

**IMMIGRATION
ADVISERS AUTHORITY**

LICENSED IMMIGRATION ADVISERS
Code of Conduct
2014



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI

New Zealand Government

LICENSED PROFESSIONAL PROTECTED MIGRANT

This code of conduct sets out the required standards of professional and ethical conduct for licensed immigration advisers. It is developed by the Registrar of Immigration Advisers and approved by the Minister of Immigration in accordance with section 37(4) of the Immigration Advisers Licensing Act 2007.

www.iaa.govt.nz

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Professional responsibilities

GENERAL

1. A licensed immigration adviser must be honest, professional, diligent and respectful and conduct themselves with due care and in a timely manner.

CLIENT CARE

2. A licensed immigration adviser must:
 - a. maintain a relationship of confidence and trust with the client and provide objective advice
 - b. acknowledge the cultural norms and values of the client
 - c. facilitate the provision of interpreters and translators as appropriate
 - d. where appropriate, advise the client when they may be eligible for legal aid under the Legal Services Act 2011 in relation to a refugee status or protection claim or appeal or immigration detention
 - e. obtain and carry out the informed lawful instructions of the client, and
 - f. when requested, assist the client to access information about the Treaty of Waitangi and tikanga (Māori customs and traditions).

LEGISLATIVE REQUIREMENTS

3. A licensed immigration adviser must:
 - a. if operating in New Zealand, act in accordance with New Zealand law
 - b. if operating offshore, act in accordance with the law of the jurisdiction they are operating in, and
 - c. whether in New Zealand or offshore, act in accordance with New Zealand immigration legislation, including the Immigration Act 2009, the Immigration Advisers Licensing Act 2007 and any applicable regulations.

CONFIDENTIALITY

4. A licensed immigration adviser must:
 - a. preserve the confidentiality of the client except in the following circumstances:
 - i. with the client's written consent, or
 - ii. if making a complaint to the Immigration Advisers Authority relating to another adviser or reporting an alleged offence under the Immigration Advisers Licensing Act 2007, or
 - iii. for the administration of the Immigration Advisers Licensing Act 2007, or
 - iv. as required by law, and
 - b. require that any employees or other persons engaged by the adviser also preserve the confidentiality of the client.

CONFLICTS OF INTEREST

5. Where a licensed immigration adviser is aware that there is a potential or actual conflict of interest relating to the client, including the existence of any financial or non-financial benefit the adviser will receive as a result of the relationship with the client, the adviser must disclose the potential or actual conflict to the client in writing.
6. Where a licensed immigration adviser is aware that there is a potential or actual conflict of interest relating to the client, the adviser may only represent or continue to represent the client where the client gives written consent.
7. A licensed immigration adviser must not in any circumstances represent or continue to represent the client where they are aware that there is an actual conflict of interest that means:
 - a. the adviser's objectivity or the relationship of confidence and trust between the adviser and the client would be compromised, or
 - b. the adviser would breach the confidentiality of a client.

WORK WITHIN LIMITS OF KNOWLEDGE AND SKILLS

8. A licensed immigration adviser must:
 - a. work within the scope of their individual knowledge and skills, or under direct supervision if a provisional licence holder, or refer the client to another professional
 - b. if a limited licence holder, explain to the client that a limited licence authorises them to provide immigration advice only in relation to specified matters, and they may provide advice only in those areas, and
 - c. if a provisional licence holder, explain to the client that a provisional licence requires them to work under the direct supervision of a full licence holder, and they must seek advice from the supervisor whenever necessary.

FUTILE IMMIGRATION MATTERS

9. If a proposed application, appeal, request or claim is futile, grossly unfounded, or has little or no hope of success, a licensed immigration adviser must:
 - a. advise the client in writing that, in the adviser's opinion, the immigration matter is futile, grossly unfounded or has little or no hope of success, and
 - b. if the client still wishes to make or lodge the immigration matter, obtain written acknowledgement from the client that they have been advised of the risks.

PROFESSIONAL RELATIONSHIPS

10. A licensed immigration adviser must:
 - a. if they are aware that the client has previously used another licensed or exempt immigration adviser:
 - i. ensure that the previous contract has ended, or
 - ii. ensure that the client has terminated the services in writing, or
 - iii. with the client's written consent, terminate the services in writing on the client's behalf, or
 - iv. if the client wishes to continue to engage another licensed or exempt immigration adviser, ensure that there are clear instructions on the terms of engagement with the new adviser
 - b. comply with the operating requirements of Immigration New Zealand
 - c. when applicable, comply with the operating requirements of the Immigration and Protection Tribunal
 - d. disclose to the Immigration Advisers Authority in writing any information that would have a material effect on their licence, and
 - e. notify the Immigration Advisers Authority in writing of any changes to their details as recorded on the register of licensed immigration advisers as soon as practicable, but no later than 10 working days, after the change.

Supervision

SUPERVISION AGREEMENT

11. A provisional licence holder and their supervisor must have a supervision agreement in place that is approved by the Registrar of Immigration Advisers.

