



DECISION RECORD

AGENT	Jinnan Shentu
COMPLAINT NUMBER	CMP-42141
DECISION	Suspension – 24 months
DATE OF DECISION	2 December 2019

Terms used for reference

1. The following abbreviations are used in this decision:

<i>ABN</i>	Australian Business Number
<i>AAT</i>	The Administrative Appeals Tribunal
<i>MARN</i>	Migration Agent Registration Number
<i>PIC</i>	Public Interest Criteria
<i>Section 308 notice</i>	Notice issued by the Authority under section 308 of the Act
<i>Section 309 notice</i>	Notice issued by the Authority under section 309 of the Act
<i>The Regulations</i>	<i>The Migration Regulations 1994</i>
<i>The Act</i>	<i>The Migration Act 1958</i>
<i>The Agent</i>	Jinnan Shentu
<i>The Authority</i>	The Office of the Migration Agents Registration Authority
<i>The Code</i>	The Migration Agents Code of Conduct prescribed under Regulation 8 and Schedule 2 to the Agents Regulations
<i>The Department</i>	The Department of Home Affairs
<i>The Register</i>	Register of migration agents kept under section 287 of the Act
<i>The Agents Regulations</i>	<i>Migration Agents Regulations 1998</i>
<i>VEVO</i>	Visa Entitlement Verification Online

STATEMENT OF REASONS

Background

1. The Agent was first registered as a migration agent on 1 February 2000 and was allocated the MARN 9905973. The Agent's registration had been renewed annually to date, with the most recent registration commencing on 1 February 2018. An application for repeat registration was received by the Authority on 11 January 2019, which is still under consideration.
2. The Register lists the Agent's associations with two entities: Shanghai Overseas Affair Service Center Co Ltd,¹ as an employee, and ASCI Consultancy Pty Ltd with ABN 74 097 984, as a director.

Prior Disciplinary action

3. The Agent does not have a history of prior disciplinary action.

Complaint

4. On 6 February 2019 the Department made a referral to the Authority regarding adverse information in relation to the following nominations and associated visa applications, in which the Agent was the appointed registered migration agent:
 - Employer Nomination Scheme (ENS) (Direct Entry) nomination for H Pty Ltd, lodged on 7 April 2016, nominating Mr XW for the position of Sales and Marketing manager;
 - Corresponding subclass 186 visa application for Mr XW, lodged on 2 September 2016;
 - ENS (Direct Entry) nomination for MPGA Pty Ltd, lodged on 10 November 2016, nominating Mr JX for the position of Corporate General Manager; and the
 - Corresponding subclass 186 visa application for Mr JX, lodged on 21 March 2017.

Departmental Records

5. The nomination application forms, and the corresponding subclass 186 visa application forms, listed the Agent as the registered migration agent appointed for each of the respective migration matters. The Agent's email address joanneshentu@hotmail.com was provided, in the application forms, as the authorised recipient email address for electronic communication from the Department. All four applications were lodged from the same self-registered user ImmiAccount, 'ginseng33'.

H Pty Ltd Pty Ltd

6. The Agent contacted the Department on 16 January 2017 to seek an update of the progress of H Pty Ltd's nomination. The Department approved the nomination on 5 April 2017.
7. On 27 July 2017, the Department contacted H Pty Ltd to verify Mr XW's nomination and employment in considering the corresponding visa application. A representative of H Pty Ltd advised on the same day that the company had not nominated any person in the position of Sales and Marketing manager, and was not aware of Mr XW. This was reiterated in further correspondence from Mr MA, the director and founder of H Pty Ltd on 14 August 2017, who also confirmed the company had not authorised any nomination applications at that time.

¹ This business is an overseas entity

MPGA Pty Ltd

8. On 26 October 2017, the Department contacted [Australian] University to verify two financial documents for training submitted to the Department on 12 January 2017 in support of the nomination application. The documents consisted of an invoice addressed to 'MPGA' dated 9 August 2016 for four courses in accounting and business administration, and the corresponding tax receipt for payment of these courses, dated 19 September 2016. On 27 October 2017, a representative of [Australian] University advised that the invoice and tax receipt were not issued by the university.
9. The Department contacted MPGA Pty Ltd on 26 October 2017 to verify the nomination application for Mr JX. The Department received an email from a representative of MPGA Pty Ltd on 27 October 2017, confirming that the company had:
 - Never heard of Mr JX, never agreed to employ Mr JX, and did not authorise a nomination application to be lodged to sponsor Mr JX;
 - Never engaged the Agent's services, or instructed her to act on their behalf, including to liaise with the Department;
 - Had not authorised or instructed the Agent to lodge a Permanent Employer nomination for MPGA Pty Ltd;
 - Had never sponsored an overseas worker in the position of Corporate General Manager with a salary of \$191,000, the amount indicated in the nomination application lodged for Mr JX; and
 - Had not supplied the Agent or Mr JX with company documents including business activity statements (BAS), Profit and Loss statements or business plans.

Publication of adverse information to visa applicants

10. Based on the information provided by H Pty Ltd and MPGA Pty Ltd, the Department sent notices pursuant to section 57 of the Act (the section 57 notices) to the Agent on 27 February 2019, as the authorised representative for Mr JX and Mr XW. The section 57 notices advised that it was open for the Department to consider refusing the subclass 186 visa applications, and impose Public Interest Criteria (PIC) 4020 on the basis that the associated nomination applications were not genuine.
11. The Department received Mr JX and Mr XW's submission to the section 57 notices from the Agent on 23 March 2019, which included supporting documents and correspondence². In summary, the Agent's submission stated that all the employer documents for the nomination applications were provided by an Australian based registered migration agent [removed], who also organised the positions for Mr JX and XW, and prohibited the Agent from contacting the employers during the nomination and visa application process. The Agent asserted that [other registered migration agent]'s actions appeared to have affected other registered migration agents and clients, and should not have an adverse effect on her, Mr JX, or Mr XW, as they were all victims of this fraud. Subsequently, both visa applicants withdrew their visa applications.

Notice under section 308 of the Act ("the section 308 notice")

12. On 28 February 2019, the complaint was published to the Agent for response. Under subsection 308(1) of the Act (the section 308 notice) the Agent was required to answer questions put to her by the Authority, in the form of a statutory declaration. The Agent was also requested to provide the complete client files including all Service Agreements, correspondence, documents, file notes, and instructions from the clients, for Mr JX; MPGA Pty Ltd; Mr XW; and H Pty Ltd. The Agent was also requested to provide for inspection all

² Submission included statements from the Agent; Ms HM who was Mr XW's representative; [other registered migration agent]'s former employee Mr YW; and Mr JW, a Shanghai based 'agent'; [other registered migration agent]'s business card; email correspondence between the Agent and [other registered migration agent]; and, a letter from Mr JX and his wife requesting that their visa applications be withdrawn.

records of her clients' account, and all records for each and every account into which any money paid by clients to the Agent had been deposited, in accordance with her professional obligation under clause 7.5 of the Code.

The Agent's response to the Authority's section 308 notice

13. Prior to receiving the Agent's response to the section 308 notice, the Authority was copied into the Agent's emails to the Department on 23 March 2019, responding to the section 57 notices. On 24 March 2019, the Authority received the Agent's response to the complaint in the form of a letter, not in statutory declaration form, and the following documents:

- Bank records for payments made by Ms HM, Mr XW's representative, to reimburse the Agent for the fees associated with the nomination and visa application for Mr XW;
- WeChat account screenshot for correspondence between the Agent and Mr JX seeking reimbursement of the nomination and visa application paid by the Agent;
- Email correspondence between the Agent and Ms HM relating to Mr XW's case; and
- Email correspondence between the Agent and 'V', Mr JX's secretary, relating to his case.

14. In summary, the Agent's response to the Authority stated:

"When I received your letter dated 28 Feb 2019, I was shocked and suffered a lot. Our company mainly deals with business migration and I had little experience in handling employer nomination cases. I did not realize that it would bring me such a big trouble just because I helped [removed] Agent and one of friend lodge their cases.

ImmiAccount

Ginseng33 belongs to Shanghai Overseas Affairs Service Center. I am the employee of Shanghai Overseas Affairs Service Center.

H Pty Ltd and MPGA Nomination and application of XW and JX were lodged through Ginseng33.

H Pty Ltd and MPGA Pty Ltd

I did not know about two employers. [other registered migration agent] provided all the document.

I had forwarded you the letters and evidences I gave to DIBP.

Mr XW

He is a client of HM (of immigration consulting firm DTIC Co. Ltd.). He did not enter any service agreement with me and I did not charge any professional fee. Ms HM wished me to lodge nomination and application for her client. I got reimbursement for nomination application fee, immigration application fee and translation fee. (Attached please find the bank records and translation) I contacted Ms HM rather than Mr. XW for preparing visa application. I forwarded you the emails I addressed to Ms HM as follows I ask XW and Wife to sign Form 80 2 Ask XW to sign Declaration 3 Ask to check if the information on Form 80 are correct 4 Forward XW's reference letter to translate department to translate 4 Inform all the documents I lodged for the application after lodgment 5 Inform nomination approved 6 Inform more requested document from DIBP for Mr. XW's application 7 Inform how to do Swiss non-criminal record 8 Ask applicants to undertake medical examination 8 Ask further medical reports required 9 Forward emails with DIBP relating to XW's case processing enquiries. I received all XW's document in original by mail except passport biopages and reference letter in scanned copy through email from HM.

