



## **DECISION RECORD**

<b>AGENT</b>	Christina Chang
<b>COMPLAINT NUMBER/S</b>	CMP-36712, CMP-39291 and CMP-49825
<b>DECISION</b>	CANCELLATION
<b>DATE OF DECISION</b>	24 September 2020

## **Terms used for reference**

1. The following abbreviations are used in this decision:

<i>ABN</i>	Australian Business Number
<i>AAT</i>	The Administrative Appeals Tribunal
<i>BVA/B/C/E</i>	Bridging Visa A, B, C or E
<i>FOI requests</i>	Requests under the <i>Freedom of Information Act 1982</i>
<i>MARN</i>	Migration Agent Registration Number
<i>PIC</i>	Public Interest Criteria
<i>Section 308 notice</i>	Notice issued by the Authority under section 308 of the Act
<i>Section 309 notice</i>	Notice issued by the Authority under section 309 of the Act
<i>The Act</i>	<i>The Migration Act 1958</i>
<i>The Regulations</i>	<i>The Migration Regulations 1994</i>
<b><i>The Agent</i></b>	<b>Christina Chang</b>
<i>The Authority</i>	The Office of the Migration Agents Registration Authority
<i>The Code</i>	The Migration Agents Code of Conduct prescribed under Regulation 8 and Schedule 2 to the Agents Regulations
<i>The Department</i>	The Department of Home Affairs
<i>The Register</i>	Register of migration agents kept under section 287 of the Act
<i>The Agents Regulations</i>	<i>Migration Agents Regulations 1998</i>
<i>VEVO</i>	Visa Entitlement Verification Online

## **STATEMENT OF REASONS**

### **Background**

2. The Agent was first registered as a migration agent on 8 July 1993 and was allocated the MARN 9254751. The Agent's registration had been renewed annually from that date.
3. The Agent made an application to renew her registration on 6 July 2020, which remains under consideration, pending the finalisation of the complaints which are the subject of this decision.
4. The Register lists the Agent's business name as Australia World Link Pty Ltd, with the ABN 24 607 902 401.

### **Prior Disciplinary action**

5. The Agent does not have any history of prior disciplinary action.

### **Complaint/s**

6. The Authority received three complaints about the Agent's conduct as a registered migration agent:
  - i. CMP-36712 - made on 16 April 2018 by Mr NB.
  - ii. CMP-39291 - initiated by the Authority as an own motion complaint.
  - iii. CMP-49825 - made on 3 February 2020 by Ms IG.
7. The details of each complaint as well as the details of relevant departmental records are set out below.

### **CMP-36712 – Mr NB**

8. On 16 April 2018 the Authority received a complaint about the Agent's conduct as a migration agent from Mr NB (**Mr NB**).
9. Mr NB alleged the following:
  - He engaged the Agent's services as a registered migration agent in 2015 to assist him to apply for permanent residency. He alleged that the Agent failed to provide the services the Agent was engaged to provide.
  - The Agent lodged three permanent visa applications on his behalf, but none of these applications resulted in the grant of a permanent visa:
    - a) The Agent lodged nomination and visa applications in 2015. Mr NB alleged that the Agent advised him that these applications had to be withdrawn due to 'technical issues' and 'changes in government requirements to that specific visa.'
    - b) On 13 December 2015 the Agent lodged a Regional Sponsored Migration Scheme (**RSMS**) nomination application. Mr NB alleged that the Agent failed to provide documents in support of that application, resulting in a refusal of the application and necessitating a withdrawal of the visa application by the complainant.
    - c) On 22 November 2016 the Agent lodged another RSMS nomination application. The Agent lodged the related visa application on 23 November 2016. In respect of this

nomination application, on 22 November 2016 the Agent submitted an application to the Regional Certifying Body (**RCB**). However, the Agent did not complete the application form correctly, and the Agent did not pay the application fee.

- The Agent provided Mr NB incorrect information in respect of travel entitlements of the visa he held. In October 2017 Mr NB held a Bridging Visa C (**BVC**). He alleged that he asked the Agent if he was able to travel to Ireland and return to Australia. The Agent advised him that he was permitted to travel. As a result of the Agent's advice Mr NB departed Australia. When he returned he learned that he had lost his permission to work. Further, the Agent did not provide him with correct advice in relation to seeking the reinstatement of his BVC.
  - The Agent advised him to apply for a temporary subclass 407 training visa, even though his intention was to gain permanent residency.
  - On 4 April 2018 Mr NB wrote to the Agent and outlined his concerns with the Agent's poor advice resulting in the lack of success in obtaining a visa and sought a full refund from the Agent. The Agent did not respond to Mr NB's complaint and the Agent has not provided a refund.
  - The Agent did not respond to email and text message enquiries Mr NB sent to the Agent throughout 2017 and early 2018.
10. Mr NB alleged that the service provided by the Agent has been unsatisfactory, resulting in a devastating impact on his visa status and ability to work and live in Australia.

### Departmental Records

11. A review of the records of the Department of Home Affairs (and its previous manifestations) indicates that the Agent lodged multiple applications on behalf of Mr NB, as detailed in **Attachment A**. In summary:
- i. In February 2015 the Agent lodged an Employer Nomination Scheme (**ENS**) nomination and related Class EN subclass 186 (**186 visa**) application on behalf of Mr NB's employer and Mr NB respectively. These applications were withdrawn.
  - ii. In December 2015 the Agent lodged an RSMS nomination, and related Class RN subclass 187 (**187 visa**) application on behalf of Mr NB's employer and Mr NB respectively. The nomination application was refused, and the visa application was subsequently withdrawn.
  - iii. In November 2016 the Agent lodged an RSMS nomination, and related 187 visa application on behalf of Mr NB's employer and Mr NB respectively. The nomination application was refused. Mr NB appointed another migration agent before the visa application was finalised.
  - iv. In February 2018 a migration agent working for the Agent's business, Ms TD, lodged a Class GF Subclass 407 Training Visa application on behalf of Mr NB. The contact email address in respect of this application was the Agent's email address (*christina@aus-global.com.au*).
12. Details in respect of Mr NB's travel and visa history are contained in **Attachment B**, and include that Mr NB departed Australia on 25 October 2017 while a holder of a BVC.
13. Departmental records indicate that Australia World Link undertook Visa Entitlement Verification Online (**VEVO**) checks of Mr NB's status on two occasions - on 5 April 2016 and 24 November 2017.

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

14. On 6 February 2019 the Authority published Mr NB's complaint to the Agent, advising the Agent that it raised concerns regarding the Agent's compliance with clauses 2.1, 2.3, 2.4, 2.5, 2.7, 2.8, 2.18, 2.19, 5.2 and 5.3 of the Code.
15. Pursuant to section 308 of the Act, the Authority requested the Agent to provide answers to specific questions in relation to the applications the Agent lodged on Mr NB's behalf, as follows:
  - In relation to the first application, what advice did the Agent provide to Mr NB in relation to the prospects of success for this application? What evidence and documents did Mr NB and his employer provide to the Agent in support of this application, to enable the Agent to provide this advice?
  - In relation to the second application, what supporting documents did Mr NB provide? Why were no supporting documents attached to the application?
  - Was an application made to the Regional Certifying Body for certification? If so, the Agent was asked to provide details of this application including any correspondence with the certifying body as well as the outcome.
  - In relation to the third nomination application, why was no Regional Certifying Body advice provided with the application?
  - In relation to the complainant's visa status, what advice did the Agent provide to Mr NB about travelling offshore and eligibility to return to Australia between October and December 2017?
  - What was the Agent's involvement in the applications for Mr NB for the Class UD subclass 601 Visitor Visa and the Class GF subclass 407 Training Visa?
16. The Agent was asked to provide an outline of her interactions with Mr NB, including:
  - Details of any meetings or telephone conversations held;
  - Details of written and verbal advice provided;
  - Details of steps taken to address the complainant's concerns.
17. The Agent was also asked to provide her complete client file in respect of Mr NB.

The Agent's Response to the Authority's section 308 notice (CMP-36712)

18. On 20 February 2019, the Authority received a request for an extension of time to respond to the notice of 4-6 weeks due to health issues the Agent had experienced. On 25 February 2019 the Agent was granted an extension until 26 March 2019. As no response was received, and in consideration of the Agent's health concerns, on 1 April 2019 a follow-up email was sent to the Agent, seeking a response by 5 April 2019.
19. To date the Authority has not received the Agent's response to this complainant.