ROLES AND RESPONSIBILITIES OF THE SUPERVISOR

12. A supervisor must:
- a. hold a full immigration adviser licence
 - b. ensure that any fees charged for supervision are fair and reasonable in the circumstances
 - c. act in accordance with the supervision agreement as approved by the Registrar of Immigration Advisers
 - d. preserve the confidentiality of the provisional licence holder's clients
 - e. where there is a close personal relationship with the provisional licence holder, ensure that this does not compromise the supervision agreement between the parties, and
 - f. inform the Registrar of Immigration Advisers when any notice is given that the supervision agreement is to be terminated.

ROLES AND RESPONSIBILITIES OF THE PROVISIONAL LICENCE HOLDER

13. A provisional licence holder must:
- a. act in accordance with the supervision agreement as approved by the Registrar of Immigration Advisers
 - b. inform the Registrar of Immigration Advisers when any notice is given that the supervision agreement is to be terminated
 - c. not give immigration advice for any period of time in which they do not have in place a supervision agreement approved by the Registrar of Immigration Advisers, and
 - d. provide any new supervision agreement to the Registrar of Immigration Advisers for approval.

Professional Practice

IMMIGRATION ADVISER LICENCE

14. A licensed immigration adviser must provide evidence of being licensed to the client.

COMPLAINTS PROCEDURE

15. A licensed immigration adviser must:

- a. develop and maintain an internal complaints procedure that notes that the client may also complain to the Immigration Advisers Authority, and
- b. if a complaint is made to the adviser, follow their internal complaints procedure.

INITIAL CONSULTATIONS

16. A licensed immigration adviser:

- a. must, if charging a fee for an initial consultation, before the initial consultation, obtain the client's written consent to the fee and the payment terms and conditions for that fee, and
- b. when conducting an initial consultation with the client or potential client, whether charging a fee or not, is not required to meet the requirements at 17 and 18 below, but must adhere to all other requirements of this code of conduct.

CODE AND COMPLAINT DOCUMENTS

17. Before entering into a written agreement with the client, a licensed immigration adviser must:

- a. provide the client with the summary of licensed immigration advisers' professional responsibilities, as published by the Registrar of Immigration Advisers
- b. explain the summary of licensed immigration advisers' professional responsibilities to the client and advise them how to access a full copy of this code of conduct, and
- c. advise the client that they have an internal complaints procedure and provide them with a copy of it.

WRITTEN AGREEMENTS

18. A licensed immigration adviser must ensure that:

- a. when they and the client decide to proceed, they provide the client with a written agreement
- b. before any written agreement is accepted, they explain all significant matters in the written agreement to the client
- c. all parties to a written agreement sign it, or confirm in writing that they accept it, and
- d. any changes to a written agreement are recorded and accepted in writing by all parties.

19. A licensed immigration adviser must ensure that a written agreement contains:

- a. the name and licence number of any adviser who may provide immigration advice to the client

- b. where an adviser is representing the client, written authority from the client for the adviser to act on the client's behalf
- c. if the adviser holds a provisional licence:
 - i. a record that a provisional licence requires them to work under the direct supervision of a full licence holder, and that they must seek advice from the supervisor whenever necessary
 - ii. the name and licence number of their supervisor, and
 - iii. a record that they will disclose the client's personal information to their supervisor who is obliged to keep that information confidential
- d. if the adviser holds a limited licence, a record of what specified matters their limited licence authorises them to provide immigration advice in relation to, and that they may provide advice only in those areas
- e. a full description of the services to be provided by the adviser, which must be tailored to the individual client
- f. where fees are to be charged, the fees for the services to be provided by the adviser, including either the hourly rate and the estimate of the time it will take to perform the services, or the fixed fee for the services, and any New Zealand Goods and Services Tax (GST) or overseas tax or levy to be charged
- g. the likely disbursements that will be incurred (including any Immigration New Zealand fees), including the amount, if known, or a reasonable estimate
- h. where disbursements will be incurred, whether the disbursements will be paid directly by the client or by the adviser on the client's behalf
- i. where fees and/or disbursements are to be charged, the payment terms and conditions for any fees and/or disbursements
- j. where fees and/or disbursements are to be charged, what interest on unpaid accounts will be charged, if any
- k. where fees and/or disbursements are to be charged, the adviser's refund policy
- l. if applicable, a record of any potential or actual conflict of interest relating to the client, including the existence of any financial or non-financial benefit the adviser will receive as a result of the relationship with the client
- m. a record that a copy of the summary of licensed immigration advisers' professional responsibilities has been provided and explained to the client, and
- n. a record that a copy of the adviser's internal complaints procedure has been provided to the client.

FEES

20. A licensed immigration adviser must:
- a. ensure that any fees charged are fair and reasonable in the circumstances
 - b. work in a manner that does not unnecessarily increase fees, and
 - c. inform the client of any additional fees, or changes to previously agreed fees, and ensure these are recorded and agreed to in writing.

