



DECISION RECORD

AGENT	Karl Young
COMPLAINT NUMBERS	CMP-40628, CMP-45601, CMP-48498
DECISION	Barring – Five (5) years
DATE OF DECISION	27 August 2020

Definitions

The following abbreviations are used in this decision:

“The Authority”	The Office of the Migration Agents Registration Authority
“The Former Agent”	Karl Young
“The Department”	The Department of Home Affairs
“The AAT”	The Administrative Appeals Tribunal
“The Act”	The <i>Migration Act 1958</i> (Cth)
“The Agents Regulations”	The <i>Migration Agents Regulations 1998</i> (Cth)
“The Regulations”	The <i>Migration Regulations 1994</i> (Cth)
“The Code”	The Migration Agents Code of Conduct prescribed under Regulation 8 and Schedule 2 to the Agents Regulations
“The Register”	Register of Migration Agents kept under section 287 of the Act
“ABN”	Australian Business Number
“VAC”	Visa Application Charge. A VAC is the amount of money, in Australian dollars that must be paid for the visa application. It is generally a non-refundable fee in the event of an unsuccessful visa application
“Section 57 notice”	Invitation to comment on information before the Department relevant to a decision
“RSMS	Regional Sponsored Migration Scheme
“ABF”	Australian Border Force

Background

1. The Former Agent was first registered as a migration agent on 2 June 2011 and was allocated the migration agent registration number (MARN) 1171642. The Former Agent's registration had been renewed annually until the Former Agent requested to be deregistered on 16 January 2020.
2. While registered as a migration agent, the Register listed the Former Agent as an employee of Australian Multicultural Education Centre Pty Ltd (AMEC) with an Australian Business Number 66 137 733 709. The Former Agent was listed as a director of AMEC from 14 April 2011 until 14 January 2013. He continued to hold 50 percent of the shares in AMEC at the time of his deregistration. The remaining 50 percent of shares for AMEC are held by the appointed director, Ms [FC], who shares the Former Agent's residential address.
3. Four complaints were received by the Authority about the Former Agent's conduct in relation to his provision of immigration assistance while he was a registered migration agent. A fifth complaint was received after the Former Agent was voluntarily deregistered.

Complaint	Complainant	Notification to Agent
CMP-40096	Department of Home Affairs – received on 12 October 2018	20 November 2019 – first section 309 notice. This complaint has not been considered as part of the decision.
CMP-40628,	Ms [CY] – received on 20 November 2018	25 March 2019 – section 308 notice
CMP-45601	Department of Home Affairs – received on 9 July 2019	20 November 2019 – first section 309 notice
CMP-48498	Department of Home Affairs – received on 26 November 2019	2 December 2019 – second section 309 notice
CMP-51500	Mr [CHC] – received on 14 April 2020	24 June 2020 This complaint has not been considered as part of this decision.

Complaints

CMP-40628 (Ms [CY])

Allegations

4. On 20 November 2018 the Authority received a complaint about the Former Agent's conduct while registered as a migration agent from Ms [CY], who alleged:
 - She and her boyfriend were referred to the Former Agent through a friend in April 2016. The Former Agent told them that he could assist them to apply for a subclass 187 visa, in order to obtain permanent residency.
 - The Former Agent charged Ms [CY] and her boyfriend \$40,000 in professional fees to prepare and lodge the visa application, and promised that he would refund all professional fees if the visa application was refused.
 - The Former Agent had refused to speak with Ms [CY] or her boyfriend following the refusal of the subclass 187 visa application in February 2018. Nor did he offer them the refund. He did not achieve the outcome he had promised her and charged unreasonably large fees for the services provided. Further, the Agent advised her that

she would not need to work in a regional area until her subclass 187 visa was granted, which was misleading.

Documentary evidence provided by the complainant

5. Ms [CY] provided the Authority with the following documents in support of her complaint:
- Agreement for Services and Fees between Australian Multicultural Education Centre, signed by the Former Agent and Ms [CY] on 8 April 2016, for total professional fees of \$46,868.90;
 - Two handwritten receipts, addressed to Ms [CY] for the following payments:
 - (a) Payment of \$10,000 for “187 visa fee” dated what appeared to be 3 April 2016;¹ and
 - (b) Payment of \$30,000 for “1st payment for 187 visa” dated what appeared to be 8 April 2016;²
 - Departmental Notification of refusal for Ms [[CY]’s] subclass 187 visa dated 2 February 2018 sent by email to amec888@gmail.com; and
 - Email from Ms [CY] to the Former Agent on 21 September 2018, seeking a refund of the professional fees paid.

Departmental records

6. The Department’s records show that:
- (a) An RSMS³ nomination application was submitted to the Department on 25 May 2016 for the [TNFT] trading as [HBH], nominating Ms [CY] in the position of Office Manager. The corresponding subclass 187 visa application was lodged for Ms [CY], and her dependent, Mr [SJ], on 26 May 2016.
 - (b) The Department sent an acknowledgement of receipt of the application to the Former Agent’s email address amec888@gmail.com on the same day.
 - (c) Between 26 May 2016 and 20 July 2016, a large number of documents were submitted to the Department in support of the visa application. This included an employment contract between Ms [CY] and [HBH], dated 29 April 2016, for the position of Office Manager, signed by a representative of the sponsor, Ms [CY], and two witnesses – one of which was the Former Agent.
7. On 2 August 2017 the Australian Border Force (ABF) conducted a site visit at [address], the address of [first real estate business]. Officers noted a glass door with business names listed on it including [first real estate business], one of the [TNFT]’s trading names. The door was locked and there was a ‘For Lease’ sign through an unrelated real estate agency on the door. Officers noted the second level windows had ‘For Lease’ on each window.
8. On 12 September 2017 ABF officers visited the business address for [HBH] and [second real estate business] located at [address]. The office was locked and the business appeared not to be operating from this [removed] location.

1 The Agent advised in his response to the section 308 notice that this was 23 April 2016, with the ‘2’ not clearly distinguishable from a ‘0’

2 Ibid, for 28 April 2016

3 RSMS helps businesses in regional, remote or low population growth areas, to recruit skilled workers to fill positions that are unable to be filled from the local labour market

9. On 13 September 2017 a telephone interview was conducted with the Director, Mr [DK], who advised:
 - [First real estate business] was initially set up in [location] but the location was not good, so he moved it to [location] but sold the business a couple of months ago.
 - [Second real estate business] was his newest real estate business in [location] but he sold it two months ago.
 - At the time of nominating Ms [CY], his real estate businesses needed the nominee but now that the real estate businesses are finished he thinks he could still use her skills as an Office Manager in his [removed] businesses. He needs these skills as he doesn't possess them himself.
 - He no longer had any employees working for him, including at the [location] address, as he only engaged contractors.
 - His wife was currently working as the Office Manager and Contract Administrator, and that he could not afford to have full time employees working at the [removed] location.
10. On 20 November 2017, the Department sent the Former Agent an invitation for Ms [CY] to comment on adverse information in relation to her subclass 187 visa application (section 57 notice). The notice informed Ms [CY] that the Department had conducted a site visit and interviews with her proposed sponsor, [HBH]. The information obtained from the Director, Mr [DK], by the ABF officer during a telephone interview was that he had sold the business where the nominated position was located, and did not have any employees at the nominated address(es). This was inconsistent with the business address and the nominated position information that was contained in the nomination and visa applications. The Department advised that in light of this inconsistency, it was open for the delegate to refuse Ms [CY]'s visa application. On 18 December 2017, the Department received an email from the Former Agent, containing a letter from Ms [CY] signed 15 December 2017, advising that the position was still available to her and would be regionally based.
11. On 24 January 2018, the Department refused the nomination application from [HBH] on the basis that the evidence provided did not demonstrate a need for a paid employee to work in the position under the sponsor's direct control. Ms [CY]'s visa application was subsequently refused on 2 February 2018, with the Department finding that Ms [CY] had provided false and misleading information in the application in relation to the genuineness and location of the nominated position. As a result, Ms [CY], and her dependent, Mr [SJ], are subject to public interest criteria (PIC) 4020 which precludes them from being granted another visa for a period of three years.
12. An application for review of the Department's decision to refuse the nomination application was lodged with the Administrative Appeals Tribunal (AAT) on 12 February 2018. An application for review of the Department's decision to refuse Ms [CY]'s visa application was lodged with the AAT on 21 February 2018. Both review applications identified the Former Agent as the nominated authorised recipient.
13. On 4 September 2018, the AAT received a request from the Former Agent to withdraw both the nomination and visa review applications. In his email to the AAT on this date regarding Ms [CY]'s review application, the Former Agent stated *"Please be advised that the associated Nomination Appealing (Case No. 1803743) has been notified with intent to withdraw. Enclosed with this email, a completed Form MR10 for your reference. We also advise that we cease our representation for the Applicant as we have identified possible false claim from the Applicant"*. The Form MR10 was signed the Director of [HBH], Mr [DK], in relation to the review application for the nomination and dated 3 September 2018.
14. On 13 September 2018 the AAT notified the Former Agent that the applications had been withdrawn. The withdrawal notification for Ms [CY], which was addressed to the Former

Agent as her authorised representative, stated the withdrawal request had been made on '3 September 2018.'

