**DECISION RECORD**

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| **AGENT** | Jin Liu |
| **COMPLAINT NUMBER** | CMP-38373 |
| **DECISION** | Cancellation |
| **DATE OF DECISION** | 28 August 2020 |

**Terms used for reference**

1. The following abbreviations are used in this decision:

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|---|---|
| *ABN* | Australian Business Number |
| *AAT* | The Administrative Appeals Tribunal |
| *BIR* | Business Intelligence Report. The report lists all applications lodged by the Agent in a specified period and is issued by the Department. |
| *BVA/B/E* | Bridging Visa A, B or E |
| *FOI* | The department administering requests under the *Freedom of Information Act 1982* |
| *MARN* | Migration Agent Registration Number |
| *PIC* | Public Interest Criteria |
| *Section 308 notice* | Notice issued by the Authority under section 308 of the Act |
| *Section 309 notice* | Notice issued by the Authority under section 309 of the Act |
| *The Regulations* | The *Migration Regulations 1994* |
| *The Act* | The *Migration Act 1958* |
| *The Agent* | Jin Liu |
| *The Authority* | The Office of the Migration Agents Registration Authority |
| *The Code* | The Migration Agents Code of Conduct prescribed under Regulation 8 and Schedule 2 to the Agents Regulations |
| *The Department* | The Department of Home Affairs |
| *The Register* | Register of migration agents kept under section 287 of the Act |
| *The Agents Regulations* | *Migration Agents Regulations 1998* |
| *VEVO* | Visa Entitlement Verification Online |

**STATEMENT OF REASONS**

Background

1. The Agent was first registered as a migration agent on 23 December 2014 and was allocated the MARN 1468279. The Agent's registration had been renewed annually to date, with the most recent registration application lodged on 9 December 2019.
2. The Register lists the Agent's business name as Ausbridge Visa Service Pty Ltd with the ABN 28 169 398 976.

Prior Disciplinary action

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

Complaint

4. On 21 July 2018 the Authority received a complaint about the Agent's conduct as a registered migration agent from Mr [GY], on behalf of Ms [WL]. Ms [WL] made the following allegations:
   (a) She came to Australia in 2014 on a Student visa. On 27 October 2015, Ms [WL] entered into a Service Agreement with the Agent to prepare and lodge a subclass 457 visa application for the agreed fee of $6600. The Agreement was written in Chinese, although Ms [WL] provided the Authority with an English translation of the first page of the Agreement.
   (b) Ms [WL] did not receive a signed copy of the Agreement or a copy of Code of Conduct or Consumer Guide from the Agent.
   (c) In addition to the fee stated in the Agreement, the Agent also instructed Ms [WL] to pay a further $60,330 to her, being $60,000 for introducing a subclass 457 sponsor employer and $330 for the nomination application fee.
   (d) Ms [WL] spoke limited English at this time, and was not aware that such an arrangement was illegal in Australia.
   (e) The Agent directed Ms [WL] to make payments into the bank account of Miss [JR], who Ms [WL] believed to be the Agent's relative, and who was under 18 years of age at the time of these transfers. The Agent used Miss [JR]'s bank account to receive and make payments for her migration business.
   (f) The Agent asked Ms [WL] to make payments into the bank account of Ms [JS]. Ms [WL] understood this account had also been used by the Agent to receive and pay out monies for her migration business. Following receipt of these payments, Ms [WL] understood that Ms [JS] and Miss [JR] transferred the money to the Agent's personal bank account.
   (g) Between October 2015 and March 2016, the Agent instructed Ms [WL] to make the following payments to Miss [JR] and Ms [JS]:

| Date | Paid to | Amount | Fee description |
|---|---|---|---|
| 27 Oct 2015 | Miss [JR] | $33,300 | Incl. $30,000 for 50% of the fee introducing sponsoring employer and $3,300 for 50% visa service fee. |
| 30 Oct 2015 | Miss [JR] | $330 | 457 nomination application fee |
| 11 Feb 2016 | Ms [JS] | $20,000 | The balance of introducing sponsor fee. |
| 26 Feb 2016 | Ms [JS] | $10,000 | The balance of introducing sponsor fee. |
| 3 Mar 2016 | Ms [JS] | $3,300 | 50% visa service fee. |
| **Total** | | **$66,930** | |

(h) The Agent arranged for Ms [WL] to enter into an employment agreement (the first employment agreement) with [business] on 25 October 2015. The salary in the first employment agreement was $60,000 per annum. Mr [JP] was the director of [business].

(i) On 29 October 2015, Miss [JR] transferred $20,000 to Mr [JP's] bank account, with the reference "[Ms WL's name]". Miss [JR] transferred further $20,000 to Mr [JP's] bank account, again with the reference "[Ms WL's name]", on 17 February 2016, following the granting of Ms [WL] subclass 457 visa application on 1 February 2016.

(j) In accordance with the first employment agreement, Ms [WL] commenced full-time employment with [business] in [location], where the company's office was located.

(k) On 22 Feb 2016, Ms [WL] was required by Mr [JP] to sign another employment agreement with [business] (the second employment agreement), which changed Ms [WL's] actual starting wages to $500 per week.

(l) During Ms [WL's] employment with [business], Ms [WL] received the salary payments in accordance with the first employment agreement, but was required to return these payments to Mr [JP]. Fearing that Mr [JP] might cancel her sponsorship, Ms [WL] accepted this arrangement.

(m) Ms [WL] complained to the Agent about these payments to Mr [JP] but the Agent advised her that this arrangement was a normal practice and there was nothing she could do to assist. During her employment period, Ms [WL] asked Mr [JP] to pay her the full entitlement on a number of occasions but he refused. Ms [WL] decided to resign from her position and her employment was terminated on 17 November 2016.

(n) Ms [WL] requested that the Agent return the $60,000 fee she had paid to the Agent to organise the position at [business]. In December 2017, the Agent returned $20,000 to Ms [WL] but to date has not returned the remaining balance of $40,000 despite numerous requests made by Ms [WL].

(o) [business] has been under external administration since 24 Jul 2017. In December 2017, Mr [JP] attempted to offer Ms [WL] another position in his new company, with no salary or superannuation, which she refused.

(p) Ms [WL] permanently departed Australia in March 2018, while her subclass 457 visa was still in effect, and applied to the Department to cancel her 457 visa, which the Department did on 10 April 2018.

5. In support of her complaint, Ms [WL] provided the Authority with the following documentation:

- ASIC company search results for Ausbridge Visa Service Pty Ltd details;
- ASIC company search results for [ACN details], formerly [business], showing that the company is under external administration;
- Service Agreement between Ms [WL] and the Agent, written in Mandarin, along with an English translation of the first two pages of the agreement;
- WeChat correspondence between the Agent and Ms [WL] from 17 July to 5 November 2015;
- Original and translated WeChat message correspondence between the Agent and Ms [WL] on 26 and 27 October 2015, wherein she instructed Ms [WL] to pay money into Miss [JR's] account, which the Agent will then transfer to Mr [JP] and state that payments are made *"normally, at 457 stage is 40% and 40%, and at 187 stage paying 20%"*;
- Ms [WL's] bank account transaction statements, showing payments of $33,300 and $330 to Miss [JR] 27 October and 30 October 2015, and payments of $20,000, $10,000 and $3300 to Ms [JS's] account on 11 February, 26 February and 2 March 2016, respectively;

- Bank transaction receipt from Miss [JR's] account, showing two transfers of $20,000 on 29 October 2015 and 17 February 2016 to an account in Mr [JP's] name, with the transaction description "[Ms WL's name]";
- Ms [WL's] first employment agreement with [business], signed by Ms [WL] and a representative of [business], believed to be Mr [JP], and dated 25 October 2015, stating that Ms [WL's] salary on commencement of the agreement would be *"$60000 per year plus 9.5% superannuation plus 15% commission on work introduced"*, and would be reviewed on 18 July 2016;
- Ms [WL's] second employment agreement with [business], dated 22 February 2016, signed and dated by Ms [WL] and Mr [JP] on 29 February 2016, stating that Ms [WL's] weekly wage on commencement of the agreement and until 3 June 2016 would be $500;
- Ms [WL's] bank account transaction statement for 1 December 2016 to 30 June 2017, showing weekly payments of $917.85 paid into her account from another bank account with the description 'wages' and payments of $529 paid to a third party the day after with the description 'bill';
- Offer of Employment from [business] dated 19 December 2017, signed by Mr [JP], advising Ms [WL] that *"You are offered a fulltime position with a commencement date of the 22nd January, 2018. You commencement salary as per the National Private Sector Award 2010 is $865.38 per week plus 15% commission from fees on clients introduced by you. Superannuation will be paid according to the industry standard of 9.5% of your salary"*;
- Email correspondence between Ms [WL] and Mr [JP] regarding the offer of employment, and Ms [WL's] request for the remaining $40,000 to be returned to her;
- Bank account transaction receipts for three payments made to Ms [WL's] account from the account [removed] with the description [the Agent] for the following amounts: $10,000 on 19 December 2017, $5000 on 20 December 2017, and $5000 on 21 December 2017; and
- WeChat correspondence between the Agent and Ms [WL] in June 2018 in which the Agent discusses refunding money to Ms [WL] on Mr [JP's] behalf.

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

6. On 4 June 2019 the Authority published the complaint to the Agent in a notice pursuant to section 308(1) of the Act (the first section 308 notice). The Agent was advised that the complaint raised possible issues under clauses 2.1, 2.4, 2.23, 7.1, 7.1A, and 7.2 of the Code.

7. Pursuant to section 308 of the Act, the Authority requested the Agent to respond to the Authority's questions in a statutory declaration and provide the complete client files for Ms [WL] and [business] including all Service Agreements; correspondence; documents; file notes; and instructions from the clients. The Agent was also required to provide for inspection all records of her clients' and operating accounts, and all records for each and every other account into which any money paid by clients to the Agent has been deposited, in accordance with her professional obligation under clause 7.5 of the Code.

**Response to the section 308 notice**

8. On 19 July 2019 the Authority received the Agent's response to the section 308 notice from her legal representative in the form of a statutory declaration containing responses to the Authority's questions, and copies of supporting documents. The Agent's legal representative provided a link to a file sharing website for Ms [WL's] and [business'] client files on the same day, which were subsequently also provided by email on 24 July 2019. These contained supporting documents for both the nomination and visa applications.

9. The Agent's response as relevant is set out below:

(a) The Agent was approached in early July 2015 by her relative, who was a friend of Ms [WL], to request the Agent's assistance. Ms [WL] advised the Agent that she was on a Student visa but wanted to obtain permanent residency. This was a common request from potential clients.

(b) The Agent understood that Ms [WL] had a Bachelor degree and 16 years of work experience as a financial investment advisor in China, and was studying a Masters of Applied Finance at [Australian university] at that time.

(c) The Agent advised Ms [WL] that if she could find herself a financial investment advisor position with a sponsor who was willing to sponsor her, she would be eligible for either a Regional Sponsored Migration Scheme (RSMS) subclass 187 visa or a subclass 457 visa that would enable her to apply for permanent residency after two years. The Agent agreed to provide immigration assistance to her to apply for a subclass 457 visa on the condition that she obtained a sponsor.

(d) However, Ms [WL] asked the Agent to find her a sponsor. Finding potential sponsors was not part of the Agent's standard services to her immigration clients, however she made an exception for Ms [WL] because she was a friend of the Agent's relative.

(e) The director of [business], Mr [JP], approached the Agent in January 2015 to ask her to promote his financial services and investment products to her Chinese clients. He would also occasionally refer his clients to the Agent for immigration assistance. He had previously engaged her migration services to lodge a regional certifying body (RCB) advice application and subclass 187 visa for an employee of [business].