Mr JX

He is a friend of mine. We did not enter any service agreement and I did not charge professional fee from him. I only lodged his applications and he gave me reimbursement for nomination and application fee (RMB20000 in cash and RMB10000 by transfer from Wechat account on 4 Nov 2016, Attached please find the screenshot of Wechat account) He was quite busy and [you] usually contacted his secretary 'V' for documents. I forwarded [the Authority] the emails I addressed to [secretary 'V'] 1 Ask her to fill in the personal information for Mr. JX and his wife 2 Request for Notarial certificates of applicants 3 Confirm received the signed pages of Mr JX and his wife's. I received all applicant's academic certificates and transcripts in original by mail and passports pages, recommendation letter and notarial birth and marriage certificates in colored scan copies through email.

I never did those template. [other registered migration agent] did that.

As a migration agent, I should have verified with employers before lodging the cases. However, in China, there is an agency rule. We cannot contact clients directly without the permission of their agent. I think it is the same in Australia too. As [other registered migration agent] insisted he was the representative of two employers, I informed him rather than the employers. Similarly, I only informed HM rather than XW as she is the agent of Mr. XW.

As a matter of fact, at beginning, I refused to lodge applications for XW and JX because I am quite inexperienced in this visa. However, HM and JX are my friends and insisted they trusted me only. I could do nothing but help them, however, I told them I did not charge fees and did not promise any successful rate.

I knew I made a big mistake. I kept on crying and could not concentrate on my work. I am so upset as I might lose my license, that means I might lose my job and future career. I have a [family member] and I cannot imagine how I can [removed] without a job.

I cherished to be a migration agent and has a good record in the last twenty years. I helped a lot of successful business men migrate and settle down in Australia. That's a job I like. I am so proud of that.

I here give my apology to DIBP, MARA, DTIC Co. Ltd agent and her client XW, my friend JX, my employer Shanghai Overseas Affairs Service Center and my colleagues. Your forgiveness is so important to me and I beg for the chance you might give me to register as a migration agent again [sic]."

15. The Authority contacted the Agent on 25 March 2019 to confirm receipt of the response. The Agent was advised that she had been requested to respond to the Authority's questions in the section 308 notice sent on 28 February 2019 in the form of an Australian statutory declaration, and that the response provided did not properly address all the questions put to her and was not in statutory declaration form. In accordance with clause 9.3 of the Code, the Agent was requested to provide responses to all questions published under section 308(1) of the Act in a statutory declaration. She was also requested to confirm that the documents provided were the complete client files, resubmit NAATI accredited translations of documents which were not in English, and respond to additional questions put to her by the Authority regarding [other registered migration agent].
16. The Authority received the Agent's subsequent response to this request on 4 April 2019, wherein the Agent stated that she was unable to find an appropriate person to witness her statutory declaration in Shanghai, and would instead complete a statutory declaration once she returned to Australia in July 2019. In response to the Authority's subsequent questions regarding [other registered migration agent], the Agent advised that:

"At the end of July,³ I went to Melbourne to undertake CPD lessons. One migration agent who is [other registered migration agent]'s friend introduced me to him. [Other registered migration agent] did not mention he was a migration agent at the beginning, just mentioned his company had strong recruitment background. He visited my Shanghai office on Oct 2015 and gave me his Australian company business card and told me he established a Shanghai company [SLC] Co. Ltd. which specialized in recruitment senior managers for Australian employers.

Since he had companies in Australia and Shanghai and was a migration agent as well, I trusted him more and introduced him to our [DTIC Co. Ltd agent] HM. HM forwarded him two candidate's resume in November 2015. In Dec 2015 and April 2016, he found employers for those two candidates respectively. At the end of September 2016, he visited my Shanghai office again and happened to meet JX, my friend who visited me during business trip. Mr.JX was interested in working in Australia and gave me his resume and I forwarded to [other registered migration agent] on 31 Oct 2016. [Other registered migration agent] advised he found proper employer for Mr. JX four days later. [Other registered migration agent] provided all the nomination document lodged...

Mr. XW never directly contacted [other registered migration agent] for the sponsorship. His agent HM transferred his resume to [other registered migration agent] for searching proper employer. Mr.JX only met [other registered migration agent] once in my office and I transferred his resume to [other registered migration agent] for searching proper employer. [Other registered migration agent] was the person who found employers for them and provided offer letters. I did not organize with [other registered migration agent] to procure positions for both clients."

- When asked by the Authority whether she had been notified of, and received documents for, other sponsors from [other registered migration agent], the Agent advised that she had received information for the sponsor ADE, who were responsible for sponsoring Ms YS. The Agent stated that Ms YS was also Ms HM's client and that, at the time, she understood [other registered migration agent] to be the representative for ADE.
- The Authority questioned why the Agent had prepared and lodged the nomination applications for MPGA Pty Ltd and H Pty Ltd, given she stated that [other registered migration agent] was their purported representative. In response, the Agent asserted that she had *"asked [other registered migration agent] to lodge the nominations as I did not know about the employers at all. However, he persuaded me to lodge by saying that our company is big and has good reputation which will bring high successful rate. I did not think too much at that time as HM and JX are my friends and I wished their cases would have favorable results. However, now, I understood that it was a trap that [other registered migration agent] let me in. Lodging through immi account will exempt him from all the responsibilities. I was too stupid to be used [sic]"*
- The Agent confirmed that she had lodged a nomination application and corresponding visa application for Ms YS and ADE, where she had never met or entered into written agreement or contract with the sponsor and had only received instructions through a third-party representative.

17. In support of her second response, the Agent provided the following documentation:

- Typed file notes for Mr XW's matter;

³ The Agent did not specify which year she was referring to, however based on her responses to date, this is taken to be July 2015

- Typed file notes for Mr JX's matter;
 - Typed file Notes for Ms YS' matter; and
 - Email correspondence between the Agent and [other registered migration agent] with English translations, including emails to [other registered migration agent] on:
 - (a) 7 April 2016, forwarding him the departmental acknowledgement of H Pty Ltd's nomination application lodgement and a copy of Mr XW's resume;
 - (b) 13 May 2016, providing him with all the documents for H Pty Ltd's nomination application, as well as evidence of Mr XW's qualification(s);
 - (c) 31 October 2016, providing Mr JX's resume;
 - (d) 4 November 2016, providing the Agent's ImmiAccount username and password to [other registered migration agent];
 - (e) 10 November 2016, forwarding [other registered migration agent] the departmental acknowledgement of MPGA Pty Ltd's nomination application lodgement;
 - (f) 17 January 2017, providing the last page of the MPGA Pty Ltd's employment contract to [other registered migration agent], signed by Mr JX; and
 - (g) 5 April 2017, forwarding the departmental notification of the approval of H Pty Ltd's nomination application.
18. In line with her email on 4 April 2019 wherein the Agent advised that she was unable to complete a statutory declaration while in Shanghai, and would provide one when she returned to Australia, the Authority received a statutory declaration from the Agent on 22 July 2019. The statutory declaration, signed and witnessed on the same day, only stated that *"the statements and evidences I provided in emails dated 23rd March and 3rd April 2019 are genuine and correct."* The Agent did not provide any other documents at this time.

Notice under section 309 of the Act ("section 309 notice")

19. On 29 August 2019 the Authority sent to the Agent a notice pursuant to section 309(2) of the Act, advising the Agent that it was considering cautioning, or suspending or cancelling the Agent's registration under section 303(1) of the Act.
20. The Agent was notified that having regard to the information before the Authority, it was open to the delegate to be satisfied that the Agent had engaged in conduct that breached the Agent's obligations under clauses 2.1, 2.3, 2.4, 2.5, 2.8, 2.9A, 5.2, 6.1, 6.1A, and 7.4 of the Code. The Agent was also notified that it was open for the delegate to be satisfied that she was not a person of integrity and/or are otherwise not a fit and proper person to give immigration assistance.
21. Pursuant to section 309(2) of the Act, the Authority invited the Agent to provide written submissions on the matter by 10 October 2019.

The Agent's response to the Authority's section 309 notice

22. On 9 October 2019 the Authority received the Agent's submissions by way of a statutory declaration and supporting documentation. In summary, the Agent advised the Authority:
- She lodged an ENS nomination for H Pty Ltd on 7 April 2016 and corresponding subclass 186 visa application for Mr XW on 2 September 2016 under the instruction of [other registered migration agent] and Ms HM. She also lodged an ENS nomination for MPGA Pty Ltd on 10 November 2016 and corresponding subclass 186 visa application on 21 March 2017 under the instruction of [other registered migration agent] and the visa applicant, Mr JX.

- Ms HM is an agent⁴ based in [removed], China, who always refers Business Skilled migration cases to the business where the Agent works, 'Shanghai Overseas Affairs Center'. She is Mr XW's representative.
- Mr JX works in a real estate company based in Beijing and sometimes refers Business Skilled migration cases to Shanghai Overseas Affairs Center.
- [Other registered migration agent] is a registered migration agent whom the Agent alleged had advised her that he was the recruitment agent appointed for H Pty Ltd and MPGA Pty Ltd.
- On 27 Feb 2019, almost three years after lodgement, the Agent received letters from the Department, which advised the nomination documents relating to the above two cases were not genuine and requested that the visa applicants provide an explanation before 26 March 2019.
- After receipt of the letters, Ms HM, representing Mr XW, attempted to contact [other registered migration agent]. However, he blocked her from Wechat and did not answer telephone calls. Ms HM's statement of the events that transpired was provided to the Department in response to Mr XW's section 57 notice on 23 March 2019⁵, with the Authority copied into this correspondence.
- Mr JX was angry that the nomination was not genuine as he had been waiting for two years and had intended to commence working in Australia. As a result of the news that the employment offer did not exist, he had no choice but to withdraw his application. The Agent highlighted that Mr JX's withdrawal letter, which was also sent to both the Department and the Authority on 23 March 2019, he identified [other registered migration agent] as being the one responsible for the deception.
- The Agent also referred to a statement from a former employee of [other registered migration agent], Mr YW, which was also provided to both the Department and the Authority on 23 March 2019, which implicated [other registered migration agent] in creating bogus documents, including forging departmental notifications and "cheating" migration agents and clients in both Australia and China.
- In light of the evidence she had previously provided to both the Department and the Authority, the Agent consider that she *"took it for granted that MARA had mastered all the evidence that [other registered migration agent] make bogus documents as his office had been searched by warrant on 30 July 2018"*.
- The Agent argued that Ms HM, Mr XW and Mr JX were not [other registered migration agent]'s only victims, and that she had been in contact with another China-based recruitment/ brokerage agent, Ms JZ, who had incurred the same situation representing Ms YS2. In Ms YS2's case, all employer documentation was also provided by [other registered migration agent], with the nomination and visa application lodged by a different registered migration agent, Mr [Z]. The Agent advised the Authority that it appeared from communication with Mr [Z] that he was also unaware that the information received from [other registered migration agent] was not genuine.⁶
- The Agent believes that Ms JZ has sued [other registered migration agent], but given that [other registered migration agent] is both an Australian citizen and passport holder, and also retains his Chinese national identification, he can easily travel between the two countries and disappear easily. The Agent has been advised by a friend that [other registered migration agent] travelled to China in May 2019 to promote his business and is still advertising for employer sponsored migration pathways.

