example: Preparing a visa application if there is little or no prospect of the visa being granted.

20. Duty to avoid making false or misleading statements etc. to government officials

Documents migration agent knows are false or misleading

(1) A migration agent must not give to a government official a document that the agent knows is false or misleading, unless the agent discloses to the government official that the document is false or misleading.

Note: See also section 15 (duty not to make false or misleading statements).

Statements and documents migration agent suspects are false or misleading

(2) A migration agent must not make to a government official a statement that the agent suspects, or reasonably ought to suspect, (but does not know) is false or misleading, unless the agent has taken all reasonable steps to determine whether the statement is false or misleading.

(3) A migration agent must not give to a government official a document that the migration agent suspects, or reasonably ought to suspect, (but does not know) is false or misleading, unless the agent:

(a) discloses to the government official that the agent suspects that the document is false or misleading; or

(b) has taken all reasonable steps to determine whether the document is false or misleading.

Statements and documents about endorsement etc.

(4) A migration agent must not make to a government official a statement that a person is endorsed, nominated or sponsored by another person under or for the purposes of the migration law, unless the agent has taken all reasonable steps to verify the statement.

(5) A migration agent must not give to a government official a document that states that a person is endorsed, nominated or sponsored by another person under or for the purposes of the migration law, unless the agent has taken all reasonable steps to verify the statement.

Third party documents

(6) A migration agent must not state to a government official that a particular document originated from a specified person other than the agent or a client of the agent, unless the agent has taken all reasonable steps to verify the origin of the document.

(7) A migration agent must not give to a government official a document that purports to have originated from a particular person other than the agent or a client of the agent, unless the agent has taken all reasonable steps to verify the origin of the document.

21. Duty relating to correcting false or misleading statements etc.

If a migration agent becomes aware that:

(a) a statement that:

(i) a client of the agent made to a government official; or

(ii) the migration agent made to a government official on behalf of a client of the agent; or

(iii) a third person (including another migration agent) made to a government official on behalf of a person who is now a client of the agent (whether or not the client was a client of the agent at the time the statement was made);

in relation to an immigration matter (including a statement described in subsection 20(4) or (6)) was false or misleading; or

(b) a document that:

(i) a client of the agent gave to a government official; or

(ii) the agent gave to a government official on behalf of a client of the agent; or

(iii) a third person (including another migration agent) gave to a government official on behalf of a person who is now a client of the agent (whether or not the client was a client of the agent at the time the document was given);

in relation to an immigration matter (including a document described in subsection 20(5) or (7)) was false or misleading; or

(c) a client of the agent has concealed from a government official relevant information in relation to an immigration matter;

the migration agent must not give immigration assistance to the client unless:

(d) a migration agent has:

(i) informed the client about the potential consequences of the matter mentioned in paragraph (a), (b) or (c) of this section; and

(ii) discussed with the client how the matter may be corrected; and

(e) the client agrees to the matter being corrected; and

(f) the client takes all reasonable steps to correct the matter.

Division 3 - Duty to maintain skills and knowledge

22. Duty to maintain skills and knowledge

A migration agent must:

(a) maintain sufficient knowledge and skills to give immigration assistance professionally and competently; and

(b) maintain, or have access to, a professional library that includes up-to-date material relevant to giving immigration assistance.

Example: Material relevant to giving immigration assistance includes copies of the Act and regulations made under the Act.

Note: See also section 290A of the Act (continuing professional development requirements).

Division 4 - Duties relating to practice management

23. Duty to ensure that immigration assistance is given only by registered migration agents

A migration agent must take all reasonable steps to ensure that no member of the agent's business contravenes Division 2 of Part 3 of the Act.

Note: Division 2 of Part 3 of the Act provides that generally only registered migration agents may give immigration assistance.

24. Duties relating to work or services performed by persons other than registered migration agents

(1) A migration agent must take all reasonable steps to ensure the quality, accuracy and timeliness of any work or services performed by another person (including a person in the migration agent's business):

(a) for the purpose of assisting the agent to give immigration assistance; or

(b) under a service agreement in relation to which the agent is a responsible migration agent.

(2) Subsection (1) does not apply to work or services performed by another registered migration agent.

25. Duties relating to MARN

(1) A migration agent must ensure that the agent's MARN appears on the agent's:

(a) correspondence; and

(b) business cards.

(2) A migration agent must take all reasonable steps to ensure that the MARN of at least one member of the agent's business who is a registered migration agent appears:

(a) on the business's:

(i) website; and

(ii) social media; and

(b) in any advertisement relating to the giving of immigration assistance by the members of the business who are registered migration agents.

(3) A migration agent must take all reasonable steps to ensure that the agent's MARN is not used in a way that suggests that immigration assistance given by another person is given by the agent.

(4) A migration agent must give written notice to the Authority within 14 days after becoming aware that the agent's MARN is being, or has been, used:

(a) by another person (whether or not a registered migration agent) as if the MARN were the MARN of that person or of a third person; or

(b) by another person in a way that is reasonably likely to have been intended to represent that conduct of that person or of a third person was conduct of the migration agent.

26. Duties not to make false or misleading statements in promoting business etc.

(1) A migration agent must not:

(a) make a false or misleading statement about:

(i) the agent's qualifications; or

(ii) immigration opportunities or risks; or

(iii) migration procedure; or

(b) state that the agent's status as a registered migration agent involves a special or privileged relationship with any government official; or

(c) state that the agent can procure a particular decision for a client under the migration law.