**CMP-49825 – Ms IG**

20. On 3 February 2020 the Authority received a complaint about the Agent's conduct as a migration agent from Ms IG (**Ms IG**).
21. Ms IG alleged the following:

- She was offered a position as a database administrator and visa sponsorship with Company A. The company recommended the Agent as a migration agent as they had previously utilised the Agent's services.
- On 18 October 2016 the Agent attended a meeting with Ms IG and her employer. At this meeting the Agent suggested that both the nomination application and visa application should be lodged at the same time, to accelerate the process.
- Ms IG alleged that during this meeting she realised that there was a business relationship between the Agent and Company A. Following discussions about immigration assistance the Agent would provide, the Agent and the representatives of Company A (Mr J and Mr S) discussed the importation of food products from Asia. Ms IG alleged that the Agent owned or had an interest in a company, and was providing a list of products available for importation through this company. The representatives of Company A expressed their interest in these products.
- On 19 October 2016, the Agent provided a letter of advice, suggesting that a subclass 187 visa, under the direct entry stream, was a suitable option. The Agent advised that her fees for the visa application would be \$4400, in addition to the Department's lodgement fees for Ms IG and her daughter.
- The Agent did not provide an *Agreement for Services and Fees*, a copy of the Code of Conduct or a copy of the Consumer Guide to Ms IG.
- The Agent encouraged Ms IG and her employer to lodge the applications before 11 March 2017 due to anticipated legislative changes. However the Agent lodged the nomination application on 12 March 2017 and Ms IG's visa application on 13 March 2017.
- The Agent did not provide reports on the progress of the application, even when specifically requested.
- In August 2017 the nomination application was refused. The Agent did not notify either Company A or Ms IG of this outcome. Instead, the Agent lodged an application for review of the refusal with the Administrative Appeals Tribunal (**AAT**) without seeking instructions and advised the nominator after this was done. The Agent paid the AAT lodgement fee.
- On 5 September 2017 the Agent demanded twice that Ms IG repay the Agent the AAT application fee. The Agent threatened to withdraw the appeal application if no payment was made, and subsequently sought payment from the employer. Ms IG has provided evidence that the Agent asked her to pay for the AAT application lodged on behalf of her employer.
- Ms IG's visa application was refused on 18 September 2017 as a result of the refusal of the nomination application. The Agent submitted an AAT appeal application on 10 October 2017, with instructions from Ms IG.
- On 24 December 2019 the Agent wrote to the AAT advising that the Agent has a conflict of interest due to the fact that the Agent was representing both the nominator and the visa applicant. The Agent did not advise Ms IG of this correspondence.
- On 31 January 2020 the Agent advised Ms IG that the Agent would no longer represent her.
- Throughout this process, Ms IG paid all required fees including the Agent's professional fees, in respect of both the nomination and the visa applications. Ms IG was concerned that the Agent's relationship with Company A had compromised her visa application, and that the Agent may have colluded with Company A to their advantage.

## Departmental Records

22. A review of the records of the Department of Home Affairs (and its previous manifestations) indicates the following:
- i. On 12 March 2017 the Agent lodged a RSMS Nomination application on behalf of Company A, nominating Ms IG for the position of Database Administrator. On the same date the Agent lodged the related subclass 187 visa application on behalf of Ms IG and her dependent child.
  - ii. On 3 August 2017 this application was refused on the basis that no certification from a Regional Certifying Body (**RCB**) was provided. The Department issued a natural justice letter to Ms IG, advising that due to the nomination refusal, the visa application cannot be approved.
  - iii. On 24 August 2017 an application for appeal of the refusal decision for the nomination application was lodged with the AAT. (On 10 December 2019 the AAT affirmed the decision to refuse the nomination application.)
  - iv. On 30 August 2017 the Agent sought an extension of time to respond to the natural justice letter as the Agent *“had not been able to seek the Visa Applicant’s instructions in relation to the withdrawal.”* The Department did not grant an extension of time.
  - v. On 18 September 2017 Ms IG’s visa application was refused on the basis of the refusal of the nomination application.
  - vi. On 8 October 2017 an application for review of the decision was lodged with AAT.
  - vii. On 3 February 2020 the AAT confirmed that the review application was withdrawn. The Agent was the authorised recipient in connection with the review application.

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

23. On 13 February 2020 the Authority published Ms IG’s complaint to the Agent, advising the Agent that it raised concerns regarding the Agent’s compliance with clauses 2.1, 2.3, 2.4, 2.8, 2.18, 2.21, 3.4, 5.2 and 5.3 of the Code.
24. Pursuant to section 308 of the Act, the Authority requested the Agent to provide answers to specific questions in relation to the application the Agent lodged on Ms IG’s behalf, as follows:
- Had the Agent had dealings either Company A or Mr GC prior to being engaged in respect of Ms IG’s application? If so, the Agent was asked to describe the nature of these dealings.
  - Who organised the first meeting between the Agent, Ms IG and Company A?
  - What advice did the Agent provide to Ms IG and Company A?
  - What information or documents did the Agent request from Ms IG and Company A?
  - Did the Agent provide each client with an Agreement for Services and Fees? If so, the Agent was asked to provide a copy of each agreement. If not, why not?
  - What payments did the Agent receive in respect of the applications she lodged on behalf of Ms IG and Company A? How were the payments made, and who made the payments?
  - Did the Agent notify either Company A or Ms IG of the refusal decision? The Agent was asked to provide evidence of the communication with the clients in respect of the refusal.
  - Did the Agent apply for RCB certification on behalf of Company A? If so, the Agent was asked to provide details of this application. If not, why not?

- Why did the Agent lodge two nomination applications on behalf of Company A?
  - Why was the first nomination lodged without RCB approval?
  - Why was the second nomination lodged without any supporting documents at all?
25. The Agent was also asked to provide evidence of instructions from the client and a complete client file in respect of Ms IG and Company A.

The Agent's Response to the Authority's section 308 notice (CMP-49825)

26. To date, the Authority has not received the Agent's response to complaint reference CMP-49825.

**CMP-39291**

27. The Authority was made aware of action taken by the Legal Practice Board of Western Australia (**LPBWA**) to cancel the Agents legal practicing certificate pursuant to section 56(4) of the *Legal Profession Act 2008* (WA).
28. Publicly available information on the LPBWA website states the Agent's status as 'not practicing':  
<https://www.lpbwa.org.au/Practising-Certificates/Search-the-legal-profession-in-Western-Australia.aspx>
29. The Western Australia State Administrative Tribunal (**SAT**) website indicates that three separate matters have been considered by the SAT – VR183/2016, VR20/2018 and VR51/2018. This information is publicly available, and is summarized below. It is relevant to a consideration as to whether the Agent is a fit and proper person to be registered as a migration agent.
30. This information should have been declared to the Authority in the Agent's applications to renew her registration. Evidence before the Authority indicates that the Agent did not declare the SAT proceedings or their outcomes in the Agent's registration renewal applications lodged 25 July 2018 or 6 July 2019.
31. The Agent did declare that she was subject of disciplinary action in the Agent's registration renewal application lodged 6 July 2020. On the application form, the Agent provided the following details: "Misconduct findings which are subject to appeal to the WA Supreme Court as advised to MARA." While the Agent stated "as advised to MARA," the Agent has not advised the Authority of these findings. In support of her registration renewal application it appears that the Agent recognised that she should provide further information. In the section for uploading documents in support of her application there is a title for a document "Statement describing disciplinary action, dates, name of the body undertaking the action, results of action and letter or other written evidence supporting your statement," However the Agent has not attached any document or statement to the application.
32. The three SAT matters can be summarised as follows:

**VR 183/2016 – Legal Profession Complaints Committee v Chang**

33. The SAT dismissed the Agent's interim application to set aside Consent Orders made by the SAT. The decision in respect of VR183/2016 was attached to the section 308 notice for the Agent's reference.
34. The SAT's decision indicates that the matter concerned an allegation by the Legal Profession Complaints Committee that the Agent was guilty of professional misconduct based on five

grounds, one of which was that the Agent made false and misleading statements which had the potential to mislead the SAT.

35. The decision indicated that an agreement had been reached as to the grounds on which the Agent would 'plead guilty,' however the Agent was seeking to set aside her consent to the agreement ('the Consent Orders'). A copy of the agreement was included with the Tribunal's decision, and indicates (at pages 23-26) that the Agent agreed that:
- i. the Agent engaged in professional misconduct;
  - ii. the Agent's conduct substantially and consistently fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner;
  - iii. the Agent was grossly careless in a number of instances;
  - iv. the Agent made false and misleading statements to the Tribunal.
36. The Agent lodged an appeal and the matter is pending.

**VR 51/2018 - Legal Profession Complaints Committee v Chang**

37. The SAT handed down a decision in respect of this matter on 9 September 2019. The complete SAT decision in respect of VR 51/2018 was attached to the section 308 for the Agent's reference. The SAT decision indicated that the matters related to the Agent providing immigration assistance in respect of permanent residency.
38. The SAT made findings of professional misconduct on all three grounds alleged by the Legal Profession Complaints Committee. The key matters discussed in the SAT's decision are included in **Attachment C**, and are summarized below.
39. The SAT found that the Agent had engaged in professional misconduct on three grounds:
- i. The Agent knowingly sought to mislead a client by making false and misleading email statements, so as to defer or delay the client from commencing proceedings against the Agent in respect to a claim;
  - ii. The Agent knowingly sought to mislead the Magistrates Court and a client by making false and misleading statements at two pre-trial conferences in the Magistrates Court proceedings, so as to defer or delay the Magistrates Court proceedings;
  - iii. Without reasonable excuse, the Agent failed to respond to the notification letters and summonses issued in a period between September 2017 and December 2017 by the relevant regulatory authority, being the Legal Profession Complaints Committee.
40. The SAT found that as a legal professional the Agent breached the Agent's fundamental ethical duties of candour and fairness to the Court and to the client.
41. The SAT found that this conduct would be reasonably regarded as disgraceful or dishonourable by practitioners of good repute and competence and is conduct that, consistently and to a substantial degree, falls short of the standard of professional conduct observed or approved by members of the profession of good repute and competence.