⁴ Not a migration agent. It appears Ms HM is a recruitment agent/third party broker.

⁵ Which was received the day prior to the Agent's response to the section 308 notice

⁶ The Agent also provided the Authority with documentation regarding Ms YS2's matter, which she advised she had not provided in response to the section 308 notice as she perceived that the Department, and therefore the Authority, had access to this information.

- The Agent advised that she was not surprised that H Pty Ltd had advised the Authority that none of the financial documentation submitted to the Department was genuine and that the company did not know of [other registered migration agent], as she understood this matter had already been investigated by the Department on 30 October 2017. The Agent advised that this investigation had found that [other registered migration agent] was never a recruitment agent for the company, nor had the company any intention of hiring overseas workers. She considers that neither H Pty Ltd or MPGA Pty Ltd know [other registered migration agent], and is certain that all documents were “*forged by him*”.

Agent-client relationships

- In response to the Authority’s potential findings regarding her agent-client relationships with the identified sponsors and visa applicants, the Agent advised that:

“we all treated agents who represented for the applicant and [other registered migration agent] who represented the employer as applicants and nominators as they provided us the intimate document including birth certificate, graduation certificate, marriage certificate, financial reports, training records, employment offer, so on so forth. In our opinion, those documents are confidential and could not be got except be provided by the applicant and nominator themselves. And in my former letter, I did not argue [other registered migration agent] was the migration agent for the employer and I was the migration agent for the applicant. I just said I was the migration agent lodged the nomination and visa application. All the documents were provided HM (the agent), JX (the applicant) and [other registered migration agent] (the representative of H Pty Ltd and MPGA Pty Ltd).”

Knowledge and due diligence

- In response to the Authority’s potential findings set out in the section 309 notice in relation to her knowledge and due diligence, the Agent stated the following:
 - (a) She has her own ImmiAccount but it would be very easy for her to create a new ImmiAccount to lodge an application if she had known the documents lodged were not genuine;
 - (b) It would be illogical that, if the Agent and other affected parties had known those nomination documents were fake, that they would have lodged the applications using their own ImmiAccounts. Such conduct would not only cost the Agent her registration but also impact on all her other clients in her ImmiAccount. The Agent reiterated that she did not know the documents that were submitted to the Department through her ImmiAccount were not genuine, and that she and the other parties involved are the victims of [other registered migration agent]’s conduct.
 - (c) The Agent was prohibited from contacting the employers at that time, and she did not consider that someone would be “*so bold*” as to create fraudulent documents including financial documents, and forging signatures.
 - (d) [Other registered migration agent] had come to the Agent’s office several times to provide her with supporting documents for the nomination applications, which were witnessed by the Agent’s former assistant SG. In the case of the nomination application for MPGA Pty Ltd, nominating Mr JX, the Agent reiterated that she did not upload any of the supporting documents, which she asserted the Department should be able to confirm by checking the IP addresses used against the evidence she believes the Department has already obtained against [other registered migration agent].
 - (e) The Agent, in responding to the Authority’s potential finding that it was inappropriate for her to provide her ImmiAccount username and password to another person to use, stated that “*practically, migration agents and lawyers in big company have to give their user name or password to their assistants or*

secretaries for document uploading. If not, there would be too much work-load for them". In the case of providing this information to [other registered migration agent], which the Agent confirmed was not her colleague, the Agent considered that since "he was a migration agent and supervised by MARA, I did not think he would do anything unlawful. Hence, when he insisted [on using her ImmiAccount], I emailed him the user name and password. I definitely will not do it again, however, from this point of view, the evidence is pretty clear that I was not the person provided misleading and non-genuine document."

- (f) The Agent argued that it is impossible for migration agents to distinguish the authenticity of documents, and that responsibility for the provision of fraudulent documentation to the Department should be directed to the person who provided the fraudulent documentation. The Agent argued that this person should be treated the same as visa applicants who are found to have provided false and misleading documents and are refused visas as a consequence.
- (g) In response to the potential finding relating to the Agent's statements as to her inexperience with the subclass 186 nominations, which appeared inconsistent with her declared client caseload records before the Department, the Agent argued that she *"might not [have] clearly state[d] in my former statements."* She asserted that what she meant was that she *"was inexperienced in high-salary 186 ENS nomination applications, which I only handled three cases. As those positions were well-paid (normally over AUD180, 000 per year), the employers must be multi-million companies. It was common for big companies to use recruitment agency to represent them. Hence, I trusted [other registered migration agent] for what he told me. That's the inexperienced factor I referred to. I learned my lesson now and I will refer those unfamiliar cases to migration agents in specific area in the future"*.
- (h) The Authority advised the Agent in the section 309 notice that it was open to reject her statements that she could not complete a statutory declaration overseas, and that it would be expected that someone with her experience would be aware that this could be undertaken at an Australian embassy or consulate. In response to this information, the Agent argued that *'In China, there are only two afternoons in working days you can book with embassy to do statutory declaration. As I did not have enough time to book with embassy for statutory declaration, I requested in my former response if I could do it when I returned to Australia in middle of July. I did not receive further letter from you to push for the statutory declaration and I took it as you agreed. On 22 July 2019, I went to Australia to do statutory declaration and found all the statements could not fit in one one page [sic]. Hence, I just simply wrote "the statements and evidence I provided in emails dated 23rd March and 3rd April are genuine and correct". The Agent also argued that she thought this wording would suffice, based on her correspondence with the Authority between 3 and 6 August 2019.*
- (i) In response to the potential findings on systematic failures in her practice, the Agent asserted that *"everyone make mistakes. How can a systematic failure migration agent has no dispute with clients within 20 years practice? The fact that I am a qualified migration agent in past practice can not be denied by this single mistake. A large number of clients are willing to support me and write references for my long-lasting good practice. Attached please find the reference letters from my former clients who are all business elites and knows me for more than five years or more (a President of [business school alumni association] and a Chairman of listed company) [sic]"*.
- (j) In response to the Authority's potential findings that the Agent did not enter into Service Agreements or maintain proper records for the identified clients, the Agent reiterated her previous response that she *"just did a favor [sic] to Ms HM [being for Mr XW] and Mr. JX. Hence, no formal agreements were entered into. However, as you can see, I still keep records for important correspondence and inform relevant persons as soon as I received correspondence from DIBP. As a professional, I of course keep notes of the cases. However, those notes were*

handwritten in Chinese and scribble, hence; I made electrical notes when I submitted on 4 April for you to read clearly and added more details which stored in my email or computer." In support of her response the Agent provided copies of the handwritten notes.

- (k) In response to the Authority's potential findings that the government fees paid to the Agent by Mr JX could not be a reimbursement, given her initial claim that she received it prior to making the payments to the Department, the Agent stated:

"I think we have different way to understand "reimbursement". "Reimbursement" literally means we pay the money on behalf of the clients first and get them back later. However, it is impossible In real practice. Those fees charged by DIBP ranges from couple hundreds of Australian Dollars to couple thousands of Australian Dollars. If the client wants to stop their application and refuses to pay their application fee back, who will be responsible for the loss occurred? Hence, except for professional fees, we issue the invoice before we starts and issue receipt when we receive the money, all other third party fees including DIBP fees we have to charge in front. We call all the fees except the migration service fee as "reimbursement" even though we charged them before we lodged the application. All the payment records had been installed in our immi account and if clients requested the receipt, we will provide them immediately. I believe what the code of conduct mentioned invoice and receipt is for migration service. fee only and we strictly followed the rules. However, for the fee charged by third parties, we have to charge in front to protect ourselves and, sometimes, we will directly use client's credit cards to pay if they wish. For JX's case, he did not pay exactly the amount of the nomination fee on 4 Nov 20 16 because [other registered migration agent] advised there might be some translation fee later. Since JX did translation himself through a Beijing company, the money was kept with me and counted for part of immigration fee until the balance cash was paid by his secretary on 20 March 2017 [sic]."

- (l) In response to the Authority's potential findings that the Agent had facilitated the payment of fees associated with the sponsor's nomination, the Agent asserted that she did raise her concerns with Ms HM and Mr JX regarding their payments but was advised by both parties that [other registered migration agent] had instructed them to pay this upfront, and that they would be reimbursed afterwards.

