



Australian Government
Department of Immigration and Citizenship

Code of Conduct

for

Agencies and Registered Users

This Code of Conduct sets out in detail the professional and ethical standards expected of Agencies who access and use the Assessment Level 2-4 eVisa facility.

Code of Conduct

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Part 1 Introduction

- 1.1 This Code of Conduct (Code) establishes professional and ethical standards for Agencies and Registered Users who use the Assessment Level 2–4 eVisa facility (the Facility).
- 1.2 In this Code, an obligation imposed on an Agency applies equally on the same terms and to the same standard to each of the Agency's Registered Users.
- 1.3 The Agency is responsible for administering the Code.
- 1.4 The Code applies to all Agencies and Registered Users who are registered with access to the Facility.
- 1.5 To ensure compliance with the Code, the Department may impose a sanction if a breach of the Code is found to have occurred, as specified in Attachment D.
- 1.6 A sanction may range from a caution through to suspension of access or termination of access to the Facility.
- 1.7 The Code aims to:
- (a) establish a proper standard for the conduct of an Agency;
 - (b) set out the minimum attributes and abilities that an Agency must possess and demonstrate to perform as an Agency under the Code including:
 - (i) being of good character;
 - (ii) being able to perform diligently and honestly;
 - (iii) being able and willing to deal fairly with clients;
 - (iv) having sufficient knowledge of business procedure to conduct business as an Agency, including record keeping and file management;
 - (v) properly managing and maintaining client records;
 - (c) maintain quality control of the Facility with the Agency doing everything practicable to ensure that Applications lodged through the Facility are accurate, complete and genuine.

Part 2 Standards of professional conduct

2.1 An Agency must always:

- (a) act in accordance with the law (including, for an agent operating as an agent in a country other than Australia, the law of that country) and the legitimate interests of his or her client; and
- (b) deal with his or her client competently, diligently and fairly.

2.2 An Agency must not accept a person as a client if the Agency or any Employee of the Agency would have any of the following conflicts of interest:

- (a) the Agency is, or intends to be, involved with the client in a business activity that is not relevant to the assessment of a visa Application;
- (b) the Agency and client are related to each other;
- (c) the Agency has a business interest with an education provider that goes beyond the standard agreement (for example, shares, part or full ownership);
- (d) there is any other interest of the Agency that would affect the legitimate interests of the client.

Note the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students (2007) requires education providers to enter into a written agreement with each agency it engages to formally represent it.

2.3 If it becomes apparent that an Agency has a conflict of interest mentioned in 2.2 in relation to a client, the Agency must, as soon as practicable taking into account the needs of the client:

- (a) tell the client about the conflict of interest;
- (b) advise the client to appoint another representative;
- (c) cease to deal with the client's eVisa Application; and
- (d) immediately inform DIAC of the conflict of interest.

2.4 An Agency must have due regard to a client's dependence on his or her knowledge and experience.

2.5 An Agency must take account of objective criteria to make an Application under the Migration Act or Migration Regulations. He or she must be frank and candid about the prospects of success when assessing a client's request for assistance in making an Application.

2.6 An Agency who is asked by a client to give his or her opinion about the probability of a successful outcome for the client's Application must not hold out unsubstantiated or unjustified prospects of success.

2.7 While an Agency cannot be responsible for misinformation provided by a client, the Agency must not make statements in support of an

Application, which he or she knows or believes to be misleading, inaccurate, or non-genuine.

- 2.8 In communicating with, or otherwise providing information to, the Department, an Agency must not seek to mislead or deceive the Department, whether directly or indirectly.
- 2.9 An Agency must not engage in false or misleading advertising in relation to:
- (a) offering access to the Facility to unauthorised persons;
 - (b) guaranteeing the success of an Application;
 - (c) guaranteeing work in Australia;
 - (d) guaranteeing the success of future Applications with the Department (for example, permanent residence under skilled migration)
- 2.10 An Agency must not intimidate or coerce any person for the benefit of the individual, agency or otherwise.
- 2.11 An Agency with operations overseas who is not a Registered Migration Agent must not create an impression that registration to the Facility involves accreditation by the Commonwealth Government as a Registered Migration Agent.

