



## **DECISION RECORD**

<b>AGENT</b>	Ms My-Yen Thi Tran
<b>COMPLAINT NUMBER/S</b>	CMP-30005 and CMP-33870
<b>DECISION</b>	Cancellation
<b>DATE OF DECISION</b>	<b>9 January 2020</b>

### **Terms used for reference**

1. The following abbreviations are used in this decision:

<i>ABN</i>	Australian Business Number
<i>AAT</i>	The Administrative Appeals Tribunal
<i>BVA/B/E</i>	Bridging Visa A, B or E
<i>MARN</i>	Migration Agent Registration Number
<i>PIC</i>	Public Interest Criteria
<i>Section 308 notice</i>	Notice issued by the Authority under section 308 of the Act
<i>Section 309 notice</i>	Notice issued by the Authority under section 309 of the Act
<i>The Act</i>	<i>The Migration Act 1958</i>
<i>The Regulations</i>	<i>The Migration Regulations 1994</i>
<i>The Agent</i>	Ms My-Yen Thi Tran
<i>The Authority</i>	The Office of the Migration Agents Registration Authority
<i>The Code</i>	The Migration Agents Code of Conduct prescribed under Regulation 8 and Schedule 2 to the Agents Regulations
<i>The Department</i>	The Department of Home Affairs <sup>1</sup>
<i>The Register</i>	Register of migration agents kept under section 287 of the Act
<i>The Agents Regulations</i>	<i>Migration Agents Regulations 1998</i>

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<sup>1</sup> And its former manifestations

## **STATEMENT OF REASONS**

### *Background*

2. The Agent was first registered as a migration agent on 6 May 2002 and was allocated the MARN 0209532. The Agent's registration had been renewed annually to date, with the most recent registration application lodged on 22 March 2019 pending the outcome of this decision.
3. The Register lists the Agent's business name as MYT Nguyen Solicitors with the ABN 95 626 759 206.

### *Prior Disciplinary action*

4. The Agent does not have history of prior disciplinary action.

### *Complaints*

5. The Authority has considered two complaints about the Agent's conduct as a registered migration agent as detailed below:
  - a. CMP-30005 referred from the Department on 20 March 2017
  - b. CMP-33870 referred from Ho Chi Minh City (HCMC) post on 25 October 2017

### **CMP-30005**

On 20 March 2017, the Department referred information about the Agent's conduct to the Authority alleging that:

- The Department had received a high number of allegations indicating that the relationships within the Partner Visa application cohort, where the Agent was the declared registered migration agent, were not genuine.
- There were similarities in the document styles and statements provided to the Department across unrelated Partner Visa applications.
- The statements and documents appear to have near identical wording/phrasing.
- The forms and statements provided raised concerns that the Agent may have signed the forms on behalf of applicants and also witnessed the declarations which the Agent likely knew contained incorrect information.

### *Information received from the Department*

6. Departmental records obtained by the Authority relevant to the matters raised in CMP-30005.

### *Third Party Declarants*

Mr HHN<sup>2</sup>

- Third party declarant for Ms THP<sup>3</sup> in relation to her onshore 820/801 Partner visa application sponsored by Mr QDN lodged in December 2012. The Agent was the appointed registered migration agent on file for the combined application.
- Third party declarant for Mr TTD<sup>4</sup> in relation to his onshore 820/801 Partner visa application sponsored by Ms TPTT lodged in November 2014. The Agent was the appointed registered migration agent on file for the combined application.
- Mr HHN submitted Form 888's for each Partner visa application witnessed by the Agent.

Ms TBC<sup>5</sup>

- Third party declarant for Ms TNTN<sup>6</sup> in relation to her onshore 820/801 Partner visa application sponsored by Mr NPC lodged in September 2013. The Agent was the appointed registered migration agent on file for the combined application.
- Third party declarant for Ms TMHP in relation to her onshore 820/801 Partner visa application sponsored by Mr HC lodged in October 2014. The Agent was the appointed registered migration agent on file for the combined application.
- Ms TBC submitted Form 888's for each Partner visa application witnessed by the Agent.

*Visa Applicants*

Mr MTN<sup>7</sup>

- On 26 May 2017, the Agent, on behalf of Mr MTN lodged an onshore Partner visa subclass 820 and 801 combined application.
- The applicant's friend and mother in law provided form 888's to the Department.
- On 13 April 2018, the Department undertook a phone interview with the applicant.
- On 24 April 2018, after considering all the information available the delegate refused the onshore Partner visa subclass 820 and 801 combined application. In the decision record the delegate noted that little weight was given to the Form 888's received in support of the application.

Mr AHN<sup>8</sup>

- On 6 June 2016, the Agent, on behalf of Mr AHN lodged an onshore Partner visa subclass 820 and 801 combined application.
- On 20 November 2017, the Department issued a request for more information to the Agent.
- On 1 May 2018, the Department refused the application on account of not receiving the requested information. The Department notified the Agent of the decision the same day.

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<sup>2</sup> CID:4\*\*\*\*\*0

<sup>3</sup> CID:7\*\*\*\*\*4

<sup>4</sup> CID:5\*\*\*\*\*5

<sup>5</sup> CID:1\*\*\*\*\*9

<sup>6</sup> CID:3\*\*\*\*\*6

<sup>7</sup> CID:3\*\*\*\*\*1

<sup>8</sup> CID:8\*\*\*\*\*1

- In the refusal decision, the delegate noted that the third party declarants provided misleading information. The Agent witnessed the Form 888's provided to the Department.

Mr TTN<sup>9</sup>

- On 23 December 2011, the Agent, on behalf of Mr TTN lodged an onshore Partner visa subclass 820 and 801 combined application.
- On 14 October 2013, the Department granted a subclass 820 visa to the applicant.
- On 28 May 2014, one of the third party declarants, Mr HVL was contacted as part of the application process and during the interview with the delegate adverse information was provided by Mr HVL in regards to the couple.
- On 23 July 2014, the Department issued a natural justice letter to the Agent requesting the applicants to comment on the information provided by Mr HVL.
- On 20 April 2015, the Department refused the 801 Partner visa upon review of the information provided by the Agent. The Agent was notified of the Department's decision on the same day.

*Further Requests for information from the Department*

Ms TMHP<sup>10</sup>

- On 31 October 2014, the Agent, on behalf of Ms TMHP lodged an onshore Partner visa subclass 820 and 801 combined application.
- On 2 March 2016, the Department requested information to be provided in respect of the visa application, specifically regarding DNA testing for the child listed on the visa application, as the Department had information indicating that the child may not be of the relationship. The Department emailed the Agent, as the authorised contact, the request for further information.
- On 21 March 2016, the Department received a response from the Agent refuting the allegations.
- On 30 March 2016, the Department emailed a second request for information to the Agent advising that the Department had adverse information that the main applicant and sponsor were required to comment upon. The Agent submitted a response to the natural justice letter on 19 April 2016.
- On 1 June 2016, a delegate of the Department refused the Partner visa application on the basis of the evidence before them. An application for review of the refusal decision was made to the AAT which affirmed the Department's decision.

**CMP-33870**

On 25 October 2017, HCMC post referred findings made by the Administrative Appeals Tribunal (AAT), about the Agent's conduct, in a prospective partner visa application, alleging that:

- The Agent, as the appointed registered migration agent, was neglectful in her duties in a decision with regard to Ms NTP.

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<sup>9</sup> CID:4\*\*\*\*\*6

<sup>10</sup> CID:2\*\*\*\*\*1

- The Agent did not complete the full dates of marriage or divorce prior to submitting the visa application to the Department. In the Form 47SP<sup>11</sup> the Agent allegedly “whited out” dates of birth.
- The Agent failed to comply with requirements in that the client did not sign a declaration on the Form 47SP advising that the *“information supplied is complete, correct and up to date in every detail”*.
- The Agent should not have submitted the visa application forms to the Department until the above information was supplied and the applicant signed the declaration.

#### *Information received from the Department*

7. Departmental records obtained by the Authority as relevant to the matters in CMP-33870.
  - On 18 March 2015, the Agent lodged an offshore Prospective Marriage visa application subclass 300 on behalf of Ms NTP.
  - On 25 May 2016, the Department conducted an interview with the applicant and the sponsor and subsequently refused the 300 subclass visa application on the same day. The delegate was not satisfied that the couple intended to co-habit together.
  - On 24 June 2016, a review of the decision was lodged with the AAT. The AAT decided to remit the decision to the Department on 15 March 2017.
  - On 10 August 2017, the Prospective Marriage visa was granted to the applicant.

#### **Notice under section 308 of the Act (“the section 308 notice”)**

8. On 5 January 2018, the Authority published the complaints to the Agent, advising the Agent that it raised concerns regarding her compliance with clauses 2.1; 2.3; 2.9; 2.17 and 2.23 of the Code.
9. Pursuant to section 308 of the Act, the Authority requested the Agent to provide the following information by 2 February 2018:
  - a. Client files for Ms NTP; Ms THP; Ms TTTTB; Mr TTN; Ms SPTP; Mr MQV; Ms TNTM; Mr VTN; Mr TDH and Mr QTT; and
  - b. A list of all the employees of MYT Nguyen Solicitors.

#### *The Agent’s response to the Authority’s section 308 notice*

10. On 14 February 2018, the Authority received the Agent’s response to the complaints by way of a statutory declaration. The Agent made the following submissions:
  - The Agent’s business practice with regards to the completion of Form 888’s where assistance was required by the witness, would involve her *“personally”* meeting with the witness and asking them the questions specified in the form.