(2) A migration agent must take all reasonable steps to ensure that no member of the agent's business makes statements of the type mentioned in subsection (1) in relation to:

(a) the migration agent; or

(b) a class of migration agents in the migration agent's business that includes the migration agent; or

(c) the migration agents in the migration agent's business generally.

(3) A migration agent must take all reasonable steps to ensure that no person publishes or broadcasts an advertisement that makes statements of the type mentioned in subsection (1) in relation to:

(a) the migration agent; or

(b) a class of migration agents in the migration agent's business that includes the migration agent; or

(c) the migration agents in the migration agent's business generally.

27. Duty to hold professional indemnity insurance

A migration agent must:

(a) hold professional indemnity insurance of a kind prescribed by regulation 6B of the *Migration Agents Regulations 1998*; or

(b) be a director, employee or member of an organisation that holds professional indemnity insurance of such a kind.

Division 5 - Duties relating to keeping Authority, clients, Department and review authority informed of matters relating to migration agent

28. Duty to notify Authority and clients of material changes in matters shown in Register

A migration agent must give written notice to:

(a) the Authority; and

(b) all current clients of the agent;

within 14 days after becoming aware of a material change in a matter that is shown in the Register of Migration Agents in respect of the agent.

29. Duty to notify Authority of changes in circumstances relevant to agent's continued registration

A migration agent must give written notice to the Authority within 14 days after becoming aware of any change to the agent's personal circumstances that it is reasonably likely will have a negative impact on the Authority's satisfaction that the agent:

(a) is a person of integrity; and

(b) is otherwise a fit and proper person to give immigration assistance.

Note 1: Subsection 290(2) of the Act sets out the matters the Authority must take into account in considering whether an agent is fit and proper or a person of integrity. Those matters include:

(a) any relevant criminal proceedings that the agent is the subject of; and

(b) any relevant inquiry or investigation that the agent is or has been the subject of; and

(c) any relevant disciplinary action that is being taken, or has been taken, against the applicant.

Note 2: The Authority may cancel or suspend the registration of a migration agent, or caution an agent, if the Authority becomes satisfied that the agent is not a person of integrity or is otherwise not a fit and proper person to give immigration assistance: see subsection 303(1) of the Act.

30. Duty to notify clients, Department and review authority if registration suspended

(1) If the Authority suspends a migration agent's registration, the agent must give written notice of the suspension in accordance with subsections (2) to (6) within 14 days after the Authority gives notice of the suspension to the agent.

(2) Notice must be given to:

(a) all current clients of the migration agent; and

(b) the Department, if an immigration matter in relation to which the agent has given immigration assistance to a current client is pending before the Department; and

(c) a review authority, if an immigration matter in respect of which the agent has given immigration assistance to a current client is pending before the review authority.

(3) A notice must state the period of the suspension.

(4) A notice given to a client must include the following if an immigration matter in respect of the client is pending:

(a) the status of the client's immigration matter;

(b) if the matter is to be allocated to another registered migration agent:

(i) the name and contact details of the other registered migration agent; and

(ii) a statement to the effect that the client may choose not to have the matter allocated to another registered migration agent and may cease receiving the agent's services at any time before the end of the period of suspension if the client wishes to do so;

(c) if the matter is not to be allocated to another registered migration agent—details of how the client may obtain further immigration assistance.

(5) A notice given to a client must include the following if the migration agent, or a member of the migration agent's business, has received client money in relation to a service agreement that covers the client and in relation to which the agent is a responsible migration agent:

(a) a statement setting out:

(i) each amount of client money received; and

(ii) each amount paid as mentioned in paragraph 50(1)(d); and

(iii) the amount remaining;

(b) a statement that, in the absence of instructions from the client, the amount remaining will be refunded to the client.

(6) A notice given to a client must include a statement setting out the effect of section 54.

Note 1: Section 54 requires a migration agent to return documents to which a client is entitled if requested to do so by the client or by a new registered migration agent representing the client.

Note 2: See also section 57 (termination notices).

31. Duty to notify clients, Department and review authority if registration expected to lapse

(1) A migration agent who becomes aware that it is reasonably likely that the agent will cease to be a registered migration agent on a particular day (other than because of the agent's registration being cancelled) must give written notice of the expected cessation in accordance with subsections (2) to (6):

(a) if the agent becomes aware of the expected cessation less than 14 days before that day—as soon as practicable; or

(b) otherwise—no later than 14 days before that day.

Note: The registration of a migration agent ends 12 months after the day of registration unless the registration is suspended, cancelled or the agent applies to be registered for another 12 months: see section 299 of the Act.

(2) Notice must be given to:

(a) all current clients of the migration agent; and

(b) the Department, if an immigration matter in relation to which the agent has given immigration assistance to a current client is pending before the Department; and

(c) a review authority, if an immigration matter in respect of which the agent has given immigration assistance to a current client is pending before the review authority.

(3) A notice must state the day on which it is reasonably likely that the agent will cease to be a registered migration agent.

(4) A notice given to a client must include the following if it is reasonably likely that an immigration matter in respect of the client will be pending on the day stated under subsection (3) (the ***end date***):

(a) the status of the client's immigration matter;

(b) if the matter is to be allocated to another registered migration agent:

(i) the name and contact details of the other registered migration agent; and

(ii) a statement to the effect that the client may choose not to have the matter allocated to another registered migration agent and may cease receiving the agent's services at any time before the end date if the client wishes to do so;

(c) if the matter is not to be allocated to another registered migration agent—details of how the client may obtain further immigration assistance.