DISBURSEMENTS

21. A licensed immigration adviser must:
- a. charge disbursements to the client at the actual amount, if known, or at a reasonable estimate of what it costs the adviser to provide the service
 - b. work in a manner that does not unnecessarily increase disbursements, and
 - c. inform the client of any additional disbursements, or changes to previously agreed disbursements, and ensure these are recorded and agreed to in writing.

INVOICES

22. A licensed immigration adviser must, each time a fee and/or disbursement is payable, provide the client with an invoice containing a full description of the services the fee relates to and/or disbursements that the invoice relates to.

RECEIPTS

23. A licensed immigration adviser must, each time a payment is received in cash from the client, provide the client with a receipt, clearly indicating which invoice(s), if applicable, the receipt relates to.

REFUNDS

24. A licensed immigration adviser must:
- a. ensure that refunds given are fair and reasonable in the circumstances
 - b. ensure that refund obligations can be met, and
 - c. promptly provide any refunds payable upon completing or ceasing a contract for services.

CLIENT FUNDS

25. A licensed immigration adviser must, if taking payment for fees and/or disbursements in advance of being payable and invoiced:
- a. recognise that these client funds remain the property of the client until payable and invoiced
 - b. establish and maintain a separate client account for receiving and holding all client funds paid in advance
 - c. deposit any mixed funds (funds including payable payments and advance payments) into the client account at the outset and then as soon as practical withdraw from the client account the portion of the funds that were payable and for which an invoice has been issued
 - d. cover any administrative costs of maintaining the client account
 - e. withdraw client funds only when payments for fees and/or disbursements are payable and invoiced
 - f. use client funds only for the purpose for which they were paid to the adviser, and
 - g. when requested by the Registrar of Immigration Advisers, have business accounts audited by a Chartered Accountant to show that any client funds taken in advance are held in a separate client account and only withdrawn when payments for fees and/or disbursements are payable and invoiced.

FILE MANAGEMENT

26. A licensed immigration adviser must:
- a. maintain a hard copy and/or electronic file for each client, which must include:
 - i. a full copy of the client's application or other immigration matter
 - ii. copies of all written agreements and any changes to them
 - iii. copies of all written communications (including any file notes recording material oral communications and any electronic communications) between the adviser, the client and any other person or organisation
 - iv. copies of all invoices and receipts relating to the client
 - v. copies of all personal documents relating to the client supplied to the adviser, and
 - vi. evidence of the safe return of the client's original documents

- b. confirm in writing to the client when applications have been lodged, and make on-going timely updates
- c. confirm in writing to the client the details of all material discussions with the client
- d. maintain a well-managed filing system
- e. maintain each client file for a period of no less than 7 years from closing the file, and make those records available for inspection on request by the Immigration Advisers Authority, and
- f. when requested by the client or their new licensed or exempt immigration adviser, release a copy of all applications lodged on behalf of the client and all correspondence relating to the client.

DOCUMENT SECURITY AND RETURN

27. A licensed immigration adviser must:
- a. ensure any financial and personal documents belonging to or relating to the client, whether held physically or electronically, are held securely whilst in the adviser's possession, and
 - b. when requested or required, return passports and other personal documents to the client without delay and in a secure manner.

TERMINATION OF SERVICES

28. A licensed immigration adviser must ensure that:
- a. the termination of services, for any reason, is confirmed to the client in writing
 - b. where they cease to act for the client for any reason other than the completion of agreed services, they inform Immigration New Zealand or the Immigration and Protection Tribunal, as appropriate, that they are no longer representing the client, and
 - c. if, for any reason, the adviser cannot continue to act for the client, the adviser fully updates the client on the status of their immigration matter and advises them of where they could get assistance.

Misrepresentation

ADVISERS

29. A licensed immigration adviser must not misrepresent or promote in a false, fraudulent or deceptive manner:
- a. themselves, including their qualifications or their licence status or type
 - b. their business
 - c. their employees
 - d. the client
 - e. immigration opportunities or risks, or
 - f. New Zealand's immigration requirements.
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FORMER GOVERNMENT OFFICIALS

30. Licensed immigration advisers who are former government officials must take special care to ensure representations regarding their qualifications and past employment are strictly factual and must not promote the notion that they may have special access or influence.
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APPLICATIONS

31. A licensed immigration adviser must:
- a. not deliberately or negligently provide false or misleading documentation to, or deliberately or negligently conceal relevant information from, the decision maker in regard to any immigration matter they are representing, and
 - b. if they become aware that false or misleading documentation has been provided to, or that relevant information has been concealed from, the decision maker in regard to any immigration matter they are representing:
 - i. inform the client about the potential consequences of continuing to misrepresent themselves to the decision maker
 - ii. discuss with the client the ways the misrepresentation or concealment could be remedied, and
 - iii. should the client not consent to take action to remedy the situation, terminate their services to the client in writing.
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TRADE MARK

32. A licensed immigration adviser must, if using the "Licensed by Immigration Advisers Authority" trade mark, do so in accordance with the Trade Mark Licence Agreement.

