



DECISION RECORD

AGENT	Mr Khilendra Raj TIMSINA
COMPLAINT NUMBERS	CMP-25283
DECISION	BARRED
DATE OF DECISION	02 June 2020

Definitions

The following abbreviations are used in this decision:

<i>ABN</i>	Australian Business Number
<i>AAT</i>	The Administrative Appeals Tribunal
<i>BVA/B/E</i>	Bridging Visa A, B or E
<i>MARN</i>	Migration Agent Registration Number
<i>PIC</i>	Public Interest Criteria
<i>Section 308 notice</i>	Notice issued by the Authority under section 308 of the Act
<i>Section 311D notice</i>	Notice issued by the Authority under section 311D(1) of the Act
<i>Section 311EA notice</i>	Notice issued by the Authority under section 311EA of the Act
<i>The Act</i>	<i>The Migration Act 1958</i>
<i>The Regulations</i>	<i>The Migration Regulations 1994</i>
<i>The Former Agent</i>	Mr Khilendra Raj Timsina
<i>The Authority</i>	The Office of the Migration Agents Registration Authority
<i>The Code</i>	The Migration Agents Code of Conduct prescribed under Regulation 8 and Schedule 2 to the Agents Regulations
<i>The Department</i>	The Department of Home Affairs ¹
<i>The Register</i>	Register of migration agents kept under section 287 of the Act
<i>The Agents Regulations</i>	<i>The Migration Agents Regulations 1998</i>

¹ And its former manifestations

BACKGROUND

1. The Former Agent was first registered as a migration agent on 13 December 2012 and was allocated the migration agent registration number 1281118. The Former Agent's registration had been renewed annually until 12 December 2017 when his registration lapsed. The most recent registration application was lodged on 19 December 2017 which is pending the outcome of this decision.
2. While registered as a migration agent, the Register listed the Former Agent's trading name as EP Migration Australia with an ABN of 56 603 783 311
3. Two (2) complaints were received by the Authority about the Former Agent's conduct as a registered migration agent.

Complaint Matters

CMP-25283

Allegation

4. On 8 June 2016, the Authority received a complaint from the Department about the Former Agent's conduct as a registered migration agent. The substance of the complaint was that the Former Agent provided contradictory and potentially fraudulent information to the Department whilst representing a number of clients in relation to submitting their Expressions of Interest (EOIs) through SkillSelect. The contradictory and potentially false information related to details surrounding the Former Agent's clients' employment experience, employment references and place of employment. It was alleged the Former Agent participated in the provision of this fraudulent information and documentation in order to secure for his clients, State and Territory nominations and invitations to apply for a visa.

Background information

- General skilled migration visas are applied for using an invitation obtained from the submission of an EOI through the SkillSelect system. State and Territory Nominated (STN) visas, such as the subclass 190 and subclass 489 visas, use the SkillSelect system to nominate applicants.
- An applicant can only specify one email address to be contacted about any invitation or messages concerning an EOI.²
- This complaint is predominantly concerned with EOIs submitted which sought the nomination of the Australian Capital Territory (ACT) government. The ACT government requires nominees to be residing and working in the ACT for a period of time to be eligible for nomination.

²As specified by the Department at <https://immi.homeaffairs.gov.au/visas/working-in-australia/skillselect>

- As at June 2016 all applicants for ACT subclass 190 nomination must have met the nomination criteria. Under the employment criteria, graduates from an institution in another Australian State or Territory must have been living in Canberra and have been working full time for an ACT employer in their nominated occupation for the previous 6 months before applying for ACT nomination.

Notice to give information pursuant to section 308 of the Act (the first section 308 notice)

5. On 11 January 2017, the Authority wrote to the Former Agent pursuant to section 308 of the Act. At the time the complaint was made, the Former Agent was informed that the conduct complained of by the Department raised issues under clauses 2.1, 2.1A, 2.1B, 2.4, 2.9 and 2.23 of the Code. The Former Agent was required to provide:

- answers in the form of a statutory declaration in response to allegations made by the Department as part of the complaint
- a copy of clients files in relation to the complaint for the following persons who were made mention in the information referred to the Authority by the Department:

[TRJ]	27/11/1987
[RA1]	12/01/1987
[GSS]	10/09/1990
[SS]	01/01/1983
[YP]	03/11/1989
[PP]	08/06/1987
[AC]	27/04/1986
[BT]	25/02/1981
[SA]	05/08/1988

The Former Agent's response to the first section 308 notice

6. On 2 March 2017, the Authority received the Former Agent's response to the first section 308 notice along with a copy of the client files. The Former Agent stated that

In regards to Agent Accounts used to lodge EOIs with state or territory governments

- He does not hold an Agent account with most of the State and Territory governments to facilitate the lodgement of EOI applications where nomination has been sought.
- Most State and Territory governments do not have a specific Agent account.
- He has dealt with States or Regional Certifying Bodies (RCB's), who do not offer a specific agent account, or to 'the best of [his] knowledge' do not have an Agent account

Applications specifically made to Australian Capital Territory (ACT) Government Skilled Migration

- In relation to the Regional Sponsored Migration Scheme (RSMS), he is aware that the ACT Government has an Agent account, however, he has only undertaken three applications with the ACT government since his registration as a migration agent³.
- He made two RSMS applications prior to 2014, but only makes specific reference to one made for Mr [SG] (DOB 18 October 1985), who contacted EP Migration's offshore office in Nepal to request assistance in preparation of an ACT nomination.
- Mr [SG] did not sign a contract with the Former Agent, as he was only willing to proceed with the Former Agent's firm after the approval of the nomination and receipt of an invitation via SkillSelect.
- He communicated with the ACT government after the lodgement following a request by his client and provided a Form 956⁴ on the expectation that there would be future work regarding his application, however this client applied using his own login.
- He has not submitted any other applications for ACT state nominations after this or prior to Mr [SG]'s applications. He does not have an agent account with the ACT government, should he however get prospective applicants he will obtain one.

The utilisation of an Agent Account (if held)

- EP Migration Australia provides support and guidance in relation to the creation of EOIs for prospective clients.
- Only prospective candidates and employers can create a SkillSelect login.
- He is unaware as to the existence of Agent Accounts for EOIs or SkillSelect.
- He uses the link border.gov.au/busi/Empl/skill_select to apply for EOIs.

The Former Agent's association with EOIs submitted via his email

- EP Migration Australia Pty Ltd (EP Migration) interviews prospective clients via telephone, Skype and face to face to provide advice on General Skilled Migration.
- The Former Agent advises clients on the preparation of skills assessment applications, EOI applications, medical requirements, health insurance, police clearances and other documents required in specific cases.
- Clients approach EP Migration on a daily basis at the commencement of, or during the process of making a general skilled migration application. EP Migration then sends a quotation to determine the scope of work and to take instructions.
- The headquarters of EP Migration is in Quakers Hill, NSW, and there is a consulting office in the Sydney CBD. EP Migration mainly provides student advisory and Student visa extension services, and assistance with subclass 485 and General Skilled Migration applications.
- A client who has obtained a skills assessment of 60 points under the General Skilled Migration Scheme will be eligible to prepare and submit EOIs for three types of visas:

³ It is inferred from the headings and structure in the Former Agent's response that he meant that he has only undertaken three RSMS applications concerning ACT nomination.

⁴ Form 956 is used by an agent to advise the Department or relevant body of their appointment as a registered migration agent

- a. an EOI for a subclass 190 visa under NSW state sponsorship
 - b. an EOI for a subclass 189 visa, which is a skilled independent visa that does not require state or territory sponsorship
 - c. an EOI for a subclass 489 visa to look for regional sponsorship under a different RSMS.
- As a part of a prospective client conversion strategy, the Former Agent offers free EOI preparation, lodgement and monitoring services until a client receives an invitation via SkillSelect.
 - “We” take instructions from each individual client in relation to the creation of the EOI and the email ID they prefer in relation to the EOI.⁵
 - Most clients prefer to use the Former Agent’s email: *Khilendra@epmigration.com.au* for EOIs due to the risk that an email from SkillSelect would go to the client’s email as a junk email and they may not be able to log into the SkillSelect system.
 - The EOI application via SkillSelect is a sensitive system and there is a high chance a SkillSelect invitation will lapse, given the 60 day limitation on applying, and the difficulties faced with incorrect passwords and an inability to answer secret questions in relation to the password. In the past, a few of the Former Agent’s clients have forgotten passwords for SkillSelect after they have received an invitation.
 - The Former Agent has no mechanism to know whether a client has received an invitation to apply from SkillSelect in the absence of an Agent Account, unless they use his email. The Former Agent stated that from a business perspective, he would like to know if his prospective clients have received invitations.
 - The Former Agent has obtained approval for 35 visas under the General Skilled Migration Scheme since he joined EP Migration using his email⁶ for most applications.
 - The Former Agent has consulted and helped to prepare more than 70 EOI applications for prospective General Migration visas in which his email was used in the application process. The Former Agent has prepared two EOI applications for each client on average, therefore the total number of EOIs would be 140. On one occasion the Former Agent prepared at least nine applications for the same client, given their particular circumstances, and he does not see anything wrong with this.

The retention of the login details

- He provides the EOI number and login password to clients as soon as they are created.
- The Former Agent stated that he retains the login details and passwords on his office’s system⁷ or on the client file. However, once a visa decision has been made he can no longer access the EOIs.

⁵ The Former Agent’s response does not indicate who he is specifically referring to through the use of term ‘we’.

⁶ khilendra@epmigration.com.au

⁷ The Former Agent did not state whether or not the office system referred to is an electronic case management system, or some other system

Amendments to the submissions when required

- In relation to current EOIs, the client can submit, change and update anything on their EOI application as they retain their password and login ID. The Former Agent stated that an email ID is not required to submit, change and update anything in their EOI application at any time. However, if a client instructs EP Migration to check any changes or updates, he does so as advised.

Instructions regarding amending submissions

- *“Yes, we receive email instructions if client is not present at our office or receive oral instructions and record that on file note when client see us face-to-face. The most of the time, I encourage them to make their own amendments in [my] presence me or EP Migration staff [sic]”*

Fees charged in association with EOIs

- *“No, I did not receive fees for services in associated with the EOI applications. We only send our cost disclosure agreement after our clients receive an invitation to apply.” There was no payment is association with the EOI. As such there were no payments transferred”.*

Clients provided with EOI and visa application assistance

- EP Migration assisted the following persons with the preparation and submission of an EOI and a subsequent visa application following receipt of an invitation to apply:

[TRJ]
[RA1]
[GSS]
[MS]
[SS]
[AC]
[BT]

Clients provided with EOI preparation and submission assistance only

- EP Migration assisted the following persons with the preparation and submission of an EOI, but not a visa application:

[KA]
[SD]
[YP]
[PA]
[SRT]
[SG]

Related Student visa matters

- EP Migration assisted [PP] as a client in relation to the EOI application. However, the client has not received an invitation to apply. EP Migration also applied for her Student visa to be extended. The Former Agent assisted [SA] with a Student visa application and did not create an EOI application for him.

Companies that the Former Agent stated he is connected to

- True Story Pty Ltd – the Former Agent was a director of the company, but the company has not been in operation since 2011.
- Education Park Australia Pty Ltd (Education Park) – he is a director and shareholder of this company. The Former Agent stated that he was a full time director and employee migration agent until 15 January 2015, but that he does not currently work for Education Park. However, the Former Agent stated that he still participates in company meetings and strategic decisions for the company with other partners. The Former Agent stated that the company has contracts with a number of universities and recruits international students from Nepal, India and Australia.
- [company name removed for privacy] (trading as [removed for privacy]) – the Former Agent stated that he has an awareness about the existence of this company, but does not have any dealings and associations with this company.
- [company name removed for privacy] Pty Ltd – the Former Agent stated that this company operates from the same premises as Education Park. The Former Agent stated that he knew Mr [BS] who is a director of the company, and that the company subleased office premises with Education Park for a period of time.

Specified companies that the Former Agent claims no connections

The Former agent specifically stated that he does not have a connection with any of the following companies.

[PHMTH] Pty Ltd
[business name removed for privacy]
[business name removed for privacy] Pty Ltd (T/a [removed for privacy])
[SNAG] (Australia) Pty Ltd (T/a [business names removed for privacy])
[business name removed for privacy] Pty Ltd
[KHS]
[XMLDWS]
[business name removed for privacy] Pty Ltd
[business name removed for privacy]

Companies where the only connection is immigration assistance provided to the company

- [ST] Pty Ltd (holding of [PHMTH] Pty Ltd)⁸ – the Former Agent stated that he applied for a subclass 457 standard business sponsorship for the company on 17 August 2015. The Former Agent stated that he was instructed and provided documents to evidence that the company operated from Canberra ACT and Sydney.
- The Former Agent stated that the sponsorship application was refused as the director of the company failed to provide the requested documents. The Former Agent stated that the company has since discontinued service with him, and he has had no further dealings or associations with the company.
- [MST2] Pty Ltd - the Former Agent stated that he lodged a subclass 457 standard business sponsorship application for the company and one 457 nomination application in relation to a specific visa applicant. The Former Agent stated that the owner of the company also referred a few of the company's employees to him to address their visa enquiries.
- [AITG] Pty Ltd – the Former Agent stated that his client, Mr [BT] worked for this company as an accountant, and that he assisted him with his subclass 189 visa application. The Former Agent stated that he has no other personal or business relationship with the company.
- OE Pty Ltd – the Former Agent stated that he received referrals from this company pertaining to the related visa matters which concern the company's clients. The Former Agent stated that in relation to these matters he charges set fees for his services. The Former Agent stated that these referrals have related to graduate skilled and student visas.

The potential for a conflict of interest

- *“No, I am only connected with Education Park Pty Ltd in a capacity as a director or shareholder. I was also director True Story Pty Ltd, however this company ceased operations before I registered as a migration agent. I have no personal connection on formation and operation of 15 entities which were listed above (the company's listed in the Authority's section 308 notice)”*

Supporting documents

The Former Agent provided the following supporting documents, in addition to the requested client files:

- An email that the Former Agent sent to his client [MP] on 1 August 2016, which contained her EOI ID and logon ID. This email attached her submitted EOI application.
- An email dated 12 August 2016, containing a chain of correspondence with his client [AH], in which he has attached an amended EOI application form for this client.
- A brochure from the NSW Department of Industry with instructions on how to apply for a subclass 190 visa.
- A brochure from Regional Development Australia, Central Coast NSW containing guidelines for obtaining Regional Certifying Body Advice.

⁸ I note that from publicly available ASIC records it does not appear that [ST] Pty Ltd is a holding company of [PHMTH] Pty Ltd.

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7. On 20 September 2017, the Authority received a complaint from Mr [YP]. Mr [YP] alleged the following:
- On 17 July 2017, the Former Agent deducted \$15,000 from his credit card via a PayPal account in three separate transactions to provide him permanent residence through employer nomination but the Former Agent failed to do so.
 - The Former Agent suggested to Mr [YP] a different scheme as the Former agent was not willing to refund the money to Mr [YP]. Mr [YP] stated he was not interested in the scheme the Former agent advised him of.
 - On 15 August 2017, Mr [YP] attended the Former Agent's office. He had calculated that the Former Agent should refund him \$2000 which the Former Agent promised to deposit on 18 August 2017. Only \$1000 was deposited on that date and no further refund has been received by Mr [YP].
 - The Former Agent charged \$5500 for a certificate obtained as Recognition of Prior Learning. It was for a Certificate IV in Patisserie. Mr [YP] alleged that this was a false certificate because he had experience as a baker but not in patisserie.
 - Mr [YP] had to approach a different agent for which he had to pay a further \$3315 to obtain a Certificate IV in Advanced Baking.