(f) The Agent referred Ms [WL] to [business] as a potential employee and Ms [WL] met with Mr [JP] in August 2015.

(g) [business] agreed to sponsor Ms [WL] on or around 25 October 2015. An employment contract (first employment contract) between the sponsor and Ms [WL] was entered into on the same day. Once this arrangement was confirmed, the Agent then entered into a Service Agreement with Ms [WL] on 27 October 2015. The Agent charged Ms [WL] $6600 in professional fees to prepare and lodge her subclass 457 visa application of which she paid 50 per cent when she entered into the Service Agreement on 27 October 2015 and the remainder on 2 March 2016, following the grant of her subclass 457 visa on 1 February 2016.

(h) The Agent charged Ms [WL] a referral fee of $60,000 to organise this service. The Agent asserted that this service was not was not immigration assistance. They did not enter into any contract or agreement for these referral services. The referral was for non-immigration assistance related services and was paid into bank accounts separate from the Agent's migration business' account. She retained $20,000 of the referral fee and paid the remaining $40,000 to Mr [JP].

(i) The Agent realised around 30 October 2015 that she had also accidently included the $330 fee for the nomination application charge in Ms [WL's] Service Agreement, which she was aware was supposed to be paid by the sponsor. She could not contact Mr [JP] to ask him to pay this charge prior to lodging the nomination application, so Ms [WL] agreed to pay for it. At no time did Ms [WL] ask the Agent or Mr [JP] to reimburse her for the nomination fee.

(j) The Agent was not required to enter into any written agreement or contract with Mr [JP], on behalf of [business], because she did not charge him any professional fees.

(k) Following the grant of her subclass 457 visa on 1 February 2016, Ms [WL] emailed the Agent on 15 February 2016 to raise concerns that Mr [JP] was angry with her because she had not met his expectations. The Agent alleged that Ms [WL] had proposed leaving this employment but continuing transactions into her bank account to pretend she was still working for and receiving wages from [business] for two years until she could apply for permanent residency. The Agent claimed that she told Ms [WL] that she had to move to [location], where [business] was located, and work for the sponsor in accordance with her visa requirements.

(l) On 17 February 2016 Ms [WL] forwarded the Agent correspondence she had received from Mr [JP] in which he suggested reducing her wages to reflect her level of knowledge and his expectations of her, and reduce the work pressure she was experiencing. The Agent did not respond to this email as she considered it a matter between employer and employee and unrelated to the migration services she had provided. The Agent was aware of the proposed reduced salary but only became aware that Ms [WL] had signed a second amended employment contract with [business] on a reduced salary when the Authority sent the section 308 notice on 4 June 2019 containing Ms [WL's] complaint and supporting documents.

(m) On 24 July 2017 [business] went into liquidation, and consequently Ms [WL's] employment was terminated on 17 November 2017. Ms [WL] contacted the Agent on the private messaging application We Chat on 10 December 2017 to advise the Agent that she had moved to [country]. She requested a refund of the referral fee she had paid to the Agent. The Agent agreed to refund $20,000 of the referral fee she had retained because Ms [WL's] sponsorship had been unsuccessful. This amount was repaid in instalments between 19 and 21 December 2017.The Agent borrowed money from her mother to repay Ms [WL].

(n) The Agent was copied into an email from Ms [WL] to Mr [JP] on 19 December 2017, responding to a new offer of employment (third employment contract) from Mr [JP] with a new entity in order to keep sponsoring her for the subclass 457 visa. Ms [WL] refused this offer[1].

(o) On 22 December 2017 Ms [WL] contacted the Agent to confirm she had received the $20,000 and to advise that she had no problem with the Agent but intended to pursue Mr [JP] for the outstanding referral fee amount. The Agent did not hear anything further from Ms [WL] until 23 May 2018 when she received a letter of demand from Ms [WL's] solicitor demanding payment of the outstanding $40,000 of the referral fee and the nomination application charge of $330.

(p) The Agent did not think Ms [WL] would demand more money from her as she had already repaid $20,000. The Agent wanted to resolve the matter so she offered a settlement payment to Ms [WL] on 30 May 2018, on a without prejudice basis, through her own legal representation. Ms [WL] did not accept this settlement payment. The Agent made a second settlement offer on 12 June 2018 to pay Ms [WL] a further $20,000 in order to resolve the matter but Ms [WL] did not accept this either.

Ausbridge

(q) Up until June 2016, the Agent was a joint shareholder and co-director of her migration business, Ausbridge, along with Ms [HX]. As the registered migration agent, the Agent responsible for professional immigration services to clients, while Ms [HX] was responsible for bookkeeping and managing the business' accounts.

(r) The Agent had no experience with bookkeeping or managing accounts, as she had been an education agent for 10 years in China before she met Ms [HX] and decided to start her own business in 2014. Ms [HX] joined the business in October 2014[2]. The Agent trusted Ms [HX's] advice, who had more than 10 years work experience in the migration advice industry in Australia, including as the *"general assistant manager"* of another migration business, [removed]. She had studied accounting at an Australian university.

Financial payments and use of bank accounts

(s) As the Agent had never provided referral services before, she was unsure how to handle the referral fee payments made by Ms [WL]. It was agreed that Ms [WL] would pay an initial lump sum that contained 50 per cent of the professional fees set out in the Service Agreement, being $3300, and 50 per cent of the agreed referral fee,

[1] However for Ms [WL] to be sponsored by a new entity, new applications for standard business sponsorship and nomination would be required to be lodged with the Department and approved.

[2] The Agent was only first registered as a migration agent on 22 December 2014.

$30,000, in October. Ms [HX] advised the Agent that Ausbridge was not allowed to receive any payments that included any part of the referral fee because this did not relate to immigration assistance. Ms [HX] instructed the Agent to have Ms [WL] pay this initial amount into an external bank account that belonged to Ms [HX's] niece, Miss [JR].

(t) On the basis of this same advice from Ms [HX], the second payment, consisting of the remaining 50 per cent of the professional fees and 50 per cent of the referral fee was paid into the Agent's mother-in-law, Ms [JS's], bank account in March 2016. This was because at that time the Agent was in a dispute with Ms [HX], who wanted to leave Ausbridge, who demanded that any money that was in Ausbridge's bank account be split with her.

(u) The refund payments the Agent made to Ms [WL] on 19, 20 and 21 December 2017 were made from her mother, Ms [ZT's], bank account, from whom the Agent had borrowed the money.

(v) Ausbridge has two business bank accounts; a client account and an operation account.

Contentions

(w) The Agent objected to answering the Authority's questions in relation to Ms [WL's] complaint, as she regarded the complaint allegations to be outside of the Authority's jurisdiction. The Agent argued that Ms [WL] did not make any allegations in relation to the immigration assistance the Agent provided her, as the subclass 457 visa was granted without issue. Her complaint related primarily to her employment with [business] and the referral services provided by the Agent, which were not immigration assistance and therefore outside the prescribed functions of the Authority set out in ss316(1)(b) and (c) of the Act.

(x) The Agent claimed that the referral payments to Mr [JP] were not subject to sections 245AR and 245AS of the Act, (which prohibit the provision and receipt of benefits in return for employment to facilitate a visa nomination), because these came into effect after Ms [WL] agreed to pay the referral fee. It was never the Agent's intent to exploit Ms [WL] by having her pay the referral fee to her prospective employer and that there was no way the Agent could have known that [business] would go into liquidation because they were a reputable business.

(y) The Agent refused to respond to the Authority's question as to whether any of her other clients had paid professional fees or other charges into a third party bank account rather than the business's clients' account. She objected to responding on the basis that she did not consider the question relevant to Ms [WL's] complaint or the services she had provided.

(z) The Agent also objected to answering the Authority's question as to whether she had provided sponsor referral services for a fee to any other clients on the basis that she did not consider it relevant to Ms [WL's] complaint or the services provided to her. The Agent nonetheless advised that this was the only occurrence where she had received a benefit for a sponsorship related event.

(aa) The Agent claimed that she was unaware that Ms [WL] was repaying Mr [JP] part of her salary payments under the second employment agreement. The Agent disputed the allegation by Ms [WL] that she told Ms [WL] that this was a normal practice and there was nothing she could do to assist her. The Agent advised that she had not been part of any discussions with Mr [JP] and Ms [WL] about the subsequent employment contracts, had never provided any advice to Ms [WL] regarding these, and only learned of the second employment contract when the complaint was published to her.

(bb) The Agent also claimed that contrary to the WeChat correspondence provided by Ms [WL] in support of her complaint, she only refunded the $20,000 in December 2017 and had not made any further payments to Ms [WL] in June 2018. The messages sent to Ms [WL] in June 2018 related to the Agent's settlement offers through her legal representative to Ms [WL], both of which Ms [WL] refused.

Mitigations

(cc) The Agent's employment as a registered migration agent is her sole means of income to support herself and her family, which includes two young children. If the Agent's registration is suspended or cancelled, this will have significant financial consequences for her and her family.

(dd) The Agent deeply regrets her handling of Ms [WL's] payments, and has realised in hindsight that she had breached the Code by asking Ms [WL] to pay the professional fees into Miss [JR] and Ms [JS's] accounts. However, the Agent did not know this at the time and was relying on Ms [HX's] advice. The Agent is now more experienced and understands her financial duties when handling clients' monies. She does not ask her clients to pay money into external third party accounts.

10. The Agent made specific references to the following documents provided as part of her response to the section 308 notice:

- Service Agreement for subclass 457 visa in Mandarin, signed by Ms [WL] and dated 29 October 2015;
- Two Ausbridge Visa Service Pty Ltd invoices dated 27 October 2015, and 31 December 2015, both issued to Ms [WL] for the two professional fee payments of $3300 for her subclass 457 visa application;
- Two departmental receipts for the payments of the nomination fee of $333.56 on 30 October 2015 and Ms [WL's] subclass 457 visa application charge (VAC) of $2046.87 on 6 November 2015;
- English translations of WeChat correspondence between the Agent and Ms [WL] between 12 June 2018 and 15 July 2018 discussing Ms [WL's] dissatisfaction with her treatment by Mr [JP] and whether she would accept a settlement payment from the Agent;
- Email correspondence from Ms [WL] to the Agent between 15 to 17 February 2016, forwarding correspondence with Mr [JP] and his proposal to amend Ms [WL's] weekly wages to reflect her knowledge and his expectation as a way to ease pressure on her to perform;
- Email correspondence from Ms [WL] to Mr [JP] on 19 December 2017, in which she refused a third employment contract to be employed by Mr [JP's] new company, to which the Agent was copied in on;
- WeChat correspondence between the Agent and Ms [WL] between 12 and 22 December 2017 regarding the Agent's refund payment of $20,000 to Ms [WL]; and
- Online banking screenshot of Ausbridge's "Client account" and "Operation account"

11. The Agent did not provide any records from her clients' and operating bank accounts, or any records for any other account into which any money paid by clients was deposited.

**Departmental records**

12. The Department's records show that both a Standard Business Sponsorship (SBS) application and a Temporary Business Entry Nomination (Business Sponsorship) application (nomination application) for [business], nominating Ms [WL], were both lodged from the Agent's ImmiAccount on 30 October 2015. The Agent was declared as the registered migration agent for both applications. Ms [WL's] subclass 457 visa application was lodged on 6 November 2015, also from the Agent's ImmiAccount and the Agent was declared as the registered migration agent representing the application.

13. Prior to this, the Agent lodged a RSMS nomination application for [business] on 24 August 2015, nominating Ms [XW] in the position of Financial Planning Advisor. This nomination was approved on 30 March 2016.