(5) A notice given to a client must include the following if, when the notice is given, the migration agent, or a member of the migration agent's business, has received client money in relation to a service agreement that covers the client and in relation to which the agent is a responsible migration agent:

(a) a statement setting out:

(i) each amount of client money received; and

(ii) each amount paid as mentioned in paragraph 50(1)(d); and

(iii) the amount remaining;

(b) a statement that, in the absence of instructions from the client, the amount remaining will be refunded to the client.

(6) A notice given to a client must include a statement setting out the effect of section 54.

Note 1: Section 54 requires a migration agent to return documents to which a client is entitled if requested to do so by the client or by a new registered migration agent representing the client.

Note 2: See also section 57 (termination notices).

Division 6 - Duty to respond to requests from Authority for information or documents

32. Duty to respond to requests from Authority for information or documents

(1) This section applies if the Authority requests information or a document from a migration agent for the purposes of the Authority carrying out its functions under paragraphs 316(1)(a) to (d) of the Act.

(2) The migration agent must respond to the request:

(a) promptly; and

(b) without limiting paragraph (a), if the Authority specifies a reasonable time by which the migration agent must respond to the request—by the specified time; and

(c) in accordance with subsection (3).

(3) The response must:

(a) deal with each matter raised by the request; and

(b) answer any questions in the request; and

(c) include all requested information or documents.

Note: Other provisions of the migration law under which a migration agent can be required to provide documents to the Authority include:

(a) subsection 56(9)) of this instrument (access to client files); and

(b) sections 305C, 306D and 308 of the Act.

Part 3 - The agent-client relationship

Division 1 - General duties

Subdivision A - General duties

33. General duties

A migration agent must, in giving immigration assistance to a client or in performing other work or services for a client under a service agreement:

(a) subject to this instrument and any other law of the Commonwealth, a State or a Territory, act:

(i) in the legitimate interests of the client; and

(ii) in accordance with the client's instructions; and

(iii) in accordance with the relevant service agreement (if any—see section 43); and

(b) have regard to the client's dependence on the agent's knowledge and experience; and

(c) respond to the client in a timely manner; and

(d) be aware of the times by which, under law, any relevant application must be made, any relevant response must be given or any other relevant thing must be done; and

(e) have regard to the consequences of an application not being made, a response not being given, or any other thing not being done by the relevant time.

34. Duty to inform clients of conflicts of interest

(1) Subject to subsection (4), if a migration agent has an interest, pecuniary or otherwise, that conflicts, or could conflict, with the proper performance of the agent's duties in relation to a client, the agent must not give immigration assistance to the client unless:

(a) the agent gives written notice of the interest to the client in accordance with subsection (2); and

(b) the client gives to the agent a written statement that the client:

(i) has been given notice of the conflict; and

(ii) still wishes the agent to give immigration assistance to the client.

Note: The proper performance of the agent's duties in relation to the client includes complying with the agent's duty to act in the legitimate interests of the client and in accordance with the client's instructions: see section 33.

(2) A notice under paragraph (1)(a) must include the following:

(a) details of:

(i) the nature of the interest; and

(ii) how the interest conflicts, or could conflict, with the proper performance of the agent's duties in relation to the client;

(b) if relevant:

(i) the name of the person or body providing the interest; and

(ii) the reason the interest is being, or has been, provided;

(c) if the interest is pecuniary—the amount or a reasonable estimate of the amount of the pecuniary interest.

(3) A notice under paragraph (1)(a), and a statement under paragraph (1)(b), may be included in a service agreement that covers the immigration assistance.

Actual conflicts

(4) A migration agent must not give immigration assistance to a client (even with the client's consent) if:

(a) the agent has an actual conflict of interest, pecuniary or otherwise, with the client's interests; and

(b) as a result of the conflict of interest:

(i) the agent's objectivity, or the relationship of confidence and trust between the agent and the client, could be compromised; or

(ii) the agent is reasonably likely to breach the confidentiality of the client.

Interests of family members

(5) To avoid doubt, for the purposes of this instrument, a conflict of interest may arise in relation to a migration agent or a client because of an interest of a relative of the migration agent or client.

35. Duty of confidentiality

Except as required by a law of the Commonwealth, a State or a Territory, a migration agent must not disclose, or allow to be disclosed, to a third person any personal information relating to:

(a) a client or former client; or

(b) a client's or former client's affairs;

without the client's written consent.

Subdivision B - Preliminary requirements for giving immigration assistance

36. Duty to know clients etc.

(1) A migration agent must not give immigration assistance to a client unless the agent:

(a) has taken all reasonable steps to verify the identity of the client; and

(b) is reasonably satisfied of the identity of the client.

(2) Subsection (1) does not apply to giving immigration assistance mentioned in paragraph 276(1)(b), (2)(b) or (2A)(b) of the Act (advice) during an initial consultation.

(3) A migration agent must not deal with a client through an agent or other intermediary representing the client unless the migration agent:

(a) has taken all reasonable steps to verify the identity of the agent or other intermediary; and

(b) is reasonably satisfied:

(i) of the identity of the agent or other intermediary; and

(ii) that the client has agreed in writing to the agent or other intermediary dealing with the migration agent on the client's behalf.

Duties relating to third persons who have endorsed, nominated or sponsored client

(4) Subsections (5) and (6) apply to a migration agent giving immigration assistance to a client on the basis that a third person has endorsed, nominated or sponsored the client under or for the purposes of the migration law or intends to do so.

(5) The migration agent must not give the immigration assistance unless the agent:

(a) has taken all reasonable steps to verify the identity of the third person; and

(b) is reasonably satisfied:

(i) of the identity of the third person; and

(ii) that the third person has actually endorsed, nominated or sponsored the client or intends to do so.