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<sup>11</sup> Application for Migration to Australia by a Partner

- The Agent would ask the questions in either English or Vietnamese depending on which language the person was more comfortable with. Once the Form 888 had been completed the contents were read back to the witness to ensure that they were clear on what had been recorded. The Agent then checked their identification and asked that the forms be signed.
- Forms that the Agent witnessed were completed in her office and “*the witnesses provide instructions*”. The Agent checked the contents on the form and then the client signed the documents in her presence. The Form 888 is completed by going through the questions noted on the form and asking the witnesses in either English or Vietnamese. Once the answers were provided, they were recorded on the form, read back to the witness, and they are asked to sign the document.
- The witnesses were not provided with prior wording or template examples to assist them in completing the form 888 as “... *[The Agent] would go through the questions in the form with them and would they would give [the Agent] answers....each case is different therefore [the Agent] do not provide templates to the witnesses...*”. Otherwise, the witness takes the form/s home and completes them and then has them witnessed by another person.
- In regards to the completion of statutory declarations, the Agent stated they are “...*usually declared and drafted in [the Agent’s] office with full instructions from the declarants...*” where the contents are then read back to the declarants before they sign them and the Agent witnesses the signatures. With regards to who completes the statutory declarations they are “...*drafted by [the Agent] with the client’s full instructions regarding their relationship...*”.
- The Agent asks questions “...*as stated in the Departments statutory declaration as per second stage partner processing, the clients answers are written on their behalf into the document...*” and the contents are then read back to the clients prior to the signing and witnessing of the document.
- “*Where the statutory declarations are regarding the development of the couple’s relationship then [the Agent] would directly ask questions and obtain instructions regarding how their relationship developed, their future plans ect [sic]...*” The Agent typed their answers into the form of a statutory declaration, they would then sign the document in the Agent’s presence after the contents were read back to them in their preferred language: either Vietnamese or English.
- “...*No templates are provided because each case is different...*” however, the Agent notes that in relation to Partner Visa applications the “...*questions are very generic in nature hence it is common that the answers provided by the Declarant are very similar and also generic in nature...*”
- That the two statutory declarations, that are similar in style and wording, provided along with the section 308 notice were “...*drafted with full instructions from the Declarant/clients in [the Agent’s] office. The facts of each case are different, in some cases the document and writing styles are similar because this is the way [the Agent] prefer[s] to draft documents...*”. Further, the Agent sees “...*absolutely no problem in the way [she] write[s] the documents and [with her] style of writing...*”

- With regards to the Form 888 examples, provided with the section 308 notice, the Agent *"...see[s] no problem in the way the documents were drafted even if it is similar in format..."*. The documents were completed *"...with full instructions form [sic] the declarant as they would only sign the documents after it is read back to them and they full understood and agree with it's [sic] contents..."*.
- With reference to Mr S's statutory declarations provided in support of his Partner visa application in 2014 and 2016 the Agent notes her *"... office did/had incorrectly uploaded the wrong signature page of Mr S's statutory declaration to the Department in 2014..."* and there are no issues with her writing style/structure or of her wording.
- However *"...even if the structure of [the Agent's] writings were similar, the contents of the documents are completely different..."*. The Agent reiterates that all the documents witnessed by the Agent, were done so with the full instructions and approval of the clients.
- If the Agent's partner visa applications *"...were vexatious in nature, then why are visas being granted to the Visa Applicant? [The Agent's] cases were clearly prejudiced and obviously vigorously assessed by the Department/Embassy..."*. Further, if the applications are vexatious then *"...why are all their visas were [sic] granted by the Department or remitted/set aside by the AAT..."*.
- The Agent had discovered, during a routine request for documents under Freedom of Information (FOI), that she was noted as an 'agent of concern' by an offshore embassy. The Agent believes that this is defamatory and unlawful practice. The Agent indicated that *"...from the high levels of successful cases being remitted/set aside by the AAT on appeal from [the Agent's ] office, it can only be concluded that the Department/Embassy did not correctly assess/held prejudice against cases lodged by [her] office..."*.
- Ms NTP's AAT notice of decision was provided to the Agent and she *"...completed the form as per instructions by [the] client. [The Agent] cannot make up information if [her] client does not remember dates of births of their own relatives..."* The Agent can only complete the forms using the information as provided to the Agent by her clients, which she believe she advised the member on the day of the hearing. This case was remitted to the Department and the visa was granted.
- With regards to whether the Agent should have submitted the forms upon receiving the information *"...the forms were complete with full instructions from [the Agent's] clients and the forms were signed, checked prior to lodgement..."* Forms were completed in the Agent's office as per her client's instructions, in the presence of the sponsor and/or visa applicant.
- The visa application forms *"...are completed by [the Agent's] office..."* with instructions from the client with as much information, relating to their personal circumstances included. The Agent is *"...responsible for final checking before any lodgement..."* with the clients.
- The Agent's staff members do not *"...do any migration work. Any typing, emails or letters carried out by [the Agent's] staff [is] personally checked by [the Agent] before sending out..."*
- Where other cases have been identified that have had dates of birth or other dates "whited out" these *"...white outs are made on the forms because of a correction needed to be made [sic]. There is absolutely nothing wrong with having white outs in the application forms..."* All information *"...on the application forms are requested and provided to [the Agent] from clients, whether they remember the family date of birth of family members or other dates is another issue..."*

- The reason for so many white outs occurring is due to “...not everyone [having] a good memory and errors do happen as we are all human...”
- Ms NTP could not remember the dates and the Agent therefore initially noted 1 January. However, the Agent then whited this out and only noted the year of birth as she believed this would be a more accurate representation.

Documentary evidence provided in response to the section 308 notice

- Statutory Declaration dated 14 February 2018
- Client file for Ms NTP
- Client file for Ms THP
- Client file for Ms TTTTB
- Client file for Mr TTN
- Client file for Ms SPTP
- Client file for Mr MQV
- Client file for Ms TNTM
- Client file for Mr VTN
- Client file for Mr TDH
- Client file for Mr QTT
- List of all employees of MYT NGUYEN SOLICITORS

**Notice under section 309 of the Act (“the section 309 notice”)**

11. On 9 May 2019, the Authority sent to the Agent a notice pursuant to section 309(2) of the Act, advising the Agent that it was considering cautioning her, or suspending or cancelling the Agent’s registration under section 303(1) of the Act.
12. The Agent was notified that having regard to the information before the Authority, it was open to the delegate to be satisfied that the Agent:
  - a. had engaged in conduct that breached the Agent’s obligations under clauses 2.1, 2.4, 2.8, 2.9, 2.9A, 2.23, 5.2, 5.5, 6.1, 6.4, 7.1, 7.2, 7.4 and 9.3 of the Code; and
  - b. that she was not a person of integrity or otherwise not a fit and proper person to provide immigration assistance.
13. Pursuant to section 309(2) of the Act, the Authority invited the Agent to provide written submissions on the matter by 12 June 2019.

*The Agent’s response to the Authority’s section 309 notice*

14. On 12 June 2019, the Authority received the Agent’s submissions by way of written argument. The Agent made the following submissions:
  - She has acted in accordance with the law, dealt with her clients competently and diligently and fairly. She has not had one complaint made against her by any of the “many” clients she has represented. The Agent added that she submits that in regards to clause 2.1 she has “not breached this clause as alleged”.



- The Agent in response to clause 2.3 is *“adamant [she] ha[s] not breached this clause as alleged. [The Authority has] not provided evidence that [she does] not have sound knowledge of the Migration Act and regulations, and other legislation relating to migration procedure and capacity provide accurate and timely advice.”*
- The Agent in response to clause 2.8 stated that in relation to taking client instructions this *“takes place”* when the client presents and signs the forms, their statutory declarations and any other documents. *“The client's actions in executing/signing the documentation are evidence that they have instructed [the Agent's] office to represent them”.*
- *“The client's instructions are confirmed and given to the clients in the form of a written cost agreement which they retain for their reference. [The Agent's] fees are fixed therefore [the Agent is] fully aware of the service fees that [she] charge[s] [her] clients hence [she does] not feel the need to keep a copy of the cost agreement in [her client] files. [The Agent] enclose[d] a copy of the standard cost agreement for [the Authority's] information.”* The Agent maintained that she always acts in accordance with her clients instructions.
- However, *“it is not in [the Agent's] practice to maintain a separate written confirmation that [she has] taken instructions from [her] clients and that [she has] understood their instructions. By completing their application forms, assisting with the preparation of their statutory declarations is a confirmation that [the Agent has] been instructed to act. Confirmation of [her] representation of their matter is also confirmed through their signing of the forms 956...”* and *“In the absence of any evidence to the contrary, this allegation that [the Agent has] breached the above subclauses of the code of conduct should fail.”*
- The Agent stated that with regards to informing her clients on the progress of their cases the *“outcome of their case is always relayed to them either by way of text messages, emails or direct phone calls to the clients. The communications between are usually in the Vietnamese language. It is not [the Agent's offices] normal practice to print out these communications and placing them physically in the client's file.”* The Agent advised she reviewed her text messages and emails and was able to locate some communications she had with her clients and has provided them to the Authority.
- The Agent stated the clients are *“always given a copy of their acknowledgement letter, bridging visa's, request for further information from the DOHA<sup>12</sup> and also a copy of their visa grant or decision record. [sic]”* The Agent confirmed that she did not breach clause 2.8.
- In response to clause 2.9 the Agent stated *“[She has] never acted against [her] client's instructions. All statements in support of [her] client's application are done with their full instructions. [The Agent has] not encouraged the making of statements which are known or believed by [the Agent] to be misleading or inaccurate.”*
- In response to the matters regarding third party declarants, Mr HHN, Ms TBC and Mr MTN, the Agent's response was *“Your assertion at paragraph 37 that ‘third party declarants may not know the couples but rather as they had used your services prior, they have agreed to provide a declaration in support of the couple’ is most absurd. What evidence does MARA have to make such an assertion that these third party declarants do not know the couple? These third party declarants have a duty to provide correct statements and are liable for penalty if a false statement is provided”.*

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<sup>12</sup> This abbreviation is taken to be the Department of Home Affairs