14. The Agent also lodged a RSMS nomination application for [business] on 12 September 2016, nominating Ms [TW] for the position of Accountant. The Department refused this nomination on 2 January 2018 on the grounds that [business] was under liquidation. Following this, the Agent lodged a RSMS nomination application for Mr [JP's] new entity, [TAUT], trading as [business], nominating Ms [TW] in the same position on 2 February 2018.

15. On 16 February 2018 the Department cancelled the approval of [business] as a standard business sponsor as the sponsor had ceased lawfully operating any business since 17 November 2017. In the same decision, the Department also barred [business] from making future applications for approval as a standard business sponsor for a period of five years.

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

16. On 22 June 2020 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.

17. 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, 5.2, 5.5, 7.2, 7.4, 7.5 and 9.3 of the Code. It was put to the Agent that she had facilitated a sponsorship payment by Ms [WL] to [business], and had failed to act in accordance with her professional and financial obligations. The Authority also advised the Agent that it was open to find that she was not a person of integrity or are otherwise not a fit and proper person to give immigration assistance on the basis of her knowledge and involvement in Ms [WL's] employment and sponsorship by [business].

18. Pursuant to section 309(2) of the Act, the Authority invited the Agent to provide written submissions on the matter by 20 July 2020.

***Notice under section 305C of the Act (section 305C notice)***

19. Pursuant to section 305C of the Act, the Authority also requested on 22 June 2020 that the Agent provide by 20 July 2020 the following:

    (a) copies of the complete client files including all relevant communications, agreements, receipts, tax invoices and Statements of Service in relation to:

        - The nomination application lodged by the Agent on behalf of [business] in which Ms [XW] was the nominee;
        - The visa application lodged by the Agent on behalf of Ms [XW];
        - The nomination application lodged by the Agent on behalf of [business] in which Ms [TW] was the nominee;
        - The visa application lodged by the Agent on behalf of Ms [TW];
        - The new nomination application lodged by the Agent on behalf of [TAUT], trading as [business] in which Ms [TW] was the nominee; and
        - The new visa application lodged by the Agent on behalf of Ms [TW].

    (b) Copies of client ledgers, client account documents, and any other financial documents which related to monies paid by or owed to clients in relation to the above nomination and visa applications for [business], [TAUT], trading as [business], Ms [XW] and Ms [TW].

***The Agent's response to the Authority's section 309 notice and section 305C notice***

20. On 16 July 2020 the Authority received a request for an extension of time to respond to both notices from the Agent's legal representative until 3 August 2020. The Authority agreed to the request. On 3 August 2020 the Authority received the Agent's submissions in response to the section 309 notice, and some documents in response to the section 305C notice from a new legal representative. This legal representative subsequently provided more documents by email on 4 August 2020, and confirmed that these constituted the Agent's complete response to the section 305C notice.

21. The Agent's legal representative provided a written submission on the Agent's behalf that addressed the nature of the alleged behaviour, mitigating factors, training efforts and rehabilitation prospects, and the impact of any sanctions on the Agent's livelihood. In summary, the submission advised:

Referral fee

(a) In response to the Authority's potential findings that the Agent had charged Ms [WL] fees to secure Mr [JP's] agreement to employ and sponsor her, the Agent did not accept that she should have questioned the whether the position was genuinely required by [business]. She submitted that nothing in the correspondence she was privy to between Mr [JP] and Ms [WL] suggested the role was not genuine.

(b) In or around August 2015, the Agent referred Ms [WL] to attend an interview with Mr [JP]. Between August and October 2015, there was considerable contact between Ms [WL] and Mr [JP], which the Agent was not party to. From the small number of emails in which the Agent was included, she understood that Ms [WL] was in talks with Mr [JP] about proposed a number of business opportunities from Chinese clients. On that basis, the Agent argued there was nothing to indicate that the position was not genuine or that [business] was not a reputable business. The Agent provided copy of a number of emails she received from Mr [JP] and Ms [WL] evidencing their correspondence in or around September 2015.

(c) The Agent acknowledged that on 14 December 2015, the *Migration Amendment (Charging for a Migration Outcome) Act 2015* (CMOA) came into effect. Any contravention of the Act by the Agent needed to be considered in light of the following mitigating factors:

- The Agent was relatively inexperienced at the time, as it was during her first full year of practicing as a registered migration agent, and while she was aware of the legislative change, she failed to appreciate the impact of the legislation on Ms [WL's] application;
- The agreement to pay Mr [JP] was entered into and partly paid for prior to the commencement of the CMOA;
- The Agent was concerned any attempt to refund the money paid or back out of the arrangement with Mr [JP] may jeopardise Ms [WL's] application;
- The Agent believed the position was genuine based on the information she received from Ms [WL] and Mr [JP's] correspondence with each other in respect of the nominated position;
- The sponsor referral was a one-off as a favour for the relative that referred Ms [WL] to the Agent, who has not offered referral services to any other clients before or since Ms [WL];
- The Agent attempted to remedy the situation by refunding the $20,000 referral fee she had received, which she believed at the time was a reasonable fee to charge for her referral services and negotiated with Ms [WL] to resolve the dispute in good faith;

- The Agent now understands that the referral fees paid by Ms [WL] to facilitate her employment and sponsorship were a contravention of the Act once CMOA came into effect;
- Employer sponsored visas account for less than ten per cent of the Agent's caseload and her relative lack of exposure to these visa subclasses when combined with her inexperience in 2015 contributed to her failure to act on the CMOA changes introduced in December 2015; and
- The Agent has sought to address relevant gaps in her knowledge through continuing professional development (CPD) training including specific training since 2016 on subclass 457 visas and reforms to employer sponsorship visas.

Nomination fee

(d) The Agent denied any actual intention by her to obtain a benefit to herself or to Mr [JP] to the detriment of Ms [WL] by requiring her to pay all costs associated with the nomination fee. At the time of being engaged by both parties, the Agent was keen for the nomination application to be lodged. In hindsight, she acknowledged that asking Ms [WL] to pay the nomination fee at the time was an error in judgment, which she now regrets. The Agent is committed to improving her processes so that such errors do not occur in the future.

Business records and financial accounts

(e) The Authority advised in the section 309 notice that it was open to find that the Agent failed to provide for inspection all records of client accounts and failed to respond properly to the section 308 notice[3], in breach of clauses 7.5 and 9.3 of the Code. In response, the Agent asserted that she had provided the client files she had in her possession and control in respect of Ms [WL] and [business]. She suggested that if the Authority considered that further documents existed but had not been provided, it should specifically identify what other records were sought and she would provide these where possible.

(f) In relation to the financial records sought pursuant to the section 308 notice, the Agent considered the request suggested an open-ended timeframe, which would span her entire registration of approximately five years. The Agent considered this an onerous task, but would be willing to undertake it if required. She instead provided a full copy of her clients' account records for 2019 in response to the section 309 notice.

(g) In relation to any other accounts into which money has been paid by her clients, the Agent reiterated that Ms [WL] is the only client she has asked to pay money into accounts not belonging to her, and the deposits into Miss [JR] and Ms [JS's] bank accounts were a one-off occurrence. She categorically denied that she used bank accounts not belonging to her or her migration advice business to conceal payments received from any clients.

(h) The Agent had difficulty providing any records for Miss [JR] or Ms [JS's] bank accounts because they do not belong to her. The Agent has been unable to obtain consent for access Miss [JR's] bank account records since her aunt Ms [HX] left Ausbridge. The Agent cannot access Ms [JS's] bank account information as it is located in China and the Agent is in Australia. The Agent submitted that the Authority should take into account these practical difficulties in considering whether the Agent has acted in breach of the Code in respect of the provision of the requested information.

(i) In response to the Authority's potential findings that the Agent had failed to issue a statement of service and maintain proper records on her client files, the Agent acknowledged that there were deficiencies in her practice due to her inexperience.

[3] The section 308 notice published to the Agent on 4 June 2019 sought the complete files for Ms [WL] and [business], as well as inspection of all records of the Agent's clients' and operating accounts

(j) At the time of providing services to Ms [WL], the Agent was relying on the advice of her former business partner, Ms [HX]. She regrets her decision to do so. She now understands that, after receiving legal advice, if she is in similar circumstances again she should seek legal advice about her compliance with professional obligations.

Lack of service agreement with Mr [JP]

(k) The Agent acknowledged that she had failed to provide a service agreement to [business] and submits that this was largely due to her inexperience and lack of business processes back in 2015. Ms [WL] noted that she has remedied these deficiencies by putting in place separate template agreements for nomination and visa services. Accordingly, the risk of any further breach of this kind is minimal

Knowledge of Ms [WL's] second employment contract with [business]

(l) The Agent reiterated her previous statements that she had no knowledge that Mr [JP] and Ms [WL] had entered into a second contract of employment until the publication of Ms [WL's] complaint. She claimed that the 17 February 2016 email did not contain an employment contract or any enforceable contractual terms. The Agent acknowledged that she was copied into the email between Mr [JP] and Ms [WL] discussing the salary amendment on 16 February 2016[4] but argued that there was no commentary or request for assistance from Ms [WL] attached to this email. The Agent also asserted that it was unclear from this email what actions, if any, Ms [WL] wanted the Agent to do in relation to her employment with [business]. The Agent does not consider her lack of action demonstrates that she was indifferent to Ms [WL's] situation. The Agent also argued that the email did not contain any threat from Mr [JP] to terminate Ms [WL's] employment.

(m) She had no day-to-day involvement with the operation of [business], and therefore she could not have known that Ms [WL] was not performing the tasks required of her nomination position. While the Agent was aware of some performance issues by Ms [WL] in the course of her employment with [business], the evidence put forward by the Authority does not prove that the Agent had knowledge of any arrangement for the second contract of employment or that this had been executed by Mr [JP] and Ms [WL].

(n) The Agent rejects the Authority's potential findings that, having received the email from Ms [WL] on 15 February 2016[5] containing Mr [JP's] proposed salary amendments, she was aware that it contained multiple contraventions of the law. The Agent did not read the second contract of employment, and had no actual knowledge that it had been entered into at the time in question. Therefore, any conclusion that she knew or should have known that Mr [JP] was paying Ms [WL] significantly below the award minimum on the terms of this email alone and without having read the second contract of employment, cannot be made out.

(o) The Agent denied any complicity in the exploitation of Ms [WL] by Mr [JP] and argued there was insufficient evidence before the Authority to support such a conclusion.

(p) In the section 309 notice the Authority highlighted that the metadata properties in a draft (first) employment contract for Ms [WL] listed the Agent as the creator and editor. The Agent argued that this can occur when downloading, transferring, editing or copying a document, and that she had copied the document wording into a new template with a letterhead. She categorically denied that she created the employment contract, as she is not a legal practitioner and does not offer employment contract drafting services, nor was she party to the contract between Mr [JP] and Ms [WL].

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[4] This was forwarded to the Agent by Ms [WL] on 17 February 2016.

[5] The Agent's records, provided to the Authority in response to the section 308 notice, show that Mr [JP] emailed Ms [WL] with the proposed salary reduction on 16 February 2016, and that Ms [WL] forwarded this to the Agent on 17 February 2016.

(q) The practical limitation of a migration's agent role does not extend to providing employment law advice, advocacy on behalf of a client in respect of employment law issues, or a positive duty to dob-in employers to regulators such as the Fair Work Ombudsmen. The Agent fully accepts that she had a duty to act in the best interests of Ms [WL] in relation to her visa application, but does not consider her actions demonstrate of a lack of integrity, fitness or propriety, as she believed the nominated position at [business] was genuine and had no knowledge of the second employment agreement.