(6) Furthermore, if the migration agent deals with the third person through an agent or other intermediary who represents the third person, the migration agent must not give the immigration assistance unless the agent:

(a) has taken all reasonable steps to verify the identity of the agent or other intermediary; and

(b) is reasonably satisfied:

(i) of the identity of the agent or other intermediary; and

(ii) that the third person has agreed in writing to the agent or other intermediary dealing with the migration agent on the third person's behalf.

37. Duty to arrange access to interpreters

(1) A migration agent must arrange for an appropriately qualified interpreter to assist a client in the client's dealings with the agent if the client requests such assistance.

(2) To avoid doubt, subsection (1) does not prevent the client from being required to pay for the assistance.

38. Duty to give consumer guide to clients

A migration agent must not give immigration assistance to a client unless a copy of the consumer guide has been given to the client.

Note: The Authority arranges for the production of the consumer guide: see regulation 9A of the *Migration Agents Regulations 1998*.

Subdivision C - Other duties

39. Duty to keep clients informed about progress of immigration matters

A migration agent must:

(a) advise a client in writing when any application, submission or representation that the agent makes for the client is lodged with a government official; and

(b) give a copy of the application, submission or representation to the client; and

(c) promptly advise the client of any material developments that occur in relation to the application, submission or representation.

40. Duty not to act in a way that causes unnecessary expense or delay

A migration agent must not, when dealing with an application, submission or representation for a client (including when lodging the application, submission or representation with the Department or a review authority), act in a way that causes, or is reasonably likely to cause, unnecessary expense or delay.

41. Duty not to give false or misleading documents to clients

(1) A migration agent must not give to a client a document that the agent knows is false or misleading, unless the agent discloses to the client that the document is false or misleading.

(2) A migration agent must not give to a client a document that the migration agent suspects, or reasonably ought to suspect, (but does not know) is false or misleading, unless the agent:

(a) discloses to the client that the agent suspects that the document is false or misleading; or

(b) has taken all reasonable steps to determine whether the document is false or misleading.

Note: See also section 15 (duty not to make false or misleading statements).

Division 2 - Service agreements

42. Service agreements

(1) Subject to section 43, a migration agent must not give immigration assistance to a client unless:

(a) a service agreement that:

(i) covers the immigration assistance; and

(ii) authorises the agent to act on the client's behalf; and

(iii) complies with the requirements of this Division;

is in force; and

(b) if the service agreement has been varied—that variation met the requirements of section 44.

(2) The service agreement must be:

(a) in writing; and

(b) signed by the client; and

(c) signed by the migration agent or by another migration agent in the agent's business.

(3) The service agreement must include the following:

(a) the following details of each client to whom immigration assistance is to be given under the agreement:

(i) name;

(ii) date of birth;

(iii) email address (if any);

(iv) residential address;

(b) the name, MARN and contact details of:

(i) the migration agent who signs the agreement, as mentioned in paragraph (2)(c); and

(ii) each migration agent who, at the time the agreement is signed, is expected to give immigration assistance under the agreement;

(c) details of the work or services to be performed under the agreement;

(d) a statement that a copy of the consumer guide has been given to the client (see section 38);

(e) an explanation of what will happen to the client's file:

(i) if the service agreement is terminated by any party to the agreement; or

(ii) on completion of the work or services covered by the agreement;

(f) the matters required by Division 3 (about fees and disbursements).

(4) A service agreement may be expressed to cover more than one client.

(5) The authority mentioned in subparagraph (1)(a)(ii) may be expressed to cover:

(a) a particular migration agent; or

(b) a class of migration agents in the agent's business; or

(c) all migration agents in the agent's business.

43. Service agreements not required for initial consultations

(1) Despite section 42, a migration agent may give immigration assistance of a kind mentioned in paragraph 276(1)(b), (2)(b) or (2A)(b) of the Act (advice) at an initial consultation with a client or potential client without a service agreement that covers the immigration assistance being in force.

(2) A migration agent must ensure that any fee charged for an initial consultation the migration agent conducts other than under a service agreement is reasonable.

(3) If a migration agent conducts an initial consultation with a client or potential client other than under a service agreement:

(a) the migration agent must notify the client or potential client of the agent's MARN; and

(b) section 49 (invoices and receipts) applies in relation to:

(i) immigration assistance given as part of that initial consultation; or

(ii) other work or services performed as part of that initial consultation;

as if the immigration assistance were given, or the other work or services were performed, under a service agreement; and

(c) if the migration agent, or a member of the migration agent's business, receives amounts (including fees or amounts for disbursements) from a client for:

(i) immigration assistance given as part of that initial consultation; or

(ii) other work or services performed as part of that initial consultation;

then:

(iii) this instrument (other than section 51) applies to those amounts in the same way as it applies to client money in relation to a service agreement in relation to which the migration agent is a responsible migration agent; and

(iv) the migration agent must ensure that sufficient funds are available to cover any refunds of those amounts that become payable; and

(v) the migration agent must ensure that any such refunds are paid promptly and, in any case, no later than 14 days after they become payable.

(4) To avoid doubt:

(a) only the first consultation between a migration agent and a client or a potential client in relation to a particular immigration matter is an ***initial consultation***; and

(b) if a consultation consists of a series of sessions conducted on more than one day, sessions conducted on a day other than the first day are taken not to be part of an ***initial consultation***.