Integrity, Propriety and Fitness

- In response to the Authority's potential findings in relation to the Agent's integrity, she argued that integrity relates to *"moral and character. Only those people know you for more than five years or more have the right to judge that you are integrate or not. Those clients, agents, former colleagues are all know me for more than five years, some of them had known me for more than ten years. They know I am an integrate person and are willing to support me with their letters [sic]."*
- In relation to propriety and fitness, the Agent stated that this related to honesty and that she was *"definitely such kind of person from my former clients' eyes. If you wish, I could find dozens of clients who are all in good position or big companies to give their words of honor to state If I am an honest and proper person in handling their cases. Both my company and I have good reputation in migration industry [sic]."*

Conclusion

- The Agent asserted that she had been a qualified and practicing migration agent for 20 years. Further, that she is an *"honest and integrate person in all my former clients' eyes. I have strong migration knowledge in handling business migration, which is my specialty. Our company has strict financial system and file record system and has good reputation in migration industry".*

- She, along with the other affected parties, had been waiting for outcomes on the nomination and visa applications for three years, and had “*no idea the nomination documents were not genuine*”. The Agent also argued that had she not been “*confident*” that the positions existed with the identified sponsors, she “*might [have] withdrawn [the applications] earlier and changed to apply for other categories [sic]*”, as Mr XW and Mr JX both owned their own companies and may have qualified for other visa options.
- The Agent argued that her statements relating to the adverse information received from the Department does not “*diminish my accountability but to give the truth. Ms HM and Mr. JX all met [other registered migration agent] and were cheated by him. As I stated, I just did them a favor to lodge the applications. Ms MA and Mr JX feel guilty to me as I am now in trouble partly because they trusted a liar [sic]*”.
- Contrary to the Authority’s potential findings, the Agent asserted that she “*did not shift my responsibility to Ms HM or Mr.JX when we realized we were cheated*” and instead had tried her best to “*write explain letter to DIBP with evidence to make every thing clear. I believe DIBP accepted our explanation and evidences as DIBP allowed them to withdraw on 28 and 29 March 2019. If not, they might be forbidden for applying any other visas within three years [sic]*.”
- The Agent conceded that she had made mistakes in her handling of the nomination applications in association with Mr XW and Mr JX’s visa applications, however she argued that the mistake was a “*single case [and] not [a] systematic failure*”. The Agent asked that the Authority consider her long-lasting good record and livelihood, and afford her another opportunity to continue to work as a registered migration agent.
- The Agent reiterated that she had not provided either the Department or the Authority with false and misleading information. The Agent argued that she had provided this information to both the Department and the Authority to assist in their investigation of [other registered migration agent], who she argued was “*still at large*”, in order to prevent more clients and ‘agents’ from becoming victims of his conduct.

Documentation provided in response to section 309 notice

23. In support of her written submissions, the Agent provided the Authority with the following documentation:

- Written statements from:
 - Ms HM;
 - Mr JW – another employee of [STI] Consulting Co. Ltd,
 - Mr YW – a former employee of [other registered migration agent]; and
 - the Agent’s former employee SG;
- Copy of a search warrant purportedly issued by the Department to [other registered migration agent];⁷
- Mr JX’s withdrawal letter dated 22 March 2019 that the Agent advised she had sent to the Department, and copied in the Authority, on 23 March 2019;
- Departmental invitation to comment on information (section 57 notice) in relation to similar adverse information, addressed to Ms YS2 and dated 27 February 2019, along with correspondence from the registered migration agent Mr Z forwarding the letter to Ms YS2’s representative, Ms JZ;
- [Other registered migration agent]’s Chinese PR status and current advertisement in Mandarin;
- Emails between the Agent and the Authority regarding her delay in providing a statutory declaration;

⁷ It is unclear how the Agent obtained this document.

- Two reference letters from the Agent's former clients, and one from the [chamber of commerce]; and
- Handwritten file notes for Mr XW's and Mr JX's cases in Mandarin.

Jurisdiction

24. The Authority performs the functions prescribed under section 316 of the Act.
25. The functions and powers of the Authority under Part 3 of the Act and Agents Regulations are the functions and powers of the Minister. The Minister has delegated his powers under Part 3 of the Act and the Agents Regulations to officers of the Authority. I am delegated under the relevant Instrument to make this decision.

Relevant legislation

26. The functions of the Authority under the Act include:
- to investigate complaints in relation to the provision of immigration assistance by registered migration agents (paragraph 316(1)(c)); and
 - to take appropriate disciplinary action against registered migration agents (paragraph 316(1)(d)).
27. The Authority may decide to cancel the registration of a registered migration agent by removing his or her name from the register, or suspend his or her registration, or caution him or her under subsection 303(1), if it is satisfied that:
- the agent's application for registration was known by the agent to be false or misleading in a material particular (paragraph 303(1)(d); or
 - the agent becomes bankrupt (paragraph 303(1)(e); or
 - the agent is not a person of integrity, or is otherwise not a fit and proper person to give immigration assistance (paragraph 303(1)(f); or
 - an individual related by employment to the agent is not a person of integrity (paragraph 303(1)(g); or
 - the agent has not complied with the Code prescribed under subsection 314(1) of the Act (paragraph 303(1)(h)).
28. Subsection 314(2) of the Act provides that a registered migration agent must conduct himself or herself in accordance with the Code. Regulation 8 of the Agents Regulations made under the Act prescribes a Code.
29. Before making a decision under subsection 303(1) of the Act, the Authority must give the agent written notice under subsection 309(2) informing the agent of that fact and the reasons for it, and inviting the agent to make a submission on the matter.

Migration Act 1958 (Cth)

Section 276 Immigration assistance

*(1)For the purposes of this Part, a person gives **immigration assistance** if the person 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.

(2)For the purposes of this Part, a person also gives **immigration assistance** if the person uses, or purports to use, knowledge of, or experience in, migration procedure to assist another person by:

(a)preparing, or helping to prepare, a document indicating that the other person nominates or sponsors a visa applicant for the purposes of the regulations; or

(b)advising the other person about nominating or sponsoring a visa applicant for the purposes of the regulations; or

(c)representing the other person in proceedings before a court or review authority that relate to the visa for which the other person was nominating or sponsoring a visa applicant (or seeking to nominate or sponsor a visa applicant) for the purposes of the regulations.

(2A)For the purposes of this Part, a person also gives **immigration assistance** if the person uses, or purports to use, knowledge of, or experience in, migration procedure to assist another person by:

(a)preparing, or helping to prepare, a request to the Minister to exercise his or her power under section 351, 391, 417, 454 or 501J in respect of a decision (whether or not the decision relates to the other person); or

(aa)preparing, or helping to prepare, a request to the Minister to exercise a power under section 195A, 197AB or 197AD (whether or not the exercise of the power would relate to the other person); or

(b)advising the other person about making a request referred to in paragraph (a) or (aa).

(3)Despite subsections (1), (2) and (2A), a person does not give immigration assistance if he or she merely:

(a)does clerical work to prepare (or help prepare) an application or other document; or

(b)provides translation or interpretation services to help prepare an application or other document; or

(c)advises another person that the other person must apply for a visa; or

(d)passes on to another person information produced by a third person, without giving substantial comment on or explanation of the information.

(4)A person also does not give immigration assistance in the circumstances prescribed by the regulations.

The Code of Conduct, under section 314 of the Act

1.10 The aims of the Code are:

- (a) to establish a proper standard for conduct of a registered migration agent;
- (b) to set out the minimum attributes and abilities that a person must demonstrate to perform as a registered migration agent under the Code, including:
 - (i) being a fit and proper person to give immigration assistance;
 - (ia) being a person of integrity and good character;
 - (ii) knowing the provisions of the Migration Act and Migration Regulations, and other legislation relating to migration procedure, in sufficient depth to offer sound and comprehensive advice to a client, including advice on completing and lodging application forms;
 - (iii) completing continuing professional development as required by the Migration Agents Regulations 1998;
 - (iv) being able to perform diligently and honestly;
 - (v) being able and willing to deal fairly with clients;
 - (vi) having enough knowledge of business procedure to conduct business as a registered migration agent, including record keeping and file management;
 - (vii) properly managing and maintaining client records;
- (c) to set out the duties of a registered migration agent to a client, an employee of the agent, and the Commonwealth and its agencies;
- (d) to set out requirements for relations between registered migration agents;
- (e) to establish procedures for setting and charging fees by registered migration agents;
- (f) to establish a standard for a prudent system of office administration;
- (g) to require a registered migration agent to be accountable to the client;
- (h) to help resolve disputes between a registered migration agent and a client.

1.11 The Code does not list exhaustively the acts and omissions that may fall short of what is expected of a competent and responsible registered migration agent.

1.12 However, the Code imposes on a registered migration agent the overriding duty to act at all times in the lawful interests of the agent's client. Any conduct falling short of that requirement may make the agent liable to cancellation of registration.

Migration Agents Regulations 1998, regulation 9

Complaints

For paragraphs 316 (c) and (e) of the Act, any person or body may make a complaint, including:

- (a) a client of the registered migration agent or lawyer;
- (b) an official;
- (c) an employee or member of the Institute;
- (d) an employee of the Authority;
- (e) a parliamentarian;
- (f) a tribunal or court;
- (g) a community organisation;
- (h) the Department.

Evidence and other material

30. In reaching the following findings of fact the Authority considered the following evidence:
- Documents contained in the Authority's complaint file CMP-42141, including information and documents provided by the Agent in response to the Authority's notices;
 - Information held by the Authority in relation to the Agent; and
 - Records held by the Department.

DECISION AND REASONS

Finding on material questions of fact

31. The meaning of 'client' is set out in the *Migration Agents Regulations 1998* (Cth) (the **Agent Regulations**) as follows (as relevant):

'3(1) "client", of a registered migration agent, means a person to whom the agent agrees (whether or not in writing) to provide immigration assistance.'