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

42. On 26 September 2019 the Authority published complaint CMP-39291 to the Agent, advising the Agent that it raised concerns regarding the Agent's compliance with clauses 2.9A and 2.23 of the Code. The Agent was also advised that the complaint raised possible questions as to whether the Agent knew that the Agent's application for registration was false or misleading in a material particular, pursuant to subsection 303(1)(d) of Act.

43. The Agent was presented with the following information in the section 308 notice:
- “The LPBWA website indicates that you are no longer practising as a legal practitioner. The registration applications you lodged on 25 July 2018 and 8 July 2019 contained declarations which included the following statements:*
- ...
- iv. “no disciplinary action is being taken (I understand that I must declare any current actions), or has been taken against me (other than previously declared by me to the Migration Agents Regulation Authority)”*
- vii. “I am not aware of any finding, conduct, or event or fact which would affect my fitness and propriety to provide immigration assistance or which goes to my integrity (other than that which is disclosed herewith or previously disclosed)”*
44. Pursuant to section 308 of the Act, the Authority requested the Agent to provide answers in respect of the allegation, as follows:
45. In respect of the decision made by the LPBWA, the Agent was invited to comment on the action taken by the LPBWA and why the action should not impact on the Agent’s registration as a migration agent.
46. In respect of the three matters before the SAT discussed in the section 308 notice, the Agent was asked for details about the circumstances of each matter that related her clients to whom she gave immigration assistance (name, date of birth, application ID).
47. In respect of the legal practicing certificate, the Agent was asked:
- Why she had not disclosed to the Authority in her migration agent registration applications lodged on 25 July 2018 and 8 July 2019 that her WA legal practising certificate had been cancelled?
  - To provide information on the grounds for the LPBWA’s decision to cancel the Agent’s practising certificate and a copy of the decision.
  - To provide any other information the Agent thought relevant to the Authority’s consideration of the Agent’s integrity, fitness and propriety.

#### The Agent’s Response to the Authority’s section 308 notice (CMP-39291)

48. On 25 October 2019 the Authority received a request for an extension until 1 November 2019 due to health issues the Agent had experienced. On 28 October 2019 the Authority responded, noting that it was still awaiting the Agent’s response in respect of CMP-36712, but that an extension in respect of both matters is granted until the requested date.
49. On 3 November 2019 the Authority received an email from Ms ND, providing a letter from a GP seeking a four-week extension due to ill health. In considering the health concerns and medical treatment the Agent were receiving, and extension was granted until 10 December 2019.
50. To date, the Authority has not received the Agent’s response to this complainant.

#### Subsequent information regarding Agent’s status as a legal practitioner - CMP-39291

51. On 15 May 2020, the SAT determined the issue of costs and penalty in respect of VR 51/2018. The SAT recommended that the Agent’s name be removed from the roll of persons admitted to the legal profession under the *Legal Profession Act 2008* (WA). The SAT ordered that the Agent pay the Legal Profession Complaints Committee’s costs in the amount of \$20,761.35 within 30 days of the SAT order or as otherwise agreed between the Agent and the Legal Practice Board.
52. The SAT decision stated that the Agent <<removed for personal/privacy reasons>>.

53. The full SAT decision as handed down on 15 May 2020 was attached to the section 309 notice discussed below, for the Agent's reference.

Notice/s under section 309 of the Act (**the section 309 notice**)

54. On 23 July 2020 the Authority sent to the Agent a notice pursuant to section 309(2) of the Act, advising the Agent that it was considering cautioning her, or suspending or cancelling the Agent's registration under section 303(1) of the Act. The notice referred to each of the three complaints.
55. The Agent was notified that having regard to the information before the Authority, it was open to the delegate to be satisfied that the Agent had engaged in conduct that breached the Agent's obligations under clauses 2.1, 2.3, 2.4, 2.8, 2.17, 2.19, 2.23, 3.4, 5.2, 5.3 and 9.1 of the Code.
56. Pursuant to section 309(2) of the Act, the Authority invited the Agent to provide written submissions on the matter no later than 21 August 2020.

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

57. The Agent has not made any response to the Authority's section 309 notice.

**Jurisdiction**

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

**Relevant legislation**

60. The functions of the Authority under the Act include:
- to investigate complaints in relation to the provision of immigration assistance by registered migration agents (paragraph 316(1)(c)); and
  - to take appropriate disciplinary action against registered migration agents (paragraph 316(1)(d)).
61. The Authority may decide to cancel the registration of a registered migration agent by removing his or her name from the register, or suspend his or her registration, or caution him or her under subsection 303(1), if it is satisfied that:
- the agent's application for registration was known by the agent to be false or misleading in a material particular (paragraph 303(1)(d); or
  - the agent becomes bankrupt (paragraph 303(1)(e); or
  - the agent is not a person of integrity, or is otherwise not a fit and proper person to give immigration assistance (paragraph 303(1)(f); or
  - an individual related by employment to the agent is not a person of integrity (paragraph 303(1)(g); or

- the agent has not complied with the Code prescribed under subsection 314(1) of the Act (paragraph 303(1)(h)).
62. Subsection 314(2) of the Act provides that a registered migration agent must conduct himself or herself in accordance with the Code. Regulation 8 of the Agents Regulations made under the Act prescribes a Code.
63. Before making a decision under subsection 303(1) of the Act, the Authority must give the agent written notice under subsection 309(2) informing the agent of that fact and the reasons for it, and inviting the agent to make a submission on the matter.

Migration Act 1958 (Cth)

*Section 276 Immigration assistance*

- (1) For the purposes of this Part, a person gives **immigration assistance** if the person uses, or purports to use, knowledge of, or experience in, migration procedure to assist a visa applicant or cancellation review applicant by:
- (a) preparing, or helping to prepare, the visa application or cancellation review application; or
  - (b) advising the visa applicant or cancellation review applicant about the visa application or cancellation review application; or
  - (c) preparing for proceedings before a court or review authority in relation to the visa application or cancellation review application; or
  - (d) representing the visa applicant or cancellation review applicant in proceedings before a court or review authority in relation to the visa application or cancellation review application.
- (2) For the purposes of this Part, a person also gives **immigration assistance** if the person uses, or purports to use, knowledge of, or experience in, migration procedure to assist another person by:
- (a) preparing, or helping to prepare, a document indicating that the other person nominates or sponsors a visa applicant for the purposes of the regulations; or
  - (b) advising the other person about nominating or sponsoring a visa applicant for the purposes of the regulations; or
  - (c) representing the other person in proceedings before a court or review authority that relate to the visa for which the other person was nominating or sponsoring a visa applicant (or seeking to nominate or sponsor a visa applicant) for the purposes of the regulations.
- (2A) For the purposes of this Part, a person also gives **immigration assistance** if the person uses, or purports to use, knowledge of, or experience in, migration procedure to assist another person by:
- (a) preparing, or helping to prepare, a request to the Minister to exercise his or her power under section 351, 391, 417, 454 or 501J in respect of a decision (whether or not the decision relates to the other person); or
    - (aa) preparing, or helping to prepare, a request to the Minister to exercise a power under section 195A, 197AB or 197AD (whether or not the exercise of the power would relate to the other person); or
  - (b) advising the other person about making a request referred to in paragraph (a) or (aa).
- (3) Despite subsections (1), (2) and (2A), a person does not give immigration assistance if he or she merely:
- (a) does clerical work to prepare (or help prepare) an application or other document; or
  - (b) provides translation or interpretation services to help prepare an application or other document; or
  - (c) advises another person that the other person must apply for a visa; or

- (d) passes on to another person information produced by a third person, without giving substantial comment on or explanation of the information.*
- (4) A person also does not give immigration assistance in the circumstances prescribed by the regulations.*

*The Code of Conduct, under section 314 of the Act*

*1.10 The aims of the Code are:*

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

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

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

#### *Migration Agents Regulations 1998, regulation 9*

##### *Complaints*

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

- (a) a client of the registered migration agent or lawyer;*
- (b) an official;*
- (c) an employee or member of the Institute;*
- (d) an employee of the Authority;*
- (e) a parliamentarian;*

- (f) a tribunal or court;
- (g) a community organisation;
- (h) the Department.