The Former Agent's registration as a migration agent

8. On 8 January 2018, a delegate of the Authority identified that the Former Agent's registration as a migration agent had lapsed on 12 December 2017.⁹
9. On 2 January 2018, the Authority had issued the Former Agent a notice pursuant to section 308 in error.

Notice pursuant to section 311EA of the Act

10. On 9 January 2018, the Authority issued the Former Agent a notice pursuant to section 311EA of the Act and requested that he produce the documents that were requested in the Authority's section 308 notice issued on 2 January 2018.

The Former Agent's response to the section 311EA notice

11. On 29 January 2018, the Former Agent responded to the Authority about Mr [YP]'s complaint. The relevant aspects of the Former Agent's response have been set out below.

The immigration and other assistance provided to Mr [YP]

- In 2015 he assisted Mr [YP] to apply for a Temporary Graduate (subclass 485) visa, which was granted. This was the last service for which he entered into a formal agreement for services and fees with Mr [YP].

⁹ As reflected in correspondence saved on the Authority's case management system and agent records.

- Mr [YP] subsequently requested the Former Agent to enrol him in a Masters of Professional Accounting with the Holmes Institute in Sydney in connection with a Student visa application. Mr [YP] received a letter of offer from the Holmes Institute on 19 October 2016.
- On 11 August 2016, the Former Agent submitted an EOI for Mr [YP] seeking the nomination of the ACT in relation to a subclass 190 visa. He did not charge Mr [YP] any fees in relation to this application, or enter into a formal agreement with him, as Mr [YP] did not receive an invitation to apply for a subclass 190 visa.
- The Former Agent has also “found”¹⁰ two other EOIs that he had “created”¹¹ for Mr [YP]. These were an EOI¹² in relation to a subclass 189 visa that has since expired, and an EOI¹³ in relation to a subclass 190 visa under the sponsorship of NSW, which has also expired. The Former Agent then refers to Mr [YP] having prepared his own EOIs regarding a subclass 189 visa, and a subclass 190 visa, both seeking the nomination of NSW. The Former Agent stated that Mr [YP] created these EOIs himself, but the Former Agent checked them before submission.¹⁴

Mr [YP]’s role as an accountant with EP Migration

- Mr [YP] undertook an internship as a part of his professional year program in accounting, which was approved and assessed by his education provider, Queensland International Business Academy. Mr [YP] worked as an intern accountant for a total of 240 hours and continued as a part time accountant after the completion of the internship.
- Further, the Former Agent advised that:

“Mr [YP] had informed us around mid-December 2015 that he would be unable to continue employment after 15 April 2016 as he was planning to move to Canberra for ACT nomination and he discontinued employment with us from 15 April 2016.... Mr [YP] had been employed with EP Migration Australia Pty Ltd from the period between 10 April 2015 to 15 April 2016. As I have mentioned earlier, I have only submitted an EOI on his request on 11 August 2016. Mr [YP] was our former employee and I did not see the situation of the conflict of interest as his former employer and a migration agent assisting Mr [YP] for submission of an EOI on his instruction.”

¹⁰The Former Agent’s response does not elaborate on what he means by having ‘found’ these applications.

¹¹The Former Agent has not elaborated in his response on what he meant by having ‘created’ these applications.

¹² EO*****5

¹³ EO*****0

¹⁴ It is not clear in the Former Agent’s response whether the EOIs he ‘found’ are the same EOIs he stated Mr [YP] prepared himself, but it would appear that this is the case given that they are for the same subclass, and both seeking NSW nomination.

Mr [YP]'s employment in Canberra

- “Mr [YP] has instructed my admin clerk [P] over the telephone and supplied his employment letter with local employer at Canberra. We created new EOI as he wanted to keep his option open for 190 visa under NSW state sponsorship and also wanted to apply for ACT nomination. We have created his EOI for ACT on 11 August 2016 without the formal agreement and we did not charge any service fees”
- The Former Agent stated that he did not provide any documents to SkillSelect or the Department concerning this EOI. The Former Agent stated that he prepared the EOI on the basis of the following documents pertaining to Mr [YP] :
 - The document establishing his employment with his ACT employer
 - His passport
 - His bachelor degree completion letter and academic transcript
 - His advanced diploma completion letter and academic transcript
 - His IELTS certificate
 - His professional year in accounting completion letter

Supporting documents provided by the Former Agent

12. The Former Agent provided the following documents in support of the response concerning Mr [YP] :
- Offer of admission to the Holmes Institute to study a Master of Professional Accounting commencing 7 November 2016 and finishing 31 December 2017.
 - An employment reference letter for Mr [YP] from EP Migration dated 11 July 2016.
 - Queensland International Business Academy conditional letter of offer for the Professional Year Program (Accounting).
 - Internship performance survey on completion of the internship period signed by the Former Agent and dated 2 December 2015.
 - EOI application for Mr [YP] dated 11 August 2016.
 - Mr [YP] 's letter of offer dated 11 January 2016 from IGA in Canberra
 - PAYG payment summary for the payer EP Migration for gross payments of \$5980 and tax withheld \$351.

Notice pursuant to section 311D of the Act

13. On 29 October 2019, the Authority sent to the Former Agent a notice pursuant to subsection 311D(1) of the Act.
14. The section 311D notice informed the Former Agent:
- of the complaints lodged by the Department and Mr [YP] ;
 - that the Authority had investigated the complaints;
 - that the Authority was considering whether or not to bar the Former Agent under subsection 311A(1) of the Act from being a registered migration agent for a period of up to five years; and
 - the reasons for which the Authority was proposing to make such a decision.

15. The section 311D notice invited the Former Agent to make a written submission to the Authority on the matter within 28 days, and also informed the Former Agent that subject to any written submission received within that period, it was open for the Authority to be satisfied that the complaints were made out.

The Former Agent's response to the section 311D notice

16. At the Former Agent's request a number of extensions to the period for response were granted, with the final date for submissions being 30 January 2020.
17. On 27 December 2019 and 30 January 2020, the Authority received the Former Agent's response to the section 311D notice. The Former Agent stated that:

In regards to his status as a migration agent

- On 12 November 2012, he was registered with the OMARA as a registered migration agent.
- His last repeat application was "finalised" on 13 December 2016.
- On 12 December 2017, he received an email from the OMARA advising him that his registration as a migration agent expired on 12 December 2017.
- On 29 October 2019, he received a notice under section 311D (1).
- On 27 December 2019, he "*claim[s] that I am not a former registered migration agent under the Migration 1958*"
- He has reviewed section 275 of the Act and there is no "*interpretation*" for the term "*a former registered migration agent*"
- He also looked at section 287(3A) of the Act wherein it is noted that the list of former agents names is published by the OMARA.
- He looked at the OMARA website and "*conducted a full search of former agents list on 27 December 2019, I have found that this list did not have my name as a former migration agent*"
- "*On the basis of above-mentioned provisions under the Migration Act 1958, [he] claim[s] that [he is] not a former migration agent on 27 December 2019 and after that*" [sic]
- Further "*[His] registration as a registered migration agent was expired in accordance with section 299 of the Migration Act 1958. Under section 306B of the Migration Act 1958, [he] became an **inactive migration agent** on or since 13 December 2017. [He] ceased to be an **inactive migration agent** since 14 December 2019 under the section 306B(a)(ii) of the Migration Act 1958.*" [the Former Agent's emphasis]
- He has become "*inactive*" as a result of "*expiry*" he is "*neither a **former registered migration agent** nor an **inactive migration agent***" [the Former Agent's emphasis]
- He "*claim[s] that the OMARA may not have authority under the provisions made in the Migration Act 1958 to bar [him] under the section 311A of the Migration Act 1958. Furthermore, [he has] furnished several documents and evidences in support of [his] claim that the OMARA complaint handling officer has failed to prove that the substance of claim is made out in all the complaints.*"

18. In regards to the provision of immigration assistance

- The Former Agent stated that the case quoted by the Authority of *Stolar and Migration Agents Registration Authority [2007] AATA 1397; (2007) 45 AAR 367* (4 June 2007) is not indicative of immigration assistance being provided and cannot be likened to that of lodging a visa application.
- That the *“EOI application takes about 5 minutes to prepare and lodge”* which is a three page application requiring *“a completed skill assessment, English proficiency report, employment details (if they want to claim points for the employment) or a reference letter, academic qualifications and any other points claims the application is eligible to claim.”*
- The EOI can be lodged without the supporting documents and also can be prepared over the phone if the client provides the relevant details or is provided with a questionnaire generated by *“LEAP Migration Manager”*
- *“EOI is a free application, the applications do not have to pay an application fees for creating any number of EOIs. Registered migration agents do not need to fill and submit 956 form, do not need to declare RMA details as a representative.”* [sic]
- *“[the Former Agent] refuse[s] to admit EOI is same as a skill assessment. Skill Assessment requires agent to declare his or her details, provide 956 forms and requires extension knowledge about the skilled occupation list and skill assessment requirements under ANZSCO.”* [sic]
- *“On the basis of above mentioned analogy, [the Former Agent] cannot held responsible for use of company email id under [his] name for EOI generation and it does not fall with in the definition of immigration assistance unless [he] a registration migration has conducted all the steps including a skill assessment, advise about a point system, and State and Territory Nomination application for any of these matters complained for.”* [sic]

19. In response to the complaint by Mr [YP]

- The Former Agent responded to the complaint by Mr [YP] on 29 January 2017.
- The Former Agent expressed dissatisfaction with the Authority’s handling of the complaint, commenting on the time frames involved and the lack of evidence by the authority.

20. In response to the complaint by the Department

- On 2 March 2017, the Former Agent provided a response to the Authority’s section 308 notice as well as client files for each of the clients whose files were requested.
- He has now been issued with a notice under section 311D of the Act.
- *“[He] acknowledge[s] that a complaint is received with respect of [his] conduct while [he] was registered migration agent at that time.”*
- *“[He] disagree[s] and refuse[s] to accept the OMARA claim that it may be open to the Authority to be satisfied that the subject matter of the Department's complaint is made out. The Authority has not relied on objective evidences and made their finding based on apprehended bias.”*

- On 15 February 2018, he emailed a delegate of the Authority asking whether further information was required from him. On 16 February 2018, the delegate responded to his enquiry and advised that no further documents were required and that the Authority was considering whether a section 311D was to be published to him.
- “.... [t]his comment made by the OMARA complaint handling officer on 16 February 2018 and the manner they have subsequently conducted an investigation resulted the apprehended bias...”
- “On 16 February 2018, the OMARA and its officers have made up a mind to bar [him] and it clearly indicated by their conduct including statement made by the OMARA officer on that date. The OMARA has failed to objectively satisfy on the basis evidences that the subject matter of the Department complaint is made out. They have made their conclusion based on some irrelevant and unreliable findings which are baseless and lacks the substance.

21. In regards to Mr [YP] the Former Agent stated the following;

Omission of employment with EP Migration

- Mr [YP] prepared his own EOI application for the 189 visa on 25 January 2016 and another EOI on 20 January 2016 for a 190 visa for New South Wales (NSW) nomination.
- On both occasions no service fees were charged for the submission of the EOIs
- Mr [YP] instructed an EP Migration clerk over the phone and provided his employment letter with the local employer in Canberra. EP Migration created a new EOI on 11 August 2016, as he wanted to keep his options open for the 190 visa under NSW state sponsorship, without a formal agreement and no charge for the service.
- The Former Agent disagrees with the Authority that he has “*participated in an act of fraud or deception by omitting Mr [YP]’s employment with EP Migration on his EOI for created on ACT on 11/08/2016*” The Former Agent states he has “*provided information on Skill Select under Expression Of Interest (EOI) about Mr [YP]’s most recent employment which was with [removed for privacy] East Row Canberra which he had claimed to has started on 18 January 2016*” [sic]
- The Former Agent stated that an EOI under SkillSelect is not a departmental visa application and can be updated at any time after it has been submitted. He has not declared himself as registered migration agent in the EOI application.
- The EOI was created by an EP Migration clerk and he “*did not personally submitted EO*****7, it is completely incorrect and baseless allegation made by the OMARA officer to me personally,*” as he was not the sole director or shareholder of the EP Migration
- The email address khilendra@epmigration.com.au “*is an email ID and property of Effective Migration Processing Australia Pty Ltd and it is not/was not [the Former Agent’s] personal property*”.

Contradictory employment information

- *“[He] completely disagree[s] with the OMARA investigation officers who have acted or investigated this complaint from Mr [YP] and relied on irrelevant or incorrect information or document provided by Mr [YP] while the OMARA officers have easily accessible other credible sources to investigate this matter”*
- The Former Agent has stated that the Authority should have and could have “*easily accessed*” and consulted the departmental systems where it would have identified that Mr [YP]’s employment declarations, specifically those noted in his Student visa and 187 subclass applications which would establish that Mr [YP] worked with EP Migration until April 2016.
- The Authority contacting Mr [YP] “*is a clear evidence of complete dis-regard of information and documents that [he has] provided or presented to the OMARA in response to complaint CMP-33268- [YP] where [he has] presented [his] case*”
- *“[The Former Agent] refuse all the allegations made by the Department's complaint.... Mr [YP] continued to work with Ep Migration Until April 2016 as a paid employee for the period of 1 year. On the balance of above-mentioned information and evidences, the substance of the department's claim is not made out.” [sic]*

22. In regards to Mr [AC] the Former Agent stated the following;

- He filed and lodged Mr [AC]’s subclass 190 visa application. However, no agreement was signed nor was “*any advice related with EOI application and ACT nomination to Mr [AC] at the time of preparation of EOI after that prior to lodgement of subclass 190 visa. I was never declared or acted as a registered migration agent for Mr [AC]’s EOI application preparation and ACT government subclass 190 nomination. Mr [AC] had prepared these applications on his own*” [sic]

[ST] Pty Ltd employment reference letter

- He has reviewed all his files for Mr [AC] and has been unable to locate the employment letter issued by [ST] Pty Ltd as such “*[He] can not comment about authenticity of employment reference letter issued by [ST] Pty Ltd as [he does] not have knowledge of such existence on [his] file*” [sic]
- EP Migration was instructed by Mr [AC] to prepare and submit his subclass 190 visa. The Former Agent has prepared and lodged his subclass 190 visa application on 27 February 2016. The application was prepared using the information that was provided to them by Mr [AC].