- In regards to the potential finding that similar responses have been provided in statutory declarations, in regards to TTLD, Ms KCL, Ms TKL and HTTN, the Agent stated that it would not be uncommon that there would be documents that were drafted that looked “systemic and similar”. The Agent added that she did not “see any problem with the way the documents were drafted as it is done with the client's full instructions and is a true reflection of the Declarants opinion of the relationship.”
- She “cannot write or make up information that is not provided by the witnesses or the clients. [The Agent] cannot draft documents or provide 'more detailed information' as [the Authority] suggested the Declarants/witnesses should be doing if it was not their instructions.” The Agent requests that the Authority provide her with evidence from the declarants/witnesses that the answers they provided in the documents submitted to the Department did not reflect their true circumstances.
- On the matter of Mr AHN and the position of the Authority that “[the Agent] should doubt the information provided by the Declarant/s and that [she] 'would have noted that the couple would have difficulty in establish that they were in a genuine and ongoing relationship in light of the finite time they had spent together as a couple'. Ultimately it is the DOHA who makes the final assessment of the couple's relationship as required and prescribed under the Migration Act. [The Agent does] not agree with [the Authority's] implication that [she] should doubt the information provided by [her] client/s, the witnesses or the Declarant/s or any documents that [she has] witnessed [sic]”.
- The Agent asserted that a person witnessing statutory declarations does not have the jurisdiction “to doubt the contents of the information provided by the Declarants/ third party Declarants. The prescribed person's role is to merely witness the Declarant/s signature.”
- In response to the potential findings, raised relation to Mr TTN the Agent referred the Authority to page 185 of the client's file. The Agent stated that she attached “a document made by Mr HVL disagreeing with the issues raised by the Department in the natural justice letter given in Mr TTN'S case.” The Agent further adds that it is the responsibility of the person that makes the statement to ensure that the correct information is provided.
- “Paragraph 43 of your email<sup>13</sup> insinuated that [the Agent is] a 'primary and significant link between all the parties and ha[s] an active role in facilitating and creation of documentation in support of applications which may not represent the genuine circumstances of the applicants'. This is an outrageous accusation to make. [The Agent's] role is to represent [her] client in their best interests and to present their case and circumstances to the DOHA in the most effective way. [She is] an authorised prescribe person who can witness Declarant's signature under the Statutory Act and [she has] done so accordingly. [sic]”
- In regards to Ms TMHP where the Authority in its “email...stated '[the delegate is] of the view that a migration agent working in their clients best interest would have responded to the requests made by the delegate [of the Department] and counselled their client on the risks of not complying with request'.” The Agent questions what evidence the Authority has that she did not counsel her client.
- The Agent asserts that it is up to the client to challenge the Department's allegations and asks what evidence the Authority has to imply that the Agent did not act in her clients best interests. The Agent further adds “in the absence of any complaints originating from any of my client/s, witnesses or Declarant/s, I submit that the allegation that I have breached this clause cannot be made out.”

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<sup>13</sup> The delegate has formed the view that the email which the Agent refers to in her response is the actual notice pursuant to section 309 and not the email method it was sent.

- In regards to the potential finding by the Authority that the Agent has breached clause 2.17 the Agent states she *"know[s] for a fact and strongly believe[s] that none of [her] applications is vexatious or grossly unfounded; therefore, the subclauses (a)-(c) is not applicable. [The Agent] confirm[s] [her] role as a Solicitor and Migration Agent are to relay the client's case and their witnesses' circumstances to the DOHA. No evidence has been provided in [the Authority's] email that [she has] breached this clause of the code of conduct"*
- The Agent states she has not breached clauses 5.1 and 5.2 as she provides *"[a]n estimated cost agreement for [her] services and any Departmental fees that may be incurred are given directly to the client usually after the initial consultation."* Further, the Agent's office runs on *"an extremely simple cost structure - clients are charged per case/service independent of number of consultations or time. Clients are fully aware of the cost involved as outlined in the cost agreement given to them. There has never been a dispute with clients over my costing or dispute"*. As such, the Agent asserts there is no evidence of her breaching the clauses and requests that the Authority provide evidence of her breaching the clauses.
- The Agent states that she has complied with clauses 6.1 and 6.4 and has *"provided the entire [client] files as requested"* and further that *"the way [she] has managed [her] practice has proven successful over the years"*
- The Agent states that she has complied with clause 7.2 and that clause 7.3<sup>14</sup> does not apply to her as she does not take money up front but rather after the service has been performed. She therefore has not breached the clauses as alleged.
- In regards to not responding to the Authority, the Agent seeks clarification as to how *"[her] response was designed to mislead or deceive the Authority?"*
- In regards to the identified spelling errors that were put to the Agent, she identifies that the delegate of the Authority also has *"made a significant number of spelling errors"* and the Agent provides a news article that the Australian Government spelt the word 'responsibility' wrong on the Australian fifty dollar note.

## **JURISDICTION**

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

### *Relevant legislation*

17. The functions of the Authority under the Act include:

- to investigate complaints in relation to the provision of immigration assistance by registered migration agents (paragraph 316(1)(c)); and

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<sup>14</sup> The Authority did not, in the section 309 notice, note clause 7.3 but rather 7.4 as such I am taking it to be a typo as the Agent has provided a response to clause 7.4.

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

## **Migration Act 1958 (Cth)**

### **Section 276 Immigration assistance**

- (1) *For the purposes of this Part, a person gives **immigration assistance** if the person uses, or purports to use, knowledge of, or experience in, migration procedure to assist a visa applicant or cancellation review applicant by:*
- (a) preparing, or helping to prepare, the visa application or cancellation review application; or*
  - (b) advising the visa applicant or cancellation review applicant about the visa application or cancellation review application; or*
  - (c) preparing for proceedings before a court or review authority in relation to the visa application or cancellation review application; or*
  - (d) representing the visa applicant or cancellation review applicant in proceedings before a court or review authority in relation to the visa application or cancellation review application.*
- (2) *For the purposes of this Part, a person also gives **immigration assistance** if the person uses, or purports to use, knowledge of, or experience in, migration procedure to assist another person by:*
- (a) preparing, or helping to prepare, a document indicating that the other person nominates or sponsors a visa applicant for the purposes of the regulations; or*
  - (b) advising the other person about nominating or sponsoring a visa applicant for the purposes of the regulations; or*
  - (c) representing the other person in proceedings before a court or review authority that relate to the visa for which the other person was nominating or sponsoring a visa applicant (or seeking to nominate or sponsor a visa applicant) for the purposes of the regulations.*

- (2A) For the purposes of this Part, a person also gives **immigration assistance** if the person uses, or purports to use, knowledge of, or experience in, migration procedure to assist another person by:
- (a) preparing, or helping to prepare, a request to the Minister to exercise his or her power under section 351, 391, 417, 454 or 501J in respect of a decision (whether or not the decision relates to the other person); or
  - (aa) preparing, or helping to prepare, a request to the Minister to exercise a power under section 195A, 197AB or 197AD (whether or not the exercise of the power would relate to the other person); or
  - (b) advising the other person about making a request referred to in paragraph (a) or (aa).
- (3) Despite subsections (1), (2) and (2A), a person does not give immigration assistance if he or she merely:
- (a) does clerical work to prepare (or help prepare) an application or other document; or
  - (b) provides translation or interpretation services to help prepare an application or other document; or
  - (c) advises another person that the other person must apply for a visa; or
  - (d) passes on to another person information produced by a third person, without giving substantial comment on or explanation of the information.
- (4) A person also does not give immigration assistance in the circumstances prescribed by the regulations.

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

##### **1.10 The aims of the Code are:**

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

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

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

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

### *Complaints*

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

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

## **EVIDENCE AND OTHER MATERIAL**

21. In reaching the below findings of fact the Authority considered the following evidence:

- Documentation contained in the Authority's complaint files for CMP-30005 and CMP-33870;
- Information held on Departmental records in relation to the matters raised in the complaints;
- Information held by the Authority in relation to the Agent; and
- The supporting documentation provided by the Agent in response to the section 308 notice and the 309 notice:
  - Statutory Declaration dated 14 February 2018 in response to section 308 notice
  - Written submission dated 12 June 2019 in response to section 309 notice
  - Client files for Ms NTP; Ms THP; Ms TTTTB; Mr TTN; Ms SPTP; Mr MQV; Ms TNTN; Mr VTN; Mr TDH and Mr QTT
  - List of all employees of MYT NGUYEN SOLICITORS
  - Statutory declaration by Mr HVL dated 8 August 2014, witnessed by the Agent.
  - A sample of the Cost Agreement issued to clients by the Agent.
  - A blank Form 888.<sup>15</sup>
  - A website article from Yahoo Finance titled 'The \$50 note has an EMBARRASSING typo'.<sup>16</sup>
  - Email correspondence between the Agent and TDH dated 26 September 2016.
  - Six screenshots of short message services (SMS) between the Agent and her clients.

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<sup>15</sup> Statutory declaration by a supporting witness in relation to a Partner or Prospective Marriage visa application.

<sup>16</sup> <https://au.finance.yahoo.com/news/australian-50-dollar-note-has-a-big-typo-002317145.html>

## **DECISION AND REASONS**

### *Finding on material questions of fact*

22. Pursuant to paragraph 303(1)(h) of the Act, the Authority may caution a registered migration agent or suspend or cancel their registration if the agent has not complied with the Code.
23. Having regard to the findings I have made, I am satisfied that the Agent has engaged in conduct in breach of the Agent's obligations under clauses **2.1, 2.8, 2.9, 2.9A, 2.23, 5.2, 5.5, 6.1, 6.4, 7.2, 7.4** and **9.3** of the Code.
24. I am satisfied that these breaches are of a serious nature and warrant a disciplinary decision. My findings and full reasons for the decision are set out below.

### ***Client Agent Relationship***

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

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

26. Section 276 of the Act defines immigration assistance as (as relevant):

*'1) For the purposes of this Part, a person gives immigration assistance if the person uses, or purports to use, knowledge of, or experience in, migration procedure to assist a visa applicant or cancellation review applicant by:*

- a) preparing, or helping to prepare, the visa application or cancellation review application; or*
- b) advising the visa applicant or cancellation review applicant about the visa application or cancellation review application; or ...; and*

*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; ...'*

27. The Agent has provided responses to specific questions put forward by the Authority and provided her client files in response to the section 308 notice. The client files provided mainly consisted of visa application forms evidencing that clients sought immigration assistance from the Agent, with regards to their respective Partner Visa applications. Furthermore, the Agent was declared as the representative migration agent in association with a number of such applications. Departmental records reveal that the Agent had communicated with the Department on the clients' behalf. The Agent, in her responses to the Authority, has not disputed that the clients for whom the Authority requested files or discussed within the notices were her clients. It follows that the Agent was engaged to provide the clients with immigration assistance and had established a client agent relationship with the visa applicants and therefore owed them obligations specified under the Code.