## Evidence and other material

64. In reaching the following findings of fact the Authority considered the following evidence:
- a. Documents contained in the Authority's complaint files (CMP-36712, CMP-39291 and CMP-49825);
  - b. Records held by the Department related to the complainants;
  - c. The Authority's registration details for the Agent;
  - d. Publicly available information in respect of the SAT matters and decisions;

## DECISION AND REASONS

### Finding on material questions of fact and breaches of the Code

65. Pursuant to paragraph 303(1)(h) of the Act, the Authority may caution a registered migration agent or suspend or cancel their registration if the agent has not complied with the Code.
66. Having regard to the findings I have made, I am satisfied that the Agent has engaged in conduct in breach of the Agent's obligations under clauses **2.1, 2.3, 2.4, 2.8, 2.17, 2.19, 5.2, 5.3** and **9.3** of the Code.

### *Agreements for Services and Fees*

67. Mr NB advised that he engaged the Agent's services as a registered migration agent to assist him to apply for permanent residency. An *Agreement for Services and Fees* as well as relevant invoices and receipts were sent to the sponsoring employer, and no documents were provided to Mr NB. As such, Mr NB alleged he does not have access to the *Agreement for Services and Fees*, invoices for payments made or documents in respect of his multiple visa applications.
68. Ms IG similarly alleged that the Agent's services were engaged through her sponsoring employer. She alleged the Agent did not provide her with an *Agreement for Services and Fees*, a copy of the Code of Conduct or a copy of the Consumer Guide.
69. As the Agent did not provide either client with an *Agreement for Services and Fees* I have considered whether the Agent entered into a client-agent relationship with Mr NB, and separately, with Ms IG.
70. The meaning of "client" is set out in the *Migration Agents Regulations 1998 (Cth)* (**the Agents Regulations**) as follows:
- "client**, of a registered migration agent, means a person to whom the agent agrees (whether or not in writing) to provide immigration assistance."
71. Section 276 of the *Migration Act 1958 (Cth)* defines immigration assistance as (as relevant):
- (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.

72. The meaning of client was also considered in *Hudson v Migration Agents Registration Authority* [2004] AATA 1007 at paragraph 92 per Dwyer SM:

*"I accept that a person does not become a client of a professional adviser simply by making an enquiry or seeking information. It is necessary for the professional, in this case, a migration agent, to agree to give some advice or to perform work within the person's area of expertise. For a person to become a client, usually, except in cases of a free consultation or work being done "pro-bono", there will be a fee paid or an agreement or understanding that a fee will be paid".*

Furthermore, at [97] per Dwyer SM:

*"...I accept that the term 'client', as used in the Code, refers to a person who uses the services of a migration agent to obtain 'immigration assistance'."*

73. Accordingly, a client is someone who seeks the services of a migration agent for the purpose of immigration assistance, defined in section 276 of the Act to include preparation, advice and representation in relation to visa, nomination and sponsorship applications.

74. Both the ENS and the RSMS applications involve a nomination application from the employer as well as a visa application from the visa applicant. There are two clients with these applications, being the sponsoring employer and the sponsored employee who is the visa applicant, both of whom require immigration assistance and should be engaged with separately.

75. Departmental records indicate that the Agent lodged visa applications on behalf of both Mr NB and Ms IG and nomination applications on behalf of their respective sponsoring employers. Evidence provided by Mr NB and Ms IG indicates that they received immigration assistance from the Agent. This is corroborated by the fact that the Agent lodged visa applications on behalf of each client. As such, I am satisfied that a client-agent relationship arose between the Agent and Mr NB, and the Agent and Ms IG.

76. Pursuant to clause 5.2 of the Code, a registered migration agent must provide a client with an *Agreement for Services and Fees*. Mr NB advised that these documents were provided to his employer, but that he was not provided with a copy of an *Agreement for Services and Fees*, despite requesting this information. He has provided evidence of email correspondence from the Agent, dated 3 December 2015 where the Agent stipulated the disbursements he is required to pay, including the nomination application fee of \$540, RCB fee of \$200 and visa application fee of \$3600. No *Agreement for Services and Fees* document is referred to or attached in this email. Similarly, Ms IG alleged that the Agent did not provide her with an

*Agreement for Services and Fees*, a copy of the Code of Conduct or a copy of the Consumer Guide.

77. The Authority requested the Agent's complete client file for each of these clients and the Agent's response to these allegations. To date, the Agent has not responded to the requests. As such, there is no evidence before the Authority that the Agent provided a written *Agreement for Services and Fees* to Mr NB and Ms IG. On the basis of evidence from the complainants and in the absence of evidence from the Agent or to the contrary, I am satisfied that the Agent has breached her obligations in respect to clause 5.2 of the Code.

#### *Knowledge and competence*

78. In light of the complaints raised by Mr NB and Ms IG, I have considered whether the Agent dealt with the clients in a competent, diligent and fair manner, and whether the Agent has demonstrated a sound working knowledge of the relevant legislation, policies and procedures.

#### *Mr NB*

79. Mr NB alleged that the first application the Agent lodged on his behalf, subclass 186 visa application lodged in February 2015<sup>1</sup>, had to be withdrawn due to 'technical issues' and 'changes in government requirements to that specific visa.' This is not supported by departmental records. The applications had to be withdrawn as the Agent was advised by a delegate of the Minister that the applicant would not meet the requirements of Regulation 186.234 as the nominated occupation was not specified in the relevant instrument. Accordingly, the nominated occupation was not eligible for approval under the ENS program and the application could either be withdrawn or refused.
80. As the Agent has not provided a response to the section 308 notice, it is unclear as to why the Agent lodged an application which had no prospects of success as it did not satisfy the relevant criteria. It appears that the Agent misled the client in respect of the reason why the application had to be withdrawn. I am satisfied that the available information, especially the fact that the Agent subsequently lodged two RSMS applications for the same occupation, indicates that the ENS application was lodged in error and should have been lodged as an RSMS application instead.
81. The Agent lodged a second application on Mr NB's behalf, a subclass 187 visa lodged in December 2015. The Agent also lodged the related RSMS nomination application on behalf of Mr NB's employer. The related RSMS nomination application was not successful due to the fact that no supporting evidence was lodged with the application. In the absence of any verifiable evidence, the delegate found that the regulations were not met. Notably, some supporting evidence was lodged with the first application that the Agent lodged on behalf of Mr NB, and therefore was readily available to the Agent. As a result of the nomination application refusal, Mr NB could not satisfy the criteria of the subclass 187 visa application and therefore had to withdraw his application.
82. The Agent lodged a third application on behalf of Mr NB, a subclass 187 visa, lodged in November 2016. The Agent also lodged a related RSMS nomination application on behalf of Mr NB's employer. The related RSMS nomination application was unsuccessful due to the fact that no advice had been received from an RCB in respect of the nominated position and the nominated tasks for the occupation did not correspond to the occupation specified. No position description was provided in support of the application, and the delegate found that no other evidence provided indicated that the tasks for the position corresponded with the occupation specified. The Department issued an *Invitation to Comment on the Nomination Refusal* to Mr NB, indicating that due to the refusal of the nomination application, Mr NB would not satisfy the criteria of the visa application.

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<sup>1</sup> This included a related ENS nomination application lodged on behalf of Mr NB's employer.

83. On the basis of the available evidence, I am satisfied that the Agent lodged three permanent visa applications in respect of Mr NB which did not satisfy the relevant criteria.
84. In considering the above evidence in respect of Mr NB I am satisfied that:
- i. The Agent did not lodge the correct subclass of visa application in respect of Mr NB: the Agent lodged an ENS subclass 186 visa application instead of an RSMS subclass 187 visa application;
  - ii. The Agent did not provide evidence in support of the two RSMS nomination applications lodged on behalf of his employer, nominating Mr NB, even though such evidence was available to the Agent from the previous ENS nomination application;
  - iii. The Agent did not take proper steps to obtain the necessary RCB certification in respect of the RSMS nomination application for Mr NB.

