

Memo

To: Arthur Moses SC, President, Law Council of Australia

From: Stuart Webb, President, Law Institute of Victoria

Subject: Code of Conduct for Registered Migration Agents

Date: 19 November 2019

Dear Mr Moses,

The Law Institute of Victoria ('**LIV**') welcomes the opportunity to provide comments relating to the proposed approach of the revised Code of Conduct for the Registered Migration Agents ('**the Code**') which is set out in Schedule 2 to the *Migration Agents Regulations 1998* ('**the regulations**'). These comments are informed by the LIV Migration Law Committee.

The LIV acknowledges the Office of Migration Agents Registration Authority's ('**OMARA**') efforts in strengthening consumer protection and professional standards in relation to Registered Migration Agents ('**RMA**'). The LIV submits that the revised Code is an improvement however members are concerned that there was insufficient compliance of what was set out in the current Code in relation to providing receipts, cost agreements, understanding conflict of interest and providing advice in areas where agents are unfamiliar. The LIV suggests that in order to combat these issues, it would be valuable to provide more training and guidance to migration agents as well as revising the Code.

Professional Obligations

The LIV notes clause 9 of the proposed Code may require a guidance note to assist with what is required for maintaining an onsite access to a professional library. RMAs may work remotely or visit clients and therefore 'onsite access' may not be viable. The LIV suggests that a guidance note on what 'onsite access' access means may be beneficial.

Furthermore, the LIV submits that there should be reference to ensuring that an agent only acts for clients in areas of their expertise. LIV members report that there have been situations where RMAs have taken on specific matters in which they do not have experience.

Conflict of Interest

Clauses 10-14 of the proposed code focus on conflict of interest. The LIV is concerned that clause 12 of the revised code does not cover situations faced by RMAs where a conflict of interests can arise. The LIV submits that the informed written consent on

commissions must be obtained “prior” to engaging or acting. It should form part of the Written Agreement or Agreement of Fees and Services. Guidance notes need to provide clear examples of where there is a relationship breakdown between clients when acting for Family Unit Visas or Partner visa application. The LIV suggests that the guidance notes should be clear as to whether the Agent can continue to represent the client.

Futile Matters

The LIV suggests that example clause 15 which relates to futile matters should be clearer to show that RMAs can continue to act for their clients if they obtain written acknowledgement from the client that they have been advised of the risks.

Confidentiality

The LIV submits that a guidance note is required to explain proposed clause 16 which governs confidentiality. In particular, OMARA should provide what constitutes “client affairs” and when does a “legal duty” arise to afford greater clarification for RMAs.

Complaints

The LIV suggests that a guidance note is required to explain how to respond properly to a complaint and the timeframe to do so.

Written Agreements

The LIV notes that the written agreement states the primary RMA who has carriage of the matter in clause 31(a). The LIV believes that there should be further clarification of the implication of the roles of the primary and secondary RMAs. A guidance note may best clarify this as the written agreement should state who is liable if issues arise.

The LIV suggests that consideration be given to how RMA give instructions to clients regarding accessing visa applications online in a written agreement as provided for in clause 31(n).

Client Funds

The LIV supports clause 39 which recognises the obligations of an RMA when managing clients’ funds. LIV members report that the sanction decisions demonstrate that due to a lack of training RMAs are negligently or wilfully breaching their duties when dealing with client monies. The LIV recommends that new agents should be required to undertake client accounting training to better improve managing client funds.

Furthermore, the LIV supports the requirement of RMAs to undergo regular inspection of client accounts.

Applications

LIV members suggest that there should be an onus on the agent to provide a copy of the application form to the client once lodged and the list of documents subsequently uploaded. LIV members report that their clients who have been previously advised by an RMA do not know what has been provided to the Department of Home Affairs. Clients often assume that anything that has been provided to an agent will be provided to the Department of Home Affairs. By providing a list to the client, this will eliminate any assumptions from the client.

If you would like to discuss any of these matters further, please contact Nethmi Perera, Policy Officer for the Administrative Law and Human Rights Section at the LIV at nperera@liv.asn.au or on 03 9607 9338.

Yours sincerely,

Stuart Webb

**President
Law Institute of Victoria**