15. On 14 September 2018, the AAT received a telephone call from Ms [CY], advising that she had not authorised the Former Agent to withdraw the application for review on her behalf. On 14 September 2018 the AAT informed to the Department that Ms [CY] had alleged that she had not authorised the withdrawal of her application for review of her subclass 187 visa.

Notice pursuant to section 308 of the Act

16. The Authority published Ms [CY's] complaint to the Former Agent in a notice pursuant to section 308(1) of the Act (the section 308 notice) on 25 March 2019. The Former Agent was requested to respond to the Authority's questions in the form of a statutory declaration, and to provide the complete client files for Ms [CY] and Mr [SJ], as well as the sponsor, [HBH]. The notice specified that the Former Agent provide files inclusive of all Service Agreements, financial documentation (invoices, receipts, statements of service), file notes, correspondence records, and documents related to the nomination application and subclass 187 visa application. In addition, the Authority requested that the Former Agent provide for inspection all records of his clients' account, and records for all accounts into which any money paid to him by clients had been deposited, in accordance with his obligation under clause 7.5 of the Code and prescribed pursuant to section 314(1) of the Act in Schedule 2 of the Migration Agents Regulations.
17. The Former Agent was advised that the complaint raised issues under clauses 2.1, 2.4, 2.8, 5.1, 5.2, 7.6, and 9.1 of the Code.
18. The Agent was provided until 22 April 2019 to respond to the section 308 notice. On 18 April 2019, he contacted the Authority to request an extension of time, which was provided upon receipt of evidence. The due date for response was extended to 20 May 2019.
19. A copy of the section 308 notice is at Appendix A.

Former Agent's response to the section 308 notice

20. On 18 May 2019 the Authority received the Former Agent's response to Ms [CY's] complaint (not in the required statutory declaration) and documents from Ms [CY's] client file. The Authority wrote to him on 27 May 2019 to request that the response be resubmitted in a statutory declaration.
21. On 28 May 2019 the Authority received the Former Agent's response in a statutory declaration (Appendix B). No other documents were provided at this time. In summary, the Former Agent stated:

Ms [CY]

- (a) He was approached by Ms [CY] and her partner, Mr [SJ] on 14 February 2016 to assist with a "*Graduate post-work*"⁴ (subclass 485) visa application. They had obtained his contact details from one of his previous successful clients. During the Former Agent's first meeting with Ms [CY] and Mr [SJ], they expressed their intention to urgently migrate, and Mr [SJ] advised the Former Agent of his family's business background in manufacturing and/or major distribution of mechanical equipment.
- (b) During this consultation, the Former Agent learnt that both Ms [CY] and Mr [SJ] had previously held Student visas, and had recently graduated from [university]. He alleged that Ms [CY] and Mr [SJ] told him that they would pay to obtain permanent residency under any circumstances. The Former Agent asserted that he advised

⁴ Temporary Graduate subclass 485 visa

them that under the law, it is illegal to do so, and that he would not participate in such conduct and the first consultation ended.

- (c) After several days, Ms [CY] and Mr [SJ] contacted the Former Agent and booked a second consultation. They continued to enquire whether they could pay to obtain permanent residency. The Former Agent asserted that he reiterated his previous statements, showed them the Regulations and what is permitted and not permitted, and warned them not to breach laws. They agreed and sought further advice on pathways in obtaining visas. The Former Agent explained to Ms [CY] and Mr [SJ] that they could easily obtain subclass 485 visas, which they agreed to, but wished to continue to pursue a permanent visa pathway. As a result, the Former Agent advised that under the current policy, the only pathway to obtain permanent residency was “*to go regional*”. Ms [CY] and Mr [SJ] allegedly refused this option, so the Former Agent terminated the meeting and told them to discuss the options with each other and come back to him with their decision.
- (d) The clients contacted the Former Agent a few days later, and he briefly met with them again to discuss the proposed visa pathways. They told the Former Agent that they would like to engage his services to seek a regional employer. The Former Agent informed them that he did not provide such services because he did not have time to run around finding job vacancies. Mr [SJ] advised that he and Ms [CY] would pay the Former Agent for the job finding services, despite the Former Agent’s professional fees being significantly higher than alternative service providers, because they believed that they would likely fail to obtain a position due to their ‘current status’ if they engaged anyone other than the Former Agent.
- (e) The Former Agent provided Ms [CY] and Mr [SJ] with a quote for his hourly rate, which they agreed to. He also advised that he did not want to enter into any agreement before he had identified a possible job vacancy, which they also agreed to.
- (f) During the Former Agent’s search for available positions, he found a company in [location], who operated a real estate property services together with [removed business activities]. The potential employer was seeking someone for an office manager. The Former Agent informed Ms [CY] of the job opportunity and advised her that she would be required to undergo a “*general interview procedure*” to demonstrate to the employer that she was committed to obtaining the position.
- (g) The Former Agent stated that Mr [SJ] was uncomfortable with the location of the position, as it was a considerable distance from where they lived. Both he and Ms [CY] requested an extension of time for Ms [CY] to attend an interview as they wished to travel to [location] to check things out. Ms [CY] and Mr [SJ] subsequently contacted the Former Agent a week later to advise that they wished to proceed with the visa application process. The Former Agent told Ms [CY] to complete the “*interview procedure*” as the employer was also interviewing a lot of other potential skilled workers at this time. However, Ms [CY] and Mr [SJ] did not agree to travel to [location] again for Ms [CY’s] interview due to the distance. A representative of [HBH] had to instead travel to conduct the interview and Mr [SJ] agreed to reimburse their travel costs.
- (h) Following Ms [CY’s] interview, the Former Agent asserted that the employer was happy to sponsor Ms [CY] as she was a [university] graduate who was multilingual. The employer considered her ability to speak English, Mandarin and Cantonese, was an advantage with the increase of Chinese tourists in the region.
- (i) The Former Agent travelled to [location] twice. He argued that this equated to four days of work on Ms [CY’s] behalf, including the travel time between Brisbane and [location], meeting with Mr [DK], and staying overnight prior to returning to Brisbane.

The Former Agent, however, did not reference the travel in his file notes and did not provide any evidence of this travel to the Authority.

- (j) Once the subclass 187 RSMS visa was agreed on, the Former Agent proceeded to collate all relevant documentation from both the sponsor and visa applicant. He prepared and lodged the RCB advice application in late April 2016, which was approved on 5 May 2016. The nomination application and visa application were lodged on 25 May 2016 and 26 May 2016, respectively. Following this, the Former Agent did not involve himself further with [HBH]' nomination of Ms [CY] except when she contacted him on several occasions concerning the processing wait times. The Former Agent explained he could not do anything about it. *Ms [CY] told me that she had obtained job elsewhere, and did not know what to do with the employment in [location]. I told Ms [CY], I had done all my best to assist [her], it is [her] matter with [her] employer which I did not have authority to make any decision with".*
- (k) On 20 November 2017 the Department sent a section 57 notice to the Former Agent as the agent representing [HBH]. The notice was in relation to a telephone interview that was conducted by an ABF officer with the employer, Mr [DK]. In late November 2017, the Former Agent met with Mr [DK] to clarify what had happened during the telephone interview with the departmental officer. He then assisted Mr [DK] to provide a response to the Department's section 57 notice. The Former Agent also communicated with Ms [CY] regarding the section 57 notice.
- (l) The Former Agent submitted Mr [[DK]'s] statement, along with additional supporting documentation to the Department in December 2017. The Department subsequently refused the nomination on 24 January 2018 and the Former Agent immediately advised Mr [DK] of the refusal decision. Mr [DK] disagreed with the Department's findings and advised the Former Agent that he intended to appeal the matter at the AAT.
- (m) In early 2018 the Former Agent contacted Ms [CY] and Mr [SJ] to discuss what was required and/or could be done in support of their application, in light of the nomination refusal. Ms [CY] and Mr [SJ] agreed to proceed with an AAT appeal. The Former Agent prepared and lodged Ms [[CY]'s] application to the AAT for review of the Department's refusal decision on "*good-will*" without charging her any additional fees for the service.
- (n) Between early 2018 until late August 2018, the Former Agent did not have any contact with Ms [CY] and Mr [SJ]. On or about 18 August 2018, he received a telephone call from Mr [DK] who advised that Ms [CY] and Mr [SJ] had approached Mr [DK] through Facebook, and personally visited him. He alleged that they told Mr [DK] that the Former Agent had taken \$140,000 from them in relation to the nomination and visa application. The Former Agent "*totally disagreed*" with these accusations as he had never taken such a large amount.
- (o) On 22 August 2018 the Former Agent met with Mr [DK] in person, who expressed his concern with Ms [CY] intentions and non-genuineness, and considered that she had provided a lot of false statements. He also stated that Ms [CY] had not approached him for work since a few months after she signed the employment contract with [HBH]. Mr [DK] instructed the Former Agent to terminate the AAT appeal application nominating Ms [CY]. Mr [DK] signed the AAT withdrawal form on 3 September 2018, which the Former Agent then filed with the AAT. He subsequently obtained a written statement, signed by Mr [DK], to support his account of events.
- (p) The Former Agent sent a text message to Ms [CY] to request an explanation on the allegations she had made against him to Mr [DK] as he did not understand why she would make these allegations. He asserted that she did not provide him with a direct answer and instead had asked the Former Agent to contact Mr [SJ] to discuss.