32. From the Agent's responses to the Authority, it is clear that she did not and does not comprehend that either the sponsors, MPGA Pty Ltd and H Pty Ltd, or Mr XW and Mr JX were her clients as they were the ones who required the immigration assistance. Rather, the Agent has repeatedly stated that their respective 'representatives' or 'agents' were [other registered migration agent] and Ms HM, and that she was only asked to lodge the applications on behalf of these agents/representatives. In her response to the section 308 notice, the Agent stated that she received permission to prepare and lodge the nomination applications on behalf of the sponsors from [other registered migration agent] and therefore she was not the sponsors' migration agent. In her response on the matter as to whether she failed to recognise who was her client, the Agent maintained that she was only responsible for lodging the nomination and visa applications as distinct from the role of the 'agent/representative' undertaken by Ms HM and [other registered migration agent]. It is concerning that after 15 years of practice as a registered migration agent the Agent is unable to recognise that she required to have a direct relationship with persons or entities to whom she is providing immigration assistance.
33. In the cases of the two sponsors and visa applicants (Mr XW and Mr JX), evidence before the Authority clearly indicates that the Agent provided immigration assistance⁸ to all the

⁸ With or without their knowledge or permission

parties identified in the Department's referral by compiling, preparing, and lodging their respective nomination and visa applications. In doing so, I am satisfied that the Agent used or purported to use her knowledge and experience in migration procedures to assist the nominees and the sponsors, pursuant to subsections 276(1)(a) and (b) of the Act. Moreover, the Agents Regulations define a client of a registered migration agent as a person to whom the agent agrees (whether or not in writing) to provide immigration assistance. As such, the sponsors and visa applicants were the Agent's clients and she had provided them all with immigration assistance in relation to their respective applications. The Agent declared her assistance to the Department as the registered migration agent appointed to represent the matters. It follows that a client-agent relationship should have existed between the Agent and her clients. Notwithstanding, I am satisfied that the Agent was bound by her obligations under the Code in her dealings with the sponsors and the visa applicants (Mr XW and Mr JX).

34. Had the Agent acted in accordance with her professional obligations towards these clients, she would have contacted them directly to take instructions from them and provide them with progress updates on their matters. However, the Agent instead formed the view that she could lodge applications with the Department at the request or direction of a third party that for all intents and purposes had no authority to bind the corporate entities. I reject the Agent's argument that she was **only** responsible for the applications, but that the visa applicants and sponsors were Ms HM and [other registered migration agent]'s clients instead. With consideration to the above findings, I am satisfied that the Agent should have recognised that the visa applicants and the sponsors were her clients (formally or otherwise), in relation to their applications submitted to the Department. I am also satisfied that the Agent's arguments to the contrary are demonstrative of critical shortcomings in her understanding of the agent-client relationship and her obligations and responsibilities as a registered migration agent.

Knowledge and due diligence

Clause 2.1 of the Code as relevant states:

2.1 A registered migration agent 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 her or her client competently, diligently and fairly.*

Clause 2.3 of the Code as relevant states:

2.3 A registered migration agent's professionalism must be reflected in a sound working knowledge of the Migration Act and Migration Regulations, and other legislation relating to migration procedure, and a capacity to provide accurate and timely advice.

Clause 2.4 of the Code as relevant states:

2.4 A registered migration agent must have due regard to a client's dependence on the agent's knowledge and experience.

Clause 2.5 of the Code as relevant states;

2.5 A registered migration agent must:

- (a) take appropriate steps to maintain and improve his or her knowledge of the current versions of:*
 - (i) the Migration Act 1958; and*
 - (ii) the Migration Regulations 1994; and*
 - (iii) other legislation relating to migration procedure; and*
 - (iv) portfolio policies and procedures; and*
- (b) either:*
 - (i) maintain a professional library that includes those materials; or*

- (ii) *if the agent's employer, or the business in which he or she works, maintains a professional library that includes those materials – takes responsibility for ensuring that he or she has access to the library.*

Clause 2.8 of the Code as relevant states:

2.8 A registered migration agent must:

- (c) within a reasonable time after agreeing to represent a client, confirm the client's instructions in writing to the client; and*
- (d) act in accordance with the client's instructions; and*
- (e) keep the client fully informed in writing of the progress of each case or application that the agent undertakes for the client; and*
- (f) within a reasonable time after the case or application is decided, tell the client in writing of the outcome of the client's case or application.*

35. The Department received written confirmation from representatives of MPGA Pty Ltd and H Pty Ltd that the nominations lodged by the Agent for their respective companies were done so without their knowledge or permission, and for positions that did not exist. The Department also received information from [Australian] University that the training provider had not issued the invoices for training submitted in support of MPGA Pty Ltd. The Authority, in its correspondence with the managing director of H Pty Ltd, received information that the financial documents that the Agent had provided to the Department in support of the nomination did not match the company's records. In light of the information before the Authority, I accept the statements by authorised representatives of MPGA Pty Ltd, H Pty Ltd and [Australian] University, and find that the two nomination applications were lodged without the companies' knowledge or permission, and that the documentation lodged in support of the applications was fraudulent.
36. The email correspondence provided by the Agent in her responses to the Authority's section 308 notice shows that she had sent documentation to [other registered migration agent], particularly that lodged in support of H Pty Ltd's nomination application, which H Pty Ltd advised was non-genuine. She, however, argued that she had received these documents from [other registered migration agent]. In response to the section 309 notice, the Agent provided the Authority with statements from other parties affected by the conduct of [other registered migration agent], and her former employee who witnessed her interactions with [other registered migration agent], including [other registered migration agent] transferring copies of documents in person at the Agent's office. There is no contemporaneous evidence currently before the Authority to verify how the Agent received all these documents in person from [other registered migration agent]⁹.
37. The Agent stated that [other registered migration agent] uploaded all the documents for MPGA Pty Ltd using her assistant's ImmiAccount, after she had provided him with the login details. The Agent has continued to argue that she had no knowledge that the applications and supporting documentation were not genuine, and that had she known, she would have created new ImmiAccounts to conceal her involvement, or withdrawn the applications prior to receiving notifications from the Department. Notwithstanding the matters raised by the Department, these responses raise a number of additional concerns as to the Agent's actions and understanding of her ethical obligations.
38. The Agent has provided the Authority with circumstantial evidence to support her assertion that she was unaware that the nominations and the supporting documents were not genuine until she was notified of this fact by the Department. The Agent stated that she allowed [other registered migration agent] to use her ImmiAccount to upload the supporting documentation. I am of the view that the Agent's conduct facilitated the lodgement of the nomination applications and the corresponding visa applications, without

⁹ Given the witness statement and file notes had been produced at a later date.

the sponsor's knowledge or consent, and that they contained false and misleading information and bogus documentation.

39. These significant failings in the Agent's management of her clients' matters is exacerbated by the Agent's decision to provide a third party with her ImmiAccount login details in order to allow them to allegedly submit the false and misleading documents in support of the nomination applications for her clients, H Pty Ltd and MPGA Pty Ltd. The Agent argued in her response to the section 309 notice that it was reasonable to provide colleagues and assistants with this information, and that since [other registered migration agent] was registered with the Authority the Agent believed she could trust him. I do not accept that this absolves the Agent of accountability or her responsibility in this matter, particularly given that she did not appear to have an employment relationship with [other registered migration agent]. The Agent's proposition would imply that she could provide any registered migration agent with her personal log-in details without recourse or consideration as to the appropriateness of such conduct. Moreover, why she would have done so in a circumstance where [other registered migration agent] was registered as a migration agent, appeared to have access to the documentation, purported to have authority to represent the sponsors, and was based in Australia raises significant concerns as to the Agents judgement and integrity.
40. The matters raised in this decision speak to the level of working knowledge, competency, and due diligence demonstrated by the Agent in the handling of the identified applications. Despite being registered as a migration agent for more than 16 years at the time of lodging the first of the applications in April 2016, the Agent advised in her response to the section 308 notice that she had not entered into Service Agreements with either the visa applicants or the sponsors. The Agent had also not issued receipts and invoices for the payments made to her for any of the associated charges. Further, the Agent advised the Authority that she had not sought instructions directly from all of her clients, or that she ensured they were notified on the progress of their cases.
41. The Agent initially argued that she had *"little experience in handling employer nomination cases and was quite inexperienced in"* the subclass 186 visa. In the section 309 notice, it was put to the Agent that departmental records showed that she had lodged four subclass 186 visa applications prior to lodging the applications for Mr XW and Mr JX, including Ms YS's in early 2016 and three applications in 2014. Likewise, departmental records showed she had lodged six ENS subclass 186 nomination applications and a Regional Sponsored Migration Scheme (RSMS) nomination application, as well as a substantial number of Sponsored Skilled work visas, prior to the nominations submitted on behalf of H Pty Ltd and MPGA Pty Ltd.
42. The Authority highlighted that in instances where a registered migration agent was aware that they did not hold the requisite skills and knowledge to lodge certain applications, they should seek professional guidance or refer the cases to another registered migration agent. In response,¹⁰ the Agent argued that her previous statements were not clear and that she had intended to say that she was inexperienced in subclass 186 ENS nomination applications with salaries over \$180,000, of which she had only lodged three. According to the Agent, the sponsors for these positions were generally larger companies who used recruitment agencies to represent them and she trusted that [other registered migration agent] was authorised by the sponsors. The Agent stated that she has, however, learnt her lesson and will refer immigration matters with which she is unfamiliar to other migration agents in the future.
43. While I acknowledge the Agent's clarification of her original statements that were inconsistent with information held on departmental records, I consider these have only been made in response to the Authority's potential findings. I am of the view that an experienced registered migration agent such as the Agent would have taken appropriate steps to maintain and improve her knowledge of the relevant legislation, including the

¹⁰ On 9 October 2019

capability to interpret legislation relating to a range of migration matters and visas, in accordance with her obligation under clause 2.5(a) of the Code. In instances where she was aware of her inexperience, I consider that she should have been proactive in seeking out guidance from, or referring unfamiliar matters to, other registered migration agents. Further, I do not consider nomination applications for positions with salaries of greater than \$180,000 to be fundamentally different or more complicated than other ENS nomination applications lodged by the Agent. As such, I do not consider that the higher salary in these applications justifies the Agent's argument that she was unfamiliar or lacked experience in handling such applications, or condones her conduct in not meeting her professional obligations to her sponsor clients. In light of the above, I consider the Agent's response to be an attempt to diminish her accountability for the lodgement of non-genuine applications.