44. Written notice of variations to service agreements

For the purposes of paragraph 42(1)(b):

(a) before a service agreement is varied, each client covered by the agreement must be given written notice of:

(i) the proposed variation; and

(ii) the reasons for the proposed variation; and

(iii) the matters required by subsection 46(5), if relevant; and

(b) a variation of a service agreement must not take effect unless:

(i) each client covered by the agreement agrees in writing to the variation; or

(ii) if the agreement provides that the agreement of each client is not required for the variation—at least one client covered by the agreement agrees in writing to the variation, and any other conditions specified in the agreement are satisfied.

45. Duty to ensure work or services specified in service agreements are completed

(1) A responsible migration agent in relation to a service agreement must take all reasonable steps to ensure that the work or services specified in the agreement are completed.

(2) This section ceases to apply if the agreement is terminated.

Division 3 - Fees and disbursements

46. Fees

(1) A responsible migration agent in relation to a service agreement must not charge fees, and must ensure that fees are not charged, for work or services performed under the agreement other than as provided for by the agreement in accordance with this section and section 48.

(2) If fees are to be charged for work or services performed under the service agreement, the agreement must include:

(a) details of the fees, specified as either:

(i) an hourly rate; or

(ii) a fixed total amount (a ***fixed fee***);

including any relevant amount of GST or other tax; and

(b) if the agreement specifies fees as an hourly rate—a reasonable estimate of the time that will be spent performing the work or services.

(3) An hourly rate or fixed fee specified as mentioned in paragraph (2)(a) must be fair and reasonable.

(4) If the service agreement specifies an hourly rate and an estimate of time, the agreement must provide that the clients covered by the agreement will not be charged for time spent performing work or services under the agreement in excess of that estimate (or the latest updated estimate given under this subsection, if any) unless:

(a) exceptional circumstances arise after the agreement is signed; and

(b) those circumstances make it impracticable to perform some or all of the work or services under the agreement at the hourly rate within the estimated time; and

(c) each client covered by the agreement is given, in writing, an updated reasonable estimate of the time that will be spent performing the work or services; and

(d) either:

(i) each client covered by the agreement agrees in writing for work or services to continue to be performed under the agreement; or

(ii) if the agreement provides that the agreement of each client is not required for work or services to continue to be performed under the agreement—at least one client covered by the agreement agrees in writing for work or services to continue to be performed under the agreement, and any other conditions specified in the agreement are satisfied.

(5) The agreement must provide that an hourly rate or a fixed fee specified in the agreement must not be varied unless:

(a) exceptional circumstances arise after the agreement is signed; and

(b) those circumstances make it impracticable to perform some or all of the work or services under the agreement at the hourly rate within the estimated time, or at the fixed fee, specified in the agreement.

47. Disbursements

(1) A responsible migration agent in relation to a service agreement:

(a) must not unreasonably incur disbursements in relation to work or services performed under the agreement; and

(b) must not require a client to pay, and ensure that a client is not required to pay, for a disbursement that will be incurred, in relation to such work or services, other than in accordance with:

(i) subsections (3) and (6); and

(ii) provisions included in the agreement in accordance with section 48.

Clients must agree to disbursements

(2) The service agreement must include details of the likely disbursements that will be incurred in relation to work or services performed under the agreement and for which the client will be required to pay, including, for each disbursement:

(a) either:

(i) the amount of the disbursement; or

(ii) a reasonable estimate of the amount of the disbursement;

including any relevant amount of GST or other tax; and

(b) whether the disbursement is to be paid:

(i) directly by the client; or

(ii) on the client's behalf.

(3) For the purposes of subparagraph (1)(b)(i), a client must not be charged for a disbursement unless:

(a) all of the following requirements are met:

(i) details of the disbursement are included in the service agreement as mentioned in subsection (2);

(ii) those provisions of the service agreement are complied with;

(iii) subsection (4) is complied with (if applicable); or

(b) all of the following requirements are met:

(i) when the agreement was signed, the disbursement was not reasonably likely;

(ii) each client covered by the agreement is given, in writing, details of the disbursement, including the amount of the disbursement or a reasonable estimate of the amount of the disbursement;

(iii) subsection (5) is complied with.

(4) For the purposes of subparagraph (3)(a)(iii), if the service agreement specifies an amount of a disbursement, or includes a reasonable estimate of the amount of a disbursement, a client must not be required to pay an amount for the disbursement that is greater than the specified amount or the estimated amount unless:

(a) each client covered by the agreement is given written notice of:

(i) the actual amount of the disbursement; and

(ii) the reason that the actual amount of the disbursement is greater than the specified amount or the estimated amount; and

(b) either:

(i) each client covered by the agreement agrees in writing to incurring the increased cost; or

(ii) if the agreement provides that the agreement of each client is not required for the increased cost to be incurred—at least one client covered by the agreement agrees in writing to incurring the increased cost, and any other conditions specified in the agreement are satisfied.

(5) For the purposes of subparagraph (3)(b)(iii), this subsection is complied with if:

(a) each client covered by the service agreement agrees in writing to the disbursement; or

(b) both:

(i) the agreement provides that the agreement of each client is not required for the disbursement; and

(ii) at least one client covered by the agreement agrees in writing to the disbursement and any other conditions specified in the agreement are satisfied.

(6) For the purposes of subparagraph (1)(b)(i), and despite anything in the service agreement, a client must not be charged, for a disbursement in relation to work or services provided under the agreement, more than:

(a) if the amount of the disbursement is known at the time the client is charged—the actual amount of the disbursement; or

(b) otherwise—a reasonable estimate of the amount of the disbursement.