### **Non-Genuine Relationships**

28. Clauses 2.1, 2.9, 2.17 and 2.23 of the Code, provide as relevant:

- 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.*  
*However, a registered migration agent operating as an agent in a country other than Australia will not be taken to have failed to comply with the Code if the law of that country prevents the agent from operating in compliance with the Code.*
- 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.*
- 2.17 *If an application under the Migration Act or the Migration Regulations is vexatious or grossly unfounded (for example, an application that has no hope of success) a registered migration agent:*  
(a) *must not encourage the client to lodge the application; and*  
(b) *must advise the client in writing that, in the agent's opinion, the application is vexatious or grossly unfounded; and*  
(c) *if the client still wishes to lodge the application — must obtain written acknowledgment from the client of the advice given under paragraph (b).*  
*Note: Under section 306AC of the Act, the Minister may refer a registered migration agent to the Authority for disciplinary action if the agent has a high visa refusal rate in relation to a visa of a particular class.*
- 2.23 *A registered migration agent must take all reasonable steps to maintain the reputation and integrity of the migration advice profession.*

29. Allegations before the Authority suggest that there have been a number of partner visa applications, which the Agent had submitted to the Department, where the relationship between the partners was not genuine and that they were entered into solely for the purpose of achieving visa outcomes for the applicants.



30. The Agent was requested to comment on the allegations, when they were put to her by way of the section 308 notice. In her response, the Agent stated that the allegations were “*defamatory in nature*”. The Agent also made mention that of the ten (10) client files requested by the Authority, as part of the notice issued pursuant to section 308 of the Act, six (6) clients had had their onshore partner visas granted to them by the Department and three (3) were currently pending before the Department.<sup>17</sup> The Agent questioned why the Department, and additionally the AAT, were approving the visas if the relationships were not genuine in nature as claimed.
31. Moreover, the Agent highlighted that following a FOI<sup>18</sup> request she became aware that the Department had labelled her as an ‘Agent of Concern’ (AoC note) which had impacted the Agent’s caseload. The Agent contended that the Department “vigorously” assesses her cases, because of the AoC note, and notwithstanding this rigour, some cases which were refused by the Department, were subsequently overturned by the AAT. The Agent claimed that the refusals we result of the AoC note recorded against her.
32. Any notation or consideration by the Department in association with visa processing is not a matter for the Authority in respect of its investigation into any conduct on the Agent’s part. The delegate nevertheless notes that the Principal Migration Officer from HCMC post<sup>19</sup> had responded to the Agent on the issue at the time the Agent initially raised the matter with the Department.

#### *Third Party Declarants*

33. As part of its investigation, the Authority’s review of the Agent’s caseload identified a number of third party declarants who appear to be associated with numerous applications and in the different roles of sponsor, main visa applicant, or, as a witness on more than one occasion in respect of different couples. Concerns arising from the applications are discussed below.

#### Mr HHN<sup>20</sup>

34. Mr HHN was a third party declarant for two separate partner visa applications<sup>21</sup> where the Agent was the representative migration agent appointed for the matters. The Agent witnessed the Form 888’s (the Form) provided by Mr HHN to the Department in respect of the couples. Furthermore, the Form associated with the visa application for Ms THP and Mr QDN was typed and white out was applied to sections within it suggesting that information needed to be amended despite the Agent’s office taking “*full instructions*” from the applicants/witnesses in their native language.

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<sup>17</sup> Two of the three pending visa applications have since been determined. The Agent stated that one applicant had taken her matter to another RMA to lodge an appeal hence why only 9 cases were mentioned in her response.

<sup>18</sup> Freedom of Information (FOI)

<sup>19</sup> 05 October 2017

<sup>20</sup> CID: 4\*\*\*\*\*0

<sup>21</sup> That of Ms THP who was sponsored by Mr QDN and Mr TTD who was sponsored by Ms TPTT.

Ms TBC<sup>22</sup>

35. Similarly, Ms TBC was also a declarant for two separate partner visa applications where the Agent was the appointed migration agent for both applications. The first visa application lodged was in respect of Ms TMHP and Mr HC.<sup>23</sup> Mr HC, the sponsor, is Ms TBC's brother and the Agent witnessed the Form in October 2014. The declarant provided, what appeared to be personal responses to the questions. Ms TBC was a declarant for the second time in August of 2015 for her nephew Mr NPC in his sponsorship of Ms TNTN.<sup>24</sup>

Ms TBC, in respect of her nephew's Form 888, responded with:

**"I CONFIRM THE COUPLE HAVE A VERY HAPPY  
MARITAL RELATIONSHIP  
I BELIEVE MY NEPHEW AND HIS WIFE [name removed for privacy]'S  
MARRIAGE IS GENUINE AND CONTINUING  
I AM VERY HAPPY AND SUPPORTIVE OF THEIR  
MARRIAGE AND RELATIONSHSHIP  
THEY ARE VERY COMMITTED TO EACH OTHER.  
I CAN SEE THAT THEY ARE VERY MUCH IN LOVE  
WITH EACH OTHER."** [sic]

Ms D, the second declarant, declared as a family friend of the sponsor Mr HC on her Form 888, responded with:

**"I CAN SEE THAT THEY HAVE A VERY LOVING  
AND HAPPY MARRIAGE  
I AM VERY SUPPORTING OF [names removed for privacy]S  
RELATIONSHIP  
I CAN THAT THEY ARE VERY MUCH IN LOVE  
AND CARE FOR EACH OTHER  
THEY HAVE THE SUPPORT OF FAMILIES AND  
FRIENDS  
I CONFIRM THEY HAVE A GENUINE AND  
CONTINUING MARTIAL RALATIONSHIP"** [sic]

36. It would be expected that a close relative, such as an aunty, would be able to provide detailed and more personal responses to the questions on the Form. Even more so, given her comment that *"I see the couple almost every weekend..."*. In response to the questions on the Form, Ms TBC had provided typed responses with grammatical errors and similarly worded statements to that of Ms D, who was another declarant for the couple. However, unlike the close familial connection of Ms TBC, Ms D was declared as a friend of the sponsor. Given such, it may be reasonable for her responses to the questions to contain less detail than that provided by a close relative who regularly engages with the couple. However, they appear to be relatively similar.

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<sup>22</sup> CID: 1\*\*\*\*\*9

<sup>23</sup> PRID: 6\*\*\*\*\*2

<sup>24</sup> PRID: 9\*\*\*\*\*9

37. Given the similarities between the two responses, I am of the view that the responses were not taken on the instructions provided by the signatories, as purported by the Agent, rather that template wording was used to draft the statements.

Mr MTN<sup>25</sup>

38. In another case, lodged by the Agent in May 2017, Mr MTN sponsored Ms NATT for an onshore partner visa. The application was refused and the decision record revealed that the visa processing officer assigned little weight to the Form's that were completed by the sponsor's mother and the applicant's friend as they were "*similarly worded and contain[ed] generic relationship information*". The Agent witnessed both of the Forms on 25 May 2017. As a result, the visa processing officer concluded that the couple did not present themselves as though they were in a committed relationship and therefore found that the relationship was not genuine and continuing.
39. In response to question four<sup>26</sup> of the Form the friend of the main applicant Mr MTN, the declarant, stated that [emphasis added]:

***"I attended the couple's wedding and they have a loving relationship.  
I can confirm their relationship is genuine as I can see how much they are in love and care of each other and they do not hesitate to show everyone that"***

40. The sponsor's mother indicated that she sees the couple every day, as they reside with her,<sup>27</sup> and in response to the same question stated that [emphasis added]:

***"I attended the couple's wedding.  
They have a loving relationship. My daughter is very happy ever since she entered into a relationship with the Applicant.  
I can see they are very much in love and I confirm their relationship is genuine and continuing."***

41. As discussed above it would be expected that a close relative, such as a mother, would be able to provide significant detail regarding the couple's relationship. Even more so when the couple reside with her and she sees them on a daily basis. Furthermore, neither she nor the friend noted the client's name within their response to question four. The sponsor's mother refers to her son-in-law as "*Applicant*". From the Agent's responses to the section 308 notice, I am satisfied that the information contained within the Form 888's was typed at the Agent's office.

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<sup>25</sup> CID: 3\*\*\*\*\*1

<sup>26</sup> State whether you believe the relationship of the applicant and his/her partner or fiancé(e) to be genuine and continuing, and give your reasons for your belief.

<sup>27</sup> According to the sponsor's mother

42. In her response to the section 309 notice wherein the above was discussed, the Agent stated that the Authority's assertions were "*absurd*". The Agent noted that "*these third party declarants have a duty to provide correct statements and are liable for penalty if a false statement is provided*" [sic] thus revealing that the Agent was aware of the importance of providing accurate statements on the Form. The Agent has asserted that she had acted according to the instructions as provided by her clients.
43. The Agent added that she has lodged so many applications that it was not "*uncommon*" that some documents would look systemic and similar. The Agent advised that she saw no problems with the way that she drafted the documents and that they were "*a true reflection of the Declarants opinion of the relationship*" and that she was unable to add more detail as suggested by the delegate. The Agent in support of her argument provided the delegate with a copy of the Form 888 and requested that the delegate review questions three and four of the Form and determine whether the findings of similar responses in the Form still applied. Furthermore, the Agent requested that she be provided with "*evidence from any of the Declarants/witnesses that the answers they provided in the documents submitted to the Department did not reflect the true circumstances...*"
44. Whilst I acknowledge that the Agent has lodged a number of Partner visa applications, I am of the view that each relationship and visa applicant has had an individual experience of their relationship, and that such would be reflected in their responses, and that the responses provided by their declarants would be individual and specific to the relationship.
45. Given the above discussed, I find that applying such a general descriptor, devoid of personal particulars and specific detail, provides for a broader application of the document and its potential use in other cases. Additionally, as already discussed earlier in this decision, there is no evidence before me to support the Agent's claim that "*full instructions*" were taken from clients – including that of third party declarants.