- (q) During this time, Ms [CY] appeared to have appointed a different registered migration agent for her AAT appeal, [removed agent] but that the Former Agent's email address was still being used for correspondence as he had received the AAT withdrawal confirmation for Ms [CY] containing [removed agent] details. The Agent never received a "*signed AAT form*"⁵ from Ms [CY]. Accordingly, he considered Ms [[CY]'s] claim that he had withdrawn her AAT application for review of her visa application refusal without her permission to be false.
- (r) The Former Agent was extremely uncomfortable with the conduct of Ms [CY] and Mr [SJ] by providing false information. He messaged them to advise that he would no longer act for them, and they should face the consequences of their actions. The Former Agent did not respond to Ms [[CY]'s] forwarded email written on 21 September 2018 as he considered her conduct to be excessive and that he was within his rights to terminate his services, as set out in the Service Agreement.
- (s) The Former Agent alleged that on 22 October 2018 Ms [CY] and Mr [SJ] parked their car outside of his residential home at [address removed] while he was at home with his wife and daughter. They subsequently repeatedly text messaged the Former Agent and shouted at his front door to demand that he refund their money. The Former Agent did not want to confront them while his daughter was at home, so he remained silent within the home until they left. The Former Agent also alleged that after this incident, Ms [CY] and Mr [SJ] also attended his business office, uninvited, and had blocked the doorway while demanding money, which horrified his receptionist and other staff. Further, that Ms [CY] and Mr [SJ] only left the office after the Former Agent threatened to contact the Police. He considered their conduct disgraceful and consistent with the offence of 'Unlawful Stalking' under section 359B of Criminal Code (QLD).
- (t) The Former Agent stated that he had provided the Authority with all email correspondence with Ms [CY], which demonstrated his duty of care for the client, and had maintained written records on his file notes.
- (u) The Former Agent asserted that the advice he had provided to Ms [CY] regarding her employment and sponsorship had always been lawful. He considered this statement was evidenced by the contents of the employment contract signed by Ms [CY], which he had explained to her during a one of the meetings at his office, and that Ms [CY] had attended a "*proper*" job interview, where the employer had told her what her job role required.
- (v) He argued that there is no evidence that he told Ms [CY] she could apply for the subclass 187 without working for the sponsor, and that it was Ms [CY] who had sought other jobs elsewhere, and caused her employment with [HBH] to be postponed. He recalled that Ms [CY] had been working at [removed business], and that he personally knew her boss, Mr [BO], who had approached the Former Agent regarding their residential and commercial mortgage services.
- (w) The Former Agent has never sought to take any advantage of his clients during the seven years that he has practiced as a registered migration agent to date. He is bitterly disappointed that he provided services to Ms [CY] and Mr [SJ].
- (x) He considered that the fees charged to Ms [CY] and Mr [SJ] for the services they "*demand*" were reasonable, given the time he had spent to organise and travel to [location] to meet with the sponsor, which he did not charge her for. Notwithstanding the high fees, the Former Agent highlighted that he had not charged Ms [CY] the agreed full fee set out in the Service Agreement.

⁵ The Former Agent's statement refers to a withdrawal form.

- (y) The Former Agent advised that his client account statement during the period shows his *"legitimate business operation"*, and is the same account that he has always used for registration renewal since becoming registered.

Payments made by Ms [CY]

- (z) It is not the Former Agent's standard practice to be paid in cash, but Ms [CY] and Mr [SJ] advised him that they wished to do so. He provided her with his standard Service Agreement that contained bank account details for payment of fees by direct transfer.
- (aa) In response to the Authority's questions regarding the payment of fees by Ms [CY] and issuing of invoices and receipts, the Former Agent made the following statements:

"The dates on the cash receipts shall be 23/04/2016 and 28/04/2016"

"On 23/04/2016, it was a Saturday, the only way that I can issue her a receipt is a cash receipt as it was not a common practice for me to work on the weekend".

"23/04/2016, Mr [SJ] approached my home with eager to provide me the funds in cash, and on 28/04/2016 they provided me the other balance".

"In fact, if you refer in detail of my service agreement, I was only asked for \$30,000 in good favor as they were a referred client";

"But it was Ms [CY] and Mr [SJ] demanded to pay additional \$10,000 (which was delivered on a weekend)";

"There were days delayed, I reasonably believe it's caused as there were a weekend";

"I never demand them to pay on the weekend, as I was out with family anyhow";

"These cash funds were subsequently deposited into client account by my staff dated 02/05/2016 with \$20,000, 11/05/2016 with \$10,000 and 12/05/2016 with \$10,000"

[HBH]

- (bb) The Former Agent has known the sponsor, who operates a real estate agency chain and [removed] business since mid-2015. He communicated directly with the Director, Mr [DK], and his representative, Mr [F], in relation to the preparation and lodgement of the nomination application.
- (cc) The Former Agent did not enter into a Service Agreement with the sponsor in this matter or charge any professional fees, as *the "required fee"* was paid by Ms [CY] and Mr [SJ] at their own insistence.
- (dd) [HBH] instructed the Former Agent to lodge a nomination application for Ms [CY]. He attended a number of meetings with Mr [DK] to work through the nomination application process, and promptly notified them in due course of any developments, as evidenced by his communication records provided to the Authority.

AAT Review Applications

- (ee) The Former Agent asserted that Ms [CY] agreed to appeal the refusal of her visa application to the AAT. After the AAT lodgement, Ms [CY] and Mr [SJ] visited him on a number of occasions for further consultations to discuss the appeal. Mr [DK]

decided not to proceed with the appeal application for the nomination refusal decision, after he was contacted by Ms [CY] and Mr [SJ] directly in approximately September/October 2018.

- (ff) The Former Agent only received instruction from Mr [DK] to withdraw the AAT application for the refused nomination, as per the signed AAT withdrawal form he provided to the AAT. He received confirmation of the AAT application withdrawal on 13 September 2018, and subsequently provided the AAT withdrawal confirmation for the subclass 186 visa to Ms [CY] by email.
- (gg) Regarding Ms [CY's] refund request, the Former Agent asserted that at the time of her agreeing to lodge an application for appeal to the AAT, the Service Agreement was deemed to be amended. He questioned why she had not sought a refund after her visa application had been refused by the Department, and had instead agreed to pursue appeal of the decision at the AAT.

22. The Former Agent provided the following documents to the Authority in response to the Authority's request for his complete client files for Ms [CY] and Mr [SJ], and [TNFT] trading as [HBH]:

- Receipt issued to Ms [CY] from Australian Multicultural Education Centre (AMEC) dated 29 April 2016 for payment of \$40,000 on the same day for "187 visa process";
- AMEC "Client Account" bank account records for the period 28 April to 31 May 2017;
- Receipt issued to Ms [CY] from AMEC and dated 29 February 2016 for payment of \$2323.80 on the same day for "485 Visa Application";
- Email from the Department to amec888@gmail.com but addressed to [removed agent], dated 8 October 2018, regarding Ms [[CY's] Bridging visa grant;
- Handwritten file note on yellow paper containing the following information:
 - "29/02/2016 – 485 visa application paid \$2323.80*
 - 04/03/2016 – 485 visa lodged*
 - 22/03/2016 to 01/04/2019 – Multiple meeting regarding obtain PR*
 - 05/05/2016 – RCB lodged and approved*
 - 25/05/2016 – 187 nomination lodged*
 - 26/05/2016 – 187 visa lodged*
 - 09/08/2016 – Ms [CY] called about another job*
 - 29/09/2016 – Ms [CY] called in seek to possible change employer [sic]*
 - 18/12/2017 – Met and explain requests received for 187 nomination*
 - 2/2/2018 – Meet to explain how AAT works and employer willing to appeal*
 - 29/05/2018 – Ms [CY] requests VEVO check*
 - 22/06/2018 – Ms [CY] seeks info about Bridging visa.*
 - 04/09/2018 – Contact Ms [CY] to cease work for the matter and Ms [CY] refused to communicate"*
- Typed statement, dated 1 May 2019, purportedly written and signed by Mr [DK], regarding the events in the Former Agent's response to the section 308 notice;
- Email from the Former Agent to Ms [CY] dated 13 September 2018, forwarding correspondence from the AAT on the same day regarding Ms [CY's] application for review of the Department's refusal of her subclass 187 visa application;

- Documentation submitted to the Department in support of [HBH] nomination application including:
 - (a) company extracts from the Australian Securities and Investments Commission (ASIC) and the Australian Business Register;
 - (b) financial documents including business activity statements (BAS);
 - (c) Ms [CY's] employment contract;
 - (d) evidence of salary parity and recruitment activities, application forms;
 - (e) RCB application and approval notification; and
 - (f) written responses to the adverse information published following the Department's site visit and interview with Mr [DK]; and
- Documentation submitted to the Department in support of Ms [CY's] subclass 187 visa application including the application form, personal identity documents, utility bills as evidence of address, financial information, statement regarding Ms [CY] and Mr [SJ's] relationship, academic qualifications and transcripts, and English language (IELTS) and medical testing documentation.