44. The Agent delayed providing her response to the section 308 notice to the Authority in statutory declaration form on the basis that she was unable to do so while she was in Shanghai. In the section 309 notice, the Authority advised the Agent notice that it would be expected that an experienced registered migration agent would be aware that a statutory declaration could be witnessed at an Australian embassy or consulate overseas, given there may be a requirement for their clients to produce such a document in support of migration matters. In her response to the section 309 notice, the Agent stated that she was in fact aware of this but was too busy to make the available appointments to get her statutory declaration signed by an authorised officer. In light of the fact that the Agent was given a reasonable period of time to comply with the request, I reject the argument on her availability and find that the Agent was not entirely honest in her response to the Authority.
45. Contrary to the Agent's argument that her conduct in respect of the matter raised was a "*single*" occurrence and not indicative of systematic concerns with her practice, it is important to reflect that the conduct identified related to four separate clients. Further, according to the Agent's own account, this conducted was replicated with Ms YS and ADE. While the Agent has argued that business practices and customs in China prevented her from contacting the individuals, considered by the Authority as her clients, this is at odds with the regulatory scheme and the Agent's ongoing obligations since her initial registration in the year 2000. I do not consider that registered migration agents should enter into any agreement or contract that restricts their ability to interact with, and take instructions from their clients on account of their arrangement with a third party. Where a registered migration agent finds themselves in a position that prevents them from fulfilling their professional obligations, and where they cannot communicate directly with their client(s) to verify their identity, instructions, and documentation, it would be expected that the migration agent would remove themselves from such an arrangement. Failure to do so may expose registered migration agents to heightened risk of misconduct by lodging non-genuine applications with the Department containing fraudulent documentation.
46. On the information before me, I find that the Agent has lodged nomination applications without seeking instructions from MPGA Pty Ltd and H Pty Ltd, and had no contact with either sponsor in relation to the applications or the supporting documentation she received from a third party who was not authorised to bind either sponsor. Further, the Agent does not appear have sought evidence of this authorisation from either her clients or [other registered migration agent] at any time. The Agent's negligent conduct and responses to the Authority indicate that she has either does not have the requisite knowledge of, or has repeatedly shown a disregard for, her professional obligations and responsibilities as an Australian registered migration agent.
47. This is exacerbated by the significant period that the Agent has been registered, as it would be expected that a migration agent with nearly 20 years' experience would be well versed on their obligations and responsibilities. Based on the information before the Authority, I am satisfied that the matters identified indicate systematic failures in the Agent's practice in respect of her conduct, knowledge, competency, and due diligence.

48. Given the above discussed, I find that the Agent's conduct constitutes breaches of **clauses 2.1, 2.3, 2.4, 2.5(a) and 2.8** of the Code, and that the consequences of this conduct have resulted in adverse outcomes on Mr XW and Mr JX, including financial and migration impact.

Service Agreements

Clause 5.2 of the Code as relevant states:

5.2 A registered migration agent must:

- (a) before starting work for a client, give the client:*
 - (i) an estimate of charges in the form of fees for each hour or each service to be performed, and disbursements that the agent is likely to incur as part of the services to be performed; and*
 - (ii) an estimate of the time likely to be taken in performing the services; and*
- (b) as soon as possible after receiving instructions, obtain written acceptance by the client, if possible, of:*
 - (i) the estimate of fees; and*
 - (ii) the estimate of the time likely to be taken in performing the services; and*
- (c) give the client written confirmation (an Agreement for Services and Fees) of:*
 - (i) the services to be performed; and*
 - (ii) the fees for the services; and*
 - (iii) the disbursements that the agent is likely to incur as part of the services; and*
- (d) give the client written notice of any material change to the estimated cost of providing a service, and the total likely cost because of the change, as soon as the agent becomes aware of the likelihood of a change occurring.*

49. The Agent conceded that she did not enter into a Service Agreement with either of the sponsors, or Mr XW or Mr JX. Registered migration agents are required to provide clients with written confirmation, in the form of an Agreement for Services and Fees, of the services to be performed, the fees for these services, and the disbursements that the client is likely to incur as part of the services, in accordance with clause 5.2 of the Code. In her response to the section 309 notice, the Agent advised that her reason for not doing so was that she had provided these services as a "favour". The absence of professional fees charged to a client does not void the need for written confirmation of the agreed services, and any disbursements incurred. As such, I reject the Agent's argument that these services were provided as a favour as a valid reason for her failure to issue any Service Agreements for the services she provided to the identified parties. In light of the findings in relation to the existence of Agent-client relationships with all four parties, I am satisfied that the Agent failed to issue Service Agreements to the four clients identified in this decision, and in doing so repeatedly acted in breach of **clause 5.2** of the Code. The Agent's responses raise further concerns as to her understanding of her professional responsibilities under the Code and the Act.

Client and financial records

Clause 2.9A of the Code as relevant states:

2.9A In communicating with, or otherwise providing information to, the Authority, a registered migration agent must not mislead or deceive the Authority, whether directly or by withholding relevant information.

Clause 6.1 of the Code as relevant states:

6.1 A registered migration agent must maintain proper records that can be made available for inspection on request by the Authority, including files containing:

- (a) a copy of each client's application; and
- (b) copies of each written communication between:
 - (i) the client and the agent; and
 - (ii) the agent and any relevant statutory authority; and
 - (iii) the agent and the Department regarding the client; and
- (c) file notes of every substantive or material oral communication between:
 - (i) the client and the agent; and
 - (ii) the agent and an official of any relevant statutory authority; and
 - (iii) the agent and the Department regarding the client.

Clause 6.1A of the Code as relevant states:

6.1A A registered migration agent must keep the records mentioned in clause 6.1 for a period of 7 years after the date of the last action on the file for the client.

Clause 7.4 of the Code as relevant states:

7.4 A registered migration agent must keep records of the clients' account, including:

- (a) the date and amount of each deposit made to the clients' account, including an indication of the purpose of the deposit and the client on whose behalf the deposit is made; and
- (b) the date and amount of each withdrawal made in relation to an individual client, and the name of each recipient of money that was withdrawn; and
- (c) receipts for any payments made by the client to the agent; and
- (d) statements of services; and
- (e) copies of invoices or accounts rendered in relation to the account

50. The Authority requested that the Agent provide complete client files for Mr JX, MPGA Pty Ltd, Mr XW, and H Pty Ltd. In response, the Agent provided a handful of emails, electronic file notes for Mr XW and Mr JX, and transaction records for the payments made to her. While I note it is difficult to confirm when electronic file notes are created, given they can easily be created and amended at a later date, I note that the Agent did not provide any file notes to the Authority until she responded to the request for additional information on 4 April 2019. Further, the document metadata for these files when reviewed by the Authority identified that they were created and last modified on 3 April 2019, the day before the Agent provided them to the Authority.
51. In response to the publishing of this information, the Agent argued that she had only provided the services as a favour, but had still maintained records of *"important correspondence"* and had informed *"relevant persons"* as soon as she had received these from the Department. The Agent also stated that *"as a professional I of course keep notes of the cases. However, those notes were handwritten in Chinese and scribble, hence; I made electrical notes when I submitted on 4 April to [the Authority] to read clearly and added more detail which stored in my email or computer"*. While the Agent has acknowledged that the records previously provided were not contemporaneous, and has provided the Authority with a copy of her original handwritten notes, she has also conceded that these notes did not contain all the information that she subsequently added to the electronic notes created to respond to the Authority's section 308 notice. In addition, the Agent has failed to provide evidence to support a number of events detailed in her responses and electronic file notes. Particularly, evidence that she had received documents and instructions from [other registered migration agent] and Ms HM through WeChat, and any detailed notes or records of telephone and physical interactions with Mr JX, Ms HM and [other registered migration agent], or written confirmation of their instructions to her.
52. On the information before the Authority, I am not satisfied that the Agent has maintained comprehensive recordkeeping practices. She was notable to furnish detailed and accurate

records to the Authority on request, and has resorted to recreating file notes using other documentation in her records to compensate for deficiencies in her handwritten notes. As such, I am not satisfied that the Agent has demonstrated that she maintained proper records of all her interactions with all parties associated with the nomination and visa applications, which are the subject of the Department's referral, in the client files she provided to the Authority.