The Former Agent’s connection to the fraudulent employment reference letter

- The Former Agent has “*already mentioned that [he has] never provided migration advise or service for ACT nomination for Mr [AC] and never verified such employment reference letter over the phone to ACT government or any other Authority.*”
- The Former Agent was also unable to establish Mr [AC]’s employment with [ST] Pty Ltd from the documents that were provided to him at the time of application.
- “*On the basis of evidences, it is clear that [the Former Agent has] no knowledge or connection any fraudulent (if any) employment reference letter*”

Subclass 190 visa application and Education Park

- *“[The Former Agent] acknowledge[s] that [he has] signed the Employment letter issued by Education Park in capacity as a director of the company, however [he has] not certified [ST] Pty Ltd reference letter on 14 January 2015... On the basis of evidences, the OMARA complaint handling officer has failed to establish that [he has] any direct or indirect knowledge of employment reference letter issued by [ST] Pty Ltd on 14 January 2015.”*

The Former Agent’s direct knowledge of the active operations of the business; fraudulent conduct to secure ACT nomination and an invitation to apply; and failure to disclose further details in the Former Agent’s response

- *The Former Agent “refuse[s] to accept any such claim made by the OMARA complaint handling officer as there is no evidence to prove that [he] submitted Mr [AC]’s employment refence letter to the ACT government.” [sic] Mr [AC] has confirmed to EP Migration that a senior manager sent the nomination letter directly to Mr [AC].*
- *As the employment letter was not submitted by the Former Agent or EP Migration to ACT government or to the Department “it is completely baseless allegations made by the OMARA complaint officer that the fraudulent document was produced to secure ACT nomination and invitation to apply for a visa by supporting that Mr [AC] was working and residing in the ACT”*
- *“Mr [AC]’s family has paid Nepalese currency equivalent to \$ 2,000 to [the Former Agent’s] mom [TT] in Nepal on 6 January 2016, \$ 1,000 on 11 January 2016 and \$ 7,000.00 on 19 January 2016. [He has] given these amounts to Mr [AC]’s bank account in Australia. These transactions have nothing to do with [the Former Agent’s] provision of immigration assistance to him”*

23. In regards to Mr [RA1] the Former Agent stated the following;

- *EP Migration created the initial EOI based upon instructions from Mr [RA], upon his review the EOI “E0*****5” was submitted.*
- *He briefly worked for EP Migration, EP Migration have not acted for the ACT nomination.*
- *Mr [RA] “updated his own EOI on 28 July 2016 as he retained his log in and passport for EOI log in updates. We have no involvements for these changes and cannot be held responsible for his own actions”*
- *The Authority have based their allegations on “erroneous assumptions” that the Former Agent was living at “4/54 [removed for privacy], NSW which is false; I was living at 12 [removed for privacy], Quakers Hills NSW on 29 July 2016 and before that.”*

- It was further alleged by the Authority that “Mr [SA] lived at [the Former Agent’s] residential address at 12 [removed for privacy], Quakers Hills, NSW from the period between April 2016 to until 17 September 2018. These two claims are self-contradictory. It is baseless to blame [the Former Agent] that on July 2016, [he] was living with both Mr [SA] at 12 [removed for privacy], Quakers Hills, NSW and Mr [RA1] at 4/54 [removed for privacy], NSW” Further the Former Agent has as of July 2017 leased his home in Quakers Hill.

24. In regards to Mr [BT] (Mr [BT]) the Former Agent stated the following;

- “... admit[s] that [he] had a client relationship with Mr [BT] as advised by the OMARA complaint handling officer within the meaning of Regulation 3(1) of the Migration Agent Regulations regarding both his EOI and subsequent subclass 189 visa”
- “On 6 August 2015- [He has] certified the employment reference letter issued by [AITG] Pty Ltd dated 5 August 2015 as Justice of peace, however [he has] mistakenly written certification date as 6 July 2015(which the OMARA case officer has mentioned as 26 July 2015 on page 26, paragraph 107 of the notice under section 311D(1) of the Migration Act 1958) It was an unintentional error made by [the Former Agent] during the certifying the original copy” [sic]. The employment letter was received on the 6 August 2015 and the assessment was approved on 20 August 2015.
- The Former Agent has stated that given the above discussed regarding the assessment with Chartered Accountants Australia and New Zealand the substance of the complaint has not been made out.

25. In regards to Mr [GSS] the Former Agent stated the following;

- “[the Former Agent] agree[s] that EP Migration Australia has created his EOI application and we have provided access to Mr [GSS] for EOI application for review before submission. Mr [GSS] was provided with EOI lodgement confirmation, Log in ID and Password. [the Former Agent] admit that [he has] only prepared his subclass 190 visa application and lodged his visa application on 05 May 2016”

The employment dates for [MST]

- The Former Agent refutes all the allegations on the basis of the following
 - EP Migration took instruction to prepare an EOI application for Mr [GSS] as a result E0*****0 was created.
 - He was not declared as a migration agent and further he “did not receive instruction to prepare and lodge the ACT government nomination application.”
 - He received, on 5 May 2016, instruction to prepare and lodge a subclass 190 visa application for Mr [GSS] on which he was declared as the migration agent.
 - The Department for further information made a request. Mr [GSS] “declared that he had worked with [MST] since September 2015” on 29 June 2016, the requested documents were provided to the Department.
 - Further requests for information as well as a natural justice letter were made by the Department to which the requested information was provided, some of the information provided was the following:

- PAYG Summary issued by “MST Pty Ltd⁶⁷ (ABN: 94*****0 which is [MST2] Pty Ltd as per ASIC record)”
 - Employment contract and position description
 - Statutory declaration regarding his employment reference letter, on “27 March 2017, [the Former Agent] submitted the revised Statutory declaration to the department with reviewed dates”
 - Mr [GSS]’s visa was granted by the Department on 23 February 2018
- “the incorrect employment dates declared to the immigration on 05 May 2016 is mainly due to client’s inability to provide employment related evidences on that date of application and defective instructions” [sic] however this was rectified when the Form 80 was submitted as requested by the Department while processing the application.

The [MST] employment reference letter and the location of the company

- “In the absence such annexure reference letter, I claim that the OMARA has failed to establish existence of any such letter and their claim is not made.”
- With regards to the Former Agent’s knowledge about the company’s location the Former Agent states that the “allegation made by the OMARA complaint office is completely baseless and biased” as it has been made upon assumptions by the delegate of the Authority and cannot be made out.
- “[the Former Agent] refuse[s] to admit any allegations made out based on such deficient internet search” [sic]

Misleading the Department

- “[the Former Agent] completely reject[s] this claim made with-out reference to any dates and documents.... The OMARA complaint handling officer has completely confused at this stage to blame [the Former Agent] that [he had] a fraudulent intent to mislead the department on August 2016 while Mr [GSS]’s ACT nomination was finalised by the ACT government sometimes on April 2016 ([He had] not acted for the ACT nomination). [He is] not sure if this complaint is made out about the [MST2] Pty Ltd nomination application or Mr [GSS]’s subclass 190 visa. It is biased and baseless to blame [him] for something written and signed by [MST2] Pty Ltd which the department has no concern.”

26. In regards to Mr [SD] the Former Agent stated the following;

- *“The OMARA complaint handling officer has failed establish that [the Former Agent] provided any immigration assistance for Mr [SD], other than using company email id under [his] name.... [the Former Agent has] not filed his ACT nomination for subclass 190 visa. [He] refuse[s] to admit that [he has] a knowledge of the employment reference letter and had discontinued to act for his after initial EOI lodgement”*
- *“[the Former Agent] refuse[s] to admit that the OMARA complaint handling officer has establish the substance of the complaint is made out; as it is unclear from the above-mentioned claims whether the OMARA complaint handling officer was trying to establish the substance of claim for Mr [GSS] or Mr [SD] under the complaint for Mr [SD] or this is error of any kind*

27. In regards to Mr [SG] the Former Agent stated the following;

- The Former Agent admits that Mr [SG] was provided with immigration assistance in relation to the ACT nomination and that he had a client agent relationship with Mr [SG].

The employment reference letter

- The Former Agent refuses the allegations put forward.
- He certified and submitted an ‘Offer of Employment’ *“[the Former Agent does] not admit any allegations would be made out without understanding the nature of document submitted to the ACT government for the nomination application. An offer of employment and the employment reference letter are two different kinds of documents.”*
- He created and submitted the EOI “EO*****9” for Mr [SG] on 3 March 2016. There was no declaration of employment.

28. In regards to Mr [TRJ] the Former Agent stated the following;

- The Former Agent *“object[s]”* to all the claims the Authority has made in regards to the Department’s complaint about Mr [TRJ].
- The Former Agent has resided at 12 [removed for privacy], Quakers Hill from March 2015 until July 2017 when he placed the property on lease.
- He resided at a friend’s place however has no documents to evidence such.
- From October 2017- October 2018, he resided at a Sussex Street address in Sydney. From November 2018 until present, he has been residing in Parramatta.
- The Former Agent *“created EOI application submit, these inconsistencies are due to Mr [TRJ]’s inconsistency instructions”*
- Mrs [AJ] worked for Education Park in Canberra and referred Mr [TRJ] as a client however, *“we were never disclosed about their relationship prior to subclass 489 visa. This confusion mainly due to inconsistent instructions given by Mr [TRJ]. [The former Agent] den[ies] all the claims made by the OMARA complaint handling officer in relation to this complaint and claim that the OMARA complaint handling officer has failed to prove that the substance of claim is made out”*

- The association between him and [PHMTH] Pty Ltd has not been established. The findings are being made based on “*outdated departmental records*” and “*analysis of unreferenced source is not only deficient, it is very subjective and unreliable to establish wrongdoing of such an extent*”
- He had only the information that was provided to him by Mr [TRJ] who was not his client prior to the EOI and Mr [TRJ]’s inconsistent instructions lead to the declarations.

29. In regards to Mr [SRJ](Mr [SRJ]) the Former Agent stated the following;

- “*there is no mandatory legislative requirement [the Former Agent is] aware of about reporting requirement to ASIC for each additional branch under the same ABN or ACN is opened. [He] left working a full-time director and a registered migration agent at the beginning of 2015. However, [he] continued to overseas company director and Education Park Australia Pty Ltd until November 2018*” [sic]
- “*In summation, on the basis of available credible information [he has] presented and erroneous assumptions about the operation of business and companies, [the Former Agent] reject[s] the OMARA complaint handling officer claim that the substance of the complaint is made out*”

30. In regards to the alleged breaches of the Code the Former Agent stated the following;

- “*Based on the above-mentioned explanations and evidences provided to the OMARA, the OMARA has failed to establish the breaches of clause 2.1, 2.4, 5.2, 2.9 and 2.23. [He has] claimed about the apprehended bias and made my points based on objective evidences. The OMARA complaint officer took almost 2 years since they have sent [him] notice on January 2017 to reach these conclusions about code breaches and relied their whole investigation on deficient internet research, erroneous assumptions about the facts and their own subject belief how business and companies should be operated without requesting any further information from me. All the above mention code breaches are not proven*”

EVIDENCE AND OTHER MATERIAL

31. In reaching the following findings of fact the Authority has considered the following evidence:

- Documentation received from the complainants contained in the Authority’s complaint files for CMP-25283
- Information held on Departmental records in relation to the matters raised in the complaints; and
- Information held by the Authority in relation to the Former Agent.
- Information received from the Former Agent in relation to the complaint matters as part of his response to the section 311EA and 311D notices.

RELEVANT LEGISLATION

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.

Section 311A Barring former registered migration agents from being registered for up to 5 years

- (1) *The Migration Agents Registration Authority may decide to bar a former registered migration agent from being a registered migration agent for a period if, after investigating a complaint about him or her in relation to his or her provision of immigration assistance while he or she was a registered migration agent, it is satisfied that the subject matter of the complaint is made out.*

Note: Before making such a decision, the Authority must invite the former registered migration agent to make a submission: see section 311D

Subsection 316 (1B)

However, the Authority can investigate a complaint about a former registered migration agent only if the complaint is received within 12 months after he or she ceased to be a registered migration agent.

JURISDICTION

32. The Authority performs the functions prescribed under section 316 of the Act.
33. The functions and powers of the Authority under Part 3 of the Act and Regulations are the Minister for Home Affairs' functions and powers. The Minister has delegated his powers under Part 3 of the Act and the Regulations to officers of the Authority. I am delegated under the relevant Instrument to make this decision.
34. The complaint which is the subject of this decision was received whilst the Former Agent was registered as a migration agent.

FINDINGS ON MATERIAL QUESTIONS OF FACT

Provision of Immigration Assistance

35. I find that Department's complaint relates to the Former Agent's provision of immigration assistance, as defined in section 276 of the Act.
36. Sections 276(2), 276(2A), 276(3) and 276(4) of the Act also contribute to the meaning of "immigration assistance".
37. In the case of *Stolar and Migration Agents Registration Authority [2007] AATA 1397; (2007) 45 AAR 367* (4 June 2007) it was held that obtaining a skills assessment was an essential element of an application for a visa, and therefore the steps necessary to obtain the skills assessment amount to conduct in connection with a visa application, which falls within the definition of immigration assistance as defined by section 276(1) of the Act.

38. In this instance, the Department's complaint relates to the preparation and lodgement of EOIs to obtain the nomination of a State or Territory in order to receive an invitation to apply for a visa. All persons interested in the points based skilled migration scheme need to submit an EOI and receive an invitation in order to lodge a visa application.¹⁵ Further EOIs are also utilised in the process of obtaining state/territory nomination for the purposes of obtaining a state or territory nomination visa. On this basis, I find that steps necessary to prepare and lodge an EOI amount to conduct in connection with a visa application, which falls within the definition of immigration assistance as defined by s276(1) of the Act.¹⁶
39. The Former Agent also stated in his responses that he takes instructions and provides advice on general skilled migration regarding the creation of EOIs for applications he has submitted through SkillSelect.¹⁷ I find that taking instructions and providing advice in these circumstances falls within the definition of immigration assistance as defined by section 276(1) of the Act.

The subject matter of the complaint

40. Having regard to the relevant evidence before the Authority I am satisfied that the subject matter of the Department's complaint is made out. My findings in relation to this are set out below in more detail.
41. As a result of the findings concerning the subject matter of the complaint, the Authority may also be satisfied that, while registered, the Former Agent failed to comply with his obligations under the Code.
42. Mr [YP]'s complaint primarily relates to a fee dispute and refund. On the available evidence the Authority is unable to establish with any clarity the monetary transactions which may have ensued between the Former Agent and Mr [YP]. The Authority is not satisfied that the subject matter surrounding Mr [YP]'s complaint is made out. However, Mr [YP]'s complaint and the Former Agent's response, in so far as is relevant to the conduct outlined in the Department's complaint, is set out below.

CMP-25283 – the Department's complaint

Client relationship

43. I find that the Former Agent agreed to provide immigration assistance to Mr [YP] in relation to the EOI submitted on 11 August 2016, on the basis that in his response the Former Agent has acknowledged that he submitted this EOI on his client's behalf. I am therefore satisfied that a client relationship existed with Mr [YP], within the meaning of Regulation 3(1) of the Migration Agents Regulations 1998 (Migration Agents Regulations).¹⁸

¹⁵ see <http://www.border.gov.au/Trav/Work/Skil>

¹⁶ In accordance with *Stolar and Migration Agents Registration Authority [2007] AATA 1397; (2007) 45 AAR 367 (4 June 2007)*

¹⁷ via the email khilendra@epmigration.com.au

¹⁸ In relation to the EOI submitted on 11 August 2016

44. For the reasons set out below, I find that the Agent has engaged in conduct in breach of the Code. I further find that the Former Agent participated in an act of fraud and/or deception, by omitting Mr [YP]'s employment with EP Migration on this EOI.¹⁹

Timeline of relevant events

10.04.2015	In accordance with an employment reference letter signed by the Former Agent ²⁰ Mr [YP] commenced employment with EP Migration as a part time accountant
02.12.2015	The Former Agent completed an Intern Performance Survey for Mr [YP] regarding his Professional Year Program in Accounting ²¹
26.12.2015	Mr [YP] is advised of his completion of his Professional Year Program in Accounting ²²
11.01.2016	Mr [YP] signs an offer letter for employment at [removed for privacy] East Row Canberra ²³ The letter of offer contains an address for Mr [YP] in the ACT.
25.01.2016	Mr [YP] commences working as a full time baker for [BDS] in [removed for privacy] according to an employment reference letter lodged for a subsequent subclass 187 direct entry nomination application ²⁴
15.04.2016	Mr [YP] ceased working with EP Migration according to his employment reference provided by the Former Agent ²⁵
11.08.2016	The Former Agent provided assistance and submission of an EOI for Mr [YP] ²⁶

45. In relation to the abovementioned table, I note that as a part of the Former Agent's response to Mr [YP] 's complaint, he provided a signed employment reference letter for Mr [YP]²⁷ which indicated that Mr [YP] was an employee of EP Migration from 10 April 2015 until 15 April 2016. However, the EOI application form submitted²⁸ for Mr [YP] on 11 August 2016 does not refer to any employment with EP Migration.