*Ms IG*

85. The Agent lodged a subclass 186 visa application on behalf of Ms IG, and a related ENS nomination application on behalf of Ms IG's employer. Ms IG's visa application was refused due to the fact that the related nomination application was refused. Departmental records and information provided by Ms IG indicate that the reason for the nomination refusal was that no RCB certification was provided.
86. In the Agent's letter of advice to Ms IG, dated 19 October 2016, the Agent advised that the RSMS process is a three step process involving RCB certification, a nomination application and visa application. This indicates the Agent's general awareness of the requirements of an RSMS application.
87. On 5 November 2017 the relevant legislative instrument was amended, and Perth was removed from the definition of "regional Australia." The effect of this change was that employer sponsored applicants located in Perth could no longer apply for an RSMS visa. In the months leading up to the legislative change, the certifying bodies in Western Australia had ceased processing RCB certification applications, in anticipation of the legislative change, and this was communicated by the WA Government at the time.
88. In an email to Ms IG and her employer, dated 8 February 2017 the Agent advised:
- "The WA Labour Party have made it clear that they will remove Perth from having RSMS status from the 11th March 2017.... So if you are going to consider RSMS in Perth you need to lodge your 187/RSMS application before 11th March to give yourself your best chance of avoiding this possible program closure."*
89. This indicates the Agent's awareness of the impending changes in respect of RSMS applications and RCB certification. Despite the Agent's knowledge of the upcoming changes, the Agent lodged the RSMS nomination application on behalf of Ms IG's employer on 12 March 2017, one day after the date the Agent indicated as the cut-off date to lodge the application.
90. Ms IG provided evidence in the form of an email from Skilled Migration Australia, the regional certifying body, to the Agent, dated 14 March 2017, which stated that *"This e-mail confirms that the Company A partially completed application has been saved."* This correspondence indicates that the Agent commenced the RCB certification application, but did not complete it and submit it. It further indicates that the Agent's actions occurred after the date the Agent indicated as the cut-off date to lodge the application, being 11 March 2017.
91. On 14 March 2017, in an e-mail to Ms IG and her employer, the Agent stated:
- "As expected, following the recent election (& change of party and their election promises aiming at reducing WA unemployment). Western Australia RSMS and State Sponsored WASMOL (occupations that are sponsored by the state) are currently suspended & under review."*

92. These emails confirm the Agent's knowledge of expected changes to be implemented in respect of RCB certification. It is unclear why the Agent proceeded to lodge the RSMS nomination application without having secured an RCB certification first, in spite of the anticipated changes. It is also not apparent why the Agent lodged the RCB certification application and the RSMS nomination application after a date which the Agent perceived to be a cut-off date for these applications. It is a common and sensible practice to apply for and obtain RCB certification prior to the lodgement of RSMS nomination and visa applications. There is no evidence of any impediment to the Agent obtaining RCB certification, or attempting to do so, prior to the lodgement of the RSMS nomination and visa application. Obtaining RCB certification prior to lodging the RSMS applications would have ensured that this particular requirement of the application was satisfied.
93. Further, Ms IG alleged that the Agent did not inform her that the nomination application had been refused. While it is acknowledged that the sponsoring employer was the client for the purpose of the nomination application, nonetheless, the refusal of the nomination application had an adverse effect on Ms IG's visa application, and therefore she was entitled to be informed of the refusal outcome. Additionally, the Department issued a natural justice letter in respect of the visa, advising that due to the refusal of the nomination application the visa application could not satisfy the criteria and would be refused. Ms IG should have been informed of the natural justice letter sent by the Department.
94. Ms IG also alleged that the Agent did not seek her instructions, or provide notice, when withdrawing her representation for Ms IG for her matter. She alleged that the Agent informed the AAT that due to the fact that the Agent was representing the sponsoring employer and Ms IG as the nominee, the Agent had a conflict of interest and was therefore withdrawing from the matter. Notably, the Agent had acted for both clients from the time of the initial lodgement of the applications and does not appear to have informed Ms IG of a possible conflict at any stage of the process.
95. In considering the above evidence in respect of Ms IG I am satisfied that:
- i. The Agent had knowledge of the impending changes to categorisation of Perth as a regional area and that RCB certifications were not being processed and the impact these changes would have on RSMS applications for applicants located in Perth;
  - ii. Despite this knowledge of the changes, the Agent did not lodge the RCB certification application and the RSMS nomination application before the date the Agent believed to be the cut-off date to lodge these applications;
  - iii. The Agent failed to inform Ms IG that the nomination was refused, which had a significant adverse impact on her visa application;
  - iv. The Agent failed to inform Ms IG that there was a potential conflict in the Agent acting on her behalf, and that the Agent was withdrawing from her matter.
96. On the basis of the findings, and in the absence of evidence to the contrary, I am satisfied that by failing to lodge the correct application, and lodging applications without supporting evidence, the Agent has not been diligent and competent in her dealings with Mr NB. Similarly, I am satisfied that the Agent has not dealt with Ms IG in a competent, diligent and fair manner, as indicated by her failure to lodge applications by the date she perceived to be a cut-off date, and no attempt to secure RCB certification prior to lodging the applications with the Department. Doing so would have ensured that during a period of uncertainty in respect of the categorisation of Perth the criterion could be satisfied before exposing the client to additional costs and frustration in respect of her status in Australia. Further, the significant errors the Agent made in the handling of these applications indicate that the Agent has not maintained a sound working knowledge in respect of the legislation, policy and procedures in effect at that time. As such, I am satisfied that the Agent has breached her obligations in respect of clauses 2.1 and 2.3 of the Code.

*Client dependence on agent's knowledge and experience*

97. I have considered the Agent's conduct in respect of Mr NB and Ms IG and the impact that her conduct has had on them.
98. The Agent has lodged an incorrect application in respect of Mr NB, lodging an ENS instead of an RSMS application. This resulted in no prospects of success of the ENS application as the occupation under which Mr NB was nominated did not satisfy the requirements of an ENS application. Further, the Agent did not provide sufficient information (including crucial RCB certification) in support of the two RSMS nomination applications the Agent lodged on behalf of Mr NB's employer, which resulted in the applications being refused. This resulted in Mr NB being unable to satisfy the criterion of the related subclass 187 visa application. The overall immigration impact of these alleged errors has been that Mr NB has not attained the employer sponsored permanent residency visa he engaged the Agent to assist with. Mr NB also suffered a considerable financial loss and stress from the prolonged application and re-application process, which is evident in the frustration he expressed in his correspondence with the Agent.
99. Further, Mr NB alleged that the Agent provided incorrect information to him in respect of the conditions of the visa he held. He sought the Agent's advice as to whether he was able to travel to Ireland and return to Australia. The Agent advised him that he was able to depart from and return to Australia. Acting upon the Agent's advice, Mr NB departed Australia on 25 October 2017. He was the holder of a BVC, which is a visa that does not permit the holder to re-enter Australia if they depart. Departmental records indicate that Australia World Link undertook VEVO checks of Mr NB's status on two occasions - on 5 April 2016 and 24 November 2017. Accordingly, the Agent conducted a VEVO check after Mr NB departed Australia. It is unclear why the Agent provided advice in respect of visa conditions without verifying the type of visa that Mr NB held prior to providing this advice, especially as VEVO is a readily available online service.
100. The impact of not having a valid visa to return to Australia was very significant for Mr NB, both in terms of his financial loss and the stress it caused him. As noted by Mr NB, he had no work rights upon his return to Australia. Mr NB has provided evidence of an email he sent to the Agent while still overseas, dated 18 December 2017, in which he questions whether the Agent has his "visa in order" and refers to anxiety he has been suffering as a result of the visa situation.
101. Departmental records indicate that the Agent attempted to rectify the issue by applying for a class TV Subclass 651 tourist visa on behalf of Mr NB on 19 December 2017. The Agent's e-mail address (awl@aus-global.com.au) is stated as the address for correspondence on this application. However, an incorrect date of birth was provided, and this application was not linked to Mr NB. It is unclear whether Mr NB was aware that the Agent lodged this application on his behalf, or whether he had to pay the Agent's professional fees or application charges for this application.
102. On 30 December 2017 Mr NB arrived on a class UD subclass 601, Electronic Travel Authority (ETA) visa, which was granted the day before his arrival. This visa was granted with condition 8115, which permits only engaging in a business visitor activity, and does not allow undertaking work. This condition prevented Mr NB from lawfully continuing his employment with the sponsoring employer, resulting in financial loss and potentially jeopardising his sponsorship. This is supported by Mr NB's complaint where he stated that the unacceptable service the Agent provided 'has had a devastating impact on my Visa application and my ability to work here in Australia.'
103. Similarly, the Agent's conduct in respect of Ms IG's application, specifically the Agent's failure to lodge the RCB application related to Ms IG's visa application before an anticipated legislative change, had a significant detrimental impact on the prospects of success of Ms IG's visa application. Ms IG did not attain the employer sponsored permanent residency visa she sought, and incurred financial loss in the form of fees paid in the process.
104. Mr NB and Ms IG alleged that they each sought the Agent's assistance in securing permanent residency through employer sponsorship. Additionally, Mr NB sought the Agent's advice in

respect of the conditions of his visa and ability to travel. Each client depended on the Agent's knowledge and experience to lodge the correct application for their circumstances, and to provide sufficient information to the Department in support of these applications to enable their assessment.

105. The Authority's concerns in respect of these two complaints were put to the Agent in separate section 308 notices and subsequently in a section 309 notice. The Agent has not provided a response. On the basis of the available information from each client, and departmental records referred to, I am satisfied that the Agent's actions constitute a breach of clauses 2.4 and 2.19 of the Code.
106. Further, in respect of Mr NB, the Agent lodged an ENS application which had no prospects of success as Mr NB did not satisfy the criteria of an ENS application. Similarly, in spite of asserting that Ms IG's RCB and nomination applications had to be lodged before 11 March 2017, the Agent proceeded to lodge them on 14 March 2017 and 12 March 2017 respectively. In doing so, the Agent lodged applications which had no prospects of success. I am satisfied that this conduct constitutes a breach of clause 2.17 of the Code. In lodging these applications in the circumstances described, the Agent worked in a manner which unnecessarily increased the costs to Mr NB and Ms IG, in breach of clause 5.3 of the Code.