53. The Agent stated in her section 308 notice response that she did not charge any professional fees to either Mr XW or Mr JX. In Mr XW's case, the Agent advised that *"Ms HM wished [the Agent] to lodge nomination and application for her client. [The Agent] got reimbursement for nomination application fee, immigration application fee and translation fee"*. In support of this, the Agent provided translated and original bank records of the reimbursement payments, showing payments for the above fees from Ms HM's bank account on 4 April 2016, 25 August 2016, and 8 November 2016.¹¹
54. Based on the information before the Authority, it appeared that Mr XW's fees were paid for by Ms HM, or that she was responsible for transferring his funds from her account to the Agent's account. Likewise, the Agent had asserted that Mr JX reimbursed her for the nomination and application fees, which included a cash payment of RMB 20,000,¹² and a transfer of RMB 10,000¹³ through WeChat accounts on 4 Nov 2016. In support of this response, the Agent provided the Authority with a screenshot of the WeChat account transfer from Mr JX on this date. She provided no evidence of a receipt of the cash payment of RMB 20,000 and failed to advise the Authority on the date she had received this payment.
55. Departmental records show that the nomination fee of \$540 paid for H Pty Ltd's nomination application was paid on 7 April 2016, with the visa application charge (VAC) of \$7200 for Mr XW's subclass 186 visa application paid on 2 September 2016. Likewise, a nomination fee of \$540 was paid for MPGA Pty Ltd's nomination application on 10 November 2016, with the VAC of \$5400 paid for Mr JX's visa application on 21 March 2017. From the information available, it appeared that the VAC and nomination fee payments made by Ms HM, on behalf of Mr XW, and the payment on 4 November 2016 by Mr JX were all paid before the respective VAC and nomination payments to the Department. The Authority put to the Agent that, although she had not advised when she had received the cash payment from Mr JX, or provided any evidence of its receipt, it appeared that the Agent had received the cash payment prior to 10 November 2016.¹⁴ This was based on evidence before the Authority of the other payment made by Mr JX on 4 November 2016. On this basis, the Agent was advised that it was open to reject that the payments made by Ms HM and Mr JX to her were reimbursements and to find that her statements were misleading. In response to the publication of this information in the section 309 notice, the Agent argued that:

"I think we have different way to understand "reimbursement". "Reimbursement" literally means we pay the money on behalf of the clients first and get them back later. However, it is impossible In real practice. Those fees charged by DIBP ranges from couple hundreds of Australian Dollars to couple thousands of Australian Dollars. If the client wants to stop their application and refuses to pay their application fee back, who will be responsible for the loss occurred? Hence, except for professional fees, we issue the invoice before we starts and issue receipt when we receive the money, all other third party fees including DIBP fees we have to charge in front. We call all the fees except the migration service fee as "reimbursement" even though we charged them before we lodged the application. All the payment records had been installed in our immi account and if clients

¹¹ With respective descriptions of payments being nomination fee on 4 April 2016, visa application fees on 25 August 2016, and translation fee on 8 November 2016

¹² Approximately \$3868 AUD, based on currency rates for 4 November 2016

¹³ Approximately \$1934 AUD, based on currency rates for 4 November 2016

¹⁴ The date the first government payment in association with Mr JX's nomination by MPGA Pty Ltd

requested the receipt, we will provide them immediately. I believe what the code of conduct mentioned invoice and receipt is for migration service. fee only and we strictly followed the rules. However, for the fee charged by third parties, we have to charge in front to protect ourselves and, sometimes, we will directly use client's credit cards to pay if they wish. For JX's case, he did not pay exactly the amount of the nomination fee on 4 Nov 20 16 because [other registered migration agent] advised there might be some translation fee later. Since JX did translation himself through a Beijing company, the money was kept with me and counted for part of immigration fee until the balance cash was paid by his secretary on 20 March 2017".

56. It is clear from the Agent's response that she knew what the definition of reimbursement was, and how the Authority would interpret this term. Nonetheless, she used the terminology to describe payments received from her clients in advance, and where she did not issue or maintain appropriate financial records in accordance with her obligations under the Code. I also reject her statement that it is impossible to apply 'reimbursement' payments in real life as justification for using the term in this context. On the information before the Authority, I find that the Agent had not paid the Department the associated government charges at the time of receiving the funds from her clients, and reject her assertion that the payments were made by, or on behalf of, both visa applicants as reimbursements to her. As such, the Agent was required to maintain these disbursements in a clients' account until they were paid, which in Mr JX's case was up to four months, before his application was lodged and the VAC paid. Further, it would be expected that the Agent would have issued invoices and/or receipts for any monies paid to her by the clients, including for disbursements, and maintain copies of these in her client records, regardless of what these payments were for. The Agent has not provided the Authority with any such records but has argued that her reason for not doing so was that the services provided were merely 'favours'. On the information currently before the Authority, I find that the Agent did not issue or maintain records of invoices and/or receipts issued for payments, in accordance with her financial and recordkeeping obligations. I am also satisfied that the Agent's responses indicate that she had attempted to mislead the Authority by concealing the nature of the transactions with her clients. As such, I find that the Agent's conduct in this regard constitutes breaches of **clauses 2.9A, 6.1, 6.1A, and 7.4** of the Code.
57. The Agent confirmed in her response to the section 308 notice that Ms HM (on behalf of Mr XW) and Mr JX paid the nomination fees for their respective purported sponsors. The Act¹⁵ stipulates that no benefit, either direct or indirect, can be provided in exchange for sponsorship, which includes visa applicants paying costs on behalf of the sponsor including government charges such as the nomination application fee. It was put to the Agent in the section 309 notice that it was open to find that she had acted contrary to her clients' interests and the law, by facilitating payments in breach of the Act. In her response the Agent acknowledged that she had concerns with these payments but that [other registered migration agent] had advised the visa applicants that the fees would be refunded. It, therefore, appears that the Agent was aware of this issue and the concerns surrounding such but elected to ignore it. As such, the Agent's negligence in this matter raises further concern as to her control of her own client caseload and her knowledge of Australia's migration legislation. It is also unclear whether such conduct has extended to her other visa applicant clients.¹⁶ Consequently, I find the Agent failed to act to address that her clients had taken instruction from a third party to payments in contravention of the law and their best interests. She was, therefore, complicit in this conduct. Consequently, I find the Agent breached **clauses 2.1(a) and 2.4** of the Code.

¹⁵ Sections 245AR and 245AS of the Act

¹⁶ Being those identified in paragraph 22

Breaches of the Code

58. Pursuant to paragraph 303(1)(h) of the Act, the Authority may caution a registered migration agent or suspend or cancel their registration if the Agent has not complied with the Code.
59. Having regard to the findings I have made, I am satisfied that the Agent has engaged in conduct in breach of the Agent's obligations under clauses 2.1, 2.3, 2.4, 2.5(a), 2.8, 2.9A, 5.2, 6.1, 6.1A, and 7.4 of the Code.

Integrity, fitness and propriety

60. Pursuant to paragraph 303(1)(f) of the Act, the Authority may caution a registered migration agent, or suspend or cancel their registration, if the Authority becomes satisfied that the agent is not a person of integrity or otherwise not a fit and proper person to give immigration assistance.
61. There is a degree of overlap between 'fit and proper' and 'integrity' to the extent that fitness and propriety include consideration of the honesty of the actions of an individual.
62. 'Integrity' means 'soundness of moral principle and character, uprightness and honesty'.¹⁷
63. Whether a person is a 'fit and proper person to give immigration assistance' is an enquiry which looks broadly at three factors – honesty, knowledge and competency.
64. At common law, the basic test to determine whether a person is "fit and proper" is known as the "*Allinson* test". A person is not fit and proper person if his or her conduct "would be reasonably regarded as disgraceful or dishonourable by his professional colleagues of good repute and competency".¹⁸
65. In *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321, Toohey and Gaudron JJ indicated several factors that could be taken into account in determining whether a person was 'fit and proper'. These included, but were not limited to, conduct, character and reputation. Their Honours stated (at 380):

[D]epending on the nature of the activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides indication of likely future conduct) or reputation (because it provides indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question.
66. The formula 'fit and proper' (and 'person of integrity') must be construed in light of the particular legislative context at the registration scheme underpinning the migration advice profession.¹⁹
67. The context in which the reference to 'fit and proper' person occurs in section 290 of the Act is the applicant's giving of immigration assistance. The context also includes:
 - (a) the Act which creates offences for misleading statements and advertising, practicing when unregistered and misrepresenting a matter; and
 - (b) the Code contained within the Agents Regulations which refers to the applicant being able to perform diligently and honestly, being able and willing to deal fairly with clients, having knowledge of business procedure and properly managing and maintaining client records and maintaining client confidentiality.

¹⁷ See *Re Peng and Department of Immigration and Multicultural Affairs* [1998] AATA 12 at paragraph [26].

¹⁸ See *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750

¹⁹ See *Cunliffe v Commonwealth* (1994) 182 CLR 272

68. Key elements of the fitness test are:

- the honesty of the person; and
- the person's knowledge of the migration scheme and ability to fulfil the position of a migration agent.

69. The requirement in section 290 that the applicant also be a 'person of integrity' is not concerned with the person's knowledge of the migration scheme or ability as a migration agent, but is primarily concerned with a person's reputation, moral principle and character, including their honesty.

70. Having regard to the body of case law cited above, a consideration of whether the Agent is a fit and proper person or a person of integrity to provide immigration assistance can legitimately include the following:

- that the Agent's past conduct can be an indicator of the likelihood of the improper conduct occurring in the future;
- the Agent's honesty and competency towards clients, the Department and the Authority;
- a consideration of the context in which the agent works, i.e. the provision of immigration assistance to migration clients;
- the Agent's knowledge and competency in immigration law and practice;
- the reputation of the Agent as a result of their conduct and the public perception of that conduct; and
- the perception of the conduct by the Agent's "professional colleagues of good repute and competency"²⁰.

71. Having regard to the totality of the Agent's conduct in relation to the complaint and my findings, I am satisfied that the Agent is 'not a person of integrity or is otherwise not a fit and proper person to give immigration assistance'.