¹⁹ At a time when the Former Agent was a registered migration agent.

²⁰ YP1

²¹ YP3

²² YP8

²³ A YP5 It is not known from the details provided by Mr [YP] what occurred in relation to the letter of offer he signed with [removed for privacy] and whether he maintained employment with them for any period of time.

²⁴ YP7

²⁵ YP1

²⁶ YP4 and the Former Agent's response indicating he provided assistance and submission of the EOI

²⁷ It is not clear from the Former Agent's response to the Authority, the circumstances surrounding when and why the Former Agent created this reference letter for Mr [YP].

²⁸ The EOI specifically asks for employment history for the past 10 years.

46. In response to the section 311D notice, the Former Agent stated that Mr [YP] “*prepared*” his own EOI application on 20 January 2016. In August 2016, EP Migration’s admin clerk was instructed, over the telephone, to create another EOI for the client. The Former Agent has stated that he did not “*personally*” submit the August EOI application and as such he cannot be held accountable for the actions that may have transpired in that Mr [YP]’s employment details were not correct. The Former Agent has claimed that the EOI process is not like a visa application in that an EOI application can be updated after it has been submitted. Further, the Former Agent claimed that he did not declare himself as the appointed migration agent for the EOI and that on that basis the allegation is incorrect and baseless. This response is contradictory to the Former Agent’s prior response to the Authority provided to the section 308 notice in January 2018, wherein he stated that “*I had submitted **Expression of Interest (EOI)s** for his Australian Capital Territory (ACT) nomination application on 11/08/2016...*” The Former Agent appears now to be apportioning blame onto his administrative staff member and that of Mr [YP].
47. Additionally, the Former Agent stated that he was also not the sole director and shareholder of EP Migration. Further, that the email address used by him khilendra@epmigration.com.au belongs to EP Migration and is not his “*personal property*”. I reject the Former Agent’s argument that he is not responsible for the exclusion of the employment letter from the EOI application. It has been established earlier in this decision that providing assistance with an EOI application constitutes immigration assistance. The Former Agent was registered at the time that the EOI was lodged. Whilst he may not have personally submitted the EOI application in the capacity as a registered migration agent, as per his obligations under part 8 of the Code, the Former Agent would have had to review the EOI application prior to the administrative assistant submitting the application. As such, he would have been aware of the lodgement of the application and therefore would have known that the employment letter was not included with the EOI application.
48. The Former Agent in his communications with the Department stated that he was the “sole director” of EP Migration²⁹ which is contradictory to what he has advised the Authority in regards to his response to the section 311D notice. However, irrespective of whether the Former Agent was the sole director of the business or not the email address belongs to his company of which he has some ownership. Given that he is a director, the email address belongs to his business and he is therefore responsible for the email address. The Former Agent has noted khilendra@epmigration.com.au to be the primary point of contact by the Authority in regards to any matters it may have with the Former Agent. Additionally, the email address is not a generic email address that would normally be associated with a business wherein it is accessible as a group mailbox. Rather the email address contains the Former Agent’s first name which I am of the view belongs to a single person who is the only person to have access to the email account.

²⁹ ADD2018/2*****8

49. Given all the above discussed including that Mr [YP] was an employee for EP Migration, the Former Agent's migration business, and that the Former Agent's staff member, on instruction from the Former Agent submitted this EOI on his behalf, I find that the Former Agent participated in an act of fraud and/or deception, by omitting Mr [YP]'s employment with EP Migration on this EOI.³⁰

Contradictory employment information

50. In support of the subclass 187 visa application Mr [YP] lodged on 13 September 2017, was an employment reference letter which stated that Mr [YP] commenced working as a **fulltime** baker for [BDS] in **Canberra** on **25 January 2016**. This employment reference letter directly contradicts the employment reference letter provided by the Former Agent in relation to Mr [YP]'s employment with EP Migration during the same time period.

51. Given that it does not appear plausible that Mr [YP] could have maintained fulltime employment with [BDS] in Canberra since January 2016, while continuing to work for EP Migration in Sydney until 15 April 2016, I am satisfied that from January 2016 until April 2016, Mr [YP] worked either solely for [BDS] in Canberra, or for EP Migration in Sydney.

52. On the basis of the available evidence, I find that Mr [YP] was employed by [BDS] in Canberra from January 2016 to April 2016, rather than EP Migration, for the following reasons:

- a. Mr [YP] has specifically stated to a delegate of the Authority on 21 November 2017, when asked to clarify his experience in baking, that he had worked for [BDS] in Weston since January 2016.³¹
- b. In further correspondence with the Authority concluding on 15 March 2019,³² Mr [YP] stated that he moved to Canberra in January 2016 to work for [BDS] in Weston and *"left whatever I used to do in Sydney. So I was not working for EP Migration after that time"*.
- c. This information provided to the Authority by Mr [YP] is consistent with the information provided on his subclass 187 visa application form and supporting employment reference letter from [BDS].³³

53. I also note that the intern performance survey completed by the Former Agent for Mr [YP] appears to have been signed by him on 2 December 2015. Given that the employment reference letter from EP Migration for Mr [YP] concludes with a sentence which invites the reader to contact the Former Agent if further information is required **about the internship**, I find that Mr [YP]'s association with EP Migration was in relation to his internship, which was completed in December 2015. It follows that, if the EP Migration employment reference letter dated 11 July 2016 was in regards to the internship that was completed in December 2015, the available evidence suggests that Mr [YP] did not continue to work for EP Migration in any capacity beyond the conclusion of his internship. This is a further indicator that the EP Migration reference letter contained information that was not accurate.

³⁰ At a time when the Former Agent was a registered migration agent.

³¹ YP9

³² YP10

³³ YP11 (from departmental record CLD2017/3****1)

54. As the omission of employment with EP Migration occurred in the course of the Former Agent's submission of an EOI regarding eligibility for a subclass 190 visa under the nomination of the ACT government,³⁴ I find that the apparent fraudulent omission was to secure ACT nomination and an invitation to apply for a visa. I note that in the Former Agent's response to the section 308 notice, regarding Mr [YP] , the Former Agent stated in relation to this EOI that: "*We created a new EOI as he wanted to keep his option open for 190 visa under NSW state sponsorship and also wanted to apply for ACT nomination*" I am satisfied that this response is indicative that the Former Agent had an intention to assist Mr [YP] to create an EOI that provided him with the option to obtain either NSW or ACT sponsorship. Therefore, both the omission of Mr [YP] 's employment with EP Migration, and his EP Migration employment reference letter³⁵ may have been undertaken specifically to assist him to keep open the possibility of securing the nomination of either NSW, or the ACT.
55. In summation, on the basis of the available information, I find that the substance of the Department's complaint is made out for the following reasons:
- a. Mr [YP] was the Former Agent's client in relation to his EOI application submitted on 11 August 2016.
 - b. In that EOI application, the Former Agent participated in the provision of misleading information by excluding Mr [YP]'s employment with EP Migration, information that was within the Former Agent's knowledge as the director of EP Migration.
 - c. The Former Agent signed an employment reference letter for Mr [YP] that contained false and misleading information regarding the dates of his employment with EP Migration.
 - d. The provision of this fraudulent information and documentation was to obtain State and Territory nominations and invitations to apply for a visa on the basis that it supported that Mr [YP] was residing and working in the relevant state/territory at the time he applied for nomination.
56. The Former Agent in his section 311D response stated that the delegate of the Authority had not undertaken a proper review of the departmental systems that are available to them. The Former Agent added that the email received by him from the Authority dated 16 February 2018, where the Former Agent was advised by a delegate, of the Authority, that no further information was required from him, following his response to the section 311EA notice, was evidence of "*apprehended bias*" by the Authority. The Former Agent claimed that had the delegate reviewed the departmental systems they would have come to the realisation that Mr [YP] was employed with EP Migration until April 2016 as stated in his Student visa application.

³⁴ The reference letter for Mr [YP] from EP Migration was obtained from Mr [YP]'s client file provided by the Former Agent in response to the Authority's section 308 and 311EA notice. Therefore, it was prepared in the context of immigration assistance provided to the client.

³⁵ that the Former Agent signed on behalf of EP Migration

57. The Former Agent further stated that “[t]he subsequent email exchange between the OMARA complaint handling officer... and the complainant Mr [YP] clearly indicated that the OMARA and its complaint handling officers investigated this matter with apprehended bias following statement from ... Assistant Director on 16 February 2018. Based on evidence of available, it is clearly established that OMARA has done disqualification by conduct, including direct statements made to me during this course formal complaint handling process.”
58. The Former Agent further added that Mr [YP] had provided incorrect information on his visa applications and this would have been evident to the delegate had they effectively reviewed the departmental systems, as such Mr [YP] is an “unreliable complain[an]t”. The Former Agent stated that he “refuse[s] all the allegations made by the Department’s complaint, Mr [YP] was Ep Migration client and [he was] not personally appointed as his migration agent for EOI application, Mr [YP] [w]as employed as an accountant (part time) with Ep Migration starting from 10 April 2015 for the period of 1 year” and on the basis of this information and the above discussed the Former Agent stated that the Department’s complaint is not made out.
59. Given that the Former Agent has not provided any new information or evidence in support of his statement that he refutes the allegations put to him by the Authority in regards to the contradictory employment information, it follows on the basis of the evidence before me that if Mr [YP] was employed fulltime for [BDS] in Canberra from January 2016 until April 2016, then the employment reference letter the Former Agent signed for Mr [YP] in relation to his employment with EP Migration was misleading and fraudulent.
60. On the basis of the above discussed in relation to Mr [YP] I find that the Former Agent whilst registered breached clauses 2.1, 2.4, 2.9, 2.23 and 5.2.

Mr [AC]

61. The Former Agent in his response to the Authority’s section 308 notice,³⁶ advised that he agreed to provide immigration assistance to Mr [AC] to prepare and submit his EOI and subclass 190 visa application. On the basis of the Former Agent’s response, I am satisfied that a client relationship existed with Mr [AC] within the meaning of Regulation 3(1) of the Migration Agents Regulations regarding both his EOI and subsequent subclass 190 visa application.
62. Documents provided by the ACT government concerning Mr [AC]’s EOI dated 14 January 2016³⁷ and the associated ACT nomination application, contained an employment reference letter for Mr [AC] which is dated **12 January 2015** from his employer [ST] Pty Ltd. This employment reference letter stated that Mr [AC] had been employed as a full time Accountant with the company since **1 July 2015**, at its ACT office located at Level 1, [removed for privacy] Barton, Canberra Act 2600.³⁸ The Former Agent certified this employment reference letter in his capacity as a Justice of the Peace in NSW.

³⁶ Issued on 11 January 2017

³⁷ EO*****0

³⁸ AC1 obtained from the ACT government

63. However, this employment reference letter is dated **12 January 2015**, more than six months before Mr [AC] is alleged to have commenced employment with [ST] Pty Ltd. The Authority also identified that there does not appear to be a proprietary limited company called '[ST] Pty Ltd' at the time the reference letter is dated.³⁹ However, the letterhead contains a reference to [ST] Pty Ltd as having the Australian Business Number (ABN) 53*****0. This ABN belongs to the entity **[ST2] Pty Ltd**,⁴⁰ hereafter referred to as '[ST2] Pty Ltd', which was not registered with ASIC as a proprietary company until **19 June 2015**, some six months after the employment reference letter was purportedly written on **12 January 2015**.
64. Given the close similarity between the name **[ST] Pty Ltd** and **[ST2] Pty Ltd**, and that the ABN used on the employment reference letter belongs to [ST2] Pty Ltd, I am satisfied that the company Mr [AC]'s employment reference letter purportedly relates to, is the entity [ST2] Pty Ltd. I am also satisfied that the significance of this anomaly is that it is highly improbable that a company would have designed and printed a letterhead as a proprietary limited company on 12 January 2015, the date in which the employment reference is dated, when the company [ST2] Pty Ltd was not yet registered with ASIC or held an ABN at that time. Further, that the company would have made such a critical error in the reference letter to have misspelt its own name.
65. If the employment reference letter was genuinely written on **12 January 2015**, that was approximately 6 months before **1 July 2015**, which is the date specified in the reference letter as being when Mr [AC] commenced his employment with the company. Therefore, I find that it is not plausible that this employment letter was written on 12 January 2015, as it represents to be. As such, I am satisfied that the employment reference letter is fraudulent. Additionally, the employment reference letter is signed by a director, whose name is spelt "[RA2]". I note that the company was not registered at the time the reference letter was purportedly written, and therefore did not have a director who could have signed the letter on the date represented.
66. Publicly available ASIC records show there is a director of the company [ST2] Pty Ltd, who has a similar name to the director who purportedly signed this employment reference letter on 12 January 2015, namely Mr **[RA]**. I am satisfied that given similarities between the names, Mr **[RA2]** and Mr **[RA2]**, that the name on the employment reference letter is the misspelt name of the director Mr [RA2]. I consider that it is highly improbable that a director would sign a document with his name being spelt incorrectly, particularly when the name of the company he directs was also spelt incorrectly, and the date in which the employment reference letter was written occurred prior to the company he directs was registered with ASIC.

³⁹ The Authority conducted searches of publicly available ASIC information of companies with the exact and similar names, and could not locate a specific entity called [ST2] Pty Ltd in existence at that time.

⁴⁰ Obtained from publicly available ASIC records

67. I am satisfied that the director of [ST2] Pty Ltd, Mr [RA2], did not sign the letter, and as such the letter bears no authenticity. I am further satisfied that if the employment reference letter bears no authenticity, it cannot be merely the case that the letter was dated incorrectly at the time it was produced. Furthermore, I find that the number of anomalies in the employment reference letter in itself is a clear indicator that the employment reference is manifestly fraudulent.
68. Notwithstanding that Mr [AC] obtained the nomination of the ACT government on 24 February 2016, subsequent enquiries were made by the ACT government to attempt to contact the company using three telephone numbers provided for the company on its website, two of those telephone numbers were disconnected, but a third number was successfully reached.⁴¹ The number reached, namely 02 8084 0924, is the primary contact provided to the Authority for the Former Agent's migration practice, EP Migration.⁴² Furthermore, this number was answered by a person from EP Migration.⁴³ This number is the same number that appears in the footer of the [ST2] Pty Ltd employment reference letter referred to above. I also note that the email address '[email address removed for privacy]' used on the employment reference letter, appears to be an error, given that the company name is not spelt '[removed for privacy]'.
69. I find that as the employment reference letter bears no authenticity, and contains a phone number which belonged to the Former Agent's migration practice, that the Former Agent participated in the production of a fraudulent employment reference letter for Mr [AC] when it was provided to the ACT government in support of his client's application to obtain ACT nomination.⁴⁴
70. The Former Agent continued to represent Mr [AC] in his application for a subclass 190 visa once he had obtained the nomination of the ACT. As part of that visa application, the Former Agent submitted an employment reference letter to the Department for his client on 8 March 2016, which was signed by him as the director of Education Park.⁴⁵ This employment reference letter states that Mr [AC] was employed by Education Park from 1 July 2014, until at least the date in which the Former Agent signed the employment reference letter on 7 July 2015. The significance of this employment reference letter is that Mr [AC] was employed by Education Park, a company in which the Former Agent was a director,⁴⁶ at the time the Former Agent certified the [ST2] Pty Ltd employment reference letter on **14 January 2015**.