#### *Failure to keep clients informed about their applications*

107. Mr NB alleged that the Agent did not respond to the complaint Mr NB made directly to the Agent on 4 April 2018, in which he outlined his concerns and sought a full refund from the Agent. Further, Mr NB alleged that the Agent failed to respond to email and text message enquiries he sent to the Agent throughout 2017 and early 2018.
108. The evidence Mr NB has provided in support of his complaint indicates that the Agent failed to return phone calls, and respond to text messages and emails. The tone and wording of the emails Mr NB sent to the Agent express his frustration with the Agent's lack of service:
  - a) In an email dated 2 November 2016, addressed to the Agent, Mr NB stated *'After speaking with you last Wednesday you told me you would get back to me the following day regarding an update on what's happening, I called to get a reply everyday since then with no reply.'*
  - b) In an email dated 25 July 2017, addressed to the Agent, Mr NB stated *'I've messaged you three times via text since my last email to get back to me with a response of some kind. I still haven't heard from you, I think it maybe best we come in and speak to you this week.'*
  - c) In an email dated 1 December 2017, addressed to the Agent, Mr NB asked *'Why have you not replied to my last email?'*
  - d) In an email dated 20 December 2017 addressed to the Agent, Mr NB stated *'I have serious belief and evidence to lack in confidence in your service.'*
109. Similarly, Ms IG alleged that she repeatedly sought information about the progress of her application from the Agent, but did not receive any news of progress or any response. Further, Ms IG alleged that the Agent failed to communicate with her that the Agent was withdrawing her representation in the AAT appeal. In support of these allegations, Ms IG provided:
  - a) Email correspondence sent to the Agent on 9 and 10 March 2017, seeking confirmation as to whether the applications had been lodged;
  - b) Email correspondence sent to the Agent on 19 June 2018, seeking an update on the progress of the application;
  - c) Email correspondence sent to the AAT on 25 January 2020, in which Ms IG expressed surprise that the Agent had withdrawn the Agent's services to Ms IG without notifying her. In this email Ms IG also stated that she has was not informed by the Agent that she should seek different representation.

110. The Agent has not provided a response to the two section 308 notices sent in respect of the complaints made by Mr NB and Ms IG. The Agent has not provided a response to the section 309 notice sent to her in respect of these complaints. It is unclear whether the Agent was unable to or unwilling to contact Mr NB and Ms IG and assist them with their enquiries. However, on the available evidence, and in the absence of evidence to the contrary, I am satisfied that the Agent failed to be contactable and responsive to her clients on many occasions and over a prolonged period of many months. I am also satisfied that the Agent failed to keep the clients fully informed, in writing, of the progress of their respective applications. These actions constitute a breach of clause 2.8(c) of the Code.

#### *Failure to respond to the Authority*

111. The three complaints raised in this notice have been put to the Agent in the form of separate section 308 notices as follows:
- a. CMP-36712 – sent 6 February 2019;
  - b. CMP-39291 – sent 26 September 2019, including a reminder in respect of a response for complaint CMP-36712;
  - c. CMP-49825 – sent 13 February 2020.
112. The Authority received a request for an extension of time to respond to CMP-36712 and CMP-39291. Each requested extension was granted, and the extended period for response has passed.
113. The three complaints raised in this notice have also been put to the Agent in the form of a section 309 notice, sent on 23 July 2020. The timeframe for response to the section 309 notice has passed.
114. To date, the Authority has not received the Agent's response to the section 308 and section 309 notices. As such, I am satisfied that the Agent failed to respond properly to the three complaints, which are about the work and services carried out by the Agent, in breach of clause 9.3 of the Code.

#### **Integrity, fitness and propriety**

115. Pursuant to paragraph 303(1)(f) of the Act, the Authority may caution a registered migration agent, or suspend or cancel their registration, if the Authority becomes satisfied that the agent is not a person of integrity or otherwise not a fit and proper person to give immigration assistance.
116. There is a degree of overlap between 'fit and proper' and 'integrity' to the extent that fitness and propriety include consideration of the honesty of the actions of an individual.
- 'Integrity' means 'soundness of moral principle and character, uprightness and honesty'.<sup>2</sup>*
117. Whether a person is a 'fit and proper person to give immigration assistance' is an enquiry which looks broadly at three factors – honesty, knowledge and competency.
118. At common law, the basic test to determine whether a person is "fit and proper" is known as the "Allinson test". A person is not fit and proper person if his or her conduct "would be reasonably regarded as disgraceful or dishonourable by his professional colleagues of good repute and competency".<sup>3</sup>

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<sup>2</sup> See *Re Peng and Department of Immigration and Multicultural Affairs* [1998] AATA 12 at paragraph [26].

<sup>3</sup> See *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750

119. In *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321, Toohey and Gaudron JJ indicated several factors that could be taken into account in determining whether a person was 'fit and proper'. These included, but were not limited to, conduct, character and reputation. Their Honours stated (at 380):

*[D]epending on the nature of the activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides indication of likely future conduct) or reputation (because it provides indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question.*

120. The formula 'fit and proper' (and 'person of integrity') must be construed in light of the particular legislative context at the registration scheme underpinning the migration advice profession.<sup>4</sup>
121. The context in which the reference to 'fit and proper' person occurs in section 290 of the Act is the applicant's giving of immigration assistance. The context also includes:
- (a) the Act which creates offences for misleading statements and advertising, practising when unregistered and misrepresenting a matter; and
  - (b) the Code contained within the Agents Regulations which refers to the applicant being able to perform diligently and honestly, being able and willing to deal fairly with clients, having knowledge of business procedure and properly managing and maintaining client records and maintaining client confidentiality.
122. Key elements of the fitness test are:
- the honesty of the person; and
  - the person's knowledge of the migration scheme and ability to fulfil the position of a migration agent.
123. The requirement in section 290 that the applicant also be a 'person of integrity' is not concerned with the person's knowledge of the migration scheme or ability as a migration agent, but is primarily concerned with a person's reputation, moral principle and character, including their honesty.
124. Having regard to the body of case law cited above, a consideration of whether the Agent is a fit and proper person or a person of integrity to provide immigration assistance can legitimately include the following:
- that the Agent's past conduct can be an indicator of the likelihood of the improper conduct occurring in the future;
  - the Agent's honesty and competency towards clients, the Department and the Authority;
  - a consideration of the context in which the agent works, i.e. the provision of immigration assistance to migration clients;
  - the Agent's knowledge and competency in immigration law and practice;
  - the reputation of the Agent as a result of their conduct and the public perception of that conduct; and
  - the perception of the conduct by the Agent's "professional colleagues of good repute and competency"<sup>5</sup>.
125. Having regard to the totality of the Agent's conduct in relation to the complaint and my findings above, I am satisfied that the Agent is 'not a person of integrity or is otherwise not a fit and proper person to give immigration assistance'.

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<sup>4</sup> See *Cunliffe v Commonwealth* (1994) 182 CLR 272

<sup>5</sup> *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750

126. Based on the evidence before me, I am satisfied that the Agent has:
- a. Not dealt with Mr NB and Ms IG in a competent, diligent and fair manner;
  - b. Shown a lack of consideration for the clients' interests causing each client financial loss and considerable stress;
  - c. Significantly affected Mr NB's and Ms IG's ability to work and attain permanent residency in Australia.
  - d. Failed to respond to the complaints raised by the clients and by the Authority.
  - e. Not shown due regard to the clients' dependence on the Agent's knowledge and experience, lodging applications which did not have prospects of success, and thereby working in a manner which unnecessarily increased the costs to the clients.
127. The Agent's conduct indicates that the Agent lacks the knowledge, trustworthiness and character necessary to discharge the Agent's responsibilities as a registered migration agent.
128. Further, the Agent's failure to respond to the complaints and to her clients' enquiries suggests a lack of consideration and disregard for the regulatory scheme. The Agent's lack of response to the three complaints and failure to make any contact or recompense with either Mr NB or Ms IG indicates that the Agent has failed to appreciate the impropriety of her conduct.