Mr AHN<sup>28</sup>

46. The Agent was the appointed migration agent in the case of Mr AHN whose visa application was refused by the Department. The visa processing officer making the decision on the partner visa application identified notable discrepancies between the declarant's responses within the Form regarding the genuineness of the relationship when compared with Mr AHN's travel records. The Agent witnessed both of the Forms for the declarants, Ms TKT and Mr DT on 2 June 2016, in her office.
47. In her declaration in support of Mr AHN's relationship, Ms TKT noted on the Form that she often saw the couple at their home as well as every weekend at outings such as dinner or drinks. Mr DT, the second declarant, also stated in his Form 888 that he saw the couple almost every week. The departmental visa processing officer in their decision, to refuse to grant the visa, under the heading of 'Social Aspects', noted that they were "*unable to accord weight to the declarations provided.*"

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<sup>28</sup> CID: 8\*\*\*\*\*1

48. The visa processing officer found that the declarants had “*exaggerated*” their responses and that the responses were misleading. Furthermore, in consideration of the evidence provided, the visa processing officer was not satisfied that Mr AHN’s relationship with his partner/sponsor was genuine and ongoing on account of the length of time they had been in a relationship prior to lodging the visa application namely 10 days in totality.<sup>29</sup>
49. On the matter of Mr AHN, in her response to the section 309 notice, the Agent stated that it is for “DOHA” to determine the “*final assessment*” of a couple’s relationship. Furthermore, that the Agent did not agree with the Authority’s “*implication that [she] should doubt the information provided by [her] client/s, the witnesses or the Declarants or any documents that [she] has witnessed*”. However, in her capacity as a registered migration agent, the Agent is required to ensure that she does not encourage a client to lodge an application that is grossly unfounded and must advise the client of this fact in writing. Moreover, she must not make statements in support of an application under the Migration Act or Migration Regulations, or encourage the making of statements, which she knows or believes to be misleading or inaccurate.
50. In her response to the section 308 notice, the Agent stated that she undertakes the final review of the applications prior to their lodgement with the Department. I am of the view that a prudent migration agent would have noted that the couple would have difficulty in establishing that they were in a genuine and ongoing relationship in light of the finite time they had spent together as a couple, prior to lodging the visa application. Additionally, it would be reasonable to expect that an appointed agent, who reviews all the information and documentation provided by any party, would have identified the discrepancy between the declarant’s statements with that provided by Mr AHN. The conflicting statements would be indicative that the relationship was not genuine and that the statements would serve to mislead the Department on the circumstances of the relationship with the intention of procuring a visa outcome.
51. Given the above discussed I am satisfied that the Agent did not act in Mr AHN’s legitimate interests by lodging a partner visa application she likely knew was vexatious and had little or no prospect of success.

Mr TTN<sup>30</sup>

52. According to the decision record, the visa processing officer contacted Mr HVL,<sup>1</sup> who was listed as a third party declarant for Mr TTN. Mr HVL advised that he did not know the couple well and that he had often signed paperwork such as the Form at weddings when he attended them. Furthermore, according to Mr HVL, he did not know the Agent, as either a migration agent or a solicitor. Significantly, however, the Agent had purportedly witnessed both Form 888’s signed by him on the respective dates.

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<sup>29</sup> In addition to other contributing factors

<sup>30</sup> CID: 4\*\*\*\*\*6

53. In the case of Mr TTN, the visa processing officer assessing the visa application noted that the third party declarant Mr HVL's signature characteristic had changed between his first Form 888 and the second Form 888 submitted to the Department. On 14 December 2011, the initial Form 888 was signed and dated and it was hand written and witnessed by the Agent on the same day. A certified copy of Mr HVL's passport biodata page was provided in support of the Form. The Agent's colleague, Ms [removed for privacy]<sup>31</sup> certified the passport biodata page as a true copy of the original. In 2013, the Department issued the clients a letter advising them that they could apply for the permanent stage partner visa. The clients provided further information to the Department in support of the permanent stage visa including another Form 888 from Mr HVL dated 10 November 2013.
54. In support of the Form, a certified copy of the passport biodata page was again provided which Ms [the Agent's colleague removed for privacy] witnessed. The visa processing officer noted that Mr HVL's signature had changed between the submission of the first Form in December 2011 and that of the second. The signature on the 2011 Form 888 matched that of the passport biodata page provided, however the second Form 888 and the passport biodata page did not match.
55. The visa processing officer contacted Mr HVL<sup>32</sup> to discuss the changes and was advised by Mr HVL that a marriage celebrant at a restaurant in [suburb] handed the Form to him. Further, that he could not remember the person who witnessed his signature on the Form, namely the Agent. He stated that he had been handed many such Form 888's to sign usually by a marriage celebrant at a wedding. He also stated to the visa processing officer during the phone interview that he did not know of any Vietnamese migration agents or lawyers. Further, he confirmed that his signature had not changed and that all other identity documents had the same signature on them as that of his passport. On 23 July 2014, the visa processing officer issued the clients with a natural justice letter to comment on the adverse information provided by Mr HVL in relation to his statement that he did not know the sponsor or the main applicant.
56. In response to the natural justice letter, the Agent provided a statutory declaration signed by Mr HVL to the Department. The visa processing officer did not accept Mr HVL's statutory declaration to be accurate as it contradicted the statements he had recently made to the visa processing officer. Mr HVL stated that the phone conversation that took place between him and the visa processing officer was a result of miscommunication via the interpreter. He claimed that the signatures on both forms were his and that he did know the sponsor and main applicant. Furthermore, he noted that the solicitor, the Agent, wrote the content and that it was explained to him prior to him signing the Form. The statutory declaration response did not address Mr HVL's statement that he did not know the solicitor who witnessed his signature.

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<sup>31</sup> A lawyer

<sup>32</sup> On 24 May 2014 via telephone with a Vietnamese interpreter

57. According to departmental records, on the basis of all the available evidence provided by Mr HVL, the visa processing officer determined the information to be misleading and on that basis refused the visa application in April 2015. Given the above discussed, I am satisfied that it was highly unlikely that Mr HVL signed the Form 888 in 2013 and accept that it was signed by a person other than Mr HVL for the purpose of obtaining a migration outcome for the partner visa applicant. Furthermore, that the third party declarants likely did not know the couples, but rather as former clients of the Agent, they had agreed to provide a declaration in support of the couples.
58. In her section 309 response, in regards to Mr TTN, the Agent stated that “[t]he responsibility to provide the correct information lies in the person making the statement”. While I accept this to be the case, this does not abrogate the Agent from her obligations to ensure that she does not make statements, or encourage the making of statements, that she knows or believes to be misleading. Particularly in the circumstance where she is not only the representative migration agent for the application, but also the witness for the declaration. The Agent’s response appears to direct focus on apportioning blame onto others, rather than on her role and responsibilities in the circumstances surrounding the matters discussed in this decision. In addition to the above response, the Agent requested that the Authority provide her with evidence that the third party declarants were not known to one another. It is for the Agent to dispute the Authority’s potential findings with evidence to support her claims. All of the Authority’s evidence was provided to the Agent within the section 309 notice.

*Further Requests for information from the Department*

Ms TMHP<sup>33</sup>

59. In the case of Ms TMHP, the Agent lodged a partner visa with the Department, on 31 October 2014. During the processing of the application the applicant and sponsor, Mr HC, were requested on 2 March 2016, by the visa processing officer, to provide further information in support of their visa application. The request for more information was emailed to the Agent as the registered migration agent appointed on the application. The request was for DNA testing to be undertaken, as the visa processing officer was not satisfied that the child of the relationship was that of the sponsor Mr HC.
60. Detailed information was provided in regard to the request and the options available to the applicant in either undertaking the requested testing or where deciding not to do so, withdrawing the application. In response to the request under section 56<sup>34</sup> of the Act the sponsor and main applicant provided signed statutory declarations to the visa processing officer, witnessed by the Agent on 21 March 2016, refuting the allegation that the child was not that of the sponsor and maintaining that the relationship was genuine and continuing.

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<sup>33</sup> CID: 2\*\*\*\*\*1

<sup>34</sup> Request for more information

61. On 30 March 2016, in light of the statutory declarations provided to the Department, the visa processing officer made a further request under section 57<sup>35</sup> of the Act. The notice revealed that the Department had received unfavourable information, that the relationship was non-genuine, and that the child was not the child of the sponsor and main applicant, and requested that the applicant and sponsor comment on the allegation. Two further statutory declarations were provided to the Department from the applicant and sponsor, both witnessed by the Agent on 19 April 2016, in response to the allegation. In the absence of the Agent providing the visa processing officer with the requested DNA evidence, or seeking that the application be withdrawn, the visa application was refused on 1 June 2016. The visa processing officer was not satisfied that the child was of the relationship and the credibility of the information provided by the declarants in the Form 888's was called into question. The AAT has since affirmed the Department's decision to refuse the visa application.
62. I am of the view that a migration agent working in their clients lawful interests would have responded to the request made by the visa processing officer and counselled their client on the risks of not complying with the request. Alternatively, the option to withdraw the application could have been pursued, rather than proceeding with an application which was subsequently refused by the Department and affirmed by the AAT. Furthermore, I am of the view that a migration agent who sought to challenge the allegation, would have provided sufficient evidence to substantiate their claims to counter the assertions made. As such, I am satisfied that in respect of the case of Ms TMHP the Agent did not act in her client's interests.
63. Moreover, given my discussion above, I am satisfied that the supporting documents provided to the Department are too similar in detail for it to be considered coincidental. They are very generic in nature, are deficient in personal particulars and in some instances signed by persons who were not in a position to comment on the genuineness of the relationship. It follows, that I am of the view that the responses were manufactured to support a proposition that the relationships were genuine and ongoing when this may not have been the case and that the applications were misleading and designed to procure migration outcomes.
64. Furthermore, the Agent was not only the representative migration agent on all the matters which are discussed within this decision, but had witnessed the majority, if not all, the documentation submitted to the Department in support of the applications. This extended to the declaration made by Mr HVL, after which he informed the delegate that he did not know the couple (or the Agent) but signed such statements at weddings, before retracting the statement when the adverse information was published to the applicant through their representative, the Agent. It follows therefore that I am satisfied that the Agent, as the primary and significant link between all the parties, has had an active role in facilitating the creation of documentation to be provided in support of applications which were not an accurate representation on the circumstances of the applicants.