⁴¹ Information provided to the Department by the ACT government

⁴² In accordance with the Authority's records maintained on its case management system.

⁴³ As indicated in material received from the ACT government.

⁴⁴ Namely, the Former Agent's phone number

⁴⁵ AC2 and note that the full title of the company Education Park is Education Park Australia Pty Ltd, a company directed by the Former Agent from 14 November 2013 until 11 July 2018 when the company was voluntarily deregistered.

⁴⁶ until 11 July 2018 when the company voluntarily deregistered with ASIC

71. I find that, given the Former Agent's connection with Mr [AC] through Education Park at the same time the [ST2] Pty Ltd employment reference⁴⁷ was written, and then certified by the Former Agent,⁴⁸ he would have been aware that the contents of the [ST2] Pty Ltd employment reference letter was not accurate. I also note that in accordance with the employment reference letter for [ST2] Pty Ltd, Mr [AC] commenced work for [ST2] Pty Ltd as a full time accountant at its ACT office located at Level 1, [removed for privacy] Barton, Canberra Act 2600, which is the location of a virtual and/or serviced office provider.⁴⁹
72. However, publicly available ASIC records for the company [ST2] Pty Ltd Pty Ltd list the company's registered office and principal place of business as an address located in NSW. I further find that the company did not have an actively operating office located in Canberra⁵⁰ at the time the employment reference letter for Mr [AC] was written for the following reasons:
- a. The company's registered office and principle place of business is located in NSW.
 - b. The company's business plan submitted in relation to a subclass 457 standard business sponsorship application which the Former Agent provided representation for, which was purportedly written on 24 July 2015, only referred to a location in the Sydney CBD, without making reference to any plans to expand in other locations.⁵¹
 - c. The office in Canberra is the location of virtual and/or serviced office provider, which in conjunction with the available evidence that the company only actively operated in NSW, is further suggestive that the company did not have an actively operating office in Canberra at this time.
 - d. On 2 October 2015, the Department refused the company's subclass 457 sponsorship application as it was not satisfied, on the basis of the evidence provided, that the company was lawfully and actively operating a business in Canberra, or anywhere else in Australia.
73. On the basis that the Former Agent received instructions to lodge this subclass 457 standard business sponsorship application on behalf of his client, [ST2] Pty Ltd, I find that it is reasonable that in the course of obtaining those instructions from his client, and submitting the company's business plan to the Department, that the Former Agent would have been aware of whether the company was actively operating in the ACT. It follows, that if the Former Agent was aware that the company did not lawfully and actively operate a business in the ACT, I find that the Former Agent participated in an act of fraud by submitting Mr [AC]'s employment reference letter to the ACT government, which stated that he was employed by the company in the ACT at this time.

⁴⁷ Which is open for the Authority to find to be non-genuine

⁴⁸ and assuming that the Education Park reference letter was genuine

⁴⁹ <http://www.servcorp.com.au/en/virtual-offices/prices-locations/canberra/the-realm/>

⁵⁰ Or was a NSW employer where the applicant's work activity is located in the ACT.

⁵¹ BCC2015/2*****6

74. As the employment reference letter was submitted in support of an application to obtain the nomination of the ACT government,⁵² I find that the fraudulent document was produced to secure ACT nomination and an invitation to apply for a visa by supporting that Mr [AC] was working and residing in the ACT.
75. I also note that the bank account statements provided as a part of Mr [AC]'s ACT nomination application that have been certified by the Former Agent as a justice of the peace,⁵³ show that he appears to have paid Mr [AC] \$12,300 in January 2016. Such a large sum of money is indicative that the Former Agent's relationship extended beyond him providing immigration assistance to Mr [AC] for his EOI and visa application, and not that he has not disclosed this relationship in his section 308 notice response.
76. In the Former Agent's section 308 notice response, he has also stated that his only connection with [ST] Pty Ltd is that he has provided immigration assistance to them. On the basis that a telephone number answered by EP Migration appears on the company's employment reference letter, I find that this statement is untrue. I find that the presence of the EP Migration phone number on company letterhead for [ST] Pty Ltd constitutes a direct connection between the Former Agent and the company not disclosed in his response. The employment reference letter from [ST] Pty Ltd was also omitted from the documents the Former Agent forwarded to the Authority as a part of the Former Agent's response on 2 March 2017 in relation to Mr [AC]'s EOI and visa application.
77. In his response to the section 311D notice the Former Agent has stated that he agreed that he had *"filed and lodged his subclass 190 application once Mr [AC] has received invitation, however [he had] not signed any agreement or ... given any advice related with EOI application and ACT nomination to Mr [AC] at the time of preparation of EOI after that prior to lodgement of subclass 190 visa"* disputing that Mr [AC] was his client in relation to the EOI application. This statement is inconsistent with his response to the section 308 notice wherein he confirmed that a client agent relationship existed between him and Mr [AC] where the Former Agent responded *"We have helped this client for EOI preparation and submission"*.
78. Furthermore, the Former Agent stated that he had no knowledge or record of the *"certified employment letter issued by [ST] Pty Ltd on 14/01/2015 which was sent to [him] as attachment ACI-2. I can not comment about authenticity of employment reference letter issued by [business name removed for privacy] as I do not have knowledge of such existence on my file."*[sic]. The Former Agent also stated that with regards to his connection to the fraudulent employment reference letter he was unaware of the documents provided in support of the ACT nomination application as he had not performed this service for Mr [AC] as there is no evidence that he submitted the employment reference letter to the ACT government. As such he has no knowledge or connection with the letter additionally he did not certify the reference letter on 14 January 2015.

⁵² who requires that an applicant be working and residing in the ACT prior to his application

⁵³ Obtained upon request from the ACT government

79. I reject the Former Agent's argument that he did not provide Mr [AC] with immigration assistance with regards to the EOI application. Upon review of the documentation provided in support of Mr [AC]'s EOI application was a letter in regards to his wife's employment⁵⁴. The letter provided with the EOI application has been certified by the Former Agent, by hand, I am satisfied that the signature characteristics of the letter for Mr [AC]'s wife's employment is similar to signature characteristics of the employment reference letter the Former Agent provided in support of Mr [AC]'s employment with EP Migration⁵⁵. On the basis of the above discussed I am further satisfied that the Former Agent also certified the letter by [ST] Pty Ltd dated 14 January 2015.
80. The Former Agent has also stated in his section 311D response that the \$12,300 he paid to Mr [AC] is money that the Former Agent's mother received from Mr [AC]'s mother. The amount was transferred to him by the Former Agent and has nothing to do with the Former Agent providing immigration assistance to Mr [AC]. *"Mr [AC]'s family has paid Nepalese currency equivalent to \$ 2,000 to [the Former Agent's] mom [TT] in Nepal on 6 January 2016, \$ 1,000 on 11 January 2016 and \$ 7,000.00 on 19 January 2016. [The Former Agent has] given these amounts to Mr [AC]'s bank account in Australia"*. The Former Agent also stated that *"[o]n 4 January 2016, [Mr [AC]] [w]as credited \$ 2,300.00 by mistake which [the Former Agent] refunded on a same date"*.
81. In summation, on the basis of the available information, I find that the substance of the complaint is made out for the following reasons:
- a. Mr [AC] was the Former Agent's client in relation to his EOI application submitted on 14 January 2016, and his subsequent subclass 190 visa application.
 - b. In that EOI application, the Former Agent participated in the provision of a fraudulent document, by certifying a manifestly fraudulent employment reference letter.
 - c. It is reasonable to find that the Former Agent would have known that the employment reference letter was manifestly fraudulent for the following reasons:
 - I. the significant number of anomalies it contained, including the misspelling of the director's name, the name of the company, and that it was written prior to the company's registration with ASIC.
 - II. The phone number listed for the company belonged to the Former Agent's migration practice, EP Migration.
 - III. At the time the employment reference letter was written and then certified by the Former Agent, Mr [AC] was employed by Education Park, a company in which the Former Agent was a director.
 - IV. It was within the Former Agent's direct knowledge the company did not actively operate in Canberra, and did not genuinely employ Mr [AC] within the ACT
 - d. In addition to the employment reference letter, the Former Agent also participated in the provision of fraudulent information in relation to the EOI, by representing that Mr [AC] was employed by a company which did not actively operate in the ACT.

The provision of this fraudulent information and documentation was in order to obtain ACT nomination and an invitation to apply for a visa, on the basis that it supported that he was residing and working in the ACT at the time he applied for ACT nomination.

⁵⁴ ADD2018/4*****3

⁵⁵ YP1

82. On the basis of the above discussed in relation to Mr [AC] I find that the Former Agent whilst registered breached clauses 2.1, 2.4, 2.9, 2.23 and 5.2 of the Code.

Mr [RA]

83. I find on the basis of the Former Agent’s response that the Former Agent agreed to provide immigration assistance to Mr [RA] to prepare and submit his EOI, and subsequent updates to the EOI, that the Former Agent had a client relationship with Mr [RA] within the meaning of Regulation 3(1) of the Migration Agents Regulations in relation to his EOI. On the basis that the Former Agent also had instructions to prepare his subclass 489 visa application, in addition to a subclass 500 student visa application, that the Former Agent also had a client relationship in relation to those visa applications.

84. Set out below are the key events concerning the relevant EOI and visa applications:

INITIAL EOI – ACT	
28 April 2016	An EOI was submitted for a subclass 190 visa utilising the Former Agents email Khilendra@epmigration.com.au . ⁵⁶ The EOI stated the applicant’s residence and preferred nomination as being the ACT. The EOI listed the applicant’s employment with EP Migration in the ACT since 31 August 2015.
UPDATE TO INITIAL EOI - ACT	
2 May 2016	The EOI was updated to include an additional employment claim for the applicant with [KHS] in the ACT commencing 25 April 2016.
26 May 2016	The ACT government rejected the nomination application stating that they were not satisfied of the applicant’s claims relating to his ACT employment and residence and noted that the address for EP Migration was in the Nishi Building in the ACT, a virtual or serviced office provider. ⁵⁷
FURTHER UPDATE TO INITIAL EOI - NT	
28 July 2016	Approximately two months later, the EOI was updated to apply for a subclass 489 visa, rather than a subclass 190 visa. At this time the applicant’s residence and preferred nomination was stated as being the Northern Territory (NT) . The applicant’s employment claims with EP Migration and [KHS] were removed. A new employment claim was made that the applicant commenced employment with [XMLDWS] on 25 April 2016, the same date the applicant had stated that they commenced work with [KHS] in the ACT

⁵⁶ EOI ID E0*****5

⁵⁷ Information obtained from the ACT government

APPLICATION FOR A SUBCLASS 500 STUDENT VISA	
29 July 2016	A day later the Former Agent applied for a subclass 500 Student visa for his client where it was specified that the applicant's known residential address in Australia was 4/54 [removed for privacy] Hurlstone Park NSW 2193 ⁵⁸ which was the Former Agent's residential address at that time according to the Authority's records. ⁵⁹
4 August 2016	The applicant received NT nomination and an invitation to apply for a subclass 489 visa. ⁶⁰
11 August 2016	The applicant applied for a subclass 489 visa application in which the Former Agent was his appointed migration agent.
7 February 2017	Subclass 500 Student visa application refused (clause 500.212 was not met by the applicant – genuine temporary entrant).

85. As can be seen from the abovementioned table, Mr [RA]'s initial EOI in relation to a subclass 190 visa stated that he was employed by EP Migration in its Canberra office. However when that nomination was rejected by the ACT government, the EOI application was updated to reflect that he was applying for a subclass 489 visa with the applicant's residence stated as being in the NT. This updated EOI omitted any reference to employment with EP Migration in its Canberra office. Therefore the application provided contradictory and fraudulent information, as the Former Agent's client either did or did not work for EP Migration in the ACT.
86. On the basis that EP Migration does not appear to have an office which actively operates out of the ACT,⁶¹ I find that Mr [RA] did not work for EP Migration as specified by the Former Agent in his initial EOI. The basis upon which I am satisfied that EP Migration does not operate an active office in the ACT is as follows:
- a. There is no reference to the company operating in Canberra recorded on the Australian Business Register.
 - b. The EP Migration website does not contain any reference to an office in Canberra.
 - c. In the Former Agent's response to the Authority regarding this complaint, he has indicated that the headquarters of EP Migration is in Quakers Hill NSW, and that there is a consulting office in the Sydney CBD. However the Former Agent has made no mention of any role and work undertaken by EP Migration in the ACT at any time.
 - d. The address for EP Migration is an office in the Nichi Building in Canberra, which is a serviced or virtual office provider,⁶² which in conjunction with the available evidence that the company only operates within NSW, is further suggestive that the company did not have an actively operating office in the ACT at this time.

⁵⁸ TRN E*****5

⁵⁹ This is the Agent's address recorded in the Authority's CRM.

⁶⁰ Obtained from the Department's records

⁶¹ Or was a NSW employer where work activity for employees was located in the ACT.

⁶² See <http://www.servcorp.com.au/en/virtual-offices/prices-locations/canberra/nishi-building/>

- e. When the applicant applied for ACT nomination, he could not provide sufficient evidence that he resided in Canberra, such as shopping activity and ATM withdrawals from a Canberra location.⁶³ I find that if there is insufficient evidence that the applicant was residing in the ACT, it reflects that he was also not employed in an EP Migration office located in the ACT.

87. In light of the matters discussed above, I find that EP Migration did not have an office, which operates out of the ACT at the time represented on Mr [RA]'s EOI. As the Former Agent was the director of EP Migration, he is well aware of the company's business operations and locations, and therefore I find that the Former Agent has participated in the provision of fraudulent information in relation to his client's EOI regarding employment with EP Migration. In further support of this finding, when the Former Agent subsequently submitted a subclass 489 visa application on behalf of his client, the form 80 submitted with the visa application did not contain any address for the applicant in the ACT for the last 10 years.

[KHS] and [XMLDWS]

88. It is also noted in relation to this client's initial EOI that he commenced work with **[KHS] in the ACT** on 25 April 2016, at exactly the same time he commenced work with **[XMLDWS] in the Northern Territory**, as indicated in an update to his initial EOI.⁶⁴ I am satisfied that only one, or neither of those employment positions, dates and locations can be true, as they are in contradiction with each other. In relation to the information provided in the Former Agent's client's EOI on 2 May 2016, namely that Mr [RA] was employed by [KHS] in the ACT, there is insufficient evidence that the Former Agent's client resided in the ACT, most clearly supported by the absence of any ACT residential address listed on his subclass 489 visa application. Further, as previously indicated, the ACT government also found when assessing his ACT nomination, that there was insufficient evidence that the Former Agent's client resided in Canberra. I therefore find that this information was false.