*Matters before the State Administrative Tribunal of WA*

129. In considering whether the Agent is a person of integrity or otherwise a fit and proper person to give immigration assistance I have also had regard to the findings of the SAT in Western Australia in VR 183/2016, which dismissed the Agent's application to set aside Consent Orders. The SAT decision indicates that, in respect of a complaint brought before the SAT in regards to the Agent's conduct as a legal practitioner, the Agent agreed that:
- i. The Agent engaged in professional misconduct;
  - ii. The Agent's conduct substantially and consistently fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner;
  - iii. The Agent was grossly careless in a number of instances;
  - iv. The Agent made false and misleading statements to the Tribunal.
130. Further, I have taken into consideration the findings of the SAT in Western Australia in VR 51/2018 that the Agent's conduct as a legal practitioner would be "reasonably regarded as disgraceful or dishonourable by practitioners of good repute and competence, and hence constitutes professional misconduct." The SAT found that the Agent's "conduct was grossly unfair to the client and dishonest, and involved a breach of a lawyer's fundamental ethical duties of candour and fairness..." These findings were made on the basis of three grounds:
- i. The Agent knowingly sought to mislead a client by making false and misleading email statements, so as to defer or delay the client from commencing proceedings against you;
  - ii. The Agent knowingly sought to mislead the Magistrates Court and a client by making false and misleading statements at two pre-trial conferences in the Magistrates Court proceedings, so as to defer or delay the Magistrates Court proceedings;
  - iii. The Agent failed to respond to the notification letters and summonses issued by the regulatory authority, without reasonable excuse.
131. The SAT findings related to complaints from clients to whom the Agent provided immigration assistance. Whilst the occupations of Legal Practitioner and Migration Agent are distinct, they are both occupations that require trustworthiness and a willingness and ability to comply with relevant laws. In this respect, individuals carrying out both occupations require a level of competence and moral character such that a client can place trust and confidence in their

agent to follow their instructions and to act in their interests and with care, diligence and competence on their behalf.

132. The competence of an agent and the prevention of abuse of a client's trust are important and relevant concerns of the Authority in considering an agent's fitness to effectively discharge his or her obligations as a migration agent in accordance with the Code. The Agent's lack of responsibility is evident from her failure to respond to the Authority's section 308 and 309 notices.
133. I have also considered whether the Agent has made any false or misleading statements to the Authority in the Agent's applications for renewal of registration. The application for renewal of registration asks the applicant to confirm the following statements:

....

*iii. to the best of my knowledge and belief I have not been (other than previously declared by me to the Migration Agents Registration Authority) and am not currently the subject of an inquiry or investigation (I understand that I must declare any current investigations) by;*

- a department or agency of the Commonwealth; or*
- a department or agency of a State or Territory of Australia; or*
- a professional association; or*
- a corporate regulatory agency; or*
- a consumer protection organisation; and*

*iv. no disciplinary action is being taken (I understand that I must declare any current actions), or has been taken against me (other than previously declared by me to the Migration Agents Registration Authority); and*

....

*vii. I am not aware of any finding, conduct, or event or fact which would affect my fitness and propriety to provide immigration assistance or which goes to my integrity (other than that which is disclosed herewith or previously disclosed)*

*viii. There are no other relevant matters which would cause the Authority to consider that I am not a fit and proper person or a person not of integrity, to provide immigration assistance.*

134. Evidence before the Authority indicates that the Agent did not declare the LPBWA investigation, the SAT proceedings or their outcome in her registration renewal applications lodged 25 July 2018, or 6 July 2019. The Agent did declare the investigation and proceedings in the registration renewal application lodged 6 July 2020.<sup>6</sup> It is acknowledged that when the 2018 and 2019 applications were lodged, the LPBWA investigation and SAT proceedings were not finalized. However, an applicant for renewal of registration must also confirm that they are "*not currently the subject of an inquiry or investigation.*" As such, I am satisfied that the Agent has been dishonest in her dealings with the Authority in relation to the Agent's application for renewal of registration in 2018 and 2019 by providing false or misleading information in a material particular, in failing to declare that the Agent was subject to inquiry or investigation by the LPBWA, and was subsequently subject to disciplinary action as a result of this investigation.
135. On the basis of the findings of the SAT in regards to the Agent's conduct as a legal practitioner; the Agent's failure to inform the Authority of the LPBWA investigation; and to abide by multiple clauses of the Code as discussed in this notice, I am satisfied that the Agent is not a person

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<sup>6</sup> It is acknowledged that the section 309 notice erroneously referred to the Agent also not declaring the disciplinary action in the registration renewal application lodged 6 July 2020.

of integrity or is otherwise not a fit and proper person to give immigration assistance. This is because the Agent:

- a. Has not demonstrated the competence and moral character expected of a registered migration agent;
- b. Would pose a potential risk to consumers should the Agent be allowed to continue to practice as a migration agent;
- c. Others would be unable to confidently entrust their immigration related matters to the Agent's care; and
- d. Officers of the Department of Home Affairs would be unable to proceed upon the footing that the immigration applications lodged by the Agent have been prepared honestly and competently.

136. The findings discussed in this notice relate to the core characteristics of honesty, moral principle, and uprightness of character. On the basis of the findings made, I find that the Agent's conduct is indicative of someone who is not a person of integrity and is otherwise not a fit and proper person to give immigration assistance.

### **Consideration of Appropriate Disciplinary Action**

137. In deciding to discipline the Agent under section 303 of the Act I have taken into account all of the circumstances of the case, including the following:

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

### **Seriousness of behaviour**

138. In deciding to discipline the Agent under section 303 of the Act, I have taken into account all of the circumstances of the case, including the severity of the Agent's behaviour and any mitigating or aggravating circumstances which may exist.

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

- (a) The Agent has breached multiple clauses of the Code, indicating systemic poor practices;

- (b) The Agent's conduct in relation to two clients caused them significant financial loss and the loss of an opportunity to live and work in Australia as permanent residents;
- (c) The Agent has been dishonest with the Authority and her clients;
- (d) The Agent's failure to respond to the complaints demonstrates the Agent's unwillingness to be accountable for her actions suggesting that she is unlikely to rectify her behaviour, resulting in a real likelihood of repeated misconduct;
- (e) The Agent's conduct is likely to have an adverse impact or undermine the reputation of the migration advice profession;
- (f) The Agent has shown a reckless disregard for her professional responsibilities to her clients and the Authority;
- (g) The Agent's conduct demonstrates that she is not a person of integrity, and is not a fit and proper person to give immigration assistance.

#### Aggravating factors

- 140. I consider the Agents conduct falls short of the standard expected of a registered migration agent. The Agent has demonstrated her disregard for the law and her obligations as a member of the migration advice profession. The Agent has not made any meaningful attempt to explain or rectify her conduct. The Agent did not make any response to three notices issued under section 308 of the Act. The Agent did not make any response to the notice issued under section 309 of the Act advising her that the Authority was considering disciplinary action against her and the possible reasons for that action. The Agent also made no attempt to address the issues Mr NB raised with her about the poor standard of immigration assistance and communication she provided him. Such conduct is contrary to the Agent's obligations as a registered migration agent and shows a complete disregard for the Authority's role as the regulator of the migration advice profession.
- 141. The Agent has failed to meet her obligations under numerous clauses of the Code. The Agent's conduct has had serious consequences for the complainants, including financial loss and significant emotional stress.
- 142. The evidence discussed in this decision indicates that the Agent knowingly misled the Authority in respect of findings against her as a legal practitioner. The Agent has not demonstrated any remorse for her action.
- 143. I consider the Agent's conduct falls short of the standard expected of a registered migration agent.

#### Mitigating Factors

- 144. The Agent despite being invited to do so has failed to provide any evidence of mitigating factors.
- 145. I have considered that the Agent has not previously been subject of a sanction or disciplinary action by the Authority. However, I am of the view that this does not mitigate the seriousness of the conduct which is the subject of this decision.
- 146. I have also taken into account that a disciplinary decision would affect the Agent's financial earning capacity and livelihood. While the Agent has not advanced any evidence with respect to hardship, I have nevertheless considered the potential impact that a disciplinary decision may have on her livelihood and financial earning capacity.
- 147. As there is no information before the Authority as to the Agent's financial circumstances or other means of income, I am unable to ascertain whether a decision to cancel the Agent's registration would result in financial hardship. I accept, however, that any decision which

affects the Agent's ability to practice within the migration advice profession may have some impact on the Agent's livelihood.

148. I have considered the health concerns which the Agent raised with the Authority when seeking an extension to respond to complaints CMP-36712 and CMP-39291. The Agent initially alerted the Authority to her ill health in February 2019. In November 2019 the Agent provided further medical advice which alerted the Authority to the Agent's <<removed for personal/privacy reasons>>. In both instances, the Agent was granted the requested extension of time within which to respond to the Authority's section 308 notices. The Authority received no further information in respect of the Agent's health. However, the SAT decision in respect of VR 51/2018, handed down on 15 May 2020, stated that the Agent <<removed for personal/privacy reasons>>.
149. I accept that a sanction decision will cause the Agent stress, especially as it will have some impact on the Agent's livelihood. <<removed for personal/privacy reasons>>. However, I am of the view that this does not mitigate the seriousness of the conduct which is the subject of this decision. The health concerns raised may provide some explanation of the Agent's failure to respond to the Authority's notices, but do not excuse the Agent's multiple breaches of the Code.