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<sup>35</sup> Natural Justice



65. The Agent in her response to the section 309 notice stated that in regards to clause 2.1 she had “*not breached this clause*” and that she has acted in accordance with the law. Further that not one of her clients has lodged a complaint against her in all her years of practice as a migration agent. The Agent argued that it was an “*outrageous accusation*” that she was the primary and significant link between the parties and added that it was her role to “*represent [her] client in their best interests and to present their case and circumstances to the DOHA in the most effective way*” [sic]. The Agent also noted that she was an authorised prescribed person who is able to witness declarant’s signatures. The Agent asserted that she has “*never acted against her client’s instructions*” and that she has “*not encouraged the making of statements which are known or believed by [her] to be misleading or inaccurate*”.
66. Furthermore, the Agent argued that in the absence of any complaints originating “*from any of my client/s, witnesses or Declarant/s, [she] submit[s] that the allegation that she has breached this clause [2.9] cannot be made out*” and that she has not breached clause 2.17. The Agent further stated, in regards to clause 2.17, that her “*role as a Solicitor and Migration Agent are to relay the client’s case and their witnesses’ circumstances to the DOHA*”. The Agent asserted that as “*No evidence has been provided in [the Authority’s] email*<sup>36</sup>” she therefore has not breached clause 2.17 either. The Agent did not address clause 2.23 in her responses nor did she provide evidence to support her claims that she has not breached the clauses as she asserts.
67. Consequently, I am satisfied that by providing false and misleading information knowingly to the Department the Agent undermined the partner visa programme; had not acted in the legitimate interests of her clients, and that such conduct has an adverse impact on the integrity and reputation of the migration advice profession. I am therefore satisfied that the Agent has engaged in conduct in **breach of clauses 2.1, 2.9, 2.17 and 2.23** of the Code.

### **Misleading Declarations**

#### *Declarations by witnesses - Form 888 (the Form)*

68. In the Agent’s response to the section 308 notice she stated that the forms submitted to the Department where witnessed by her were completed in her office and upon receiving “*full instructions*” from her clients. Moreover, where a client required assistance in completing the forms then she would “*personally see*” the clients and ask them the questions contained within the Form, which was undertaken in Vietnamese in the event they did not speak or write English. Upon receiving the responses the Agent completed the Form in English and read the responses back to the client to ensure “*they are satisfied with the contents.*” Following this process, and once their identity has been confirmed, they are asked to sign the document in the Agent’s presence.

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<sup>36</sup> I take this to mean the notice pursuant to section 309 of the Act which was emailed to the Agent as an attachment.

69. The Agent has asserted that no client was provided with templates to guide the completion of their own forms. The Agent highlighted that “[e]ach case is different therefore [the Agent] do[es] not provide templates to the witnesses”. With regards to the two Form 888’s that were provided to the Agent along with the section 308 notice, the Agent stated that she saw “no problem in the way the documents were drafted even if it is similar in format”. The Agent also reiterated that the forms are all completed in her office and in line with the instructions provided from her clients. The Agent maintained the same position in her response to the section 309 notice.
70. During the Authority’s investigation into the complaint matter, a random selection of twenty three (23) partner visa applications were reviewed. Of the thirteen (13) Form’s submitted eleven (11) contained a spelling error in respect of the word ‘relationship’ which was spelt as “*RALATIONSHIP*”. Furthermore, the Agent witnessed all the forms personally, within the same period, or on the same day. While the forms submitted for Mr QTT<sup>37</sup> and Ms TTLT<sup>38</sup> contain the same response to question four (replicated below).

*Relationship reflected as ‘RALATIONSHIP’*

71. In the Form, signed and witnessed by the Agent dated 9 September 2015, Mr QTT’s supporting witness stated [emphasis added]:

***“THEY HAVE THE SUPPORT OF FAMILIES AND FRIENDS.  
I CONFIRM THEY HAVE A GENUINE AND CONTINUING  
MARITAL RALATIONSHIP... [sic]”***

72. Ms TTLT’s supporting witness, where the Form was signed and witnessed by the Agent on 12 May 2015, stated [emphasis added]:

***“THEY HAVE THE SUPPORT OF FAMILIES AND FRIENDS.  
I CONFIRM THEY HAVE A GENUINE AND CONTINUING  
MARITAL RALATIONSHIP [sic]”***

73. Furthermore in the case of Ms TTTTB’s<sup>39</sup> partner visa application the Form, signed and witnessed by the Agent on 19 December 2014, provided in support of the partner visa application made by Mr THT notes at question four<sup>40</sup> of the Form that [emphasis added]:

***“THEY HAVE THE SUPPORT OF FAMILIES AND FRIENDS  
I CONFIRM THEY HAVE A GENUINE AND CONTINUING  
MARITAL RALATIONSHIP [sic]”***

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<sup>37</sup> CID: 6\*\*\*\*\*8

<sup>38</sup> The Agent was appointed for Ms TTLT’s first stage partner processing visa application 820 [CID: 7\*\*\*\*\*0]

<sup>39</sup> CID: 5\*\*\*\*\*0

<sup>40</sup> State whether you believe the relationship of the applicant and his/her partner or fiancé(e) to be genuine and continuing, and give your reasons for your belief.

74. The form provided by Mr SGH, submitted in support of Ms SPTP's<sup>41</sup> relationship with Mr LCB, notes in his response to question four of the Form, signed and witnessed by the Agent on 19 December 2014, that [emphasis added]:

***“THEY HAVE THE SUPPORT OF FAMILIES AND FRIENDS.  
I CONFIRM THEY HAVE A GENUINE AND CONTINUING  
MARITAL RALATIONSHIP [sic]”***

*Relationship reflected as ‘RELATIONSHPIP’ and ‘RELATIONSHIP’*

75. In addition to the above discussed the investigation identified further correlation between separate matters in respect of four (4) of the Forms where the word “relationship” was again misspelt and reflected as “RELATIONSHPIP” in the response to question 4.
76. Moreover, it appears that some supporting witnesses provided an almost identical response to question four of the Form, inclusive of text, style and the spelling of ‘relationship’ as ‘RELATIONSHPIP’. Mr QTT’s supporting witness stated [emphasis added]:

***“I BELIEVE MY BROTHER’S MARRIAGE TO HIS  
WIFE IS GENUINE AND CONTINUING.  
I CONFIRM THE COUPLE HAVE A VERY HAPPY  
MARITAL RELATIONSHIP [sic]  
I CAN SEE THAT THEY ARE VERY MUCH IN LOVE  
WITH EACH OTHER.  
I AM VERY HAPPY AND SUPPORTIVE OF THEIR  
MARRIAGE AND RELATIONSHPIP [sic]  
THEY ARE VERY COMMITTED TO EACH OTHER”***

77. In response to the same question Ms TKLT's<sup>42</sup> supporting witness stated [emphasis added]:

***“I BELIEVE [names removed for privacy]’S RELATIONSHIP IS  
GENUINE AND CONTINUING.  
I CONFIRM THE COUPLE HAVE A VERY HAPPY  
MARITAL RELATIONSHIP [sic]  
I CAN SEE THAT THEY ARE VERY MUCH IN LOVE  
WITH EACH OTHER.  
I AM VERY HAPPY AND SUPPORTIVE OF THEIR  
MARRIAGE AND RELATIONSHPIP [sic]  
THEY ARE VERY COMMITTED TO EACH OTHER”***

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<sup>41</sup> CID: 3\*\*\*\*\*7

<sup>42</sup> CID: 4\*\*\*\*\*9

78. On the matter of the spelling of ‘relationship’ which was discussed within the section 309 notice, the Agent responded by stating that the Authority also “*made a significant number of spelling errors*” within the notice pursuant to section 309 of the Act. The Agent in support of her responses also provided a news article on the incorrect spelling the word ‘responsibility’ on the Australian fifty dollar note. The Agent failed to address the central issue of template use in her response. The Authority emphasised the spelling, phrasing, and content as significant indicators that the Forms provided to the Department were not a genuine representation of the relationships, but were generic template responses which were common in the Agent’s partner visa caseload. As such, the discussion on the spelling errors was to highlight the point that the supporting evidence submitted to the Department was template based, rather than an individual’s level of English language proficiency.

*Similar responses for unrelated matters*

Ms TTLD<sup>43</sup> and Ms KCL<sup>44</sup>

79. During the course of the investigation, further text was identified containing similar wording within documentation submitted to the Department in support of applications for which the Agent was the appointed migration agent. In the case of Ms TTLD, who was sponsored by Mr KAT, the third party declarant provided a similar response to question four to that of another third party declarant for a separate partner visa application in respect of Ms KCL. The Agent was the agent on record for Ms KCL as well as the witness for the Form Ms KCL’s declarants provided.