CMP-45601 (Own motion complaint)

Allegations

23. On 9 July 2019 the Authority received information from the Department alleging that the Former Agent had lodged a nomination application for [LA] without the knowledge or permission of that entity.

Departmental records

24. On 7 June 2017, a nomination application was lodged for [LA], nominating Ms [MQ] for the position of Office Manager with a salary of \$50,000. On the same day a Regional Sponsored Migration Scheme (subclass 187) visa application was also lodged for Ms [MQ], in association with the nominated position. The Former Agent was declared as the registered migration agent representing both applications. The Department acknowledged receipt of both applications, which were sent to his email address amec888@gmail.com on the same day.
25. On 17 July 2019 the Department emailed the Director of [LA], Mr [GG], in order to confirm Ms [MQ's] position. Mr [GG] provided a written response to the Department by email on 18 July 2019 in which he stated that he was approached by someone to potentially nominate an 'overseas worker' three years ago, and had provided this person some business documents. However, he never authorised or instructed any person to lodge a Permanent Employer Sponsored Entry nomination for his company. Further, that he had never sponsored, or intended to sponsor, an overseas worker in the position of Office Manager with a salary of \$50,000, and had no knowledge of the lodged nomination.
26. On 30 August 2019 the Department issued Ms [MQ] with a section 57 notice which was sent to the Former Agent's email address, amec888@gmail.com. In the notice, the Department advised Ms [MQ] of the correspondence with Mr [GG], indicating that the nomination application was not genuine as the nominator did not lodge the application and had no intention to employ Ms [MQ] in the position. Ms [MQ] was provided 28 days to respond to the adverse information.
27. On 23 September 2019 the Former Agent emailed the Department to request an extension of time for Ms [MQ] to respond to the notice, and stated that there had been a "misunderstanding". This request was refused on the grounds that no evidence had been

provided to the Department to substantiate the grounds for seeking extension. The Department did not receive a response to the section 57 notice sent to Ms [MQ].

28. On 22 October 2019 the Department refused Ms [MQ's] subclass 187 visa application on the basis that the information provided in the visa application regarding Ms [MQ's] nomination by [LA] was "*false and misleading in a material particular*" and Ms [MQ] did not meet the criteria for grant of the visa. As a result, Ms [MQ] was also found to have not met public interest criteria (PIC) 4020 and became subject to a three year exclusion period.⁶
29. On 28 October 2019 the Department refused [LA's] nomination application on the basis that there was insufficient evidence to demonstrate a genuine need for the position, and that the application appeared to have been lodged without the sponsor's knowledge or permission.
30. Upon review of the documentation provided in support of [LA's] nomination application by the Former Agent, the Authority identified the following:
 - The Former Agent certified as 'true copies' documents submitted to the Department in support of the nomination application as a Justice of the Peace (JP), including the trust deed, BAS statements, business lease agreement, and 'statements of recruitment effort' dated 30 May 2017 purportedly signed by Mr [GG];
 - An undated employment contract had been submitted which was purportedly signed by Mr [GG] and Ms [MQ], and with the Former Agent listed as the witness for both signatures; and
 - The screenshot of the advertisement for "*Office Manager – [LA]*", which was submitted in support of the nomination shows that it was lodged from the account of advertiser "*Australian Multicultural Education Centre (AMEC)*" on 21 April 2017.
31. The Authority subsequently commenced an own motion investigation the basis of the departmental information.

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

32. On 20 November 2019 the Authority sent the Former Agent a notice pursuant of section 309(2) of the Act, in relation to complaints CMP-40096, CMP-40628, and CMP-45601. This notice advised that, having regard to the information before it, the Authority was considering cautioning, or suspending or cancelling his registration under section 303(1) of the Act.
33. The Former Agent was notified that having regard to the information before the Authority, it was open to the delegate to be satisfied that he had engaged in conduct that breached his professional obligations under clauses 2.1, 2.4, 2.8, 2.9, 2.23, 5.2, 6.1, 6.1A, 7.2, 7.4 and 7.5 of the Code.
34. Pursuant to section 309(2) of the Act, the Authority invited the Former Agent to provide written submissions on the matter by 18 December 2019. The Authority provided the Former Agent with an extension of time to respond to the first section 309 notice until 6 January 2020 after the issue of a second section 309 notice (set out below).

CMP-48498 (Second Department complaint)

Allegations

35. The Authority received a second complaint from the Department on 26 November 2019. The complaint alleged that the Former Agent had lodged an RSMS nomination application for [D Pty Ltd [D]], nominating Ms [HW], without the sponsor's knowledge or permission.

⁶ In relation to the grant of subsequent visa applications

Departmental records

36. On 1 September 2017, a nomination application was lodged for [D] nominating Ms [HW] for the position of Office Manager with a salary of \$60,000. On 4 September 2017 a subclass 187 visa application was also lodged for Ms [HW], in association with the nominated position. The Former Agent was declared as the appointed registered migration agent for both matters in the applications forms. The Department acknowledged receipt of both applications and the acknowledgements were sent to the email address amec888@gmail.com on the same day as the lodgements.
37. In support of [D's] nomination application, the following documents were submitted:
- Publicly available Australian Securities and Investments Commission (ASIC) and Australian Business Register (ABR) company search results and company extract dated 17 July 2017 for [D], certified as a genuine copy by the Former Agent as a Justice of the Peace (JP) on 10 August 2017;
 - Regional Certifying Body (RCB) certification documentation from the Chamber of Commerce and Industry Queensland dated 31 August 2017;
 - Employment contract between [D], listing its trading name as [removed], and Ms [HW] for the position of Office Manager dated 23 August 2017, purportedly signed by the 'employer' and Ms [HW], and the Former Agent as the witness to both signatures. The document metadata for the employment contract shows that the document was created and last edited at different times on 23 August 2017, with the document title listed as 'Standard individual employment agreement' and the author as 'Karl Young';
 - Copy of an advertisement for the role listed in [D's] nomination application on a job finding website: the advertisement posted on 14 July 2017 and closed on 13 August 2017. The document is certified as a genuine copy by the Former Agent in his role as a JP on 3 August 2017;
 - Copy of page from [D's trading business] website and search engine results for [D's trading business];
 - Market salary comparison document for Office Manager, taken from a payscale website;
 - Statement from [D's trading business] in support of the nomination application, dated 23 August 2017, and purportedly signed by the Director of [D], Mr [SR]. The document metadata properties for the letter show that it was created and last edited on 1 September 2017, with the author listed as 'AMEC mobile';
 - Copies of resumes of unsuccessful candidates submitted as evidence of recruitment activities;
 - Profit and Loss statement for [D] for the financial year ending 30 June 2016, certified as a genuine copy by the Former Agent in his role as a JP on 10 August 2017;
 - Australian Tax Office Tax Agent portal search results for [D] dated 17 July 2017, showing the amount of tax owed by the company for the period January to March 2017;
 - [D's trading business] company profile document, certified as a genuine copy by the Former Agent in his role as a JP on 10 August 2017;
 - Business insurance certificate of currency for [D] for the period June 2017 to June 2018; and

- Lease agreement for [D's trading business], signed by Mr [SR] and Ms [PD] on 19 July 2014. The copy of the document is certified as a genuine copy by the Former Agent in his role as a JP on 8 August 2017.
38. On 7 November 2019 the Department both telephoned and emailed Mr [SR], in order to confirm Ms [HW's] position. Mr [SR] advised during the telephone conversation that he had no knowledge of the nomination. He subsequently provided a written response to the Department by email on 13 November 2019 in which he stated *"Back in 2016/17 we were looking for a Chinese office worker to help with some products we work with that are fabricated in China. From memory I was put in contact with someone who advised of a possible employment avenue. I think at the time I provided some details of our business, what, I can't recall. Nothing came of it and I've heard nothing since"*.
39. On 21 November 2019 the Department refused [D's] nomination application on the basis that there was insufficient evidence to demonstrate a genuine need for the position. On the same day, the Department issued Ms [HW] with a section 57 notice, which was sent to the email address, amec888@gmail.com, advising of the refusal of the nomination application.