Refund of excess charged

(7) If:

(a) a client is charged for a disbursement in relation to work or services performed under a service agreement; and

(b) a responsible migration agent in relation to the agreement becomes aware that the amount charged was greater than the actual amount of the disbursement (including because of any refunds);

the responsible migration agent must ensure that the excess is refunded to the client in accordance with section 52.

48. Payment of fees and disbursements etc.

A service agreement must include:

(a) the terms and conditions for the payment of fees for, and disbursements in relation to, work or services performed under the agreement; and

(b) the interest, if any, to be charged on unpaid fees and disbursements.

49. Invoices and receipts

A responsible migration agent in relation to a service agreement:

(a) must not charge a client, and must ensure that a client is not charged:

(i) a fee for work or services performed under the agreement; or

(ii) an amount for a disbursement in relation to work or services performed under the agreement;

unless the client is given an itemised invoice containing details of the work or services to which the fee or disbursement relates; and

(b) must ensure that, after the client pays such a fee or amount, the client is given a receipt that identifies:

(i) the work or services to which the payment relates; and

(ii) the invoice, if any, to which the payment relates.

Note: Under section 313 of the Act, a registered migration agent is not entitled to be paid a fee or other reward for giving immigration assistance unless the agent gives the assisted person a statement of services that sets out particulars of each service performed and the charge made in respect of each service.

50. Duty in relation to client's money

(1) A responsible migration agent in relation to a service agreement must ensure that the following requirements are complied with in relation to client money in relation to the agreement that is received by the agent or by a member of the agent's business:

(a) client money must be paid into an account with a financial institution;

(b) amounts other than client money must not be paid into that account;

(c) without limiting paragraph (b), interest on the account must not be paid into the account;

(d) an amount must not be paid out of the account other than:

(i) to pay the agent or the agent's business (but not if, under section 313 of the Act, a migration agent is not entitled to be paid the amount); or

(ii) to pay amounts required to be paid to the Department or a review authority; or

(iii) to pay disbursements in accordance with the agreement; or

(iv) to refund client money to a client; or

(v) to refund client money by transferring amounts to other registered migration agents, or to members of the businesses of other registered migration agents, at the instruction of a client;

Note: Under section 313 of the Act, a registered migration agent is not entitled to be paid a fee or other reward for giving immigration assistance unless the agent gives the assisted person a statement of services that sets out particulars of each service performed and the charge made in respect of each service.

(e) without limiting paragraph (d), an amount must not be paid out of the account to pay fees or costs associated with opening or maintaining the account;

(f) the total amount paid out of the account for a particular purpose must not exceed the total amount paid into the account for that purpose.

(2) A migration agent must, if requested by the Authority, demonstrate to the Authority that this section is being complied with.

51. Duty not to receive amounts from clients before entering into service agreements

(1) A migration agent must not receive amounts (including fees or amounts for disbursements) from a client if:

(a) the amounts relate to the agent, or another registered migration agent in the agent's business, giving immigration assistance to the client; and

(b) a service agreement that covers the immigration assistance is not in force.

(2) A migration agent must take all reasonable steps to ensure that a member of the agent's business, other than another registered migration agent, does not receive amounts (including fees or amounts for disbursements) from a client if:

(a) the amounts relate to the agent, or another registered migration agent in the agent's business, giving immigration assistance to the client; and

(b) a service agreement that covers the immigration assistance is not in force.

(3) This section does not apply to a fee charged for an initial consultation conducted other than under a service agreement in accordance with section 43.

Note: See also paragraph 43(3)(c).

52. Refunds

(1) A service agreement must include a refund policy in relation to fees and disbursements.

(2) The refund policy must be fair and reasonable.

(3) A responsible migration agent in relation to a service agreement must ensure that:

(a) sufficient funds are available to cover any refunds that become payable under the agreement; and

(b) any refunds payable under the agreement are paid:

(i) in accordance with the agreement; and

(ii) promptly and, in any case, no later than 14 days after they become payable.

Division 4 - Client documents

53. Duty to keep documents securely

A migration agent must ensure that any documents belonging, or relating, to a client or former client of the agent that are in the possession of the agent, or a member of the agent's business, are kept securely.

54. Duty to return client documents

(1) A migration agent must, if requested in writing by:

(a) a client; or

(b) a former client, or a new registered migration agent representing a former client;

return to the client or new agent all documents to which the client is entitled within 14 days of receiving the request.

(2) A migration agent is not entitled to claim a lien on documents to which a client or former client is entitled unless the agent is a restricted legal practitioner who is eligible.

Note: A person cannot be registered as a migration agent if the person is an unrestricted legal practitioner or a restricted legal practitioner who is not eligible: see section 302A of the Act.

(3) For the purposes of this section, and without limiting it, a client or former client of a migration agent is taken to be entitled to documents that are:

(a) given to the agent, or a member of the agent's business, by, or on behalf of, the client; or

(b) paid for by, or on behalf of, the client.

Note: Documents that are commonly given to migration agents by, or on behalf of, clients include passports, birth certificates, qualifications, photographs and business financial statements.

Division 5 - Record keeping

55. Duty to make records of oral communications with clients

A migration agent must make a contemporaneous written record of oral communications between the agent and a client in relation to immigration assistance, including:

(a) oral instructions the client gives the agent; and

(b) oral advice the agent gives the client.

56. Duty to maintain client files

Duty to create and maintain client files

(1) A migration agent for a client must ensure that a client file is created and maintained for the client.