Mr PBL, a third party declarant for Ms TTLD in her response within the Form, witnessed by the Agent on 15 June 2017, stated [as relevant emphasis added]:

***“...I believe they have a genuine relationship as they do not hesitate to show everyone that they love each other. They also show respects and care to one another...”*** [sic]

Ms TKL a third party declarant for Ms KCL (they are sisters as noted on the Form) in her response within the Form, witnessed by the Agent on 27 June 2017, stated [as relevant emphasis added]:

***“... I believe their relationship to be genuine as I can see how much respects they show to one another, and they have shown every one around them how much they care for each other..”*** [sic]

80. The response in respect of Ms TLL, provided in support of Ms TNHC’s<sup>45</sup> onshore partner visa application, for whom the Agent was the appointed migration agent likewise displayed similarities. The Form was witnessed by the Agent on 20 June 2017 and Ms TNHC stated the following [as relevant emphasis added]:

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<sup>43</sup> CID: 8\*\*\*\*\*8

<sup>44</sup> CID: 2\*\*\*\*\*4

<sup>45</sup> CID: 9\*\*\*\*\*0

***“...I believe their relationship is genuine and continuing because they are very happy together whenever I see them and they show respects and care for one another. They do not hesitate to show everyone how much they love each other...”*** [sic]

81. Given the above discussed, there appear to be numerous declarants<sup>46</sup> providing similar responses on their Form's, in respect of different couples, where the Agent is the primary link in her capacity as the migration agent appointed for the applications and where she had witnessed the Forms on the same day. The Agent argued that each case was “*different*” and that even if the writing style is similar the documents are completely different, that the content is consistent with the instructions received from the declarants and that no templates were provided, despite evidence indicating to the contrary.
82. I am satisfied that the systemic practice in using similar or identical statements appears common to the Agent's migration agency, supporting the notion that the declarations lack credibility and where the probability of receiving similar or identical statements from different and unrelated parties appears highly unlikely. Had the Agent read out the questions to different individuals, transcribed the responses they provided, read it back to them for correctness, verified their identification, and then had them sign before witnessing their signatures, it would appear improbable that the responses would be almost identical. Had this occurred, as claimed, it would be reasonable to expect that a registered agent in a like position would have immediately identified the similarities in the responses and questioned the likelihood of being provided with identical responses to the question(s).
83. Considering the similarities in the aforementioned responses, I am satisfied that it is highly improbable that responses from unrelated applicants would be nearly identical. It follows that, as the one person who had oversight of these matters, I am satisfied that the Agent was complicit in knowingly submitting statements to the Department which she knew, or should have reasonably known were misleading.

*Statutory Declaration (the Declaration)*

84. In response to the queries raised about the Agent's business practices surrounding the completion of the declarations the Agent stated in her statutory declaration response to the section 308 notice that “*the statutory declarations are drafted by [the Agent] with the client's instructions regarding their relationship*”. The Agent further added that she “*would then type or write their answers into the form of a statutory declaration, read it back to them...to make sure it was accurate and as per their instructions, they then sign the document in my presence.*”

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<sup>46</sup> CID: 5\*\*\*\*\*0 and CID: 3\*\*\*\*\*7

85. In addition to the above the Agent reiterated that templates are not provided to clients as each case is different. However, the Agent did note that with regards to the processing of second stage partner visas specifically *“...the questions are very generic in nature, hence it is common that the answers provided... are very similar and also generic in nature.”* Moreover, the Agent *“emphasise[d] that all documents were witnessed by [the Agent] were completed and obtained with the full instructions and approval from the declarant before they executed the documents in [the Agent’s] presence.”* According to the Agent’s account, the process outlined for the statutory declarations appears to mirror that applied with the Form 888’s.
86. In response to the section 308 notice, the Agent stated that she follows full instructions from clients by asking the questions in their preferred language recording their answers then reading it back to them ensuring the contents are correct. The Agent emphasised that no client is provided with a template to use when answering questions or when writing their individual statements. Accepting this to be the case, it is reasonable to assume that clients would not phrase their statements exactly the same way and use the exact same wording, inclusive of spelling errors, given they are providing the Agent responses in respect of their own individual circumstances.
87. I refer to the following examples which formed part of the review of the Agent’s caseload, undertaken during this investigation, where overt similarities were identified within the responses to the questions provided, by either the sponsor or visa applicant, in their declaration. In the case of Ms TKL<sup>47</sup> (applicant) who was sponsored for an onshore partner visa by Ms HTTN (sponsor) in response to question 6<sup>48</sup> Ms HTTN stated the following in support of her relationship with Ms TKL [emphasis added]:

***“MY PARTNER + I HAVE JOINT RESPONSIBILITIES  
REGARDING HOUSEHOLD DUTIES. WE HELP  
EACH WHENEVER WE CAN. WE ALSO DO  
OUR GROCERIES SHOPPING TOGETHER”***

The declaration, made by Ms HTTN was witnessed by the Agent however it was left undated. Given that the declaration was uploaded to the IMMI Account in February 2015, it has been completed in or around February 2015.

88. Mr TDH<sup>49</sup> (applicant) was sponsored for an onshore partner visa by Mr VTT (sponsor), which was subsequently granted. In response to question 6, the following was provided in support of his relationship with Mr TDH [emphasis added]:

***“MY PARTNER + I HAVE JOINT RESPONSIBILITY  
REGARDING HOUSE DUTIES. WE HELP EACH  
OTHER WHENEVER WE CAN. WE ALSO DO  
OUR GROCERIES SHOPPING TOGETHER”*** [sic]

The declaration by Mr TDH was dated 16 June 2014 and witnessed by the Agent on this date.

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<sup>47</sup> CID: 7\*\*\*\*\*1

<sup>48</sup> Describe the nature of your household including any joint responsibility for the care and support of children, your living arrangements and sharing the responsibility for housework.

<sup>49</sup> CID: 7\*\*\*\*\*0

89. Another example where it is apparent that similar wording was used involves Ms THP<sup>50</sup> (applicant) who was sponsored by Mr QDN (sponsor) and granted an onshore partner visa. In his declaration provided to the Department Mr QDN's answer to question 6 is reflected as [emphasis added]:

***"My wife + I have joint responsibility regarding household duties. We sometimes help each other whenever. we can we also do our groceries shopping together."***[sic]

The declaration by Mr QDN was signed 14 December 2014 and witnessed by the Agent on this date.

90. In the case of Mr MHL,<sup>51</sup> (applicant) who was sponsored by Mr JD (sponsor) for an onshore partner visa, in response to question 6 in his statutory declaration, Mr MHL stated the following [emphasis added]:

***"MY PARTNER [removed for privacy] + I HAVE JOINT RESPONSIBILITY REGARDING HOUSEHOLD DUTIES. WE ALSO DO OUR GROCERIES SHOPPING TOGETHER, HELP OUT WITH HOUSEHOLD CHORES"*** [sic]

The declaration was signed and dated 06 May 2016 and witnessed by the Agent on the same date.

91. I note that the style of hand writing differs between the responses however the content is the same. Whilst it may be open to accept aspects of the Agent's processing, as described in her response to the section 308 notice, it appears unlikely that the responses would be almost identical and therefore more indicative of a process where templates and statements are recycled. Additionally, the responses were provided at different points in time and the Agent witnessed all of them. The Agent is the one person who had access to all the cases, and the documentation, to facilitate the use of standardised responses and recycled wording, which appears to be systemic within the Agent's caseload.

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<sup>50</sup> CID: 7\*\*\*\*\*4

<sup>51</sup> CID: 5\*\*\*\*\*4

92. Given the nature of the Partner visa applications, the responses should be reflective of the individual's personal circumstances. It follows, that it would be reasonable to expect that the content would vary. Conversely, this does not appear to have transpired with a significant number of matters, where the Agent is the representative agent and witness to the declarations. Consequently, I am satisfied that template responses were recycled and that care and due diligence was not undertaken to adequately respond to the questions as would be expected from a registered migration agent. It follows that the statements are likely not reflective of the relationships, which were the basis for the visa applications. Moreover, pursuant to section 308 of Act, the Agent was requested to provide the Authority with the associated client files. A review of the client files provided indicate that not one client file contained any correspondence from the Agent to the respective client. Further, there is no evidence, such as a file note, of the client providing the Agent with verbal instructions in respect of their visa application. Additionally, there is no written confirmation from the Agent that she has taken their instructions and understood them, as expected and consistent with the Agent's obligations under clause 2.8(a) of the Code.
93. In response to question 8 of the statutory declaration,<sup>52</sup> the sponsors provided the below highlighted answers in relation to their unique and individual relationships. Specifically, Mr VTT on his relationship with Mr TDH and Ms HTTN on her relationship with Ms TKL. It would be reasonable to expect that two separate couples would reflect their different and unique circumstances, which does not appear to be the case. I further note that Mr VTT refers to "My wife" in his statement, despite his same sex relationship with Mr TDH, and the use of the term "on foot" in both responses.

Ms HTTN's response [emphasis added]:

**"MY WIFE + I ARE COMMITTEE TO EACH  
OTHER AND OUR MARRIAGE  
WE HAVE A LONG TERMS PLANS TOGETHER  
I LOVE MY PARTNER VERY MUCH. WE  
HAVE MANY PLANS TOGETHER IN THE FUTURE  
AND WOULD LOVE TO SPEND THE REST  
OF OUR LIVES TOGETHER AS A COUPLE  
I STATE THAT MY RELATIONSHIP WITH  
MY PARTNER [name removed for privacy] IS GENUINE + ON FOOT  
AND WE HAVE EVERY INTENTION OF  
LIVING AND ESTABLISHING OUR LOVES  
TOGETHER" [sic]**

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<sup>52</sup> Describe the nature of your commitment to each other including the degree of companionship and emotional support you draw from each other and whether you see the relationship as a long-term one.



Mr VTT's response [emphasis added]:

**"MY WIFE + I ARE COMMITTED TO EACH OTHER  
AND OUR MARRIAGE.  
WE HAVE A LONG TERM PLANS TOGETHER.  
I LOVE MY PARTNER "[name removed for privacy]" VERY MUCH.  
WE HAVE MANY PLANS IN THE FUTURE AND  
WOULD LOVE TO SPEND THE REST OF OUR  
LIVES TOGETHER AS A COUPLE.  
I STATE THAT MY RELATIONSHIP WITH MY  
PARTNER "[name removed for privacy]" IS GENUINE + ON FOOT AND  
WE HAVE EVERY INTENTION OF LIVING AND  
ESTABLISHING OUR LIVES TOGETHER"** [sic]

94. Additionally, their responses to question 7 of the statutory declaration<sup>53</sup> are also similar, insofar as they contain identical grammatical errors as well as similarly worded responses. Specifically, the phrase *"hang around with family + friends"* which both reflect the use of *"hang around"* and the plus sign "+" to represent the word 'and'. Moreover, where phrase 'enjoy each other's company' is reflected as *"each other company"*. The responses are therefore indicative that one and the same person has drafted and formulated the responses to the questions.