Ms [XW] and Ms [TW]

(r) The Agent rejected the Authority's potential findings that she:

- was aware that [business] and Mr [JP] were exploiting visa holders but continued to lodge further nominations applications;
- had exposed Ms [TW] to exploitation; and
- was either negligent to, or complicit in Mr [JP's] arrangements to receive benefits to employ nominees and underpay them once employed.

(s) The Agent had no reason to be concerned about [business] based on her interactions with Ms [XW] and Mr [JP] following lodgement of the nomination application.

(t) Ms [TW] was sponsored by [business] after the Agent lodged [business'] nomination application for Ms [WL]. Ms [TW's] previous subclass 457 visa was withdrawn in August 2016 because her former sponsor's nomination was refused. The Agent was aware that one of Mr [JP's] employees had resigned so she introduced Ms [TW] to him. She understands that Ms [TW] attended an interview with Mr [JP] prior to being hire by [business].

(u) On 6 September 2016, the Agent signed a service agreement with Ms [TW] and lodged the RCB, nomination and visa applications on behalf of [business] and Ms [TW]. She denied being negligent or complicit with respect to Ms [TW's] nomination and visa applications.

(v) In response to the potential finding that she had failed to inform Mr [JP] of his sponsorship obligations, given Ms [TW] was not also being appropriately remunerated in accordance with the employment agreement, the Agent argued that prior to the visa application outcome, the employment contract had not yet come into effect. While the employment contract had not commenced, Ms [TW] had commenced working three days a week for Mr [JP] in or around October 2018. The Agent understands that this arrangement was an interim option while the nomination and visa applications were being processed and it was always intended that the nominated position would become full time upon the granting of the visa.

Conclusions on the nature of the alleged behaviour

(w) The Agent accepted her conduct in 2015 and early 2016 was, at times, not consistent with the Code, but submits that the nature of the alleged behaviour was minor. She submitted that she does not lack integrity and is a fit and proper person to continue to be registered as a migration agent taking into account to the following factors:

- Her inexperience at the time;
- The inadvertent or unintentional nature of any breach
- The relatively new nature of her business, which resulted in a lack of appropriate business processes, which has now been remedied; and
- Any referral fees charged to Ms [WL] were one-off in nature, which Ms [WL] has now been refunded, and the Agent has not charged to any other client.

Mitigating circumstances

(x) The Agent provided the following mitigating factors that she argued should be taken into account by the Authority when making a decision whether to sanction the Agent:

- She was relatively inexperienced at the time and should not be judged solely by her first year of practice, but rather should be taken in its entirety. The Agent has had excellent testimonials and prides herself now as a migration agent offering high quality service to her clients. She provided a personal reference letter and client reviews to evidence these statements.
- Providing immigration assistance is her sole means of supporting herself and her family, including [dependent children]. She has no other source of income and any sanction of suspension or cancellation of her registration would place her family in financial hardship.
- She has two full-time staff members and three casual workers. In light of the current situation in respect of COVID-19, it would be difficult for the relevant staff members to find other employment. The Agent argued the Authority should consider the negative impact a sanction decision against the Agent would have on her staff.
- The Agent has complied with her training requirements and undertaken regular continuing professional training. The Agent is committed to further training to develop her knowledge and skills as a migration agent, including undertaking additional CPDs to cover any gaps in her knowledge around her compliance with the Code, financial management of her accounts and employer sponsored visas.
- She now has a number of business systems in place to prevent the occurrence of breaches of the Code in the future. This includes having in place separate template service agreements with visa applicants and employer sponsors. The Agent has also been subscribed to the accounting management software Xero since around March 2019, which has enabled her to better manage her clients' and operating accounts.

22. In support of her section 309 notice submission, the Agent's legal representative provided the following documents on her behalf:

- Email correspondence between Mr [JP] and Ms [WL] during September 2015 discussing potential tasks and clientele for Ms [WL] in the nominated position;
- CDP activities undertaken by the Agent between 23 December 2015 and 22 December 2019;
- Bank account transaction statements for account 'Ausbridge Visa Service Pty Ltd T/AS Eduglobal Melbourne' between 31 October 2018 and 31 January 2020;
- Ms [TW's] employment agreement with [business] Pty Ltd dated 6 September 2016, signed by Ms [TW] and Mr [JP] on 7 September 2016, stating that Ms [TW] would be employed as an accountant with a commencement salary of *"$51376 per year plus 9.5% superannuation"*, and would be reviewed three months after grant of Ms [TW's] subclass 187 visa;
- Ms [TW's] employment agreement with [business] t/as [business] dated 20 November 2017, signed by an authorised representative of the employer, which appears to be Mr [JP], and Ms [TW], on 20 December 2017 and 11 January 2018, respectively, for the position of accountant with a commencement salary of *"$50400 per year plus 9.5% superannuation"*, and would be reviewed three months after grant of Ms [TW's] subclass 187 visa;
- Copies of client reviews posted on Google for the Agent's business; and
- Professional character references from the Agent's accountant and the [education provider] to which the Agent provides services in her capacity as an education agent.

Section 305C notice documents

23. In response to the section 305C, the Agent's legal representative provided the Authority with the following documents:

- [Business'] nomination application sponsoring Ms [XW] in the position of Financial Investment Adviser, and all supporting documentation lodged with the Department for the application;
- Departmental acknowledgement of receipt of [business'] nomination application sponsoring Ms [XW] dated 24 August 2015;
- Ms [XW's] subclass 187 visa application, including all documentation lodged with the Department in support of the application, and departmental correspondence acknowledging receipt of the application;
- Ms [XW's] Service Agreement with the Agent dated 15 July 2015, and financial records including invoice and receipt issued by the Agent for payments made by Ms [XW], and evidence of the payment of professional fees consistent with the Service Agreement, invoice and receipt into the bank account "Ausbridge Visa Service Pty Ltd";
- [Business'] first nomination application sponsoring Ms [TW] in the position of Accountant, and supporting documents lodged with the RCB and the Department, including a Form 956 signed by Mr [JP] in relation to his engagement of the Agent's services for this application;
- Departmental correspondence in relation to [business'] first nomination application sponsoring Ms [TW], including invitation to comment on adverse information dated 28 November 2017;
- Ms [TW's] first subclass 187 visa application, including all documentation lodged with the Department in support of the application, and departmental correspondence acknowledging receipt of the application;
- [Business'] second nomination application sponsoring Ms [TW] in the position of Accountant, and all supporting documentation for the application lodged with the Department;
- Ms [TW's] second subclass 187 visa application, including all documentation lodged with the Department in support of the application, and departmental correspondence acknowledging receipt of the application; and
- Ms [TW's] Service Agreement with the Agent dated 6 September 2016, and financial records including invoices and receipts issued by the Agent for payments made by Ms [TW], and bank account statements showing deposit of funds.

Publication of Agent's section 309 notice response to Ms [WL]

24. Following receipt of the Agent's section 309 notice submission and response to the section 305C notice, the Authority contacted Ms [WL's] legal representative, Mr [L], on 11 August 2020. The Authority sent to Ms [WL] the part of the Agent's response specifically about the correspondence Ms [WL] forwarded to the Agent between 15 and 17 February 2016 including the Agent's knowledge of the second employment contract. The Authority sought additional evidence of this correspondence or other evidence in relation to Ms [WL's] interactions with the Agent in regards to the second employment contract and reduction of her salary.

25. On 19 August 2020 Ms [WL's] legal representative, Mr [L], provided the Authority with a copy of an email Ms [WL] had sent to the Agent on 17 February 2016. In this email Ms [WL] forwarded to the Agent the email dated 16 February 2016 from Mr [JP] containing the proposed reductions to Ms [WL's] salary. This email subject was *"Fw: Employment Details and Agreement"* and attached was a document labelled *"Employment*

*Agreement.doc"* (Appendix A). Mr [L] advised that this attachment was a copy of the second employment contract with the proposed new salary schedule.

Jurisdiction

26. The Authority performs the functions prescribed under section 316 of the Act.
27. 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

28. 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)).
29. 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)).
30. 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.
31. 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

32. In reaching the following findings of fact the Authority considered the following evidence:
    - Documents contained in the Authority's complaint files for CMP-38373, including information and documents provided by the Agent in response to the Authority's section 308, section 309 and section 305C 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

Jurisdiction

33. The Authority has the jurisdiction to investigate the conduct of registered migration agents in their provision of immigration assistance, and to take appropriate disciplinary action against registered migration agents[6]. Section 314(2) of the Act sets out that registered migration agents must conduct themselves in accordance with the Code of Conduct for registered migration agents. Clause 1.10 of the Code stipulates the minimum attributes and abilities that a person must demonstrate to perform as a registered migration agent. In particular, that they are able to perform diligently and honestly, and are able and willing to deal fairly with clients. Further, clause 1.12 of the Code imposes on registered migration agents an overriding duty to act at all times in the lawful interests of their client. Any conduct falling short of that requirement may make the agent liable to disciplinary action by the Authority.
34. The Agent asserted in her section 308 notice response that the Authority did not have the jurisdiction to investigate Ms [WL's] complaint because she believed it predominantly related to the Agent's services in finding a sponsor to employ Ms [WL] and sponsor her for a visa. The Agent argued that these services did not constitute immigration assistance. Section 276 of the Act specifies that a person provides immigration assistance if they use, or purport to use, knowledge of, or experience in, migration procedure to assist a visa or

[6] Section 316(1)(c) and (d) of the Act

review applicant, or another person. The definition of immigration assistance was considered in the matter *Stolar and Migration Agents Registration Authority [2007] AATA 1245* at [49-51]. The Administration Appeals Tribunal found that immigration assistance encompasses services undertaken in connection with, or preparation for, a visa application. Further, that the term 'visa applicant' encompasses those who, having engaged a registered migration agent, intend to make applications for a visa and receive services to put that application in motion.[7]

35. Ms [WL's] engagement of the Agent for immigration assistance to obtain a subclass 457 visa was contingent on the Agent initially finding a sponsor in order for her to be eligible for this visa subclass. As such, I am satisfied that the Agent's sponsorship referral services to obtain a sponsor for Ms [WL] were provided to facilitate the nomination application and her visa application. The Agent used or purported to use her knowledge and experience in migration procedures to provide referral services in connection with, or as part of, the provision of immigration advice and assistance. Accordingly, an agent-client relationship existed between the Agent and Ms [WL] that also extended to the sponsorship referral services provided by the Agent, as did the obligations and protections under the Code she owed Ms [WL] in their dealings. I am therefore satisfied that the Agent's conduct, which is the subject of Ms [WL's] complaint, is within the Authority's jurisdiction to investigate.

Facilitation of sponsorship payment by Ms [WL] to [business]

36. The Agent confirmed that she had charged Ms [WL] $60,000 to organise her employment and sponsorship by [business], of which $40,000 was provided to the director of [business], Mr [JP], following his agreement to sponsor Ms [WL]. Despite being given multiple opportunities to do so, the Agent has not explained why she charged such a significant referral fee, which was ten times the amount of the professional fees she charged Ms [WL] for preparation and lodgement of her subclass 457 visa application.

37. The Authority raised with the Agent in the section 308 notice that Mr [JP] appeared to have received a benefit to employ and sponsor Ms [WL], in contravention of sections 245AR and 245AS of the Act. The Agent did not deny that the money was in return for Mr [JP] agreeing to sponsor Ms [WL] in a nominated position but argued that Ms [WL] had agreed to pay the referral fee before these provisions came into effect. The information and documents before the Authority indicate that Mr [JP] agreed to employ and sponsor Ms [WL] on 25 October 2015, and that she made her first payment to the Agent, being 50 per cent of the professional fees and the referral fee, on 27 October 2015. The documents provided by Ms [WL] show that she paid the Agent the second half of the referral fee in two instalments of $20,000 and $10,000 on 11 and 26 February 2016, respectively. Bank transaction statements from Ms Ren and Ms [JS's] bank accounts provided to the Authority by Ms [WL] also show that the $40,000 was transferred to Mr [JP] in two instalments of $20,000 on 29 October 2015 and 17 February 2016. This February 2016 payment coincides with the dates of Mr [JP's] proposal to reduce Ms [WL's] salary by more than 50 per cent.