89. In relation to the information provided that Mr [RA] was employed by [XMLDWS] in the Northern Territory, I note that [XMLDWS] is a business name that was operating within the company [SNAG] (Australia) Pty Ltd (SNAG). The [SNAG] was deregistered on 17 September 2018. However, according to publicly available ASIC records, it would appear that the registered office for the [SNAG] since 19 April 2016 (until an unknown date)⁶⁵ was:

"C/- KHILENDRA RAJ TIMSINA, Level 1, [removed for privacy] Darwin NT 0800"

⁶³ This information was obtained from the ACT government

⁶⁴ An update made on 28 July 2016.

⁶⁵ ASIC use the term 'until an unknown date' in relation to the dates given for the company's registered office.

90. The Authority conducted a search of the company's name online and within the Department's records, and could not find evidence of the business actively operating in the Northern Territory, or another location in Australia. The business address also belongs to a serviced and virtual office provider,⁶⁶ which in conjunction with the lack of any other evidence of active operations in the NT, is suggestive that the company did not have an actively operating office in the NT in April 2016. I find that the Former Agent's client may not have been employed by [XMLDWS] in the Northern Territory since 25 April 2016.
91. On the basis of the available evidence, I find that the Former Agent is directly associated with the company [XMLDWS] for the following reasons:
- a. ASIC records lists the registered office of the [SNAG] as C/- the Former Agent at Level 1, [removed for privacy] Darwin NT 0800
 - b. The director of the [SNAG], Mr [SA] lived at the Former Agent's residential address,⁶⁷ 12 [removed for privacy] Quakers Hill NSW 2763 from April 2016 until 17 September 2018.
92. In light of the matters discussed above, I find that the Former Agent knew, or should have reasonably known, that the company [XMLDWS] did not actively operate in the Northern Territory. As the director resided in his home, and the Former Agent was listed as a contact with ASIC for the company at a location considerably distant from his home. It follows that the Former Agent was aware that his client may not genuinely be employed by [XMLDWS] in the Northern Territory at the times represented in his EOI. On this basis, I find that the Former Agent participated in providing fraudulent information in relation to his client's EOI regarding his employment with [XMLDWS] in the NT. Furthermore, Mr [RA]'s Student visa application, lodged by the Former Agent on 29 July 2016, specified that Mr [RA] resided at the Former Agent's home address in NSW. However, just a day earlier his EOI was updated to state that his residence was in the NT.
93. Having regard to the matters specified above, I find that there is insufficient evidence that the Former Agent's client worked for EP Migration in the ACT or [XMLDWS] in the NT. Further, I also find that the Former Agent's direct association with both of these companies discussed above, is indicative that he was aware that his client did not work for these companies at the time represented in the EOI. As such, I find that the Former Agent has participated in providing fraudulent information aimed at assisting his client to secure ACT and/or NT nomination and an invitation to apply for a visa.
94. Given the Former Agent's direct association with EP Migration and [XMLDWS], I find that the fraud evident in the Former Agent's client's application could not have been executed by his client alone. As the Former Agent's client could not have fabricated fraudulent employment positions and locations without the Former Agent's assistance as the director of EP Migration, or through the Former Agent's connection with [XMLDWS] as described above.

⁶⁶ See <https://darwininnovationhub.com.au/serviced-offices-darwin/>

⁶⁷ According to OMARA records concerning the Former Agent's residential address.

95. The Former Agent in his response to the section 311D notice stated that the substance of the complaint had not been made out on the basis that EP Migration assisted with the preparation and lodgement of an EOI for Mr [RA] which was reviewed, by him, and submitted with his instructions on 2 May 2016. Further, the log in details for the EOI application were then provided to Mr [RA] by EP Migration. As such it was him who updated the EOI in July 2016. The Former Agent further asserted that he had no involvement with the EOI (E0007167085) and he cannot be held accountable for the actions of Mr [RA] changing his EOI application details. The Former Agent however has not advanced any evidence to support his claims.
96. In summation, on the basis of the available information, I find that the substance of the complaint is made out for the following reason:
- a. Mr [RA] was the Former Agent's client in relation to his EOI application and his subsequent subclass 489 visa application.
 - b. In that EOI application, the Former Agent participated in the provision of fraudulent information by representing that his client was employed by EP Migration at an office in Canberra, which he knew not to be true.
 - c. In that EOI application, the Former Agent participated in the provision of fraudulent information by representing that his client was employed by [XMLDWS] in the NT, when he was aware that was not the case.⁶⁸
 - d. The provision of this fraudulent information and documentation was to secure an ACT and/or NT nominations and invitation to apply for a visa.

Failure to disclose details in the Former Agent's response

97. In the Former Agent's response to the section 308 notice he stated that he has no connections to [SNAG] (Australia) Pty Ltd, including personal connections. The Former Agent further stated in his response to the section 311D that the allegations that he was residing with Mr [RA] are "*based upon erroneous assumptions*" made by the Authority. The Former Agent stated that the Authority has relied on information contained within its systems as well as publically available information obtained from ASIC. The ASIC records for Effective Processing Migration Australia Pty Ltd reveal that the Former Agent's address is recorded as residing in Hurlstone Park since the date of appointment as the director namely, 20 January 2015.
98. Furthermore, departmental systems show that Mr [SA], the director of [SNAG], in December 2019 applied for a visitor visa on which to enter Australia. His sponsor was his sister Ms [AA] who according to documents provided by the Former Agent in response to the section 311D notice, is a joint tenant with the Former Agent on the property for 12 [removed for privacy] in Quakers Hill. This is supported further by the joint tenant agreement provided in support of Mr [SA]'s visitor visa listing the Former Agent and Ms [AA] as joint tenants.⁶⁹
99. On the basis of the above discussed I am satisfied that the Former Agent has a personal connection to the [SNAG]. I find that the Former Agent has misled the Authority in regards to his response that he has no connection to the [SNAG].

⁶⁸ For the same reasons already specified in this decision.

⁶⁹ CLD2019/82*****2

- a. Publicly available ASIC records for [XMLDWS], a business name operating within the [SNAG], has a registered office “C/- KHILENDRA RAJ TIMSINA, Level 1, [removed for privacy] Darwin NT 0800”.
 - b. The Former Agent has a direct personal connection with the company via the company’s director Mr [SA] residing in his home and further through being connected to Mr [SA]’s sister as joint tenants.
100. On the basis of the above discussed in relation to Mr [RA] I find that the Former Agent whilst registered breached clauses 2.1, 2.4, 2.9, 2.23 and 5.2 of the Code.

Mr [BT]

101. I find on the basis of the Former Agent’s response that he agreed to provide immigration assistance to Mr [BT] to prepare and submit his EOI. The Former Agent also had instructions to prepare Mr [BT]’s subclass 189 visa application. On this basis I find that the Former Agent had a client relationship with Mr [BT] within the meaning of Regulation 3(1) of the Migration Agents Regulations regarding both his EOI and subsequent subclass 189 visa application.
102. In the Former Agent’s response,⁷⁰ he has provided two employment references pertaining to Mr [BT] relating to his employment with the [AITG] Pty Ltd. The first employment reference⁷¹ (BT1) is dated 5 August 2015 and is not certified by any justice of the peace. However, the other employment reference the Former Agent provided also dated 5 August 2015, is certified by him in his capacity as justice of the peace on **26 July 2015**⁷² (BT2), which is not plausible as the purported certification date occurs before the reference letter was purportedly written. Therefore, I find that either this reference letter was not certified on the date it was purportedly to have been certified by the Former Agent, or the date in which the employment reference letter was written is not correct, which in either case is an indicator that the document may be fraudulent.
103. Departmental records indicate that the Former Agent also assisted Mr [BT] in relation to his application for assessment of his skilled employment with Chartered Accountants Australia and New Zealand in which a further employment reference letter from Mr [BT]⁷³ (BT3) was submitted by the Former Agent which is dated **10 July 2015**.⁷⁴ On the same day the Former Agent also certified this reference letter as a justice of the peace. I note that the duties and responsibilities listed in this reference are different from those specified in reference letters BT1 and BT2. I find that the discrepancies between BT1/BT2 and BT3 are further indicators that one or more of the references may be fraudulent, as it is unlikely the company would issue more than one employment reference letter for the same person with different duties and responsibilities.

⁷⁰ To the Authority’s section 308 notice issued on 11 January 2017.

⁷¹ BT1

⁷² BT2

⁷³ BT3

⁷⁴ OPD2015/1*****7

- 104.** I find that the Former Agent was complicit in the production of employment letters, which appear to be fraudulent on the basis that he certified the employment reference letter BT2 before the employment letter was purported to have been written. Furthermore, the Former Agent also certified BT3, the employment reference letter with duties and responsibilities different to the reference letters BT1 and BT2. Further, I find that the Former Agent is connected to the apparent fraudulent documents through having submitted all three employment references.
- 105.** The Former Agent in his response to the section 311D notice does not dispute that he provided immigration assistance to Mr [BT] in both his EOI application and the visa application lodged with the Department. In response to the findings by the Authority in regards to the reference letter the Former Agent has stated that “[He] refuse[s] to admit all the allegations and assumptions made by the OMARA complaint handling officer...they are baseless and based on their subjective judgements rather than objective analysis and investigation of the complaint.” [sic]. The Former Agent further added that he made an “unintentional error” when certifying the reference letter.
- 106.** I reject the Former Agent’s statement that the date was recorded in error. I am of the view that where a document is being used to support a skills assessment a person in their capacity as a justice of the peace would undertake a review of the document prior to it being submitted and as such would have picked up on the error and requested that the document be recertified. I am satisfied that the date noted on the document as the certified date was correct. I am satisfied that the document has been created in order to obtain an EOI outcome which would then be used to obtain a visa outcome for the client.
- 107.** In summation, on the basis of the available information, I find that the substance of the complaint is made out for the following reason:
- a.** Mr [BT] was the Former Agent’s client in relation to his EOI application and his subsequent subclass 189 visa application.
 - b.** In the course of providing immigration assistance to this client in relation to his EOI, skills assessment and visa application, the Former Agent participated in the provision of fraudulent documentation, namely by providing and certifying employment reference letters which he would reasonably have known to be fraudulent as they contained different duties and responsibilities for his client.
 - c.** Further, the Former Agent’s certification of one employment reference letter at a date prior to the date the employment reference letter was purportedly written is indicative of his participating in fraudulent activity, as is his connection to all three apparent fraudulent documents.
 - d.** The provision of this fraudulent information and documentation was in order to obtain State and Territory nominations and invitations to apply for a visa.
- 108.** On the basis of the above discussed in relation to Mr [BT] I find that the Former Agent whilst registered breached clauses 2.1, 2.4, 2.9, 2.23 and 5.2 of the Code.

Mr [GSS]

109. I find on the basis of the Former Agent's response that he agreed to provide immigration assistance to Mr [GSS] to prepare and submit his EOI. The Former Agent also had instructions to prepare his subclass 190 visa application. On this basis I find that the Former Agent had a client relationship with Mr [GSS] within the meaning of Regulation 3(1) of the Migration Agents Regulations regarding both his Expression of Interest and subsequent subclass 190 visa application.
110. On 16 March 2016, the Former Agent's email was used to lodge an EOI⁷⁵ for Mr [GSS] in which it stated he was employed by [MST] in the ACT from **7 September 2015** until **3 March 2016**. The employment reference letter submitted in support of that EOI specifies the same start date of 7 September 2015.⁷⁶ The resume provided in support of that EOI application confirms employment with [MST] Pty Ltd since September 2015.⁷⁷
111. On 28 April 2016, Mr [GSS] received an invitation to apply for a subclass 190 visa. On 5 May 2016, Mr [GSS] lodged a subclass 190 visa application in which the Former Agent was his registered migration agent. However in the subclass 190 visa application form, Mr [GSS] stated that he commenced working for [MST] Pty Ltd on **2 January 2016** until **4 May 2016**, the day before the subclass 190 visa application was lodged.
112. Therefore the dates of employment for Mr [GSS] are in contradiction, most notably the reference letter specifies a start date of **September 2015**, whereas the subclass 190 visa application form specified a commencement date of **January 2016**, some four months later, which is indicative that either the reference letter or visa application form are fraudulent.
113. I find that a prudent migration agent would have noticed obvious discrepancies that were apparent in relation to employment dates and company details and his purported employment with [MST] Pty Ltd and [MST2] Pty Ltd apparent in his employment reference letter and subclass 190 visa application. The lack of any evidence by the Former Agent to have clarified and corrected this contradictory information is suggestive that the information provided was not inadvertent, and may in itself constitute an act of fraud.

⁷⁵ EOI IDE0*****0

⁷⁶ As obtained from the ACT government

⁷⁷ As obtained from the ACT government

114. Further, I note that the [MST] Pty Ltd reference letter contains three company logos for the company [MST], two of which are clearly crooked and appear to have been transposed onto the document. I find that is highly improbable for a company to issue a letterhead, which contains three transposed company logos, two of which are crooked and these are indicators that the employment reference letter is not genuine and contains clear indicators of fraud. The letterhead also relates to the company called "MST" and in its footer lists the ABN 31 6** *** **0. The reference letter is signed by Mr [CN], who is specified as the director. However, the ABN 31 6** *** **0 relates to an entity [ATM] Pty Ltd, that does not have a director named Mr [CN]. Mr [CN] is the director of the company [MST2] Pty Ltd , with ABN 94 6** *** **0, but the name of the entity referred to in the body of the reference letter is [MST] Pty Ltd, not [MST2] Pty Ltd . All of these inconsistencies are indicators that the employment reference letter is fraudulent.
115. The employment reference letter also reveals that the company address, **12 [removed for privacy] Fyshwick ACT 2609** is the location of a serviced and virtual office provider,⁷⁸ when ASIC records reveal that the principal place of business for [MST] Pty Ltd has always been in Victoria while [MST2] Pty Ltd was listed as either Queensland or NSW. Further, the footer of the employment reference letter, namely [website removed for privacy reasons], provides information about the location of company offices. This information lists an office address in Sydney, the Gold Coast, Los Angeles and New Zealand. No mention is made of an actively operating office for the company in the ACT.
116. Moreover, on 11 May 2016, the Former Agent lodged a subclass 457 standard business sponsorship application for the company [MST2] Pty Ltd. At this time he was privy to the following information concerning the locations in which the company actively operated within Australia:
- a. On 8 August 2016, the company leased Suite 605, [address removed for privacy] Sydney for a period of one year. At this time EP Migration occupied Suite 603A of the same building, on the same floor.
 - b. In the documents supporting the sponsorship application, the only other address referred to other than the York St, was 20 [removed for privacy], Biggera Waters QLD 4216.
117. In his response to the section 311D notice the Former Agent stated that as the Authority referenced the employment reference letter within the 311D notice but failed to provide it to him he could not provide a response. He has stated "*that the OMARA has failed to establish existence of any such letter and their claim is not made.*" [sic] As discussed earlier in this decision the [MST] Pty Ltd reference letter was not included as an attachment with the Authority's section 311D notice.