Knowledge, judgement and diligence

72. I consider that the Agent has demonstrated systemic failures in her knowledge, judgement, diligence and in the performance of her obligations as a registered migration agent. I acknowledge the Agent's arguments that she has not been subject to previous complaints or disciplinary action by the Authority. However, I do not accept that her previous record offsets the extremely serious conduct identified by the Department. I reject the Agent's argument that she is a victim in this matter and do not accept that she should be absolved of responsibility for the lodgement of nomination applications without the sponsors' knowledge or permission.

73. To the contrary, I consider that the Agent's extremely poor judgement and repeated failings of her professional obligations resulted in her negligently lodging non-genuine nomination applications, and corresponding visa applications containing false and misleading information and documents over the period of a year, in contravention of the law. Further, I am satisfied that the Agent failed to recognise that she should have entered into direct agent-client relationships, with the visa applicants and the sponsors, and therefore had failed to manage these relationships in accordance with her professional obligations. I am satisfied that such critical failures by the Agent reflect on her fitness and propriety to give immigration advice and assistance at this time. I also consider that all these factors are compounded by the Agent's significant period of registration.

²⁰ *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750

74. The Agent was advised by the Authority that it appeared she had not been entirely honest in her responses to the section 308 notice. The Agent subsequently argued that she had incorrectly worded her responses, which had been misinterpreted by the Authority, and that she maintained this was unintentional and that she had been honest in responding to the section 308 notice. I note, however, that the Agent confirmed that she was aware of the meaning certain words would be given in English. Given the Agent was educated and received her migration agent qualification in Australia and has been subject to the same regulatory scheme for 20 years, it would be expected that she would ensure her responses to the Authority were clearly articulated so as to avoid contention. I am satisfied that the Agent has provided the Authority with responses to both the section 308 notice and section 309 notice that were inconsistent with information before the Department and the Authority. Despite her assertions, I am satisfied that this was an attempt by the Agent to distance herself from the Authority making adverse findings on her practice or play down her role in the conduct which is the subject of this decision. As such, I consider that the Agent has not been entirely honest with the Authority. I am also satisfied that the Agent has repeatedly apportioned blame onto others and portrayed herself as a victim, including suggesting that she was prohibited from contacting her clients directly due to business practices, and that the word reimbursement had a different meaning, in China. I consider the Agent's responses demonstrates that she lacks awareness of how her conduct aided the illicit behaviour under discussion.

Consideration of Appropriate Disciplinary Action

75. In deciding to discipline the Agent under section 303 of the Act I have taken into account all of the circumstances of the case, including the following:
- (a) Whether the Agent's behaviour is of a minor or serious nature. The Authority has identified the following behaviour as extremely serious and therefore likely to result in discipline at the higher end of the scale:
 - i. criminal behaviour;
 - ii. fraudulent behaviour;
 - iii. behaviour that demonstrates fundamental lack of knowledge of the law; or
 - iv. involves a blatant disregard for or a significant degree of indifference to the law;
 - v. repeated occurrences of the conduct described in subsection 303(1) (d)-(h) and/or;
 - vi. agent behaviour that has resulted in significant harm or substantial loss to clients.
 - (b) Any aggravating factors that increase the Agent's culpability including but not limited to previous conduct.
 - (c) Any mitigating factors that decrease the Agent's culpability including but not limited to evidence that the Agent's health has contributed to the Agent's culpability or where the Agent has undertaken steps to remedy the situation.

Seriousness of behaviour

76. In deciding to discipline the Agent under section 303 of the Act, I have taken into account all of the circumstances of the case, including the severity of the Agent's behaviour and any mitigating or aggravating circumstances which may exist.
77. Having regard to the Complaint Classification Matrix, I have considered that the Agent's conduct falls within the Moderate to Major classification for the following reasons:
- (a) The Agent has breached multiple clauses of the Code indicating systemic poor practices and a failure to satisfy her professional obligations;
 - (b) The Agent has demonstrated extremely poor judgement and facilitated fraudulent conduct in the lodgement of nomination applications and corresponding visa

applications without the knowledge or permission of the sponsors, and supported by fraudulent documentation;

- (c) The Agent appears to consider that she has not breached her professional obligations, and has made excuses for her conduct. She appears unwilling to rectify some of her conduct without intervention by the Authority; and
- (d) The Agent's conduct has undermined the reputation of the migration advice profession.

Mitigating Factors

78. The Agent has provided the following submissions to be taken into account in making this decision.

- She advised in her response to the section 308 notice that she has a [family member] who is reliant on her financially, and that she will lose her livelihood and her employment if she loses her registration;
- She has learnt her lesson from the Authority's investigation, and realises that she made a big mistake. She requests that the Authority afford her another opportunity to work as a registered migration agent;
- The Agent highlighted her 20 year period of registration, during which she has not received any complaints or been subject to disciplinary action by the Authority. Further that she is *"an honest and integrate person in all my former clients' eyes. I have strong migration knowledge in handling business migration, which is my specialty. Our company has strict financial system and file record system and has good reputation in migration industry"*; and
- The fraudulent conduct identified by the Authority was perpetuated by another registered migration agent, [other registered migration agent]. The Agent, along with the other identified parties in the notices, is a victim. On receiving notification of the fraud from the Department, the Agent acted in her clients' best interest to explain the situation and provide evidence to support her clients' position. As such, she believes the Department accepted these explanations and allowed Mr JX and Mr XW to withdraw their visa applications in order to avoid receiving three year bans.

79. In light of the Agent's statements regarding her employment, I have taken into account that a disciplinary decision would affect the Agent's financial earning capacity and livelihood. The Authority's records show that in addition to the company she works for as a registered migration agent in China, the Agent also owns her own migration business registered in Australia. There is no information currently before the Authority that the Agent has any other sources of income. As such, I accept that any decision that affects the Agent's ability to practice within the migration advice profession for a prolonged period of time, such as a significant period of suspension or cancellation, may have some impact on her livelihood. However, I am of the view that the seriousness of the Agent's conduct, which reflects poorly on the Agent's judgement and knowledge of, and compliance with, her professional obligations, and relevant law, warrants the Agent being required to undertake corrective action to address the deficiencies in her knowledge and practice. I am also of the view that the Agent's requires a period of time out of the profession to reflect upon her actions and their consequences, including the impact on the reputation of the migration advice profession.

80. I have considered that the Agent has not previously been subject to a sanction or disciplinary action by the Authority. However, I am of the view, due to the serious transgressions of the Agent, that this does not mitigate the conduct, which is the subject of this decision.

81. The Agent has conceded to some of the conduct put to her by the Authority in its notices, and apologised for the mistakes made. I consider that the Agent, in her responses to the

Authority's notices, has failed to demonstrate a genuine understanding of the seriousness of her actions, indicating that she does not comprehend that she facilitated, on more than one occasion, the provision of fraudulent information and documents to the Department, contrary to the law. The Agent claimed that her actions led to the Department allowing her clients' to withdraw their visa applications thereby avoiding bans on applying for visa applications in the future. I note that the Department's actions were consistent with procedural fairness practices afforded to all applicants. As such, the outcome for the visa applicants cannot be attributed to the Agent.

Aggravating factors

82. I consider the Agents conduct falls short of the standard expected of a registered migration agent.
83. While the Agent has not been found to have been knowingly complicit in the provision of fraudulent documents and information, her actions in taking instructions from a third party, and in doing so systematically failing in her professional obligations to her identified clients, have resulted in no less than six applications being lodged containing false and misleading information and documents.
84. The Agent's responses indicate that, despite the potential findings raised by the Authority in the section 309 notice, she has failed to understand that her conduct contravened to her professional obligations. She has been unwilling to acknowledge that her behaviour has directly facilitated fraudulent activity in contravention of the law, or that she has breached multiple clauses of the Code in her handling of the matters, which are the subject of this decision. I am of the view that the Agent's behaviour, and her attempts to conceal and/or distance herself from the results of her conduct, indicates that she is unlikely to be able or willing to rectify her practice without intervention from the Authority.

Consumer Protection

85. Consumers of professional services of registered migration agents are often vulnerable and place a high degree of trust in their registered migration agent. Consumers are therefore entitled to a high level of professional service from their registered migration agent.
86. The behaviour demonstrated by the Agent falls short of the reasonably expected standards of a registered migration agent. I am satisfied that the Agent has failed to demonstrate the requisite skills expected of a registered migration agent and consider that she poses an ongoing risk to consumers if she is allowed to continue to practice without the deficiencies in her conduct being addressed. I consider that a disciplinary decision is warranted in light of the findings made, and that the Agent requires further education and training to address the conduct the subject of this decision, and in the interests of consumer protection.

DECISION

87. I have turned my mind to the level of disciplinary action including whether to issue a caution or to suspend or cancel the Agent's registration, in light of the findings made in relation to the Agent's integrity, propriety and fitness.
88. Following consideration of the information before me, I have decided to suspend the Agent from being registered as a migration agent from the date of this decision for a period of **24 months**, and until the Agent has met the conditions specified. The Agent is to meet the following conditions, which are to be completed within the period of suspension or no more than four (4) years from the date of suspension:
 - a. Evidence that the Agent has completed a total of 10 Continuing Professional Development points (as approved by the Authority) for every 12 months that the suspension is in force. The Continuing Professional Development activities are to

be completed throughout each year that the suspension is in force and should cover professional standards, conflict of interest and ethics;

- b. Evidence that the Agent has passed the Capstone assessment offered by The College of Law (Limited) to assess the Agent's ability to meet the Occupational Competency Standards for Registered Migration Agents; and
- c. A statutory declaration in Commonwealth form stating that the Agent has not made immigration representations for a fee, has not advertised the provision of immigration assistance and has not given immigration assistance whilst suspended.

Senior Professional Standards Officer
Professional Standards and Integrity Section
Office of the Migration Agents Registration Authority
Department of Home Affairs
Date of Decision: 2 December 2019