38. On 14 December 2015, the *Migration Amendment* (Charging for a Migration Outcome) *Act 2015* (the CMOA) inserted into the *Migration Act* new criminal offences and civil penalty provisions for sanctions to be imposed in respect of 'payment for visa' activity. These amendments, which included sections 245AR and 245AS of the Act, came into effect on that date. It is an offence under sections 245AR and 245AS of the Act to ask for, receive, offer to provide, or provide a benefit in return for the occurrence of a sponsorship related event. The Department's procedural instruction on *'Paying for visa sponsorship'*[8] stipulates that a benefit includes, but is not limited to:

    - a one off lump sum payment;
    - ongoing regular payments;

[7] See *Stolar and and Migration Agents Registration Authority [2007] AATA 1245* at paragraph [50]

[8] Available to all registered migration agents

- underpayment of a visa holder's wages or salary (including secondary visa holders also working for the sponsor);
- repayment of a visa holder's wage or salary;
- unpaid work;
- hours of work paid below the visa holders hourly wage or enterprise agreement arrangements;
- payment for goods or services above market value; and
- gifts.

39. The Authority sent an email to all registered migration agents on 16 December 2015 advising of the CMOA amendments from 14 December 2015 that made 'payment for visa' behaviour unlawful. The Authority's records confirm that this email was sent to the Agent's nominated email address on this date. As a result, I am satisfied that the Agent was notified of these amendments to the Act by no later than 16 December 2015, and that she was aware that any payments or other benefits to a sponsor in exchange for sponsorship from this date were against the law.

40. The Department's records show that the Agent had lodged five nomination applications for four other sponsors prior to lodging the [business] application sponsoring Ms [WL]. The Agent lodged a further three nomination applications between 30 October 2015 and when she instructed Ms [WL] to make the additional payments in February 2016. I do not consider she was as inexperienced in such applications as she has argued. Even if the Agent was inexperienced and had limited exposure to employer sponsored nomination and visa applications at the time, I reject that this communication, which stated the changes related to "sponsored work visas", could have left the Agent in any doubt that the changes applied to her clients. Further, the email provided a link to further information on the Department's website, which the Agent should have reviewed if she was not already aware of the legislative changes, which would have confirmed that the payments she had facilitated to that point were now in contravention of the law, and no further such payments should be made in future.

41. The Agent did not deny that the 'referral' fees charged to Ms [WL] were related solely to procuring her sponsorship for her subclass 457 visa. The first referral fee payment made by Ms [WL] predated 14 December 2015. However, Ms [WL] made two payments after this date into the Agent's mother-in-law's bank account, which was located offshore, to pay both the Agent and Mr [JP] for procurement of the sponsorship position upon the grant of her subclass 457 visa on 1 February 2016. Despite being aware that the referral services and payments she had facilitated and benefited from in October 2015 were illegal from 14 December 2015, the Agent proceeded to instruct Ms [WL] to pay the remainder of the 'referral' fee in February 2016. I find that these payments in February 2016 contravened the section 245AR and 245AS provisions. The Agent conceded in her response to the section 309 notice that her conduct, and that of her clients, contravened the law. However, she argued that she proceeded with the February payments because the original agreement by Ms [WL] to pay for her employment and sponsorship occurred prior to the change in legislation, and she did not want to jeopardise the sponsorship by not continuing with the payment arrangement. I reject that either of these factors are genuine or reasonable mitigations for the Agent's conduct. The Agent stated in her response to the section 309 notice that any attempt to refund the referral fees or end the arrangement with Mr [JP] may jeopardise Ms [WL's] visa application. I consider that this indicates the Agent knew that Mr [JP] would rescind his sponsorship if he did not receive the money from his employee. The Agent has demonstrated that she knew Mr [JP] was driven by the monetary benefit he received from Ms [WL] for sponsoring her, rather than the genuine need for his business to employ someone in the nominated position. Despite this, had the nominated position been genuinely required, as the Agent asserted she believed it to be, Mr [JP] should not have required any remuneration to sponsor a prospective employee in a position that needed to be genuinely filled. Regardless of correspondence between Ms [WL] and Mr [JP], the Agent was the one who facilitated the

payment for visa arrangement. As such, I reject her assertion that she genuinely believed the nomination was genuine.

42. In her response to the section 309 notice, the Agent argued that her conduct in receiving payment the referral service she provided to Ms [WL] was mitigated by other factors. She claimed Ms [WL] was the only client she had charged a fee for finding a sponsor. She had attempted to remedy the situation by refunding her share of the referral fee and sought to negotiate a further settlement with Ms [WL]. The Agent has acted in contravention of the law. I reject her claim that her contravening the law on only one occasion should be regarded as a mitigation. There should not have been any occasion as a registered migration agent that she contravened the law. I consider that the Agent's actions in refunding Ms [WL] her portion of the referral fees, and attempting to reach a settlement for the outstanding money paid to Mr [JP] to be an attempt by her to appease Ms [WL], lest she complain about the Agent's conduct.

43. The Agent asserted she undertook additional CPD activities specifically to address the deficiencies in her knowledge and practice relating legislative changes and employer sponsored skilled visas. Registered migration agents are required to complete a minimum of ten (10) CPD points each year of as a requirement to renew their registration. A comparison of the Agent's CPD records provided to support of her submission in response to the section 309 notice with the Authority's records show that the Agent undertook activities to meet her registration requirements but had not completed additional professional development courses above the number needed to meet mandatory requirements. As such, I consider that the Agent has overstated her claim that she completed additional CPD to increase her understanding. I do not accept that any of the reasons put forward by the Agent excuse or reduce her culpability.

*Charging Ms [WL] the Department's fee for the nomination*

44. The Service Agreement dated 29 October 2015 and issued to Ms [WL] by the Agent set out that Ms [WL] was required to pay the subclass 457 nomination application fee. The documents provided to the Authority by both the Agent and Ms [WL] confirm that she paid this amount into Miss [JR's] bank account, rather than Ausbridge's clients' account, on 30 October 2015. The Agent then used her credit card on the same day to pay the charge when lodging the nomination application. The Agent claimed in her section 308 notice response that the inclusion of this charge in the Service Agreement was an accident and that she did not realise her error until 30 October 2015. She also claimed that, contrary to Ms [WL's] allegation that she instructed her to pay the $330, the Agent had intended to ask Mr [JP] to pay for the nomination application charge. However, she was unable to contact him before lodging the nomination application Ms [WL] offered to make the payment on 30 October 2015. In the section 309 notice submission, the Agent acknowledged it was inappropriate to ask Ms [WL] to pay this fee and that she would undertake to improve her practices so she would not make the same mistake in future. She also argued that she had no actual intention to obtaining a benefit for Mr [JP] by doing so, to the detriment of Ms [WL]. However, given that the Agent did not charge Mr [JP] for her immigration assistance for the nomination application I do not accept that the Agent made a mistake. Rather I find that charging Ms [WL] for the nomination fee was in keeping with the fact that Mr [JP] did not pay for anything for which a sponsor would normally be required to pay.

45. In light of the information before the Authority, I accept Ms [WL's] allegation that she was instructed by the Agent to pay the nomination application charge, despite the Agent being aware that this was the responsibility of the sponsor. All expenses incurred for the nomination application are the responsibility of the sponsor and should not be transferred to the visa applicant. Mr [JP] paid no professional fees for the immigration assistance provided by the Agent. I find that these costs were covered by the $60,000 payment made by Ms [WL]. I am satisfied that Mr [JP] received multiple benefits by sponsoring Ms [WL] without incurring any costs.

*Sponsor's fees charged to Ms [TW]*

46. I have reviewed the Agent's client file for Ms [TW] provided by the Agent in response to the section 305C notice. This contains a Service Agreement, predominantly in Mandarin, and invoices issued by the Agent. However, from the English wording available, Ms [TW's] Service Agreement dated 6 September 2016 contains a reference to the subclass 187 nomination application as part of the services to be provided by the Agent to Ms [TW], as well as listing the RCB application fee in the list of fees to be paid by Ms [TW].

47. A requirement for grant of RSMS nomination applications is that the Minister has received advice from the relevant appointed RCB relating to the following:

    - whether the identified person would be paid at least the annual market salary rate for the occupation
    - whether there is a genuine need for the identified person to be employed in the position, under the direct control of the nominator, and
    - whether the position can be filled by an Australian citizen or an Australian permanent resident who is living in, or would move to, the local area concerned

48. As such, it is a requirement to seek advice with the relevant appointed RCB to obtain this advice, which may incur a cost. Notwithstanding that [business] was the applicant for the RSMS nomination application, and that the Agent should have entered into a separate agreement with the business for this, I consider the inclusion of the fee for the RCB in Ms [TW's] service agreement to evidence that it formed part of the professional fees Ms [TW] paid to the Agent, totalling $8314. The invoice issued by the Agent to Ms [TW][9] dated 9 September 2016 included an amount of $715 for *"RCB application fees"*. Based on the bank account records provided on the file RCB fee was paid for by Ms [TW], along with the other fees set out in the invoice, on the same day.

49. I consider that while there are no government fees associated with the lodgement of a subclass 187 nomination application, expenses incurred for the nomination application are regarded as the responsibility of the sponsor and should not be transferred to the visa applicant. This includes the RCB advice application fee. The Act stipulates that no benefit, either direct or indirect, can be provided in exchange for sponsorship, which precludes visa applicants paying costs on behalf of the sponsor.[10] I consider that the documents before the Authority show that Ms [TW] paid for the RCB application for the [business] nomination application. I am, therefore, satisfied that the Agent required both Ms [WL] and Ms [TW] to pay fees that were the responsibility of Mr [JP]. I am satisfied that the Agent instructed Ms [WL] and Ms [TW] to pay for government fees and related charges that were the responsibility of the employer.

*Conclusion*

50. Regardless of the date that the offence of payment for visa came into effect, the requirement for Ms [WL] to pay Mr [JP] $40,000 to be employed in the nominated position should have raised concerns with the Agent as to the genuineness of the position. The Agent should have questioned Mr [JP] as to why he required payment to employ Ms [WL] [business]. If it was a reputable business, as the Agent has claimed and the position was genuinely required then it could be funded by the business. This also raises the question as to why, if the position was genuine, that the Agent prepared and lodged both [business] SBS and nomination applications after Ms [WL's] agreement to pay referral fees to both her and Mr [JP] but did not enter into any agreement with him for the immigration assistance provided to [business].

51. The Agent argued that the emails she received from Mr [JP] and Ms [WL] of their correspondence in or around September 2015 contained nothing to indicate the nominated position was not genuine. The limited emails provided by the Agent contained only discussions of between Mr [JP] and Ms [WL] of attracting potential Chinese clients. Regardless of what was contained in these emails, the Agent was aware that the

[9] For the first subclass 187 visa application only
[10] 245AR and 245AS of the Act

nominated position was only available to Ms [WL] after she agreed to pay Mr [JP] a significant amount of money to employ and sponsor her. This gives rise to the inference that the business did not require Ms [WL] as a financial investment advisor and the position was not genuinely required by [business].

