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LPLC Webinar – Migration Law

‘Doing the Basics Well’

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Overview of Today's Session

- The importance of understanding the ins and outs of migration law
- Getting the basics right
- Communicating with the client and managing client expectations
- Where are mistakes made in immigration law

Importance of Understanding the Ins and Outs of Migration Law

- Understanding the procedure from lodgement (Department of Home Affairs), merits review (AAT) and judicial review (FCOFCA, Federal Court of Australia and High Court of Australia)
- Strict timelines for lodgement due to visa expiry dates, legislative criteria and changes and review deadlines
- Keeping up to date – Migration law changes regularly and there is extensive case law. Subscribe to services where you can keep up to date and ensure you have full access to a subscriber service
- The Migration Act and Migration Regulations intertwine with each other – need to know more than a Subclass or type of visas to be able to advise the most appropriate course of action, but also risks and challenges an applicant may face (such as whether they will be eligible for a bridging visa, will it have work rights etc).
- Oral advice skills, advocacy and written skills are essential to practice in Australian immigration law
- Realistic expectations on outcomes, risks, costs and processing times

Getting the Basics Right the Start

- Know your limitations – if you are not feeling confident then refer out to an expert in the area.
- Get as much information from the prospective client as possible before giving initial advices
- Progress the file promptly – get costs agreement sent out as soon as possible with a checklist and advices
- Diarise deadlines and make sure you calculate correctly, keep an up to date list of files and do follow ups on matter prior to the deadline
- Do not leave actioning items in Immigration law to the last minute (ie extensions of invitations to comment where you need to contact the Department)
- Organise your electronic folders and contacts for clients
- Set boundaries for clients and ensure you are up front about expectations
- Consider your fee structure

Getting the Basics Right – Active files

- Regularly review your list of files. If you supervise others regularly meet to review workloads and upcoming deadlines
- Consider a centralised deadlines process that can be reviewed by others
- Be able to re-prioritise as urgent matters are common in immigration law
- Work ahead where possible
- Run a well-organised inbox
- Use a software program designed to help you run files more efficiently

Getting the Basics Right - when preparing applications and drafting submissions – what to make sure you are doing

- Create checklists for lodgement purposes
- Proof read/ get someone else to check before lodgement
- Check attachments before uploading
- Decision Ready applications are preferred
- Paper v E-lodgement applications – which is best?
- Be across potential legislative changes
- Validity issues / DHA fee paid
- Keep lists of files to lodge and enjoy the satisfaction of ticking them off
- Address applications correctly – is it a valid application?

Getting the Basics Right - when preparing applications and drafting submissions – Common Mistakes made

- Failing to plan or map out arguments
- Making grammatical and spelling/word usage mistakes
- Legalese v Plain English
- Failing to cite sources
- Failing to substantiate the claims made
- Repetition
- Failing to address counter arguments
- Failure to provide evidence
- Not spending enough time proof reading or editing

Getting the Basics Right - when preparing applications and drafting submissions – Common Mistakes made

- Rush to lodge
- Use precedents without adapting
- Use unnecessary wording
- Send it to the wrong person /area
- Short and concise can be better at primary level
- 3rd or 1st person / Applicant v Name – pick one and stick with it
- Don't exaggerate
- Keep responses professional – sit on it if angry about something
- Don't threaten or disparage who you are writing to (who will be reading this if it gets appealed?)
- Be considerate of the reader – someone has to read it and it should be targeted to that person who is reading it

Getting the Basics Right - when preparing applications and drafting submissions – paying attention

- Use case references if relevant
- Use policy if it helps or need to distinguish
- Don't include regulations that are not relevant
- Keep the submission to the points that need addressing
- Define attachments
- Be direct
- Get your client to read it before submitting where appropriate
- Proof read – try printing it off if you have read it numerous times
- Use up to date country information and case law
- Check for common words spelt wrongly and typos

Getting the Basics Right - when preparing applications and drafting submissions – paying attention

Be aware of Guidelines of Tribunals <http://www.aat.gov.au/resources/practice-directions-guides-guidelines-and-policies> and <http://www.iaa.gov.au/guidance-forms/practice-directions>

Note Legislative Deadlines (eg s.359C of the Migration Act)

DFAT reports See <https://dfat.gov.au/about-us/publications/Pages/country-information-reports.aspx>

Case Law - <http://www.austlii.edu.au/> <https://jade.io/>

Use previous AAT decisions to get an idea of the issues and the member's style of addressing issues at hearings

Getting the Basics Right - Documents

- Meet with client and use an interpreter where needed
- Use numbering and headings
- If dates are unknown make sure that's clear
- Affidavits set out facts of a case - Affidavits for court matters should support the orders being sought
- Affidavits are not used for setting out an opinion, unless expert evidence
- Spend time preparing
- At appeal – is a new affidavit necessary or should it be updated
- Form 888's - Make sure they address the validity issues
- Keeping with what the client is trying to say
- Amend an error if it later comes to light
- Supporting documents should be attached by way of Annexures

Getting the Basics Right - Court documents

- Use the correct templates
- Check the formatting
- Call the court to get a pseudonym
- Ensure the party names & file number are completed correctly
- Check fees
- Prepare the fee waiver correctly
- Use Minister for Home Affairs
- Prepare grounds carefully
- Take instructions on extensions of time applications
- Complete the tracking carefully for an amended application
- Make sure the document can be e-filed and is the right size
- Lodge early in the day, not near the end of the Court day in case of amendments

Communicating with the Client and Managing Client Expectations

- Put your advices in writing upon commencement of a matter and refer back to when needed
- Active Listening when taking instructions (repeat instructions back to the client to ensure that they are correct)
- Respond in a reasonable timeframe to emails and calls but at the same time set expectations of when you will respond
- Keep clients up to date with changes that will impact their case
- Invoice regularly particularly for hourly rate matters
- Have appropriate steps in place to be able to manage clients with mental health needs and stressed clients
- Always put in writing any deadlines and requests from external parties
- Managing expectations is about communication (you may not be able to get to something quickly let them know and acknowledge communication and give a realistic timeframe of when you can meet it)
- Giving feedback about the risks in terms of how it will be viewed by the body who is assessing your matter rather than your personal view

What mistakes can be made

- File note appropriately – go back to check what advice you gave if an issue arises
- Not putting the client on adequate notice of risk
- Not keeping up to date with changes
- Not knowing the answer to questions you need to know the answer to and not knowing what you don't know
- Missing deadlines and calculating deadlines incorrectly
- Getting side-tracked by what the client is focusing on rather than the issues at hand
- Missing a document which can cause a significant loss to the client or a missed opportunity