### Consumer Protection

150. Consumers of professional services of registered migration agents are often vulnerable and place a high degree of trust in their registered migration agent. Consumers are therefore entitled to a high level of professional service from their registered migration agent.
151. The behaviour demonstrated by the Agent falls short of the reasonably expected standards of a registered migration agent. I consider that the Agent poses a serious risk to consumers. I am satisfied that if the Agent were to continue to practice as a registered migration agent, the Agent would not demonstrate the requisite skills expected of a registered migration agent. I consider that a disciplinary decision is warranted to address the conduct the subject of this decision, and in the interests of consumer protection.

### DECISION

152. I have turned my mind to the appropriate sanction action to impose on the Agent. The Agent has not responded to the allegations put to her in the section 308 and 309 notices, sent pursuant to the *Migration Act 1958*. Having regard to all the information before me, I consider that a decision to suspend the agent, even for a prolonged time, would not be sufficient, given the seriousness of the Agent's behaviour and the overall indifference and disregard for Australian law and the Code of Conduct for registered migration agents which the Agent has shown.
153. Based on the facts and evidence before me, and my findings as discussed in the decision, I have decided to cancel the Agent's registration as a migration agent under subparagraph 303(1)(a) of the Act. I am satisfied for the purposes of subparagraphs 303(1)(f) and (h) that:
- the Agent is not a person of integrity, or is otherwise not a fit and proper person to give immigration assistance; and
  - the Agent has not complied with the Code of Conduct for registered migration agents.
154. In accordance with section 292 of the Act, an agent who has had their registration cancelled must not be registered within 5 years of the cancellation.
155. Accordingly, this cancellation will be in effect for a period of 5 years from the date of this decision.



Professional Standards Officer

Professional Standards and Integrity Section

Office of the Migration Agents Registration Authority

Department of Home Affairs

Date of Decision: 24 September 2020

## **Attachment A – Departmental records in respect of Mr NB**

### *In relation to the first application:*

- On 14 February 2015 the Agent lodged an Employer Nomination Scheme (**ENS**) nomination application on behalf of Company B, nominating Mr NB for the position of Office Manager (ANZSCO 512111) under the Direct Entry stream.
- The Agent lodged the related visa application, Class EN subclass 186 (**186 visa**), on behalf of Mr NB on 16 February 2015.
- Mr NB was granted a Bridging Visa A (**BVA**) on 16 February 2015 in relation to the subclass 186 visa application the Agent lodged on his behalf. This visa ceased on 7 August 2015 as a result of the withdrawal of the 186 visa application.
- On 19 May 2015 a *Request for Further Information* was sent to the Agent, seeking additional information in support of the application.
- On 21 May 2015 a delegate of the Minister considering the visa application telephoned the Agent to advise that the applicant would not meet the requirements of Regulation 186.234. The nominated occupation was not specified in the relevant instrument, and therefore was not eligible for approval under the ENS program.
- On 26 May 2015 the Department received e-mail from the Agent, indicating an intention to withdraw the application.
- On 4 June 2015 the Agent sent an email to the Department stating “*I confirm withdrawal. Letter to follow and new 956 as I changed my employment. Regards*”
- No new Form 956 was received. As the Agent were the appointed representative, on 9 July 2015, the Department accepted this confirmation, and the application was withdrawn.
- On 10 July 2015 the 186 visa application was withdrawn.

### *In relation to the second application:*

- On 13 December 2015 the Agent lodged an RSMS nomination application on behalf of Company B, nominating Mr NB for the position of Office Manager (ANZSCO 512111) under the Direct Entry stream.
- No supporting documents were lodged with this nomination application.
- The Agent lodged the related visa application, Class RN subclass 187 (**187 visa**), on behalf of Mr NB on 15 December 2015.
- Mr NB was granted a BVA on 15 December 2015 in relation to the first 187 visa application the Agent lodged on his behalf. This visa ceased on 26 December 2016 as a result of the withdrawal of the 187 visa application.
- The application was refused on 28 September 2016 on the basis that, in light of the fact that no supporting documents were lodged with the application, there was no verifiable evidence that the nominator satisfied Regulations 5.19(4)(d) and 5.19(4)(h)(ii)(F).
- An *Invitation to Comment on Nomination Refusal* was sent to the Agent on 28 September 2016.
- The visa application was withdrawn on 28 November 2016.

*In relation to the third application:*

- On 22 November 2016 an RSMS nomination application was lodged on behalf of Company B, nominating Mr NB for the position of Office Manager (ANZSCO 512111) under the Direct Entry stream.
- This nomination application was refused on 29 August 2018 on the basis that “the nominator does not meet regulation 5.19(4)(h)(i) as the nominated tasks do not correspond to the tasks of an occupation specified by the Minister,” and Regulation 5.19(4)(h)(ii)(F) as “no advice has been received from a specified body for the purposes of 5.19(4)(h)(ii)(F) to date.”
- Notably, in support of the application the Agent did not provide a position description, and the Regional Body Certification Form 1404 provided was not signed by the certifying body.
- The Agent lodged the related 187 visa application on behalf of Mr NB on 23 November 2016. Mr NB was granted a BVC on 28 November 2016 in relation to this second 187 visa application.
- An *Invitation to Comment on Nomination Refusal* was sent to the Agent on 29 August 2018.
- In September 2018 the Department received advice that a new registered migration agent is representing Mr NB.

## Attachment B

### *Mr NB's relevant visa and travel history:*

- Mr NB departed Australia on 25 October 2017 while a holder of a BVC. As a result of the departure, the BVC ceased and Mr NB did not have another visa to return to Australia.
- On 19 December 2017 the Agent applied for a class TV Subclass 651 tourist visa on his behalf. The Agent's e-mail address (awl@aus-global.com.au) is stated as the address for correspondence on this application. This visa was granted on the same date, however an incorrect date of birth was provided, and this application was not linked to Mr NB.
- Mr NB was granted a Class UD Subclass 601 Visitor Visa on 29 December 2017, which was valid until 30 March 2018. He returned to Australia on 30 December 2017 as a holder of this visa.
- On 28 February 2018 a migration agent working for the Agent's business, Ms TD, lodged a Class GF Subclass 407 Training Visa application on behalf of Mr NB. The contact email address in respect of this application was the Agent's email address (*christina@aus-global.com.au*). In relation to this application, Mr NB was granted a Bridging Visa A on 1 March 2018, which ceased on 26 April 2018 as a result of this application being withdrawn on 22 March 2018.
- Mr NB's BVC, granted in relation to the second 187 visa application was re-instated on 4 April 2018 and remains in effect.

## Attachment C

### VR 51/2018 - Legal Profession Complaints Committee v Chang

#### Decision Summary

*The Tribunal determined that the practitioner engaged in professional misconduct in terms of each of the three grounds alleged by the Committee against her. The Tribunal found that the practitioner knowingly sought to mislead the client by making false and misleading email statements, so as to defer or delay the client from commencing proceedings against the practitioner in respect to the claim, and that her conduct in this regard would be reasonably regarded as disgraceful or dishonourable by practitioners of good repute and competence and hence constitutes professional misconduct. The practitioner's conduct was grossly unfair to the client and dishonest, and involved a breach of a lawyer's fundamental ethical duties of candour and fairness, whether representing a client or acting in a personal capacity, not to knowingly seek to mislead the other party to a demand for payment of money.*

*The Tribunal also found that the practitioner knowingly sought to mislead the Magistrates Court and the client by making false and misleading statements at two pre-trial conferences in the Magistrates Court proceedings, so as to defer or delay the Magistrates Court proceedings, and that her conduct in this regard would be reasonably regarded as disgraceful or dishonourable by practitioners of good repute and competence and hence constitutes professional misconduct. The practitioner breached her fundamental ethical duties of candour and fairness to the Court and to the client. Knowingly seeking to mislead a court (and the other party to litigation), whether in a professional or personal capacity, strikes at the very heart of, and is an anathema to, a legal practitioner's core ethical duties as an officer of the court and fundamentally undermines the trust and confidence between court and practitioner which is essential to the administration of justice.*

*Finally, the Tribunal found that the practitioner, without reasonable excuse, failed to respond to the notification letters and summonses issued by the regulatory authority (within the periods specified in those documents or subsequently) and that this conduct would be reasonably regarded as disgraceful or dishonourable by practitioners of good repute and competence and is conduct that, consistently and to a substantial degree, falls short of the standard of professional conduct observed or approved by members of the profession of good repute and competence. The Tribunal determined that the practitioner's conduct in failing to respond to the notification letters and summonses rises to the level of professional misconduct, rather than constituting (merely) unsatisfactory professional conduct, because:*

*the practitioner's failures were sustained and repeated over three stages of investigation by the Committee;*

*the practitioner not only failed to respond to the notification letters and to comply with the summonses within the periods specified in those documents, but has failed to do so, now, for over one-and-a-half years; and*

*the practitioner never sought an extension nor engaged at all with the Committee in relation to the investigation of the client's complaint about the practitioner and the subsequent conduct investigations resulting from the practitioner's failures to respond to the first two notification letters.*