52. I am satisfied that the Agent acted in contravention of the Act by engaging in payment for visa related activities after 14 December 2015, and failed act in the legitimate interest of Ms [WL] in breach of **clause 2.1(a)** of the Code. I also find that, despite her assertions to the contrary, she prioritised the interests of Mr [JP] and herself to the detriment of Ms [WL]. She required Ms [WL] to pay all costs associated with [business'] nomination and fees (that became unlawful) to secure Mr [JP's] agreement to employ and sponsor her. I am satisfied that the Agent failed to treat Ms [WL] fairly and she was not diligent in her concern for Ms [WL's] interests in breach of **clause 2.1(b**) of the Code.

53. I am satisfied that the Agent lodged a nomination application and subclass 457 visa application for a position that she knew, or should have reasonably known, was not genuine. Her decision to prepare and lodge these applications despite Ms [WL] being required to pay the sponsor money to obtain the sponsored position is demonstrative that it was the Agent's lack of honesty, rather than inexperience, which caused her to make a mistake.

<u>Informing employer of obligations as sponsor</u>

54. The Agent argued that she had no knowledge of the second and third employment contracts issued by Mr [JP] to Ms [WL], had never provided any advice to Ms [WL] regarding these and did not know Ms [WL] was not performing the nominated position's duties. The Agent asserted in her statutory declaration responding to the section 308 notice that she *"later became aware that Ms [WL] signed another employment agreement with [business] with a reduced salary (Second Employment Contract). The first time I knew about this was when I read about it in Ms [WL's] complaint to MARA, which I received in June 2019 from MARA. In other words, I knew that it was proposed by Mr [JP] that M Li's salary be reduced but I did not know that she signed another contract with [business] agreeing to a reduction in salary."*

55. In the section 309 notice submission from the Agent on 3 August 2020, the Agent *"refers to her statutory declaration and reiterates that she had no knowledge that Mr [JP] and Ms [WL] had entered into a second contract of employment"*. The Agent asserted that the email sent following Mr [JP's] proposal had no contract attached and did not contain any enforceable contractual terms, that it contained no context or requests for assistance, and that the Agent had no knowledge that a second employment contract had been executed. As such, her legal representative argued that the Authority could not draw any inference that the Agent had knowledge of the second employment contract. The Agent also argued that 'at best' Mr [JP's] email containing a sliding scale for Ms [WL's] proposed salary were not legally enforceable as an employment contract.

56. The Agent further asserted that as a registered migration agent she was not responsible for providing employment law advice or advocacy on behalf of a client in respect of employment law issues, did not have the knowledge or experience to identify that the proposed salary was below the minimum wage and industry standard, and was not legally obligated to report employers to the Fair Work Ombudsman.

*Knowledge of second employment contract*

57. On 19 August 2020 Ms [WL's] legal representative (Mr [L]), provided a copy of the email correspondence relating to Mr [JP's] proposal to reduce Ms [WL's] salary. This email correspondence was consistent with correspondence the Agent submitted to the Authority when responding to the section 308 notice. The emails provided by Mr [L] and the Agent show that Ms [WL] sent an email to the Agent on 17 February 2016 titled *"Fw: Employment Details and Agreement*. It contained the email sent by Mr [JP] to Ms [WL] on 16 February 2016 with the proposed salary amendment. The version provided by Mr [L] clearly showed that a document was attached to this email labelled *"Employment Agreement.doc"*. Mr [L] advised that this document was the second employment contract containing Mr [JP's]

proposed amendments from the previous email correspondence. A review of the email correspondence provided by the Agent also showed that employment agreement was attached but was shown at the bottom of the correspondence. As the attached document was provided by Ms [WL] to the Agent along with the proposed reduced salary, I accept that this document was the second employment contract, and not a copy of the first employment contract. Accordingly, I find that she has attempted to mislead the Authority in order to conceal her knowledge of the second employment contract and significant reduction in her client's salary almost immediately after the grant of her subclass 457 visa. In doing so, I am satisfied the Agent has breached of **clause 2.9A** of the Code.

*Contraventions of sponsorship obligations*

58. Approved business sponsors are required to comply with sponsorship obligations under the Regulations. These include the obligation to ensure equivalent terms and conditions of employment, as set out in regulation 2.79 of the Regulations, are:

    - no less favourable than the terms and conditions of employment that the Minister was satisfied of at the time of grant;
    - no less favourable than the terms and conditions of employment that are provided, or would be provided, to an Australian citizen or an Australian permanent resident; and/or
    - no less favourable than the terms and conditions of employment set out in the work agreement.

59. The change in wage proposed by Mr [JP] to Ms [WL] on 16 February 2016 stipulated a reduction from $60 000 per annum (approximately $1154 gross wage weekly) plus 9.5 per cent superannuation and 15 per cent commission to a gross wage of $500 per week with 20 per cent commission[11]. It did not mention superannuation[12]. This proposal represented a decrease in Ms [WL's] wages by more than half only two weeks after her visa was granted on 1 February 2016. Regardless of the existence of the second employment contract, the Agent was aware that Ms [WL's] employer had proposed this wage change, which was inconsistent with, and less favourable than, the salary that had been provided to the Department in the in the work agreement (employment contract) in support of the nomination application. It was also less favourable than the terms and conditions of employment that the Minister's delegate had been satisfied of at the time of [business'] nomination grant.

60. Such a drastic reduction in wage from the first employment contract submitted to the Department to obtain the nomination and visa approvals should have raised the Agent's concerns as to the position's genuineness and the conduct of Mr [JP] and [business]. She asserted in the section 309 notice that from the interactions between Mr [JP] and Ms [WL] that she was privy to, the Agent believed that the nominated position and sponsorship were genuine, and she had no reason to question otherwise. The proposed amendments indicated that Mr [JP] intended to pay Ms [WL] less than half of her original weekly wage, which was also below the national minimum weekly wage at the time of the email.[13] As such, these are below the terms and conditions of employment that would be provided to an Australian citizen or an Australian permanent resident in the same position.

61. In support of her argument that she was not aware of the minimum wage standard, the Agent argued that she was only listed in the metadata properties of the draft first employment contract as the document's creator and editor because she copied the wording onto a new template. However, she submitted in support of [business'] nomination application a document titled 'Salary determination statement', which stated that the award

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[11] Based on the Banking, Finance and Insurance Award 2010. The second employment agreement signed by Ms [WL] and Mr [JP] on 29 February 2016 conversely stated the commission rate was 15 per cent.

[12] Failure by an employer to pay compulsory superannuation to their employees constitutes an offence under the *Superannuation Guarantee (Administration) Act 1992*.

[13] It is an offence under the Fair Work Act 2009 (Far Work Act) to not pay the minimum wage standard. The minimum weekly wage as at February 2016 was identified in the National Minimum Wage Order 2015 as $656.90. https://www.fwc.gov.au/documents/sites/wagereview2015/decisions/c20151_order.pdf

salary for Ms [WL's] nominated position was $51,418 (gross $988.81 per week). The statement also advised that commercial salary research undertaken identified the salary range for a financial planning adviser in Australia between $44, 484 - $98, 693 with the median of $67, 266. These amounts were significantly higher than Mr [JP's] proposal to reduce Ms [WL's] wages. The Agent also had information on her client file for Ms [WL] that specifically set out the award standards as, presumably, a reference to assist in the preparation of the 'Salary determination statement' document lodged by her in support of the nomination application. This information was contained a folder labelled 'AWARD'. As such, I reject that she lacked the knowledge to identify the proposal was below the industry standard and consider her statement to be misleading. The award salary would be consistent with the terms and conditions of employment expected to be paid to an Australian citizen or permanent resident. I am satisfied that the Agent knew, or should have reasonably known, that Mr [JP's] proposal was significantly below the award salary when Ms [WL] forwarded the proposed reduction in her wages to the Agent. The Agent, therefore, should have known that this would be a breach of Mr [JP's] sponsorship obligations under regulation 2.79 of the Regulations.

62. There is no evidence on the client files provided by the Agent in response to the section 308 notice that she informed Mr [JP] of his sponsorship obligations at the time of lodging the subclass 457 nomination application, or when she became aware that he intended to significantly reduce Ms [WL's] agreed salary following visa grant. In light of the Agent's statements that she did not consider it appropriate to become involved in employment matters between [business] and Ms [WL], I consider that Agent did not notify Mr [JP] that the proposal amendments to Ms [WL's] salary would breach his obligations under. The Agent, however, transferred the second half of Ms [WL's] referral fee to Mr [JP] on the same day as being notified by Ms [WL] of the proposed salary reduction, and continued to be engaged by [business] to lodge nomination applications after this date.

*Intention of Ms [WL's] emailing proposed salary reduction and second employment contract*

63. The email containing Mr [JP's] proposal sent to the Agent on 17 February 2016 was part of series of emails from Ms [WL]. This included an earlier email sent on 15 February 2016 seeking the Agent's guidance on concerns of her duties in discussions with Mr [JP] and whether he could jeopardise her visa application. The Agent advised the Authority in response to the section 308 notice that she had spoken to Ms [WL] following the email on 15 February 2016 advising her to move to [location], where [business] was located, and work for the sponsor in accordance with the requirements for the visa. There is no record of this advice being provided by email in the documents provided by the Agent, nor is there any mention in the limited files notes provided by the Agent in the client files for [business] and Ms [WL] of any interaction, either in person, by telephone or through a messaging service, of this discussion on or after 15 February 2016. Registered migration agents are required to maintain proper records that can be made available to the Authority for inspection. This includes copies of written communication and file notes of every substantive or material oral communication between the registered migration agent, the client, the Department, and any other relevant statutory authority. I find that the Agent has failed to maintain an accurate record of all email correspondence she had with Ms [WL] on her client files, in breach of her recordkeeping obligations under **clauses 6.1 and 6.1A** of the Code.

64. I also consider that if the Agent spoke with Ms [WL] in regards to her requests for advice in the 15 February 2016 email, it was likely that this occurred shortly before, or around the time that she received the subsequent email containing the proposal. I reject that Ms [WL's] email on 17 February 2016 was without context. Even without any specific request contained in the email, I accept that Ms [WL] approached the Agent for guidance and assistance given she was her registered migration agent, and had referred her to this employer and facilitated her sponsorship.

*Conclusion*

65. Ms [WL] forwarded the emails containing the proposal and the attached contract to the Agent because she had been reliant on her knowledge and experience, and continued to be so after the grant of the visa, given the Agent's statement that she had provided advice

to Ms [WL] after her email on 15 February 2016. I find the Agent knew or should have reasonably known that Mr [JP] was breaching his obligations as a sponsor by not paying Ms [WL] the correct salary as approved in the nomination. She, however, failed to inform him of obligations and continued to lodge nomination applications for [business] nominating other visa applicant employees. I will consider this conduct further in relation to the Agent's integrity, and propriety and fitness to provide immigration assistance.

Business accounts and financial records

66. The section 308 notice specified that the Agent was required to provide to the Authority **"all records"** of her clients' and operating accounts, and all records for any other account where money paid by her clients had been deposited. The Agent failed to provide the Authority with account records for her business or third party accounts. She was notified in the section 309 notice that it was open to find she had failed to comply with her obligations under clauses 7.5 and 9.3 of the Code as a result of her failure to furnish these documents. The Agent was also advised that without these records, the Authority was limited to only her written statements in considering the Agent's management of clients' monies and compliance with her financial obligations.

67. In response to the section 309 notice, the Agent stated that the wording of the section 308 notice required the Agent to provide all account records spanning the entire period of her registration, which was approximately five years. The Agent also asserted that this would be an onerous and laborious task for the Agent and that the Authority should provide her with further instructions about specific account records required. The Agent provided the Authority with bank account records for the account 'Ausbridge Visa Service Pty Ltd T/AS Eduglobal Melbourne' between 31 October 2018 and 31 January 2020. She stated that this was her clients' account. The Agent did not provide any records for her operating account.