(2) The client file must include the following:

(a) a copy of the client's application or other immigration matter;

(b) copies of all service agreements between the agent and the client and any variations to the agreements;

(c) copies of all written communications (including electronic communications) between:

(i) the agent and the client; and

(ii) the agent and any other person or organisation, to the extent that the communications relate to the client;

(d) all records made under section 55 in relation to the client;

(e) records of material oral communications between the agent and any person or organisation other than the client, to the extent that the communications relate to the client;

(f) copies of all invoices and receipts given by the agent relating to the client;

(g) copies of all personal documents relating to the client given to the agent by, or on behalf of, the client;

(h) evidence of the safe return of any original documents belonging to the client and given to the agent.

(3) A migration agent may create and maintain a single file under subsection (1) for 2 or more clients who are members of the same family unit, other than a client who requests the agent to create and maintain a separate client file for the client.

(4) A client file may be kept in written or electronic form, or partly written and partly electronic form.

Duty to keep client files for 7 years

(5) A migration agent who has a duty under subsection (1) in relation to a client file must take all reasonable steps to ensure that the client file is kept for a period of 7 years after the last action on the file for the relevant client.

(6) Subsection (5) does not prohibit a migration agent from transferring possession of a client file to another migration agent.

(7) If a migration agent (the ***original agent***) transfers possession of a client file for a client to another migration agent (the ***receiving agent***):

(a) the receiving agent must take all reasonable steps to ensure that the client file is kept for a period of 7 years after the date of the last action on the file for the client; and

(b) except as required or authorised by law, the receiving agent must not disclose, or allow to be disclosed, to a third person any personal information contained in the client file relating to:

(i) the client; or

(ii) the client's affairs;

without the written consent of the client.

(8) The receiving agent's duties under subsection (7) are in addition to the original agent's duties under section 35 (confidentiality) and subsection (5) of this section.

Duty to give Authority access to client files on request

(9) A migration agent must give the Authority access to a client file that is in the possession of the agent, or a member of the agent's business, if the Authority, in writing, requests access to the client file for the purposes of the Authority carrying out its functions under paragraphs 316(1)(a) to (d) of the Act.

Division 6 - Ending agent-client relationship

57. Termination notices

Notices to clients

(1) Subject to subsection (2), a responsible migration agent in relation to a service agreement must ensure that each client covered by the agreement is given a written notice in accordance with subsection (3) before any termination of the agreement takes effect.

(2) Subsection (1) does not apply if:

(a) because of exceptional circumstances, it is reasonable for the agreement to be terminated without a client having been given such a notice before the termination takes effect; or

(b) the agreement is terminated unilaterally by a client.

Instead, the responsible migration agent must ensure that each client covered by the agreement is given a written notice in accordance with subsection (3) no later than 14 days after the termination takes effect.

(3) The notice must include the following:

(a) the date from which the agreement is terminated;

(b) the matters required by subsection (4) (if applicable);

(c) the matters required by subsection (5) (if applicable);

(d) a statement setting out the effect of section 54.

Note: Section 54 requires a migration agent to return documents to which a client is entitled if requested to do so by the client or by a new registered migration agent representing the client.

(4) If an immigration matter in respect of the client is pending, the notice must include the following:

(a) the status of the client's immigration matter;

(b) if the matter is to be allocated to another registered migration agent:

(i) the name and contact details of that other registered migration agent; and

(ii) a statement to the effect that the client may choose not to have the matter allocated to another registered migration agent and may cease receiving the responsible migration agent's services at any time before the agent terminates the agreement if the client wishes to do so;

(c) if the matter is not to be allocated to another registered migration agent—details of how the client may obtain further immigration assistance.

(5) If the responsible migration agent, or a member of the responsible migration agent's business, holds any client money in relation to the service agreement, the notice must include the following:

(a) a statement setting out:

(i) each amount of client money received; and

(ii) each amount paid as mentioned in paragraph 50(1)(d); and

(iii) the amount remaining;

(b) a statement that, in the absence of instructions from the client, the amount remaining will be refunded to the client.

Notices to Department and review authorities

(6) A responsible migration agent in relation to a service agreement must ensure that the Department or a review authority is given written notice no later than 14 days after a termination of the service agreement takes effect if, at that time, an immigration matter in relation to which immigration assistance has been provided under the agreement is pending before the Department or review authority.

58. Duty to forward correspondence relating to former clients

(1) If:

(a) a migration agent ceases to be a migration agent of a client; and

(b) the agent later receives correspondence from a government official that:

(i) is addressed to the client; or

(ii) it is reasonable to assume was addressed to the agent because it was believed that the agent was, at the time the correspondence was sent, a current migration agent of the client;

the agent must take all reasonable steps to forward the correspondence to the former client or to a current migration agent of the former client.

(2) Subsection (1) does not apply to correspondence the migration agent receives more than 28 days after the agent gives written notice to:

(a) the Department; or

(b) a review authority at a time when an immigration matter in respect of the client is pending before the review authority;

that the agent has ceased to be a migration agent of the client.

(3) For the purposes of subsection (2), if:

(a) the client gave the Minister notice under subsection 494D(1) of the Act that the agent was authorised by the client to receive documents under the Act; and

(b) the client varies or withdraws the notice so that the agent is no longer the client's authorised recipient;

the agent is taken to have given written notice in accordance with that subsection at the later of:

(c) the time the client varies or withdraws the notice; and

(d) the time the client ceases to be a client of the agent.

Part 4 - Miscellaneous

59. Legal professional privilege

Nothing in this instrument affects the right of a person to refuse to answer a question, give information, or produce a document, on the ground that:

(a) the answer to the question or the information would be privileged from being given on the ground of legal professional privilege; or

(b) the document would be privileged from being produced on the ground of legal professional privilege.