Second section 309 notice

40. On 2 December 2019 the Authority published the second notice pursuant to section 309(2) of the Act, advising the Former Agent that having regard to the information before it, the Authority was considering cautioning, or suspending or cancelling his registration under section 303(1) of the Act.
41. The Former Agent was notified that having regard to the information before the Authority, it was open to the delegate to be satisfied that he had engaged in additional conduct that breached his professional obligations under clauses 2.1, 2.8, 2.9 and 2.23 and 7.5 of the Code.
42. Pursuant to section 309(2) of the Act, the Authority invited the Former Agent to provide written submissions on the matter by 6 January 2020.

Former Agent's Responses to both section 309 notices

43. The Former Agent's legal representative emailed the Authority on 2 January 2020 to request copies of departmental records referenced in CMP-40096⁷, CMP-45601 and CMP-48498, including working documents and interview records because he claimed the allegations were about criminal conduct. The Authority responded that its consideration was limited to the matters contained within the two notices, and that consistent with the principles of natural justice and procedural fairness, the Former Agent had been provided with the substance and details of the matters under consideration outlined within the body of the notices. Further, as the representing registered migration agent, the Former Agent had received all correspondence for the businesses and visa applicants identified in the complaints, including the section 57 notices and decision records.
44. The Authority also advised that the decisions taken by the Authority are administrative in nature and decision makers act according to substantial justice and the merits of the case. Moreover, that officers of the Department must adhere to obligations in respect of disclosure of personal information, consistent with the law. As such, he was advised that no further documentation would be provided to the Former Agent.

⁷ Not considered in this decision

45. The Authority offered the Former Agent a further extension of time to respond to both section 309 notices, however no response was received from him or his legal representative.
46. The Authority subsequently received an email from the Former Agent's legal representative on 9 January 2020 which stated:

"Thank you for your email and your careful consideration of the issues raised by me for and on behalf of my client.

After careful consideration of your replies and our concerns, we invite you to proceed to determine the matters before you so that we might, in the face of a sanction, engage with the independent review process available at the AAT to access all of the evidence upon which you rely and which you have so far failed to supply.

We reiterate our request that you supply all relevant communications grounding your factual matrix and the bases on which you draw adverse inferences concerning my clients alleged conduct.

I trust this makes my clients position clear."

47. No further submissions or documents were provided to the Authority in response to the section 309 notices.
48. On 16 January 2020 the Former Agent contacted the Authority to request under section 302 of the Act that he be deregistered. This request was actioned on the same day.

Notice pursuant to section 311D of the Act

49. On 22 May 2020 the Authority sent the Former Agent a notice pursuant to subsection 311D(1) of the Act. The notice was sent to the Former Agent's nominated email address amec888@gmail.com. The Authority received a receipt confirming delivery of the email on the same day.
50. The section 311D notice informed the Former Agent:
- of the complaints lodged by the Department and Ms [CY];
 - that the Authority had investigated the complaints;
 - that the Authority was considering whether or not to bar the Former Agent under subsection 311A(1) of the Act from being a registered migration agent for a period;
 - that period could be up to five years; and
 - the reasons for the proposed decision.
51. The section 311D notice invited the Former Agent to make a written submission to the Authority on the matter within 28 days, and also informed the Former Agent that subject to any written submission received within that period, it was open for the Authority to be satisfied that the complaints were made out.
52. The Former Agent was requested to provide his response to the section 311D notice by no later than 28 days after the notice had been given, being 19 June 2020.

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

53. The Authority has received no response from the Former Agent to date.

Subsequent complaint received (CMP-51500)

54. On 14 April 2020 the Authority received a complaint from Mr [JC], on behalf of Mr [CHC]⁸, relating to the Former Agent's conduct while he was a registered migration agent (CMP-51500).
55. In summary, Mr [CHC] alleged:
- (a) He engaged the Former Agent's services in relation to a subclass 187 visa application for him and his wife, Ms [MWW] in late 2016.
 - (b) On 30 November 2016 the Former Agent requested that he pay an initial fee of \$50,000 including GST in cash to lodge the subclass 187 visa application. As per this request, he made the following payments in cash:
 - \$30,000 on 13 December 2016;
 - \$5,000 on 13 February 2017;
 - \$5,000 on 15 February 2017;
 - \$10,000 on 16 February 2017.
 - (c) The Former Agent lodged the subclass 187 visa application on 10 February 2017. The visa application was subsequently refused by the Department⁹ and he notified Mr [CHC] of the Department's decision on 30 January 2018.
 - (d) On 31 January 2018 the Former Agent advised him to apply for review of the decision to the Administrative Appeals Tribunal (AAT)¹⁰. However, he later discovered that the Former Agent had withdrawn the AAT review application without his instructions and authorisation on 5 September 2019.
 - (e) He appointed Mr [JC] as his legal representative, who requested on 17 March 2020 that the Former Agent provide the following documents within 10 business days:
 - evidence of his registration as a migration agent between October 2016 and September 2019;
 - the Service Agreement with Mr [CHC] for his subclass 187 visa application;
 - All documents related to Mr [CHC]'s visa application, including but not limited to, the application form, visa refusal notification, AAT application and AAT withdrawal notification; and
 - All supporting documents relating to Mr [CHC]'s employment by the proposed sponsor in association with his subclass 187 visa application; and
 - All trust receipts for the service fees paid by Mr [CHC].
 - (f) Mr [CHC] had not received the requested documents prior to lodging his complaint.
56. The Former Agent was notified of the complaint allegations on 24 June 2020 and provided an opportunity to comment on them by 2 July 2020. The complaint was sent to the Former Agent's nominated email address amec888@gmail.com. The Authority received a receipt confirming delivery of the email on the same day.
57. On 2 July 2020 the Authority received an email from the Former Agent in which he advised that he had *"instructed my lawyer to seek evidence of [Mr CHC]'s claim, and I reject these*

⁸ Identified as a nominee for [TNFT], trading as [second real estate business]

⁹ Departmental records show that the Department refused Mr [CHC]'s subclass 187 visa application on 2 February 2018, and sent notification of the decision to the Former Agent on the same day.

¹⁰ Departmental records show an application for review was lodged with the AAT on 21 February 2018.

claims that are provided with no-basis". The Former Agent made no request for an extension of time nor has the Authority received any further correspondence from the Former Agent or a legal representative on his behalf to date.

58. Having considered the seriousness of the allegations before the Authority, I find it reasonable to proceed to make a decision without further delay based on the information before me. I am satisfied that the Former Agent has been provided with a substantive opportunity to respond to the findings that were open for the Authority to make in relation to the four complaints that were the subject of the section 309 notices and section 311D notice. The allegation by Mr [CHC] that the Former Agent withdrew his application for review without his knowledge or permission is very similar to Ms [CY's] allegation that the Former Agent withdrew her application for review by the AAT without her permission. However, I have not made specific findings in respect of Mr [CHC]'s complaint in my decision.

Statement of Reasons

Evidence and other material

59. In reaching the following findings of fact the Authority has considered the following evidence:
- Documents contained in the Authority's complaint files CMP-40628, CMP-45601, CMP-48498;
 - Information held on the Department's databases in relation to the matters raised in the complaints the subject of this decision; and
 - The registration files of the Former Agent held by the Authority.

Relevant legislation

Migration Act 1958

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 exercise of 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, 197A, 197AB or 197AD (whether or not the exercise of the power would relate to the other person); or*
 - (b) *advising the other person about making a request referred to in paragraph (a) or (aa).*
- (3) *Despite subsections (1), (2) and (2A), a person does not give immigration assistance if he or she merely:*
 - (a) *does clerical work to prepare (or help prepare) an application or other document; or*
 - (b) *provides translation or interpretation services to help prepare an application or other document; or*
 - (c) *advises another person that the other person must apply for a visa; or*
 - (d) *passes on to another person information produced by a third person, without giving substantial comment on or explanation of the information.*
- (4) *A person also does not give immigration assistance in the circumstances prescribed by the regulations.*

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

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

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

Subsection 316 (1B)

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

Jurisdiction

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

61. The functions and powers of the Authority under Part 3 of the Act and Regulations are the Minister for Home Affairs' functions and powers. The Minister has delegated his powers under Part 3 of the Act and the Regulations to officers of the Authority. I am delegated under the relevant Instrument to make this decision.
62. The three complaints, which are the subject of this decision, were received between 20 November 2018 and 26 November 2019 whilst the Former Agent was registered as a migration agent. The fifth complaint was received within 12 months after the Former Agent ceased to be registered on 16 January 2020 but has not been considered in this decision.

Findings on material questions of fact

Provision of Immigration Assistance

63. Section 276(1) of the Act defines the term "immigration assistance" as follows:

*[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;*
- (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.*

64. Sections 276(2), 276(2A), 276(3) and 276(4) of the Act also contribute to the meaning of "immigration assistance".
65. Having considered the subject matter of the three complaints, I am satisfied that the conduct complained of relates to the Former Agent's provision of immigration assistance, as defined in section 276 of the Act, while he was a registered migration agent.
66. In the complaint lodged by the Department and the own motion complaint, the Former Agent is identified as the appointed registered migration agent on all the of the nomination and visa applications. From the information before the Authority, it is also evident that the Former Agent was responsible for the creation of the documents in the applications, providing those documents to the Department, correspondence with the Department, and responding to the departmental notices on behalf of the applicants and sponsors.
67. In the case of Ms [CY], she engaged the Former Agent to provide assistance and advice in relation to the preparation and lodgement of her subclass 187 visa application, and the subsequent review application to the AAT. Further, she made a payment to the Former Agent to perform the services for which he was engaged.