⁷⁸ See <https://webarchive.nla.gov.au/awa/20140124103905/http://serron.com.au/index.html>

- 118.** In the interest of procedural fairness the Authority provided the [MST] Pty Ltd letter to the Former Agent via email. On 15 January 2020, the letter was provided to the Former Agent and he was requested to provide any additional comments to the Authority by 30 January 2020. No response was received from the Former Agent other than what was already provided in his section 311D response in relation to the letter. The Former Agent has not provided any further information in regards to [MST] Pty Ltd not having an office in the ACT other than to advise that the Authority completed a deficient internet search as they failed to include Brisbane as a location of [MST] Pty Ltd.
- 119.** A review of departmental records reveals that the Former Agent has lodged a Standard Business Sponsorship (SBS) and a 457 nomination application on behalf of [MST2] Pty Ltd. The nomination application was lodged within the same timeframes as that of Mr [GSS]'s. The employment letter provided in support of the client's nomination application showed that the address was the same as that of EP Migration namely, Level 6, [address removed for privacy] Sydney.
- 120.** I find in these circumstances that the Former Agent was privy to sufficient knowledge about the company to know that the company's only operations were located in NSW and Queensland when his client's ACT nomination was determined by the ACT government on 28 April 2016.⁷⁹ As such, at the time Mr [GSS] was successful in obtaining the nomination of the ACT government, I find that the Former Agent was aware that [MST] Pty Ltd did not actively operate in the ACT,⁸⁰ and therefore that Mr [GSS]'s employment in the ACT, and his employment reference letter were not genuine.
- 121.** I also note that in the nomination application for [MST2] Pty Ltd that the Former Agent has referred to having attached an organisation chart for the business "*including full names of current employees, details of any visa held, which indicates how the position fits in with the business activity*". However, departmental records do not contain an organisation chart fitting this description that was submitted by the Former Agent at this time. I find that the absence of this document may be associated with a fraudulent intent to mislead the Department about the number of employees and active business locations.

Substance of the complaint

- 122.** In summation, on the basis of the available information, I find that the substance of the complaint is made out for the following reasons:
- a.** Mr [GSS] was the Former Agent's client in relation to his EOI application and subclass 190 visa application.
 - b.** The Former Agent's inability to notice, clarify and correct obvious discrepancies in the employment dates for his client in relation to his EOI, supporting reference letter and subclass 190 application are indicative that he may have participated in the provision of fraudulent information to the ACT government and the Department.

⁷⁹ On the assumption that instructions about the company's operations would likely have commenced at least two weeks prior to the lodgement of the application on 11 May 2016.

⁸⁰ Or was a NSW employer where the applicant's work activity is located in the ACT.

- c. The Former Agent was privy to sufficient information about the company, to know that the company did not operate in the ACT, and therefore participated in the provision of fraudulent information regarding his client's employment in the ACT to the ACT government assessing his ACT nomination.
- d. The provision of this fraudulent information and documentation was to secure ACT nomination and invitations to apply for a visa, on the basis that it supported that he was residing and working in the ACT at the time he applied for ACT nomination.

123. On the basis of the above discussed in relation to Mr [GSS] I find that the Former Agent whilst registered breached clauses 2.1, 2.4, 2.9, 2.23 and 5.2 of the Code.

Mr [SD]

124. I find on the basis of the Former Agent's response to the first section 308 notice acknowledging that he agreed to provide immigration assistance to Mr [SD] to prepare and submit his EOI, that the Former Agent had a client relationship with Mr [SD] within the meaning of Regulation 3(1) of the Migration Agents Regulations regarding his EOI.

125. In response to the section 311D notice the Former Agent disputes that Mr [SD] was his client. The Former Agent stated "*I have not filed his ACT nomination for subclass 190 visa. I refused to admit that I have a knowledge of the employment reference letter and had discontinued to act for his after initial EOI lodgement*". This statement is contrary to the Former Agent's statement in his response to the first section 308 notice which included "*We have prepared his EOI application...*" I am of the view that the Former Agent is attempting to hamper the Authority's investigation by providing misleading statements. Nevertheless, on the basis of the evidence before me I am satisfied that Mr [SD] was the Former Agent's client and that a client-agent relationship had been established.

126. On 17 May 2016, the Former Agent's email was used to lodge an EOI⁸¹ for Mr [SD] in which he claimed to work full time as a systems analyst for [MST] Pty Ltd in the ACT from 11 May 2015 at least until the time the EOI was submitted on 17 May 2016. The employment reference submitted in support of the EOI (SD1) also states that Mr [SD] was employed full time by [MST] Pty Ltd since 11 May 2015.⁸² The address at the footer of the reference letter is 12 [removed for privacy] Fyshwick ACT 2609. For the same reasons given in relation to Mr [GSS], I find that [MST] Pty Ltd does not actively operate in the ACT.⁸³ Namely, the website for the company does not make reference to an active office in the ACT, the address for the office on the employment reference letter is the location of a virtual/serviced office provider, and information available from ASIC records list the principal place of business in Victoria.

⁸¹ EOI ID E0*****6

⁸² As obtained from the ACT government

⁸³ Or was a NSW employer where the applicant's work activity is located in the ACT.

127. In light of the above discussion, I find that as was the case in relation to Mr [GSS], the employment reference letter for Mr [SD] is fraudulent as [MST] Pty Ltd does not appear to actively operate at the ACT address specified in the employment reference letter. I note that the employment reference letter submitted for Mr [SD] in relation to his EOI was submitted on 17 May 2016. Even if I were to consider the alternate company, [MST2] Pty Ltd, I note that as the Former Agent had just completed the business sponsorship application for [MST] Pty Ltd Australia one week prior to the EOI submission it was well within the Former Agent's knowledge and recent memory that this company likewise did not operate in the ACT for the same reasons as specified for Mr [GSS]. Namely, that the sponsorship application and ASIC records contained information which indicated the company had a presence in NSW and QLD, but not the ACT. On this basis I find that the Former Agent participated in the lodgement of an employment reference letter for his client for the purposes of his client's EOI which he knew to be fraudulent, as the company did not operate in the ACT, where it is specified he was employed in his employment reference letter.

128. I find that this fraudulent act was executed to assist the Former Agent's client to obtain ACT nomination on the basis that it supported that he was residing and working in the ACT at the time he applied for ACT nomination.

129. On the basis of the available information, I find that the substance of the complaint is made out for the following reasons:

- a. Mr [SD] was the Former Agent's client in relation to his EOI application
- b. In relation to his EOI, the Former Agent provided an employment reference letter which indicated that he was employed by [MST] Pty Ltd in the ACT when it was within his knowledge that [MST] Pty Ltd did not actively operate in the ACT at this time. In so doing the Former Agent provided fraudulent information and document to the ACT government in relation to your client's EOI.
- c. The provision of this fraudulent information and documentation was to obtain State and Territory nominations and invitations to apply for a visa on the basis that it supported that the Former Agent's client lived and worked in the ACT.

130. On the basis of the above discussed in relation to Mr [SD] I find that the Former Agent whilst registered breached clauses 2.1, 2.4, 2.9, 2.23 and 5.2 of the Code.

Mr [SG]

131. On the basis that the Former Agent stated in his response that Mr [SG] contacted EP Migration to request assistance in the preparation of an ACT nomination, and that the Former Agent communicated with the ACT government and submitted a form 956⁸⁴ to represent Mr [SG] in relation to his ACT nomination application, I find that the Former Agent had a client relationship with Mr [SG] within the meaning of Regulation 3(1) of the Migration Agents Regulations regarding his EOI and ACT nomination application.

⁸⁴ The ACT government has provided the OMARA with the form 956 signed by the Former Agent on 3 March 2016. Our ref: MAF2018/1**5, ADD2019/2*****6

132. I find that the employment reference letter issued from [C] Pty Ltd, submitted in Mr [SG]'s EOI,⁸⁵ which the Former Agent certified as a justice of peace on 7 March 2016, appears to be fraudulent on the basis that the letterhead contains two identical company logos, one of which is crooked and transposed onto the document, and these are indicators that the employment reference letter is not genuine. I find that in the act of certifying this reference letter, the non-genuine nature of the letter was readily apparent, and therefore that the Former Agent was complicit in the production of this apparent fraudulent letter submitted for the purposes of his client's EOI.
133. The Former Agent in response to the section 311D notice stated that he did not, in his capacity as a justice of the peace, certify an employment reference letter but rather an offer of employment. Given such the Former Agent has further stated that "*I do not admit any allegations would be made out without understanding the nature of document submitted to the ACT government for the nomination application*". The Former Agent goes on to state that the employment reference letter and the offer of employment letter are "*two different kinds of documents*". The Former Agent however adds no comment in regards to the two company logos being on the document within his response. I find that irrespective of the documents title I am satisfied that the Former Agent certified a non-genuine letter in support of an EOI application.
134. Furthermore, the address for the company listed on the letterhead is **12 [removed for privacy] Fyshwick ACT 2609**, the location of the same serviced and virtual office provider as [MST2] Pty Ltd.⁸⁶ However, the company [C] Pty Ltd appears to be associated with a business location in Queensland.⁸⁷ The company's website and Facebook page do not indicate that they actively operate in the ACT.⁸⁸ I find that the Former Agent's certification of an apparent fraudulent document for a company which does not appear to actively operate in the ACT,⁸⁹ is indicative that the Former Agent participated in the production and submission of a fraudulent document in relation to Mr [SG] to enable him to secure the nomination of the ACT government and an invitation to apply for a visa.
135. On the basis of the available information, I find that the substance of the complaint is made out for the following reasons:
- a. Mr [SG] was the Former Agent's client in relation to his EOI application
 - b. In relation to his EOI, the Former Agent provided and certified an employment reference letter which could be readily identified as non-genuine, and therefore the Former Agent was complicit in the submission of fraudulent information to the Department and ACT government.
 - c. The provision of this fraudulent information and documentation was to enable the Former Agent's client to secure the nomination of the ACT government and an invitation to apply for a visa on the basis that it supported that your client lived and resided in the ACT.

⁸⁵ SG1 as obtained from the ACT government, see MAF2018/1***5

⁸⁶ See <https://webarchive.nla.gov.au/awa/20140124103905/http://serron.com.au/index.html>

⁸⁷ See <https://abr.business.gov.au/AbnHistory/View?id=48129979531>

⁸⁸ See www.facebook.com/chandnptyltd

⁸⁹ Or was a NSW employer where the applicant's work activity is located in the ACT.

136. On the basis of the above discussed in relation to Mr [SG] I find that the Former Agent whilst registered breached clauses 2.1, 2.4, 2.9, 2.23 and 5.2 of the Code.

Mr TRJ

137. I find, on the basis of the Former Agent's response, that he agreed to provide immigration assistance to Mr [TRJ] to prepare and submit his EOI and was instructed to prepare Mr [TRJ]'s subclass 489 visa application, that the Former Agent had a client relationship with Mr [TRJ] within the meaning of Regulation 3(1) of the Migration Agents Regulations regarding both his Expression of Interest and subsequent subclass 489 visa application.

138. On 18 February 2016, the Former Agent's email was used to lodge an EOI ⁹⁰ for Mr [TRJ] in which he stated he was employed by **[PHMTH] Pty Ltd in the ACT** from 13 July 2015. Mr [TRJ]'s resume and employment reference provided in the EOI confirm employment with [PHMTH] Pty Ltd since July 2015. The address for the employer and his location of work, as specified in the employment contract is **12 [removed for privacy] Fyshwick ACT 2609**. This is the same location as the virtual and serviced office utilised by [MST2] Pty Ltd and [C] Pty Ltd.

139. In that same EOI the Former Agent provided an employment reference letter for Mr [TRJ]'s spouse,⁹¹ Mrs [AJ], which stated that she was an employee of Education Park since 11 January 2016. The footer of this employment reference letter for Ms [AJ] states an address for **Education Park in the ACT** as Level 1, [removed for privacy], Griffith ACT 2603.

140. The company [PHMTH] Pty Ltd was registered on 2 March 2015.

141. Up until 5 April 2016, the principal place of business for the company [PHMTH] Pty Ltd was **unit 4, [removed for privacy] Hurlstone Park NSW 2193**. According to the Authority's records this was the Former Agent's residential home until December 2016. The Department's records show that the Former Agent resided at this address until December 2018, which was well after the company was deregistered on 30 July 2017.

142. Records obtained by the Authority from ASIC indicate that the director of [PHMTH] Pty Ltd is Mr [SG2], who also specifies his address as **Unit 4, 54 [removed for privacy] Hurlstone Park NSW 2193** from 2 March 2015 until 30 July 2017. This time period coincides with the period from when the company was registered up until when it was deregistered.

143. On 6 April 2016, the ACT government rejected the nomination of Mr [TRJ]. Mr [TRJ]'s ACT nomination was refused on the basis that the ACT government could not be satisfied that [PHMTH] Pty Ltd and Education Park were businesses which actively operated in the ACT, and if the applicants could not demonstrate that they were working for ACT based employers, they could not satisfy the ACT nomination criteria. [PHMTH] Pty Ltd and the question of whether it actively operated in the Act is discussed further below at paragraph 148.

⁹⁰ EOI ID E0*****7

⁹¹ AJ1 obtained from the ACT government

144. On the same day, namely 6 April 2016, the principal place of business for [PHMTH] Pty Ltd was changed with ASIC to be **Level 1 [removed for privacy] Darwin NT 0800**. This remained the principal place of business for the company until it was deregistered on 30 July 2017. This address belongs to the serviced and virtual office provider⁹² utilised for the registered address of [SNAG] (Australia) Pty Ltd.⁹³
145. On 4 May 2016, Mr [TRJ]'s EOI was updated⁹⁴ and the location of his residence and employment were changed to the Northern Territory, his marital status was also changed from 'married' to 'never married'.
146. On 27 July 2016, Mr [TRJ]'s EOI was changed from seeking a subclass 190 visa, to seeking a subclass 489 visa.⁹⁵
147. On 3 August 2016, Mr [TRJ] received the nomination of the Northern Territory and was invited to apply for a subclass 489 visa.
- a. The subclass 489 application and documents disclosed the following relevant matters:
 - b. The application from completed by the Former Agent specified that Mr [TRJ] and Mrs [AJ] were married on 7 December 2012.
 - c. Mr [TRJ]'s form 80 signed on 14 August 2016 does not list him as ever having resided in the ACT, and having commenced employment with [PHMTH] Pty Ltd in **December 2015**, rather than **July 2015**, as was indicated in his employment reference and resume submitted with his EOI.
 - d. Mr [TRJ]'s form 1221 signed on 20 September 2016 also states that he commenced employment with [PHMTH] Pty Ltd in December 2015 rather than July 2015.
 - e. Mrs [AJ]'s form 80 signed on 11 August 2016 does not list her as ever having been employed by Education Park or residing in the ACT.
 - f. Mrs [AJ]'s form 1221 signed on 20 September 2016 does not record her as having been employed by Education Park, in the ACT or otherwise.
148. I find that [PHMTH] Pty Ltd did not actively operate in the ACT⁹⁶ at the time Mr [TRJ]'s employment contract was signed for the following reasons.
- a. The ACT government when assessing Mr [TRJ]'s ACT nomination was not satisfied that the business actively operated in the ACT.
 - b. The company has never registered an address with ASIC that is connected to the ACT, which in conjunction with the fact that the employment contract provides an address for a virtual/serviced office provider in the ACT is highly suggestive that the company did not actively operate in the ACT.
 - c. The Former Agent's client did not specify in his subsequent subclass 489 visa application that he ever resided in the ACT, which is indicative that he also could not have worked for [PHMTH] Pty Ltd in the ACT.

