



RAILS INFORMATION SHEET

This information is not a substitute for legal advice. If you have questions about a specific case you should seek assistance from RAILS or another registered migration agent.
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RESTRICTIONS ON PROVIDING IMMIGRATION ASSISTANCE

Under the *Migration Act* there are strict limitations on the assistance that may be given to visa applicants, review applicants and sponsors/proposers, by people who are not registered Migration Agents.

Provision of Immigration Assistance

Under the *Migration Act*, it is criminal offence to provide “immigration assistance” if you are not a registered Migration Agent. This is a strict liability offence. There are also other associated offences for advertising the provision of immigration assistance and charging fees for immigration assistance, by people who are not registered Migration Agents. High fines and imprisonment terms are imposed for the various offences.

“**Immigration Assistance**” means assistance provided by a person who uses or purports to use knowledge of, or experience in, migration procedure, to assist a visa applicant, or cancellation review applicant, by:

- (a) preparing or helping to prepare, the visa application or cancellation review application; or
- (b) advising the visa applicant or cancellation review applicant about the visa application or cancellation review application; or
- (c) preparing for proceedings before a court or review authority in relation to the visa application or cancellation review application; or
- (d) representing the visa applicant or cancellation review applicant in proceedings before a court or review authority in relation to the visa application or cancellation review application.

Immigration Assistance also includes providing similar advice and assistance to sponsors and nominators of visa applicants.

Exceptions

There are exceptions to the above rule.

The following people can legally provide immigration assistance provided no fee or gift is received.

- State or Federal parliamentarians;
- Members of diplomatic missions in their capacity as members of a diplomatic mission;
- Commonwealth or State/Territory Government officials (including members of staff of a parliamentarian) in the course of their duties as an official;
- Members of a consular post in their capacity as members of a consular post;
- Members of an office of an international organisation in their capacity as members of an international organisation.

The following people can also legally provide immigration assistance so long as there is no payment of a fee, reward or gift.

- A close family member (ie spouse, child, parent, brother or sister) of the visa applicant;
- The sponsor or nominator of the visa applicant.

It is also legal:

- For any person to prepare or help prepare a request for ministerial intervention, provided there is no payment of fee or reward;

Immigration Representations

Anyone may lawfully make “immigration representations” on behalf of a visa applicant or cancellation review applicant so long as there is no payment of fee, reward or gift.

“Immigration representations” are representations to or other communications with, the Minister for Immigration or a member of the Minister’s staff or the Department of Immigration on behalf of a visa applicant, cancellation review applicant, nominator or sponsor, about their application. This includes representations to or communications with the above people about Ministerial intervention requests.

Immigration Legal Assistance

Lawyers can provide “immigration legal assistance” without being registered Migration Agents and can charge fees for doing so. “Immigration legal assistance” means advising, preparing for proceedings or representing an applicant before a Court in relation to the application.

Administrative Assistance:

It is lawful to provide “administrative assistance” without being registered as a Migration Agent.

The following is “administrative assistance”:

1. clerical assistance in the preparation of an application or other document;
2. translation or interpreting services to help prepare an application or other document;
3. advising someone that they must apply for a visa;
4. passing on to another person information produced by a third person, without giving substantial comment on or explanation of the information.

SEEK LEGAL ADVICE

If you are considering providing some kind of assistance to a visa applicant, cancellation review applicant or proposer or sponsor and you are unsure whether the assistance could be prohibited by the *Migration Act* you can obtain free telephone advice from the South Brisbane Immigration and Community Legal Service on Ph 38463189. As there are very heavy penalties breaching the *Migration Act* provisions regulating the provision of immigration assistance, you should always seek advice if you are unsure.