The subject matter of the complaint

68. Having regard to the relevant evidence before the Authority I am satisfied that the subject matter of the complaints made by the Department and Ms [CY] are made out. My findings in relation to this are set out below in more detail.
69. As a result of the findings concerning the subject matter of the complaints, I am satisfied that, while registered, the Former Agent failed to comply with his obligations under the Code.

CMP-40628

Employer sponsorship for permanent residency

70. In her complaint, Ms [CY] alleged that a friend had referred her to the Former Agent in April 2016. The Former Agent advised her and her boyfriend that he could assist them to apply for a subclass 187 visa in order for them to obtain permanent residency. This information was published in the section 308 notice dated 25 March 2019.
71. In his response to the section 308 notice, the Former Agent advised the Authority that Ms [CY] and Mr [SJ] were referred to him by one of his clients. They approached him on 14 February 2016 to assist them with applying for subclass 485 visas. The Former Agent asserted that they sought his advice on how to migrate to Australia during this meeting, and subsequently requested his assistance in obtaining permanent residency in following meetings. The Former Agent confirmed that he told Ms [CY] *"under the current policy...the only pathway in obtaining PR is to go regional"*. He agreed to assist her in finding a regional employer, and preparing and lodging her subclass 187 visa application in association with the nomination.
72. The Former Agent asserted that Ms [CY] had requested that he find her a sponsor and position, in order to facilitate her eligibility for the subclass 187 visa, and that she was willing to pay for this service. The Agent agreed, and conducted searches for a suitable employer for Ms [CY] before finding the sponsor. This statement implied that Former Agent had had no previous business dealings with [HBH] when engaged by Ms [CY].

Failure to honour refund of professional fees

Clause 2.1 of the Code as relevant states:

2.1 A registered migration agent must always:

- (a) act in accordance with the law (including, for an agent operating as an agent in a country other than Australia, the law of that country) and the legitimate interests of his or her client; and*
- (b) deal with his or her client competently, diligently and fairly.*

73. Ms [CY] alleged that the Former Agent charged her and Mr [SJ] \$40,000 in professional fees to prepare and lodge the visa application. He promised that he would refund all professional fees if the visa application was refused. Both parties have provided evidence of the \$40,000 in professional fees paid by Ms [CY]. I am, therefore, satisfied that the Former Agent received a total of \$40,000 from Ms [CY] as payment for professional fees for her subclass 187 visa application. Despite alleging in her complaint that the professional fees were unreasonable, I have considered that Ms [CY] had agreed to these fees prior to engaging the Former Agent's services.
74. The Former Agent stated in his response to the section 308 notice that he had not charged [HBH] any fees for the nomination application, as Ms [CY] and Mr [SJ] had insisted on paying any associated costs for the sponsor themselves. These associated costs totalled more than \$12,500¹¹. They included the Regional Certifying Body (RCB) application fee; the drafting of the Employment Agreement; and compiling business financial documentation including *"Profit & Loss Statement, Income Tax, BAS Statement, Company detail and Organisational Chart"*.
75. While there were no fees payable to the Department for the lodgement of the nomination application, all expenses incurred for the nomination applications are regarded as the responsibility of the sponsor and should not be paid by the visa applicant. The Act stipulates that no benefit, either direct or indirect, can be provided in exchange for

¹¹ Detailed in the Former Agent's Service Agreement with Ms [CY]

sponsorship. This would preclude visa applicants paying costs on behalf of their sponsor. I consider that it was improper for Ms [CY] to have paid for such services, regardless of whether she wished to, which were the responsibility of the sponsor and significantly increased the professional fees the Former Agent charged her. This supports her allegation that the Former Agent's fees were unreasonable. As such, I find that the Former Agent acted contrary to Ms [CY's] legitimate interests and facilitated an arrangement in breach of the Act, by charging this fee.

76. In response to Ms [CY's] allegation that he had promised, and then failed, to provide a refund of these fees, the Former Agent stated *"it was consent at the time when we lodge AAT appeal, that the matter shall continue; thus the agreement was deemed amended at that time"*. In light of the clause of the Service Agreement that states that *"if the visa is refused due to failure of approval of nomination or agent's mistake"*, he would refund Ms [CY] all costs, I am satisfied that the Former Agent had discussed the conditions for a refund with Ms [CY] if the nomination was refused. The Former Agent has not provided any written evidence from his client file of any written amendment to the Service Agreement for the preparation and lodgement of the appeal application with the AAT. It would be expected that if he had discussed and made any amendment to the Service Agreement as a result of Ms [CY] pursuing a review application before the AAT, the Former Agent would have made records of these on his client file, in accordance with his professional recordkeeping obligations under the Code.
77. Another and the preferable option would have been for the Former Agent to enter into a new Service Agreement with Ms [CY] for assistance with her application for review of the decision to refuse her visa with the AAT.
78. The Former Agent has not advised the Authority that he has provided a refund to date, nor has Ms [CY] indicated that she has received any refund. As there is no evidence to the contrary, I find that Ms [CY's] allegation is made out.
79. In light of the findings made, I am satisfied that the Former Agent has not treated Ms [CY] fairly by failing to honour his promised of a refund and has breached **clause 2.1** of the Code whilst he was a registered migration agent.

Advice regarding regional employment prior to grant of a subclass 187 visa

Clause 2.4 of the Code as relevant states:

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

80. Ms [CY] alleged that the Former Agent advised her that she could not work in a regional area until her subclass 187 visa was granted, which she considered was misleading. In his response to this allegation, the Former Agent stated in his statutory declaration dated 28 May 2019 that his advice to Ms [CY] had *"always been following what the law provides"*, as set out in the employment contract, which he had explained to Ms [CY]. Further, that her employer had told Ms [CY] what was required of her position and role at the business, and there was no evidence to suggest that the Former Agent had told her to *"seek such visa without going to work"*. The Former Agent claimed that in fact, it was Ms [CY] who sought other jobs elsewhere and caused her agreed employment to be postponed.
81. The employment agreement for [HBH] signed by Ms [CY], which the Former Agent created and witnessed¹², states that the terms of the agreement would come into force on the contract date, which is listed as 29 April 2016. It would be expected that this signified the commencement of Ms [CY's] employment with the sponsor. However, Mr [DK] advised

¹² The document's metadata properties identify the Former Agent as the document creator. He is listed as a witness to Ms [[CY]'s] signature in the employment agreement.

the Department during a telephone interview on 13 September 2017 that he had sold the real estate business where the nominated position for Ms [CY] was based. He also confirmed that Ms [CY] had not been working for him and that he had no employees at the nominated regional location when contacted by the Department but that he could still find work for her in his other business, even though his wife was working as the Office Manager.

82. The Department put this information to the Former Agent in the section 57 notices for the nomination application and Ms [CY's] subclass 187 visa application, which the Former Agent received on behalf of his clients. In response to the section 57 notice for the visa application the Former Agent submitted a letter signed by Ms [CY] to the Department on 15 December 2017. The letter advised the Department that Ms [CY] had *"confirmation that from the sponsor the position is still available for me, and currently await for approval from the government. I do not understand why the delay had been so long, but really wish this can be done as soon as possible"*. The Department's delegate, in the decision to refuse Ms [CY's] visa application, rejected this information as it was inconsistent with Mr [DK's] statement that her intended position in his real estate business was no longer required. There are no statements in the agreement, or any other documents in the provided client file, of any arrangement to delay commencement of Ms [CY's] employment.
83. Consequently, I reject the Former Agent's claim that Ms [CY's] pursuit of other job opportunities caused her employment with [HBH] to be "postponed". Instead, I find that Ms [CY's] failure to commence employment with Mr [DK], in accordance with her employment agreement was because the position for which she was nominated did not exist or was not genuinely needed.
84. The Former Agent's decision to assist Ms [CY] to provide a statement to the Department that he knew was not accurate shows his failure to act diligently, in the legitimate interests of his client and with due regard for her dependence on his knowledge and skills. In doing so, the Former Agent exposed her to restrictions on future applications for the provision of misleading or false information. I am satisfied the Former Agent's conduct while registered was a breach of **clauses 2.1(b) and 2.4** of the Code.
85. In the absence of any evidence to the contrary, I accept Ms [CY's] allegation, and find that the Former Agent instructed her that she would not work in the nominated position until the Department granted her subclass 187 visa.