68. The financial records Agent the provided for Ms [TW], in response to the section 305C included limited records for the same clients' account that related to the specific periods of time that Ms [TW's] payments were deposited into the account. The financial records provided for Ms [XW] contained evidence of a second account in the name of 'Ausbridge Visa Service Pty Ltd' that showed a deposit from Ms [XW] for the Agent's professional fees and government charges.

69. The Agent stated that she was unable to provide records for the two bank accounts that she instructed Ms [WL] to deposit money into as she was unable to provide records for accounts that belonged to other people and to which she did not have access.

70. I am satisfied from the Agent's response to the section 309 notice that she understood she was required to provide all records for her clients' and operating accounts. She did not seek clarification from the Authority about what was required by the section 308 notice. The documents the Agent has submitted to the Authority do not constitute all records for both business accounts. There is no evidence currently before the Authority that shows the Agent has used other accounts to receive and hold client monies aside from those in the name of Miss [JR] and Ms [JS], where the Agent instructed Ms [WL] to deposit both the referral and professional fee payments. I accept that she is unable to provide these records because the accounts belong to other people. Nonetheless, the Agent's statements reinforce the inappropriateness of her instruction that her client deposit tens of thousands of dollars into bank accounts of third parties. In the case of Ms [JS's] account, the Agent advised that this bank account was held in China. The Agent instructed her client, Ms [WL], to deposit money to a bank account offshore. This gives rise to the conclusion the intention of the Agent was to hide the money and keep it separate from the business.

71. The Agent has not complied with her obligation to make available all records of her clients' and operating accounts, and in doing so failed to respond properly to the section 308 notice. I am satisfied that her conduct constitutes breaches of **clauses 7.5 and 9.3** of the Code.

72. Clause 7.1 of the Code requires registered migration agents to keep separate accounts for their operating expenses (the operating account) and money paid by clients to the agent for fees and disbursements (the clients' account). Clause 7.1A of the Code specifies that the words 'clients' account' must be included in the name of the relevant bank account. Further, clause 7.2 of the Code stipulates that a registered migration agent must hold, in the clients' account, an amount of money paid by the client for an agreed block of work until the agent has completed the block of work, and an invoice has been issued to the client for the services performed.

73. The Agent has provided records for an account she claimed to be her clients' account. However, the name of this account does not contain the required wording 'clients' account' in accordance with clause 7.1A. The clients' account records provided by the Agent show a number of transactions that relate to operating costs for the Agent's business. For example, the use of the clients' account to pay the Agent's business insurance on 5 September 2016 and purchases at Officeworks, JB Hi Fi, and a computer store between 2 and 9 February 2018. The Agent's other account referenced in the client records for Ms [XW] contains transactions that are also predominantly operating expenses. This account appears to be the Agent's operating account. The statement records a deposit of $10, 416.30 into this account on 3 September 2015, consistent with the invoice for Ms [XW's] payment of professional fees and disbursements to the Agent on the same date. There is no evidence from the records provided that this money was transferred to the Agent's clients' account. I am satisfied, based on the transaction records, that the Agent made payments from her clients' account for costs relating to her operating expenses, and received client monies into an operating account. The Agent has failed to maintain the operation of her accounts in accordance with her financial obligations under clauses 7.1 and 7.1A of the Code.

74. The Agent's financial management practices in relation to the money paid by Ms [WL] do not meet the Code requirements. She instructed Ms [WL] to make payments into bank accounts belonging to third parties separate from her migration business, Ausbridge, on the basis that they contained partial fee payments for services that were not immigration assistance. The Agent conceded that, in retrospect, such conduct had breached the Code but that she had relied on the advice of her business partner Ms [HX], who was responsible for handling the financial aspects of Ausbridge. The Agent has been unable to provide any evidence of Ms [HX's] advice or instructions to her with regards to the management of business accounts and client monies. The Authority has no record of Ms [HX] ever being registered as a migration agent. This suggests that the Agent and Ms [HX] were seeking to conceal the receipt of the $60,000 Ms [WL] paid for her visa to avoid external scrutiny.

75. Registered migration agents are obliged to maintain a sound working knowledge of migration legislation, policy and procedures, and provide accurate and timely advice. It is expected that where a registered migration agent is uncertain about their professional obligations in new or unusual circumstances they should seek guidance from the migration advice profession and undertake additional training or education as necessary. The Agent, however, chose to act on the advice of someone who was not a registered migration in relation to her financial obligations for handling client monies under the Code. The Agent asserted that she trusted and relied on Ms [HX's] advice to deposit the fees paid by Ms [WL] in third parties personal bank accounts. The Agent also advised in her section 309 notice submission that she recognised she should have sought legal advice about her compliance with professional obligations. Despite being in her first year of practice, it is expected that the Agent would have, on reviewing the Code, been aware that using external accounts belonging to relatives to receive payments from clients was in breach of the Code. This advice should have raised significant concerns in the Agent's mind as to her handling of consumer transactions, and the ramifications of using third party personal bank accounts on her business' financial and taxation reporting obligations. I do not accept that the Agent was not aware that her use of Miss [JR] and Ms [JS's] bank accounts to receive payments from Ms [WL] was a breach of her financial obligations. I reject the Agent's claim that it was reasonable for her to have relied on Ms [HX's] advice to use third party accounts to receive and hold her client's money for any purpose. I instead find that the Agent purposely used other bank accounts to conceal receipt of the referral payments, which were unlawful from 14 December 2015, from the business' financial

records. The referral payments to secure a nomination for a position not generally required by the business was also a breach of the Migration Regulations.

76. At no time was Ms [WL] instructed to pay any money into either of the Agent's business accounts. Ms [WL's] first payment on 27 October 2015 was a combined payment of covering half of the Agent's professional fees and half the referral fee. It was paid into Ms Ren's bank account. Her payment for the nomination fee on 30 October 2015 was also deposited into Miss [JR's] bank account. The remainder of the Agent's professional fees were paid by Ms [WL] on 2 March 2016, into Ms [JS's] bank account. All of these deposits should have been paid into, and held in, the clients' account. None of the payments were made in accordance with the requirements of the Code.

77. Financial records provided by the Agent for Ms [TW] show that Ms [TW] paid $5600 for the VAC into what appears to the Agent's operating account on 8 February 2018. This was withdrawn on 12 February 2018, the same day the Agent lodged the second visa application and paid the VAC with her credit card. No invoice or receipt was contained in the client file for this payment. The Agent should have issued an invoice and/or receipt for this payment but from her records has either failed to do so, or failed to maintain a copy of this on the client file. Registered migration agents are required to maintain proper financial records including requisite financial documentation such as tax invoices, receipts or statements of service to either client for respective payments to the Agent in accordance with Part 7 of the Code. Based on the information before, I find that the Agent failed to maintain an invoice and/or receipt for the payment made by Ms [TW] on 8 February 2018 specifying what the payment was for.

*Conclusion*

78. The Agent instructed Ms [WL] to make multiple payments into bank accounts that did not belong to her or her migration business. The Agent never held Ms [WL's] money in her clients' account until she had completed the agreed block of work and issued her an invoice or statement of services for the work performed. The Agent also did not provide the Authority with any receipts or statements of service issued to Ms [WL] confirming receipt of the payments or completion of work. Nor did the client files for Ms [XW] and Ms [TW] contain statements of service, or receipts confirming the payments received from both clients. She acknowledged that there were deficiencies in her practice at the time of Ms [WL's] matter, but from review of the two other client files, these deficiencies extended beyond the Agent's handling of Ms [WL's] case to her other clients, as late as Ms [TW's] second subclass 187 visa application in early 2018. I consider such deficiencies systemic to her practice despite her purported attempts to improve her knowledge and skills. I find that the Agent's conduct in relation to migration services she provided to Ms [WL], Ms [XW] and Ms [TW] breached her financial management obligations in relation to **clauses 5.5, 7.1A, 7.2 and 7.4** of the Code.

<u>Service Agreement</u>

79. The Agent provided immigration assistance to Mr [JP] by preparing and lodging both the SBS and nomination applications for [business]. However, she advised in her section 308 notice response that she had not entered into a Service Agreement with Mr [JP], or anyone else on behalf of [business] for these services because she was not required to where no fees were charged to Mr [JP].

80. The client files provided by the Agent in response the section 305C notice did not contain Service Agreements between Mr [JP] or any other authorised party for [business], and the Agent, in relation to the nomination applications lodged for Ms [XW] and Ms [TW]. There is only one Service Agreement in the client file for Ms [TW], even though the Agent lodged two subclass 187 visa applications for her. I consider that, in light of no Service Agreements in these client files, the Agent did not enter into Service Agreements with [business] for any of the nomination applications she lodged on the business' behalf. I also find that the Agent did not enter into a separate Service Agreement with Ms [TW] for the second subclass 187 visa application. I am satisfied that the Agent's conduct in not issuing

Service Agreements extends beyond Ms [WL's] nomination by [business] and was systemic in her engagement by Mr [JP] and [business].

81. 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. 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. I reject the Agent's argument that as no fees were charged for the migration services provided to [business] there was no requirement enter Service Agreements. I also consider that a Service Agreement should have been issued to Ms [TW] for her second subclass 187 visa application, which was a separate application to the previous one lodged by the Agent in September 2016. Particularly given the lack of records surrounding the payment made to the Agent by Ms [TW] on 8 February 2018 for the VAC.

82. As the Agent prepared and lodged nomination applications for [business] in relation to three separate nominees, I am satisfied the business was also her client. I find that the Agent has repeatedly failed to issue Service Agreements to [business], as well as Ms [TW] for her second visa application, and in doing so acted in breach of **clause 5.2** of the Code. Despite her assertions that she has improved her practice by undertaking additional professional development and training, the Agent's responses show that she regarded her professional responsibilities under the Code as discretionary at the time she received the section 308 notice. I am not satisfied that the Agent has addressed her shortcomings in her understanding, given she continued to not issue Service Agreements to [business] for other applications. I consider her response to the section 308 notice that she did not need to enter into a Service Agreement with [business] because she had not received any payment indicative that she has not improved her knowledge in the past four years of practice since being engaged by Ms [WL].

Breaches of the Code

83. 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.

84. Having regard to the findings I have made, I am satisfied that the Agent has engaged in conduct in breach of the Agents obligations under clauses **2.1, 2.9A, 5.2, 5.5, 6.1, 6.1A, 7.1A, 7.2, 7.4, 7.5, and 9.3** of the Code (Appendix B).

Integrity, fitness and propriety

85. 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.

86. 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.

87. 'Integrity' means 'soundness of moral principle and character, uprightness and honesty'.[14]

88. 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.

89. 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".[15]

[14] See *Re Peng and Department of Immigration and Multicultural Affairs* [1998] AATA 12 at paragraph [26].
[15] See *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750

90. 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.*

91. 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.[16]

92. 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.

93. 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.

94. 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.

95. 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” [17].

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[16] See *Cunliffe v Commonwealth* (1994) 182 CLR 272

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

96. Having regard to the totality of the Agent's conduct in relation to the complaint and my findings above, 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'.

[business'] employment and sponsorship of Ms [WL]

97. The Agent facilitated Ms [WL's] payment to Mr [JP] in exchange for his agreement to employ and sponsor her for a subclass 457 visa. In doing so, I find that she lodged a nomination application and corresponding subclass 457 visa application for a position that she knew, or should have reasonably known, was not genuinely required by the business. In failing to act in accordance with her professional obligations as a registered migration agent and with the law, I am satisfied that the Agent has demonstrated a lack of integrity, sound judgement, moral character, and honesty.