Note: Under section 306AC of the Act, the Minister may refer a registered migration agent to the Office of the Migration Agents Registration Authority for disciplinary action if the agent has a high visa refusal rate to a visa of a particular class.

- 2.12 The Agency must act in a timely manner if the client has provided all the necessary information and documentation in time for deadlines. Agencies are encouraged to lodge the Applications through the Facility well before the client's intended course commences in Australia. For clients offshore applying through eVisa, an Agency can lodge their Application up to four months before his or her course commences. The Agency should not lodge Applications shortly before course start dates. If the Agency chooses to do so they do it on the understanding that the processing of an Application will not be expedited due to the approach of the course commencement date.
- 2.13 Subject to a client's instructions, an Agency has a duty to provide sufficient relevant information to the Department to allow a full assessment of all facts against the relevant criteria.
- 2.14 An Agency must not submit an Application under the Migration Act or Migration Regulations without the specified accompanying documentation.

Note: The eVisa agent checklist on specified documentation required in an Application is available on the Agents Gateway.

See: <http://www.immi.gov.au/gateways/agents/>

- 2.15 An Agency must certify the accompanying documentation when electronically submitted to the Department.
- 2.16 Where the accompanying documentation is in a language other than English, the Agency must provide a full translation in English.

Note:The translation of documentation submitted in the Facility does not need to be provided by the National Accreditation Authority for Translators and Interpreters (NAATI).

- 2.17 An Agency must notify the Department in writing within 14 days of any changes to the registration details of the individual or Agency in relation to any of the following matters:
- (a) the Agency's full name;
 - (b) any business names of the Agency or agency;
 - (c) the business address for the Agency or agency;
 - (d) the business or agency ceases operations;
 - (e) a Registered User ceases to be employed by the Agency;
 - (f) a change in the Agency's representation of the client;
 - (g) the telephone number for contacting the Agency or agency;
 - (h) the email address for contacting the Agency.
- 2.18 An Agency must notify the Department at the time of an Performance Review process or upon request by the Department on any change in the relationship with an education provider or other Agency. This includes:
- (a) a new agreement between the Agency , education provider or Agency; and
 - (b) the termination of an agreement between the Agency , education provider or Agency.
- 2.19 An Agency must take all reasonable steps to maintain the reputation and integrity of the access to the Facility.

Part 3 Dealings with clients

- 3.1 An Agency must act professionally at all times when providing advice and assistance with lodging eVisa Applications.
- 3.2 An Agency must have sound knowledge of the provisions of the Migration Act, Migration Regulations and other relevant legislation to offer sound and comprehensive advice to a client, including completing and lodging an eVisa Application.

Note: Visa criteria can be accessed from *Legendcom*, an electronic database of core migration legislation and policy documents. Information about *Legendcom* and online subscriptions are available from <http://www.immi.gov.au/legend/index.htm>.

- 3.3 An Agency must not disclose, or allow to be disclosed, confidential information about a client or a client's business without the client's written consent, unless required by law.
- 3.4 An Agency must inform clients that they are entitled to receive copies of the Application under the Migration Act or Migration Regulations and any related documents if they want copies.
- 3.5 An Agency must lodge a complete and accurate eVisa Application with all Key Documents attached immediately after the lodgement of a valid Application.
- 3.6 An Agency must not lodge a client's Application that he or she believes to contain false, misleading or inaccurate information/documentation.
- 3.7 An Agency must act in accordance with the client's instructions except in circumstances where the Application is vexatious or grossly unfounded.
- 2.20 If the Agency considers that an Application under the Migration Act or the Migration Regulations is vexatious or grossly unfounded (for example, an Application that has no hope of success) the Agency:
- (a) must not encourage the client to lodge the Application;
 - (b) must advise the client in writing that, in their opinion, the Application is vexatious or grossly unfounded; and
 - (c) if the client still wishes to lodge the Application, the Agency must immediately inform DIAC that the Applicant intends to lodge the Application but the Agency must not lodge that Application itself.
- 3.8 An Agency must have an address and telephone number where they can be contacted during normal business hours.
- 3.9 An Agency must keep the client fully informed of the progress of their eVisa Application including where additional evidence is requested or integrity checking is conducted by the Department (for example, client is invited to attend an interview).