Withdrawal of Ms [CY's] application for review before the AAT

Clause 2.8 of the Code as relevant states:

2.8 A registered migration agent must:

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

86. The Former Agent's response to Ms [CY's] allegation that he withdrew her AAT application for review of the visa application refusal decision was that he *"only received instruction from Employer to cease his AAT matter as per attached signed AAT withdrawal form"* and that he never received a *"signed AAT form"* from Ms [CY]. In his handwritten file note, (which the Former Agent provided to the Authority as part of Ms [CY's] client file), the entry for 4 September 2018 states *"Contact Ms [CY] to cease work for the matter and Ms [CY] refused to communicate"*. There is no reference in this document to evidence that Ms [CY]

had instructed the Former Agent to withdraw her review application on 4 September 2018 or on any other date either prior to, or after, he asserted he ceased his engagement. The Former Agent's limited file notes state that Ms [CY] refused to communicate with him when he contacted her on 4 September 2018. However, he has provided no other evidence of this interaction. It would be reasonable to conclude that if the Former Agent could not communicate with Ms [CY], he could not have received instructions from her on 4 September 2018.

87. The email sent to the AAT by the Former Agent on 4 September 2018 contained Ms [CY's] review application details in the email title. Despite containing the withdrawal form for the associated nomination review application, the AAT understood the email to be a request to withdraw Ms [CY's] corresponding review application, based on the Former Agent's references to her in the email. These included referring to Ms [CY's] name and appeal case number in the email title, and making references to her as the 'client' in the email itself requesting withdrawal of the appeal application and advising that he was ceasing his representation. I am satisfied that the Former Agent intentionally used the sponsor's withdrawal form in support of his request to withdraw Ms [CY's] application because he did not have written authorisation from Ms [CY] to do so.
88. The Former Agent argued in his response to the Authority's section 308 notice that Ms [CY] had engaged a new registered migration agent around the time of the review application withdrawal. However, I note that the AAT's notification of the application withdrawal was sent to the Former Agent on 13 September 2018. He forwarded it to Ms [CY] on the same day. The document still identified him as her representative, not [removed agent] I am therefore satisfied that despite notifying the AAT of ceasing his representation in the email on 4 September 2018, the AAT sent Ms [CY's] withdrawal correspondence to the Former Agent. This is consistent with Ms [CY's] correspondence with the AAT on 14 September 2018 in which she identified the Former Agent as her authorised representative. Given that the Former Agent was unable to reach Ms [CY] on 4 September 2018, as referenced in his file notes, I do not accept that the Agent had formally ceased his services with Ms [CY], and notified her of this, as he asserted in his section 308 notice response.
89. After considering information the above including the Former Agent's statements, I am satisfied that Ms [CY's] allegation that he withdrew her review application with the AAT without her instruction or consent has been made out. I find the Former Agent breached his professional obligations under **clause 2.8** of the Code whilst he was a registered migration agent.

CMP-45601 and CMP-48498

Nomination and visa applications lodged by the Former Agent

Clause 2.9 of the Code as relevant states:

2.9 A registered migration agent must not make statements in support of an application under the Migration Act or Migration Regulations, or encourage the making of statements, which he or she knows or believes to be misleading or inaccurate.

Clause 2.23 of the Code as relevant states:

2.23 A registered migration agent must take all reasonable steps to maintain the reputation and integrity of the migration advice profession.

90. The Department alleged that the Former Agent had lodged nomination applications for two separate business sponsors, [LA] and [D], without the businesses' knowledge or permission. Despite the Former Agent's decision not to respond to these allegations, I am

satisfied that the allegations are made out, based on the information before the Authority discussed below.

91. The Former Agent was listed as the appointed registered migration agent for both [LA] and [D's] nomination applications, and the corresponding subclass 186 visa application for Ms [MQ], and subclass 187 visa application for Ms [HW], respectively. His email address amec888@gmail.com was nominated for departmental correspondence in all four applications. The applications and supporting documents were lodged using the Former Agent's business organisational ImmiAccount, Australian Multicultural Education Centre.
92. The Former Agent repeatedly declared the email address amec888@gmail.com to the Authority as his primary email address for registration purposes, since first registering as a migration agent on 2 June 2011. This information is also consistent with his email contact records in the Department's records, including in relation to all other applications identified in the complaints that are the subject of this decision.
93. On the information from the Department's records, I am satisfied that Former Agent submitted the nomination applications, and all the supporting documentation, for [LA] and [D], and the corresponding visa applications for Ms [MQ] and Ms [HW]. I am also satisfied that the Former Agent, who was designated as the registered migration agent on both the nomination and visa applications, provided immigration assistance in relation to these applications.

[LA] nomination

94. The Department contacted the authorised representative of [LA], Mr [GG], who advised that he had not engaged any person, nor provided permission or instruction to any person, to lodge nomination applications on behalf of his business. Mr [GG] also advised that he had provided some business documentation to a third party, a number of years ago, when he considered possibly employing someone from overseas. However, he did not proceed with any nomination and had no intention of sponsoring an overseas worker for the position of Office Manager identified in the nomination application.
95. In light of the statements made by Mr [GG]: that he had no knowledge of the nomination application or Ms [MQ], I am satisfied that the Former Agent had no direct interaction with him, or any other person authorised to bind the business, in order to obtain instructions or to verify the associated documentation for the nomination. I find that the Former Agent acted without any instructions and knowingly submitted the nomination application and supporting documentation to the Department that was misleading and inaccurate.
96. More significantly, the Department's allegation that the Former Agent lodged a nomination application for [LA] for a position that did not exist or was not available is also made out.
97. I have considered the documents submitted in support of [LA's] application nominating Ms [MQ]. In light of Mr [GG's] statements to the Department, I am satisfied that he did not sign either the employment contract or the 'statement of recruitment effort' dated 30 May 2017. The two signatures purportedly belonging to Mr [GG] are identical in colour and composition, and appear to be the same image. That image has been inserted into both documents. It is highly likely that Mr [GG's] signature was inserted into these documents without his knowledge or permission and therefore both documents should be regarded as bogus. The Former Agent also purportedly witnessed both Mr [GG's] and Ms [MQ's] signatures for the employment contract, as set out in the document. However, as Mr [GG] did not sign these documents, the Former Agent could not have been a witness to this event, and has therefore used his status as a JP to attempt to validate the genuineness of the employment contract. I am satisfied that the Former Agent submitted documents to the Department which he knew were not signed by Mr [GG].
98. The Former Agent has provided no comment or evidence as to how he obtained the business and financial documentation for [LA], which he certified as copies of the original in his capacity as a JP. Based on Mr [GG's] statements, the Former Agent did not receive

instructions from any person authorised to bind [LA], to submit these documents to the Department in support of a nomination.

99. Further, as I have accepted Mr [GG's] statements and find that [LA] did not have any intention of sponsoring an overseas worker for the position specified in the nomination application, I am satisfied that the advertisement for "Office Manager – [LA]", is likewise misleading.
100. From the job advertisement screenshot provided to the Department by the Former Agent, the Authority was able to identify that the advertisement on the job search website was lodged from the account of the listed advertiser "*Australian Multicultural Education Centre (AMEC)*" on 21 April 2017. It is reasonable to conclude that the Former Agent created the job advertisement in order to have documentation to meet the one of the criteria for grant of the nomination. Of further note is that the advertisement was created for a position that did not genuinely exist.
101. I find the Former Agent provided the Department with information and documents without the approval of the business, purportedly created by, or on the instruction of, [LA]. I am satisfied that this misleading and/or false information was provided in order to facilitate a nomination application, and a visa application, that the Former Agent knew was not genuinely sought by the business.

[D] nomination application

102. The Department contacted the authorised representative of [D], Mr [SR], who advised that he had been approached to provide some business documentation to a third party a number of years ago. However, he had never authorised any person to lodge nomination applications on behalf of [D].
103. There is no evidence before the Authority that the Former Agent had any direct interaction with Mr [SR], or any other person authorised to bind [D], in order to obtain their instructions to prepare and lodge the nomination or to verify the associated documentation for the nomination. On the basis of Mr [SR's] statement to the Department, I find that the Former Agent also lodged a nomination application for [D] without the knowledge or permission of the sponsor.
104. The Authority has considered the documents submitted by the Former Agent in support of [D's] application nominating Ms [HW], in light of the fact that the sponsor had no knowledge of the application. Although the name for the 'employer' is not identified in the employment contract, it appears that the signature is the same as the one purportedly made by Mr [SR] in the statement of support, with both signatures also being similar to that on the lease agreement for [D]. As Mr [SR] has advised the Department that he did not know of, or authorise, the nomination application, I am satisfied that he did not sign the employment contract or the 'statement of support' dated 23 August 2017. I consider that the signatures in these documents purporting to that of Mr [SR] are not genuine and were used without his knowledge or permission, rendering both documents false and misleading.
105. The employment agreement provided by the Former Agent to the Department was created using the same template, with identical wording in all terms and conditions of employment, as the employment agreement provided to the Department for [LA]. The only differences are the sponsor and nominee names, addresses and the proposed salaries.
106. The Authority, in the section 309 notices, advised the Former Agent that it had also undertaken a review of other employment contracts submitted by him to the Department in support of nomination applications the Former Agent lodged for a further eight different

sponsoring businesses¹³. This included Ms [CY]'s sponsor, [HBH]. When compared to the [LA] and [D] employment contracts, these other employment contracts submitted by the Former Agent all contained the same identical template with consistent formatting and the same wording, with the exception of business and nominee names, addresses, positions and salaries (Appendix C). The metadata properties for [D's] employment contract list the document's name as 'Standard individual employment agreement' and the Former Agent as the author. In the case of the statement of support, which was purportedly signed by Mr [SR], the author of this document is 'AMEC mobile'. I note that the Former Agent was the only registered migration agent listed in the Authority's register as being associated with Australian Multicultural Education Centre (AMEC). Despite being given the opportunity to do so, the Former Agent has not provided any response to the allegations put to him about this information.