⁹² <https://darwininnovationhub.com.au/serviced-offices-darwin/>

⁹³ where in that case correspondence was directed to "C/- KHILENDRA RAJ TIMSINA, Level 1, [removed for privacy] Darwin NT 0800".

⁹⁴ EOI ID E0*****7

⁹⁵ EOI ID E0*****7

⁹⁶ Or was a NSW employer where the applicant's work activity is located in the ACT.

- 149.** I find that the Former Agent was aware that the company [PHMTH] Pty Ltd did not actively operate in the ACT because of his direct and close association with the company, whose principal place of business was the Former Agent's home, and the home of the company's director Mr [SG2]. As such, it is reasonable to find on the basis of the Former Agent's close association with the company, and its director, that the Former Agent was privy to knowledge about the locations of where the company actively operated from, including whether it operated in either the ACT or Northern Territory at the times specified in Mr [TRJ]'s EOI. Therefore, I find that as the Former Agent was aware that the company did not operate in the ACT that he participated in providing fraudulent information and documentation to the ACT government, and the Department, regarding Mr [TRJ]'s employment with the company in the ACT.
- 150.** I also find that Education Park, Mrs [AJ]'s employer, did not actively operate in the ACT at the time Mrs [AJ]'s employment reference letter was written for the following reasons:
- a.** The ACT government when assessing Mrs [AJ]'s ACT nomination were not satisfied that the business actively operated in the ACT.
 - b.** The company has never registered an address with ASIC that is connected to the ACT
 - c.** Mrs [AJ] did not specify in the subsequent subclass 489 visa application that she ever worked for Education Park or resided in the ACT.
- 151.** I also find that the Former Agent was aware that the company Education Park did not actively operate in the ACT because the Former Agent is a director of Education Park. It follows, that I find that when the Former Agent signed the employment reference letter for Mrs [AJ], which represented that she was employed by Education Park in the ACT, that the Former Agent participated in an act of fraud to support that his client's spouse lived and resided in the ACT for the purposes of securing ACT nomination, when she did not.
- 152.** I further find that [PHMTH] Pty Ltd change in the principal place of business to the Northern Territory on 6 April 2016 was not incidental. Specifically, as this was the day Mr [TRJ]'s ACT nomination was rejected on the basis that the ACT government was not satisfied that either [PHMTH] Pty Ltd or Education Park actively operated in the ACT. Moreover, I find that [PHMTH] Pty Ltd also did not operate in the Northern Territory on the basis that the company does not appear to have a presence or contact details accessible online in relation to the Northern Territory, and its listed premises is a virtual/serviced office. Further, I find on the basis of the Former Agent's association with [PHMTH] Pty Ltd, described above, that the Former Agent would have been aware if the company purportedly took up a location in the Northern Territory on 6 April 2016. Particularly given that the director of the company resided in the Former Agent's home at the time the principal location of the company was updated to this address.
- 153.** Therefore, I find that the Former Agent was aware that the company did not actively operate in the Northern Territory. In doing so, I also find that the Former Agent participated in an act of fraud by providing information and documentation to the Department and NT government that represented that his client was employed by [PHMTH] Pty Ltd in the Northern Territory, when he was not.

154. Given the Former Agent's association with Education Park and [PHMTH] Pty Ltd, I also find that the fraud evident in the Former Agent's client's application could not have been initiated by Mr [TRJ] alone. Instead, I consider that he would have required the Former Agent's assistance as the director of Education Park, and the Former Agent's connection with [PHMTH] Pty Ltd, to fabricate the fraudulent employment positions and locations.

Other instances of fraud

155. The Former Agent was also aware that Mr [TRJ] was married at the time he assisted him, as the Former Agent had signed his wife's employment reference in relation to Education Park. On this basis, I find that when Mr [TRJ]'s EOI was updated on 4 May 2016 to state that he was not married, the Former Agent participated in an act of fraud, as he was aware that his client was married. I find that removing the marital details may have been an attempt by the Former Agent to remove Mrs [AJ] from the EOI, including her purported employment with Education Park, in order to conceal that the Former Agent had provided misleading information by representing that Education Park was actively operating out of the ACT⁹⁷ when it did not.

156. Furthermore, when Mr [TRJ]'s subclass 489 visa application was submitted, it is reasonable that the Former Agent would have reviewed the documents submitted to the Department in relation to that visa application, and noted that contradictory information had been provided from that provided in the EOI regarding the couple's marital status, employment, and residence in the ACT. I find that the contradictory information pertaining to Mr [TRJ]'s marital status, residential and employment status were fundamental to his application, and unlikely to have been overlooked by a prudent migration agent. Therefore, it is reasonable to find that the Former Agent was aware of the contradictions, and by submitting this information he participated in an act of fraud which misled the Department.

157. The Former Agent in response to the section 311D notice stated that the inconsistencies with the information are due to poor instructions that he was provided by Mr [TRJ] in regards to the EOI information. He denies that the substance of the complaint has been made out as the Authority has not proved that he has an association with [PHMTH] Pty Ltd.

158. The Former Agent has also advised that he has not resided at [removed for privacy] in Hurlstone Park as alleged by the Authority but rather has resided at, and used as a home office, 12 [removed for privacy] in Quakers Hill. To support his claims the Former Agent provided a property settlement letter revealing that the settlement date for the [removed for privacy] address was 17 March 2015. On the basis of the evidence before me I reject the Former Agents statement that he has not resided in Hurlstone Park. The very document that he provided to support his living in Quakers Hill, namely the settlement letter, is addressed to him at the [removed for privacy] address in Hurlstone. Furthermore, the Authority's own records have the Hurlstone Park address noted as his residential address. The information is updated by the Former Agent via his Agent portal. Therefore the only person who has access to the portal is that of the Former Agent.

⁹⁷ Or was a NSW employer where the applicant's work activity is located in the ACT.

159. I also note that in the Former Agent's section 308 notice response to the Authority that he stated "[he has] no connection with [PHMTH] Pty Ltd, [he does] not know any directors or owners of the company". In light of the matters discussed above, I find that this statement is not true. The principal place of business for the company was the Former Agent's home, and the home of the company's director Mr [SG].

160. On the basis of the available information, I find that the substance of the complaint is made out for the following reasons:

- a.** Mr [TRJ] was the Former Agent's client in relation to his EOI application and subclass 489 visa application.
- b.** The Former Agent was aware that the company [PHMTH] Pty Ltd did not actively operate in the ACT or NT and therefore participated in providing fraudulent information and documentation to the Department, ACT and NT governments in relation to Mr [TRJ]'s employment.
- c.** The Former Agent was aware that the company Education Park did not actively operate in the ACT and therefore participated in providing fraudulent information and documentation to the Department, ACT and NT governments in relation to Mrs [AJ]'s employment.
- d.** The fraud evident in the Former Agent's client's application could not have been executed by his client alone, as his client could not have fabricated fraudulent employment positions and locations without the Former Agent's assistance as the director of Education Park, or through the Former Agent's connection with [PHMTH] Pty Ltd.
- e.** The Former Agent participated in an act of fraud by representing that his client was not married, when he was married, likely to conceal the fact that the Former Agent held out that a business he directs, namely Education Park, was actively operating out of the ACT when it did not.
- f.** The Former Agent participated in fraud by knowingly submitting contradictory information in relation to his client's EOI and visa application.
- g.** The provision of this fraudulent information and documentation was to enable his client to secure the nomination of the ACT and NT government and an invitation to apply for a visa on the basis that it supported that his client lived and resided in the ACT or NT at the relevant time.

161. On the basis of the above discussed in relation to Mr [TRJ] I find that the Former Agent whilst registered breached clauses 2.1, 2.4, 2.9, 2.23 and 5.2 of the Code.

Mr [SRT]

162. I find on the basis of the Former Agent's response that he agreed to provide immigration assistance to Mr [SRJ] to prepare and submit his EOI, that the Former Agent had a client relationship with Mr [SRJ] within the meaning of Regulation 3(1) of the Migration Agents Regulations regarding his EOI.

163. On 12 April 2016, the Former Agent's email was used to submit an EOI for Mr [SRJ] in which it is submitted on the EOI form that Mr [SRJ] had been working for Education Park Australia in Canberra from 24 August 2015 until 5 March 2016.⁹⁸ The employment reference letter provided in support of the EOI, signed by the Former Agent as the director of Education Park confirms the same period of employment as does Mr [SRT]'s resume.
164. While the employment reference letter does not specifically state that the employment is located in Canberra, the address in the footer is Level 1, [removed for privacy], Griffith ACT 2603. Phone 02 6140 3477. The ACT nomination was refused on the basis that the ACT government was not satisfied that Education Park is a business which is actively operating in the ACT and therefore that the applicant was working for an ACT based employer. In addition to the findings of the ACT government, I find that Education Park does not actively operate in the ACT, as the company has never registered an address with ASIC that is connected to the ACT. Further, I find that the Former Agent was aware that the company Education Park did not actively operate in the ACT because he is a director of Education Park.
165. It follows that, when the Former Agent submitted his client's EOI and signed the employment reference letter for his client that stated that he was employed by Education Park in the ACT, the Former Agent knowingly provided false information to misrepresent that his client resided and worked in the ACT for the purposes of securing ACT nomination, when he did not. Given the Former Agent's association with Education Park, I find that the fraud evident in the Former Agent's client's application was not executed by his client alone, as his client could not have fabricated fraudulent employment positions and locations without the Former Agent's assistance as the director of Education Park.
166. In his response to the section 311D the Former Agent stated that he was unaware of any requirement by ASIC to provide details of every business's location that are registered under the same company. The Former Agent stated that he "*left working full-time director and a registered migration agent at the beginning of 2015*" however continued to oversee until November 2018. The Former Agent in his response stated that the Authority "*failed to provide reliable and credible source of their investigation about Education Park Australia Pty Ltd not actively operating in ACT*". Despite the Former Agent's claims the Former Agent has not advanced any documentation to support his claim that Education Park is operating in the ACT.
167. On the basis of the available information, I find that the substance of the complaint is made out for the following reasons:
- a. Mr [SRJ] was the Former Agent's client in relation to his EOI application
 - b. The Former Agent was aware that the company Education Park did not actively operate in the ACT and therefore participated in providing fraudulent information and documentation to the Department and ACT government in relation to his client's employment.

⁹⁸ As obtained from the ACT government on 9 May 2019

- c. The fraud evident in his client's application could not have been executed by his client alone, as his client could not have fabricated fraudulent employment positions and locations without the Former Agent's assistance as the director of Education Park.
- d. The provision of this fraudulent information and documentation was to enable the Former Agent's client to secure the nomination of the ACT government and an invitation to apply for a visa on the basis that it supported that his client lived and worked in the ACT at the relevant time.

168. On the basis of the above discussed in relation to Mr [TRJ] I find that the Former Agent whilst registered breached clauses 2.1, 2.4, 2.9, 2.23 and 5.2 of the Code.

CONSIDERATION OF WHETHER OR NOT TO BAR THE FORMER AGENT

169. In reaching my conclusion with respect to being satisfied that the subject matter of the complaint is made out, I have considered the strength of the evidence and the level of satisfaction required in accordance with the grave and serious consequences for the Former Agent in terms of his livelihood and reputation.

170. In deciding whether or not to bar the Former Agent under subsection 311A(1) of the Act, I have taken into account all of the circumstances of the complaint, including the following:

Seriousness of behaviour

171. The Authority has identified behaviour that is considered to be of concern that is likely to result in a decision to bar an agent, including behaviour that:

- involves a disregard for or an indifference to the law;
- has resulted in some financial loss to clients;
- involves a blatant disregard for or a significant degree of indifference to the law; and
- has resulted in significant harm or substantial loss to clients.

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

- a) The Former Agent's conduct involves a blatant disregard, or significant degree of indifference, to the law and the Authority.
- b) The Former Agent has demonstrated significant breaches of the Code
- c) The Former Agent was dishonest in his dealings with the Department and the Authority.
- d) The Former Agent acted without instruction, and consent, from his clients

Aggravating Factors

173. The Former Agent has demonstrated behaviour which exhibits a blatant disregard for his clients' best interests and that of the Department and the Authority. I find that the Former Agent's behaviour is particularly reprehensible, in light of the fact that he was an active participant, or else a knowing party, to the creation and dissemination of fraudulent and fabricated documents, with a view to mislead the Department and secure visa outcomes. I consider the Former Agents conduct falls well below the standard expected of a registered migration agent, particularly his apparent indifference towards his obligations to his clients, the Department and the Authority.

174. I find that the following are aggravating factors that increase the severity of the sanction:

- a.** The Former Agent has demonstrated a blatant disregard for the law and adverse behaviour which extended to unlawful conduct involving fraud.
- b.** The Former Agent has provided inconsistent responses and claims to the allegations. His responses to the Section 311D notice do not support his earlier statements made in response to the Section 308 notice, in fact they are contradictory.
- c.** The Former Agent's submission to the section 311D notice was not supported by evidence and was contradicted by evidence from both the Department and the complainant.
- d.** The Former Agent has failed to show any remorse, or to accept responsibility for his conduct and the consequences for his former clients in his failure to deliver the professional service for which he had been paid and retained. Further the Former Agent has apportioned blame for his conduct onto third parties – such as his former clients, the Department and the Authority.

175. I consider the Former Agent's conduct falls short of the standard expected of a registered migration agent and that the conduct poses a serious risk to migration consumers and to the integrity of the migration advice profession. Given all the above discussed I am of the view that the likelihood of the behaviour would persist if the agent was registered again.

Mitigating Factors

176. Despite being invited to do so, the Former Agent has not advanced any submissions or evidence with respect to mitigating factors.

177. I note that the Former Agent has not had any prior disciplinary decisions made against him, however, this does not mitigate the Former Agent's responsibility for the impact his conduct has had on his clients and the integrity of the visa program.

178. In considering whether a disciplinary decision would affect the Agent's financial earning capacity, I have noted that the Former Agent did not seek to renew his registration when it expired on 3 May 2018.

Consumer Protection

179. Consumers place a high degree of trust in their registered migration agent and are entitled to a high level of professional service from them.

180. The behaviour demonstrated by the Former Agent falls short of the standards reasonably expected of a registered migration agent. I consider that the Agent poses a serious risk to consumers. I am not satisfied that, if the Former Agent were to continue to practice as a registered migration agent in future, he would be able to demonstrate the requisite requirements of honesty and diligence expected of a registered migration agent. I consider that a disciplinary decision is warranted to address the conduct that is the subject of this decision, and is in the interests of consumer protection.

181. I expect that a decision to sanction the Former Agent would more likely than not deter other registered migration agents from engaging in a similar practice and ensure that public confidence in the migration agent profession is maintained.

Period of barring

182. I consider that a barring is warranted to address the conduct of the Former Agent which has been the subject of this decision.

183. The Former Agent has been the subject of one complaint that has been made out and in the complaint the Former Agent has failed to act in the legitimate best interests of his clients, provided fabricated and fraudulent documents in support of Expressions of Interests

DECISION

184. I have decided to bar the Former Agent from being registered as a migration agent for a period that starts when he has been taken to have been given this decision notice under section 332H of the Act, and ends at the end of five years starting on the day of my decision.

A/g Senior Professional Standards Officer
Professional Standards and Integrity Section
Office of the Migration Agents Registration Authority
Department of Home Affairs

Date of Decision: 2 June 2020