Part 5 - Application and transitional provisions

Division 1- Application of this instrument

60. Application of this instrument - general duties

Duty not to give futile immigration assistance

(1) For the purposes of paragraph 19(2)(b), it does not matter whether advice given to a client was given before, on or after 1 March 2022.

(2) For the purposes of paragraph 19(2)(c), it does not matter whether a written statement given to a migration agent was given before, on or after 1 March 2022.

Duty relating to correcting false or misleading statements etc.

(3) For the purposes of section 21, it does not matter whether:

(a) a statement made to a government official was made before, on or after 1 March 2022; or

(a) a document given to a government official was given before, on or after 1 March 2022; or

(b) information concealed from a government official was concealed before, on or after 1 March 2022.

Duty to notify Authority of misuse of MARN

(4) Subsection 25(4) applies to a migration agent becoming aware, on or after 1 March 2022, of a use of the agent's MARN, whether the use occurred before, on or after 1 March 2022.

Duties to notify Authority and clients of certain matters

(5) Section 28 applies to a change that occurs on or after 1 March 2022.

(6) If:

(a) on 1 March 2022, a migration agent is aware of a matter mentioned in paragraph 29(a) or (b); and

(b) the agent did not give written notice of the matter to the Authority before 1 March 2022;

for the purposes of section 29, the migration agent is taken to become aware of the matter on 1 March 2022.

(7) Subsection 30(5) does not apply in relation to client money received by a migration agent, or a member of a migration agent's business, before 1 March 2022 under a service agreement that requires the client money to be refunded or transferred if the agent's registration is suspended.

Duty to notify clients, Department and review authority if registration expected to lapse

(8) If:

(a) on 1 March 2022, a migration agent is aware that it is reasonably likely that the agent will cease to be a registered migration agent on a day (the ***end day***) occurring after 1 March 2022; and

(b) the agent did not, before 1 March 2022, give written notice to:

(i) a client; or

(ii) the Department; or

(iii) a review authority;

that it was reasonably likely that the agent would cease to be a registered migration agent on the end day;

then, for the purposes of section 31, as it applies in relation to the client, the Department or the review authority, the migration agent is taken to become aware on 1 March 2022 that it is reasonably likely that the agent will cease to be a registered migration agent on the end day.

(9) Subsection 31(5) does not apply in relation to client money received by a migration agent, or a member of a migration agent's business, before 1 March 2022 under a service agreement that requires the client money to be refunded or transferred if the agent ceases to be a registered migration agent.

Duty to respond to requests from Authority

(10) Section 32 applies to requests made by the Authority on or after 1 March 2022.

61. Application of this instrument - the agent-client relationship

Duty to inform clients of conflicts of interest

(1) For the purposes of subsection 34(1), a written notice that:

(a) was given to a client before 1 March 2022; and

(b) meets the requirements of subsection 34(2);

is taken to have been given under paragraph 34(1)(a).

(2) For the purposes of subsection 34(1), a written statement that:

(a) was given to a migration agent before 1 March 2022; and

(b) meets the requirements of subparagraphs 34(1)(b)(i) and (ii);

is taken to have been given under paragraph 34(1)(b).

Duty of confidentiality

(3) Section 35 applies to disclosing information on or after 1 March 2022, whether the information was obtained before, on or after 1 March 2022.

Duty to give consumer guide to clients

(4) For the purposes of section 38, if a copy of the consumer guide has been given to a client it does not matter whether the copy was given before, on or after 1 March 2022.

Service agreements

(5) If a service agreement:

(a) was in force immediately before 1 March 2022; and

(b) met all applicable requirements of Schedule 2 to the *Migration Agents Regulations 1998*, as in force immediately before 1 March 2022;

then:

(c) for the purposes of subparagraph 42(1)(a)(iii) of this instrument, the service agreement is taken to comply with the requirements of Division 2 of Part 3; and

(d) paragraph 42(1)(b) does not apply in relation to a variation of the service agreement that occurred before 1 March 2022; and

(e) sections 46, 47 and 48 are taken to require only the following in relation to the service agreement:

(i) a responsible migration agent in relation to the service agreement must not charge fees, and must ensure that fees are not charged, for work or services performed under the agreement other than as provided for by the agreement;

(ii) a responsible migration agent in relation to the service agreement must not unreasonably incur disbursements in relation to work or services performed under the agreement;

(iii) a responsible migration agent in relation to the service agreement must not require a client to pay, and must ensure that a client is not required to pay, for a disbursement that will be incurred in relation to such work or services, other than in accordance with the agreement; and

(f) subsections 52(1) and (2) do not apply to the service agreement.

(6) Subsection (5) ceases to apply to the service agreement at the first time (if any) that the service agreement is varied on or after 1 March 2022.

Invoices and receipts

(7) For the purposes of paragraph 49(a), it does not matter whether an itemised invoice given to a client was given before, on or after 1 March 2022.

Duty in relation to client's money

(8) Section 50 applies to client money received by a migration agent, or by a migration agent's business, on or after 1 March 2022.

Duty to maintain client files

(9) Subsections 56(1) to (4), to the extent they relate to maintaining a client file, apply in relation to the following:

(a) a client file created before 1 March 2022 if action on the file occurs on or after 1 March 2022;

(b) a client file created on or after 1 March 2022.

Termination notices

(10) Subsection 57(5) does not apply in relation to client money received by a migration agent, or a member of a migration agent's business, before 1 March 2022.

Duty to forward correspondence relating to former client

(11) Section 58 applies in relation to a migration agent ceasing to be a migration agent of a client on or after 1 March 2022.