107. On the information before the Authority, I am satisfied that the Former Agent was the source of the template for both employment contracts in support of [LA's] and [D's] nomination applications. I am also satisfied that he prepared and submitted this document in association with [D's] nomination application. While he declared he witnessed both Mr [SR's] and Ms [HW's] signatures on the employment contract, there is no evidence that an authorised person signed an employment agreement for [D]. The Former Agent represented that he had witnessed events that did not occur. I am therefore satisfied that he prepared and submitted these documents to the Department which he knew had not been signed by Mr [SR], in breach of clause 2.9 of the Code.
108. As with [LA], it is unclear how the Former Agent obtained the business and financial documentation for [D], which he also certified in his capacity as a JP were copies of the original. In light of Mr [SR's] statements, I am satisfied that the Former Agent did not receive instructions from a person authorised to bind [D] to submit their documents to the Department in support of the nomination. In the case of the screenshot of the advertisement on the job search website for the nominated position with [D's trading business], I am satisfied that the advertisement was not published by, or on the authority of [D]. As I have found that the Former Agent created the online job advertisement for [LA] using the AMEC account, I consider it highly likely that he also manufactured the job advertisement to support the nomination application for a position that did not genuinely exist with [D's trading business].

Conclusion

109. The Former Agent has not made any response to the publication of the Department's allegations or the potential findings made by the Authority in the section 309 and section 311D notices.
110. With consideration to the findings made, I am satisfied that the Former Agent was responsible for the creation and submission of information and documents to the Department in order to facilitate the nomination applications for [LA] and [D]. I am also satisfied that this conduct extended to the corresponding visa applications for Ms [MQ] and Ms [HW], which the Former Agent knew or should have reasonably known were false and misleading. In doing so, I find that the Former Agent acted in contravention of the law, and his professional obligations in breach of **clauses 2.1, 2.9 and 2.23** of the Code whilst he was a registered migration agent. I am also satisfied that the allegations in relation to both complaints are made out.

¹³ The Authority reviewed 15 nomination applications for the following eight businesses: Australian Multicultural Education Centre, [removed], [removed], [removed], [removed], [removed], [removed] and [TNFT].

Consideration of Whether or Not to Bar the Former Agent

111. In reaching my conclusion with respect to being satisfied that the subject matter of the complaint has been made out, I have considered the strength of the evidence and the level of satisfaction required in accordance with the serious consequences for the person the subject of the decision.

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

Seriousness of behaviour

113. In reaching a decision that a barring the Former Agent under subsection 311A(1) of the Act is appropriate in this case, I find the Former Agent's conduct, which is the subject of this decision, to be extremely serious. In particular, I have taken into account that he has:

- lodged two nomination applications without the knowledge or authority of the businesses for positions that did not exist and were not genuinely available to the nominees;
- created non-genuine documents to provide in support of applications resulting in providing the Department with false and misleading information,
- engaged in fraudulent conduct;
- withdrew his clients' AAT review applications without their knowledge or permission; and
- the Former Agent has proven through his conduct that the Department cannot rely on him to lodge applications that are supported by accurate and truthful information.

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

- (a) Fraudulent and other criminal behaviour;
- (b) An indifference to professional responsibilities and the legitimate interests of clients;
- (c) Reputational damage to the profession, and
- (d) The real likelihood that the identified misconduct will continue if the Former Agent were to be registered again.

Aggravating Factors

115. The Former Agent has demonstrated a repeated disregard for the law and his professional obligations as a member of the migration advice profession. He repeatedly acted in a deceptive manner by creating and providing non-genuine documents and false and misleading information to the Department in order to undermine the integrity of the Regional Sponsored Migration Scheme.

116. The section 308 notice published to the Agent on 25 March 2019 required him to provide for inspection all records of his clients' account, and all records for all accounts into which any money paid by clients had been deposited, in accordance with his obligation under clause 7.5 of the Code. The Former Agent, however, only provided records of his clients' account for the period 28 April to 31 May 2017 in response to the section 308 notice. It would be expected that the Former Agent would have provided all financial records for the clients' account, as specified in the section 308 notice, as well as any other accounts used by him to hold client monies. The Former Agent was advised in the section 309 notice that

it was open to find that the documentation provided to the Authority was unlikely to constitute all records for his clients' account, and that he had failed to comply with the section 308 notice and clause 7.5 of the Code when requested by the Authority. The Former Agent did not provide any further financial records. I consider the Former Agent's non-compliance, which has inhibited the Authority's assessment of his management of client funds and compliance with financial obligations in relation to the complaints, to demonstrate a disregard for the regulatory scheme while registered.

117. His conduct represents repeated failings to act in accordance with the law, his professional obligations and the legitimate interests of his clients, which speaks to his integrity, judgement, moral character, and honesty. The Former Agent acted on instruction from persons not authorised to represent his clients and failed to obtain, confirm, and follow instructions prior to lodging or withdrawing applications, which resulted in severe adverse consequences for his clients, including Ms [CY].
118. The Former Agent has not taken responsibility, or shown remorse, for any his conduct, and instead sought to deflect blame onto Ms [CY] in order to detract from his own conduct.
119. I consider his decision to voluntarily deregister himself before responding to the two section 309 notices to be an attempt to evade disciplinary action. Accordingly, if the Former Agent were to be registered again as a migration agent, I consider that his non-compliance with the migration agents' regulatory scheme may continue and that vulnerable consumers would be subject to future unprofessional and unlawful conduct.

Mitigating Factors

120. The Former Agent, even though expressly invited to do so, did not advance any mitigating circumstances or evidence with respect to hardship, in response to the two section 309 notices or the section 311D notice.
121. I note that the Former Agent has not had any prior disciplinary decisions made against him.
122. 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 his livelihood, and how such a decision would affect the Agent's financial earning capacity. I am not satisfied that hardship would necessarily follow a decision by the Authority to bar the Former Agent from registration as a migration agent. The Former Agent made a request to the Authority to voluntarily deregister himself on 16 January 2020, shortly after replying to the two section 309 notices. As the Former Agent voluntarily ceased his registration, I am satisfied that barring the Former Agent from future registration would not further impact on the Former Agent's livelihood.

Consumer Protection

123. Consumers, particularly those of migration advice services, are often in a vulnerable position and have a right to place their trust and confidence in their agent that he will she will act in their interests. I am not satisfied that the Former Agent has demonstrated that he is capable of meeting these expectations.
124. The behaviour demonstrated by the Former Agent falls well short of the reasonably expected standards of a registered migration agent. I consider that the Agent poses a serious risk to consumers. I am not satisfied that if the Former Agent were to practise as a registered migration agent in future, he would be able to demonstrate the requirements expected of a registered migration agent. Nor can I be satisfied that he would desist from engaging in a similar pattern of behaviour.
125. I expect that a decision to sanction the Former Agent would more likely than not deter other registered migration agents from engaging in a similar practice and ensure that

public confidence in the migration agent profession is maintained. Consequently, I am satisfied that a barring decision is appropriate in the circumstances.

Period of barring

126. In the Narayanan case the AAT stated:¹⁴

In fixing the appropriate period in which to ban the applicant, one needs to take account of the fact that Parliament has indicated that the maximum period is five years. That is obviously reserved for the most severe cases. The most severe cases would inevitably involve an element of fraud, dishonesty or incompetence.

127. Having regard to all the circumstances, I consider that the Former Agent's conduct falls within the higher end of this range of severity, as he has demonstrated that he cannot be trusted to act with honesty, and in accordance with his professional obligations under the Code and the Act. He repeatedly provided false and misleading information and documents to the Department in relation to nomination applications for businesses that either were not genuinely operating at the nominated regional locations, or had not authorised the nomination and did not genuinely seek to sponsor the identified nominees. The Former Agent also repeatedly failed to act in the legitimate interests of his clients who are the subject of this decision, and which have resulted in adverse visa outcomes and financial loss.

Decision

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

Senior Professional Standards Officer
Professional Standards and Integrity Section
Office of the Migration Agents Registration Authority
Department of Home Affairs
Date of Decision: 27 August 2020

¹⁴ Paragraph 141, [2006] AATA 353.