98. The Agent initially advised the Authority that she did not respond to Ms [WL's] correspondence containing Mr [JP's] proposal to significantly reduce Ms [WL's] salary because it was not appropriate for her to interfere in discussions between employer and employee. This proposal was made two weeks after the Department granted Ms [WL's] subclass 457 visa, and forwarded to the Agent on the same day she sent Ms [JP] the second 'referral' payment of $20,000 for agreeing to employ and sponsor Ms [WL]. I am satisfied that this was not by coincidence. The Agent, however, argued that she was not responsible for providing employment law advice or advocacy on behalf of a client in respect of employment law issues and did not have a "positive duty" to report employers for suspected breaches of their obligations. While it would not be expected that the Agent would provide employment law advice, clause 1.12 of the Code sets out that registered migration agents have an overriding duty to act at all times in the lawful interests of their clients. Yet she did not consider the serious implications of the information provided by Ms [WL]. A business for which she had lodged sponsorship and nomination applications, and which continued to be her client for other nomination matters, was acting in breach of their sponsorship obligations and could be subject to sanction action by the Department for breaching those obligations.

99. Her failure to act on the information provided to her by Ms [WL] demonstrated a significant lack of judgement and a decision to put her financial gain and that of the sponsor over the interests of Ms [WL]. The Agent had sufficient information before her to indicate that Mr [JP] was exploiting his employee and breaching his sponsorship obligations. The Agent apparently chose not to provide any assistance to Ms [WL] and did nothing to address the breach with the sponsor.

100. As a registered migration agent, the Agent had a duty to refer this potential breach of [business'] sponsor obligations to the Department when she became aware of Mr [JP's] conduct. However, the Agent chose not to do so, and instead continued to provide immigration assistance to Mr [JP] to nominate other visa holders within his business. As such, I consider this conduct is demonstrates that the Agent was complicit in the exploitation of Ms [WL] by Mr [JP]. The Agent did not act to remind Mr [JP] of his sponsorship obligations or report his intended conduct because she was financially benefitting from this arrangement. The Agent's decision to ignore Ms [WL's] emails and not report Mr [JP's] conduct to the relevant agencies, despite being aware of the possible offences being committed, shows that she lacks the requisite moral principles, good judgement and character to provide immigration assistance.

101. Despite the clear concerns with Ms [WL's] sponsorship and employment by [business], which resulted in the Agent refunding Ms [WL] money in December 2017 and making additional settlement offers, she lodged further nomination for [business] to sponsor other visa applicants. The Agent also lodged a nomination application for the new entity, Trustee for [business], also trading as [business], with Mr [JP] identified as the employer, shortly before the Department cancelled [business'] sponsorship and barred the company from applying to be a sponsor for a period of five years

102. The amendments to Ms [WL's] salary, which the Agent was privy to, occurred shortly after the Department granted her subclass 457 visa on 1 February 2016. They also occurred at the same time that the Agent provided Mr [JP] with the second payment of $20,000 from

Ms [WL] for her employment and sponsorship. However, the Agent chose to ignore Ms [WL's] email highlighting Mr [JP's] proposal to significantly reduce her salary for the nominated position. In doing so, the Agent also ignored that her other client, [business], had demonstrated an intent to act in contravention of their obligations as a sponsor by not paying Ms [WL] the agreed salary, at the same rate as an Australian employee, and that she may not be performing the tasks, or all the tasks, that were set out for the nominated position. I reject that Agent's assertion that she was unaware that [business] was exploiting Ms [WL] but continued to lodge further nomination applications on behalf of this sponsor. Particularly, even though she knew, or should have reasonably, known that Mr [JP] may not be complying with his obligations as a sponsor by proposing unlawful amendments to Ms [WL's] salary. The Agent's decision to not assist Ms [WL] or even report Mr [JP's] conduct, exposed [business'] other nominee, Ms [TW], to the potential for exploitation. The Agent's actions indicate that she was either negligent in the discharge of her obligations to these clients, or that she was complicit in [business'] arrangement to benefit from sponsoring and underpaying visa holders. I am satisfied that her decision to continue to provide services to [business], to the detriment of her visa applicant clients, demonstrates a significant failure in her understanding of her professional obligations as a registered migration agent.

103. I consider the only reason the Agent used other bank accounts not belonging to her or her migration advice business to receive client monies from Ms [WL] was to purposely conceal the payments she received because of the ethical, and subsequently legal, implications of receiving payments in return for sponsorship. The Agent's failure to receive money through her business accounts likely had ramifications for her business' broader financial and taxation reporting obligations.

104. The Agent's conduct and her responses to the Authority's notices have demonstrated significant shortcomings in her understanding of her professional and financial obligations, and knowledge, and that she has breached multiple clauses of the Code. The Agent has also been dishonest with the Authority in responding to the section 308 and section 309 notices in an attempt to conceal her culpability. While the Agent argued that she had undertaken steps to rectify deficiencies in her knowledge and skills that had led to the events detailed in this decision, I consider her actions which occurred over a period of three years were the result of her lack of integrity rather than a lack of knowledge or inexperience. I am also satisfied that the Department cannot trust the Agent to act in accordance with her professional and ethical obligations as a registered migration agent. As a result, I find that the Agent is not a person of integrity, or otherwise not a fit and proper person to give immigration assistance.

Consideration of Appropriate Disciplinary Action

105. 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***

106. 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.

107. Having regard to the Complaint Classification Matrix, I have considered that the Agent's conduct falls within the Major classification for the following reasons:

(a) The Agent acted in contravention of the sections 245AR and 245AS of the Act by facilitating payments to a sponsor in exchange for a visa applicant's employment and sponsorship;

(b) The Agent required visa applicant clients to cover the financial costs of being sponsored by their employers;

(c) The Agent has breached multiple clauses of the Code indicating repeated poor practice and a failure to satisfy, and possess the requisite knowledge of, her professional obligations;

(d) The Agent failed to act in the legitimate interests of her client, Ms [WL], resulting in financial loss and exploitation at the hands of the sponsor she organised sponsorship and payment for visa with;

(e) The Agent misled the Authority as to her knowledge of Ms [WL's] significant reduction in salary and second employment contract following the grant of her visa;

(f) She has not complied with her statutory requirements under section 308(1) of the Code to provide the Authority with all records of her accounts for inspection; and

(g) The Agent, who I have found is not a person of integrity, nor a fit and proper person to provide immigration assistance, has undermined the reputation of the migration advice profession as a result of her conduct.

***Aggravating factors***

108. I consider the Agents conduct falls short of the standard expected of a registered migration agent. The Agent declined to provide all of her operating and clients' account records to the Authority for inspection, despite being afforded multiple opportunities and ample time to do so. When considered alongside her dishonesty in her responses to the Authority, concealment of email correspondence with Ms [WL], and attempts to provide Ms [WL] with settlements to compensate her for her payments to Mr [JP], I am satisfied that she sought always to conceal her conduct. I am satisfied that, despite her statements that she is remorseful for her actions, the Agent has continued to act in a deceitful manner. The Agent's decision to act in contravention of the law exposed her and her clients to the potential for civil penalties or criminal prosecution. Her actions were in contravention of the integrity of Australia's visa and migration programs.

***Mitigating Factors***

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

(a) Her inexperience at the time of the complaint conduct;

(b) providing immigration assistance is her sole means of supporting herself and her family, as she has no other source of income, and her family would face financial hardship as a result of any decision that would affect her practicing;

(c) Her full-time and casual employees would be negatively affected by any decision to sanction the Agent, particularly finding alternative employment in light of the impacts of COVID-19;

(d) She has complied with her training requirements and undertaken regular continuing professional training but is also committed to further training to address gaps in her knowledge and develop her skills; and

(e) She has implemented a number of business systems in place to prevent the occurrence of breaches of the Code in the future, including accounting management software to better manage her clients' and operating accounts.

110. I have considered that the Agent has not previously been subject to a sanction or disciplinary action by the Authority. I have also considered that the Agent was within her first year of practice as a registered migration agent at the time of being engaged by Ms [WL]. However, I am of the view, due to the serious nature of the findings against the Agent, that these alone do not mitigate her conduct. Nor do I consider that her conduct is mitigated by any impact a sanction would have on her employees.

111. The Agent has repeatedly referenced her inexperience when seeking to mitigate her conduct. This inexperience may have contributed towards some deficiencies in her knowledge and practice. However, the Agent's conduct has shown that she is a dishonest person.

112. I have taken into account that a disciplinary decision that would affect the Agent's financial earning capacity and livelihood. The Agent advised that providing immigration assistance is her sole means of supporting herself and her family, who would suffer financial hardship as the result of a decision to sanction the Agent from practicing. She provided character reference letters, including one from the [education provider] about the Agent's work as an education agent. It would appear that the Agent also works as an education agent. I accept that a disciplinary decision may have an impact on the Agent's livelihood. However, I am of the view that this is significantly outweighed by the public interest, given her conduct.

113. I have considered the Agent's claims that she has undertaken additional training in the form of CPD activities to address deficiencies in her knowledge and skills, and implemented new business systems and software to assist her to meet her professional obligations. I acknowledge that she has made improvements to her business systems and process but do not consider that this reflects on the most serious of her conduct which demonstrated a lack of integrity, fitness and propriety. I have reviewed the list of CPD activities provided by the Agent against those on the Authority's records. These add up to ten (10) CPD points for each registration period, which is the minimum requirement for registration. The Agent has not completed additional CPD training to address deficiencies despite her assertion. I am also satisfied that the CPD training the Agent has completed, which is mandatory for some segments of the profession as part of their repeat registration, cannot alone address significant matters of integrity, which are the subject of this decision.

***Consumer Protection***

114. 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.

115. The behaviour demonstrated by the Agent falls short of the reasonably expected standards of a registered migration agent. I consider that the Agent poses a serious risk to consumers. I am satisfied that if the Agent were to continue to practice as a registered migration agent, she would not demonstrate the integrity expected of a registered migration agent. I consider that a disciplinary decision is warranted to address the conduct the subject of this decision, and in the interests of consumer protection. I also consider that decision to sanction the Agent must deter other registered migration agents from engaging in similar practice and ensure public confidence in the migration agent profession is maintained.

**DECISION**

116. I have considered whether to issue the Agent with a caution or to suspend the Agent's registration. A decision to issue a caution to an agent or to suspend an agent's registration will usually be imposed with appropriate conditions attached. I am of the view that there are no courses or private tuition that could satisfactorily address the findings made in this decision, particularly regarding her decision to act in contravention of the law and exploit of her client. The Agent's conduct is very serious and demonstrates a lack of fitness, integrity and propriety that I am not satisfied can be addressed by imposing conditions.

117. For these reasons, it is not appropriate to issue a caution or to suspend her registration for a period of time. I am satisfied that the Agent's conduct can only be addressed by the cancellation of her registration.

118. Based on the facts and evidence before me, my findings as discussed in the decision, and in the interests of consumer protection, I have decided to cancel the Agent's registration as a migration agent under subparagraph 303(1)(a) of the Act. I am satisfied for the purposes of subparagraphs 303(1)(f) and (h) that:

- the Agent is not a person of integrity, or is otherwise not a fit and proper person to give immigration assistance; and
- the Agent has not complied with clauses of the Code.

119. In accordance with section 292 of the Act, an agent who has had their registration cancelled must not be registered within 5 years of the cancellation.

120. Accordingly, this cancellation will be in effect for a period of 5 years from the date of this decision.

Senior Professional Standards Officer
Professional Standards and Integrity Section
Office of the Migration Agents Registration Authority
Department of Home Affairs
Date of Decision: 28 August 2020