- 3.10 Within a reasonable time after the eVisa Application is decided, tell the client in writing of the outcome of the Application. The Agency must not alter decision records or any Departmental communication in relation to an Application.
- 3.11 Where an Agency changes his or her address, telephone number, email address or any other details, the Agency must give notice to all current clients no later than 7 days after the change.
- 3.12 An Agency must not portray registration as involving a special or privileged relationship with the Minister or officers of the Department (for example, to imply that the Agency undertakes part or full processing for the Department, can influence or interfere with decisions).
- 3.13 An Agency must not represent to a client that they can procure a particular decision for a client under the Migration Act or the Migration Regulations.
- 3.14 There is no statutory scale fee for the use of an Agency. However, an Agency may set and charge a fee that is reasonable in the circumstances of the case.
- 3.15 An Agency must:
- (a) find out the correct amount of any visa Application charge and all other fees or charges required to be paid for a client's eVisa Application under the Migration Act or the Migration Regulations.
 - (b) tell the client the amount of each fee and charge; and
 - (c) give the client notice of each amount paid by the Agency for the client.
- 3.16 The Agency must not intimidate or coerce a client to lodge or continue with an eVisa Application.

Part 4 Relations between Agencies

- 4.1 An Agency must act with fairness, honesty and courtesy when dealing with other Agencies.
- 4.2 Before accepting immigration work, an Agency must consider whether he or she is qualified to give the advice sought by the client. If the Agency is unsure, he or she must seek the appropriate advice or assistance, or refer the matter to another Agency.
- 4.3 An Agency must not take over work from another Agency unless he or she receives written evidence that the other engagement has ceased.

Part 5 Record keeping and management

- 5.1 An Agency must maintain proper records and make them available for inspection on request by the Department, including files containing:
- (a) a copy of each client's Application;
 - (b) copies of each written communication between:
 - (i) the client and the Agency;
 - (ii) the Agency and any relevant statutory authority;
 - (iii) the Agency and the Department regarding the client.
 - (c) File notes of every substantive or material oral communication between:
 - (i) the client and the Agency;
 - (ii) the Agency and an official of any relevant statutory authority;
 - (iii) the Agency and the Department regarding the client.
 - (d) detailed verification case notes
- 5.2 The Agency must keep the records mentioned in clause 5.1 for a period of two (2) years after the date of the decision on the eVisa Application.
- 5.3 An Agency must keep all documents to which a client is entitled securely and in a way that will ensure confidentiality while the Agency is giving services to the client and until the earlier of:
- (a) two (2) years after the date of client's eVisa decision; or
 - (b) when the documents are given to the client or dealt with in accordance with the client's written instructions.

Note On the completion or termination of services, all documents to which a client is entitled are to be dealt with in accordance with Part 7 of the Code.

- 5.4 For clause 5.2, the documents to which a client is entitled include (but are not limited to) documents that are:
- (a) provided by, or on behalf of, the client; and
 - (b) paid for by, or on behalf of, the client.

Note Documents the client is entitled to can include passports, birth certificates, qualifications, photographs and other personal documents.

- 5.5 An Agency must respond to a request for information from the Department within a reasonable time specified by the Department.
- 5.6 An Agency must act on the basis that the Agency's electronic communications are part of the Agency's records and documents.

Part 6 Duties of an Agency to Employees

- 6.1 An Agency must properly supervise the work carried out by its staff.
- 6.2 An Agency must make all Employees familiar with the Code.
- 6.3 An Agency must ensure that its Employees are of good character and act consistently with the Code in the course of their Employment.

Part 7 Termination of services

- 7.1 An Agency must complete services as instructed by the client unless:
- (a) the Agency and client agree otherwise;
 - (b) the client terminates its contract with the Agency; or
 - (c) the Agency terminates its contract with the client and gives reasonable written notice to the client.