Ms HTTN's response [emphasis added]:

**"MY PARTNER + I SOCIALISE AS A COUPLE  
WE LIKE TO GO OUT WITH FRIENDS +  
ENJOY ATTENDING FAMILY GATHERINGS  
WE ENJOY EACH OTHER COMPANY.  
WE ALSO LOVE TO HANG AROUND WITH  
FAMILY + FRIENDS  
WE LOVE TO BE WITH EACH OTHER."** [sic]

Mr VTT's response [emphasis added]:

**"MY PARTNER + I SOCIALISE AS A COUPLE  
WE LIKE TO GO OUT WITH FRIENDS + ENJOY  
ATTENDING FAMILY GATHERINGS.  
WE ENJOY EACH OTHER COMPANY.  
WE ALSO LOVE TO HANG AROUND WITH  
FAMILY + FRIENDS.  
WE LOVE TO BE WITH EACH OTHER."** [sic]

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<sup>53</sup> Describe the social aspects of your relationship including social activities, attending special events or joint travel you and your partner undertake.

Mr QDN's<sup>54</sup> response to the same question [emphasis added]:

***“My wife + I socialised as a married couple we like to go out with friends and enjoy each other company. we also love to hang around with friends + family we love to be with each other” [sic]***

95. Based upon the above discussion, and given that there is no evidence to the contrary, I am satisfied that the Agent had produced, or was complicit in the production of, documentation in a systemic manner and that it was not the result of the circumstances conveyed by the signatories to the document. While the Agent has conceded that she had drafted the documentation, she argued that it was on instruction from the clients and that she was reflecting their statements. As mentioned, there is no evidence before me to substantiate this claim, particularly given the extensive use of identical responses put forward in a number of unrelated matters where the Agent was the representative migration agent.
96. The Agent has advised that her staff members do not undertake any “migration work” and that “[a]ny typing, emails or letters carried out by [the Agent’s] staff are personally checked by [her] before sending out”. Moreover the Agent has advised that she is “responsible for the final checking before any lodgement/response”. As such, the Agent appears to be the only person likely to be in a position to reproduce identical statements for unrelated clients and with the authority to do so.
97. When this matter was put to the Agent for comment, in the section 308 notice, the Agent indicated that the reason the responses were similar was reflective of the questions which are identical and quite generic<sup>55</sup> and therefore the responses would essentially be the same. However, the Agent then went on to state that “even if the structure of [the Agent’s] writings were similar, the contents of the documents are completely different”. The Agent added no further comment or explanation as to how they could be considered different, when the statements are substantially alike.
98. However, as discussed earlier in this decision, no evidence of client communication or instructions has been provided to the Authority to support the Agent’s assertion that this was the case. To the contrary, Mr HVL informed a departmental visa processing officer that he often signed paperwork, such as the Form at weddings, even though he did not know the couple well, and said that he did not know the Agent even though she had witnessed both Form 888’s signed by him on the respective dates. While Mr HVL later retracted this statement, when the visa applicant and the Agent were made aware of his comments,<sup>56</sup> I give greater weight to the initial statements he had made directly to the visa processing officer, where there was no third party involvement (other than the accredited interpreter).

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<sup>54</sup> Ms THP’s sponsor

<sup>55</sup> The questions asked as part of the second stage processing.

<sup>56</sup> Contained within the adverse information letter

99. I therefore reject the Agent's assertions that she only reflected what the clients put forward. If this were the case the responses would likely vary significantly. The above clearly depicts that the responses are the use of template responses inclusive of grammatical errors. Moreover, the responses are not restricted to a specific period, rather they appear to be systemic in nature and span a number of years. In light of the information before me, I am satisfied that the Agent has produced the formulaic documentation submitted to the Department where she was aware or should have been aware that the statements did not reflect the true circumstances of the relationships, and that it was done so with a view to procure migration outcomes.
100. As such, I am satisfied that the Agent has engaged in conduct in **breach of clauses 2.1, 2.9 and 2.23** of the Code.

### **Financial Obligations**

#### *Agreement for Services and Fees and Statement of Services*

- 5.2 *A registered migration agent must:*
- (a) *before starting work for a client, give the client:*
    - (i) *an estimate of charges in the form of fees for each hour or each service to be performed, and disbursements that the agent is likely to incur as part of the services to be performed; and*
    - (ii) *an estimate of the time likely to be taken in performing the services; and*
  - (b) *as soon as possible after receiving instructions, obtain written acceptance by the client, if possible, of:*
    - (i) *the estimate of fees; and*
    - (ii) *the estimate of the time likely to be taken in performing the services; and*
  - (c) *give the client written confirmation (an **Agreement for Services and Fees** ) of:*
    - (i) *the services to be performed; and*
    - (ii) *the fees for the services; and*
    - (iii) *the disbursements that the agent is likely to incur as part of the services; and*
  - (d) *give the client written notice of any material change to the estimated cost of providing a service, and the total likely cost because of the change, as soon as the agent becomes aware of the likelihood of a change occurring.*
- 5.5 *A registered migration agent must be aware of the effect of section 313 of the Act, and act on the basis that:*
- (a) ***the agent is not entitled to be paid a fee or other reward for giving immigration assistance to a client unless the agent gives the client a statement of services that is consistent with the services, fees and disbursements in the Agreement for Services and Fees mentioned in clause 5.2; and***
- Note: The statement of services may be an itemised invoice or account. See clause 7.2 and 7.4.*
- (b) *a statement of services must set out:*
    - (i) *particulars of each service performed; and*
    - (ii) *the charge made in respect of each such service; and*
  - (c) *a client is entitled by the Act to recover the amount of a payment as a debt due to him or her if he or she:*
    - (i) *made the payment to the agent for giving immigration assistance; and*
    - (ii) *did not receive a statement of services before making the payment; and*
    - (iii) *does not receive a statement of services within 28 days after a final decision is made about the visa application, cancellation review application, nomination or sponsorship to which the immigration assistance related.*

- 7.2 *A registered migration agent must hold, in the clients' account, an amount of money paid by a client for an agreed block of work until:*
- (a) the agent has completed the services that comprise the block of work; and*
  - (b) an invoice has been issued to the client for the services performed in accordance with the Agreement for Services and Fees mentioned in clause 5.2, showing:*
    - (i) each service performed; and*
    - (ii) the fee for each service.*

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

101. The obligations of an agent in regard to the provision of an agreement for services and fees a statement of services are set out in clauses 5.2, 5.5, 7.2 and 7.4 of the Code.

102. In response to the section 308 notice the Agent provided the client files requested under section 308(1)(c) of the Act. None of the files provided by the Agent to the Authority contained a service agreement nor was there any evidence that the Agent provided a statement of services to the clients. Whilst an occasional tax invoice was enclosed within some of the client files provided, this was not an evident practice across all the client files. In considering this, I have turned my mind to the effect of section 313 of the Act, where an agent is not entitled to be paid for the provision of immigration assistance unless the agent gives the client a statement of services. In the absence of any evidence that the Agent did so, I am satisfied that the Agent was not entitled to payment in relation to the nine matters for which she provided her client files.

103. In her response to the section 309 notice the Agent asserted that *"there is no evidence that [she] breached this clause as alleged"*, referring to clause 5.2 of the Code in regards to the agreements for services and fees. According to the Agent's response, she issued the clients with service agreements. Furthermore, her clients were *"fully aware of the cost involved as outlined in the cost agreement given to them"* as the cost agreements were given to, and retained by, the clients. However, as outlined in the preceding paragraph there was no evidence of the agreements within the client files provided to the Authority.

104. According to the Agent, in her response to the section 309 notice, she does not have copies of the service agreements, as the clients retain the agreements. Further, *"[a]n estimated cost agreement for my services and any Departmental fees that may be incurred are given directly to the client usually after the initial consultation. The client would take it away for consideration. If the client is happy to engage in [the Agent's] service, then they would sign acknowledging the cost agreement and retain the signed copy"*. The Agent argued that the Authority should *"provide evidence"* that she has breached clauses 5.2 and 5.5 of the Code. Adding that *"[a]s stated earlier in the response, the costs agreement is given and retained by the clients"* and that she has not *"in all [her] years of practice....had any complaints [from her clients] about her fees or services"*.

105. While the Authority discussed potential breaches of part 5 of the Code, within the section 309 notice, at no point was there discussion on the reasonableness of the Agent's fees or any complaint from her clients. Within the notice, the Authority directed attention to the provision of agreements for services and statements of services, particularly in light of section 313 of the Act.<sup>57</sup> Furthermore, it was for the Agent to support her response, to the potential findings open to be found within the section 309 notice, with evidence that she had not breached the clauses. Despite being afforded the opportunity to provide evidence that she had issued her clients with service agreements and statements of services, the Agent has failed to do so.
106. The Agent stated that "*[m]y fees are fixed therefore I am fully aware of the service fees that I charge my clients hence I do not feel the need to keep a copy of the cost agreement in my files*". Whether or not a registered migration agent is aware of the fees they charge for services is not a consideration for the Authority. What is a consideration is whether an Agent issues and retains copies of the service agreements provided to their clients so as to evidence that the clients have accepted the Agent's service and the terms of any agreement. Furthermore, to ensure the Agent's compliance with their obligations pursuant to the Code.
107. On the basis of the information provided by the Agent, in response to the section 309 notice, and given her client files contain no service agreements or statements of services, I am satisfied that the Agent has engaged in conduct in **breach of clauses 5.2 and 5.5 of the Code**.
108. Moreover, in the Agent's response to the Authority's potential finding that she may have been in breach of clauses 7.2 and 7.4 of the Code, the Agent stated, "*I have complied with clause 7.2*". Furthermore, "*clause 7.3*"<sup>58</sup> does not apply to her as she does not accept payment upfront but when her services have been rendered. However, the Agent failed to provide any evidence to support her response in this regard. I note that the Agent is also a legal practitioner and would be required to maintain a trust account, which could have been provided to substantiate her response and evidence her compliance with Part 7 of the Code.
109. On the information before the Authority, and with no evidence to the contrary, I find that the Agent has not satisfied her financial obligations under the Code. The Agent has not provided the relevant invoices as would be expected of a migration agent working in the legitimate interest of her clients. On that basis, I find the Agent in breach of her obligations under **clauses 2.1, 7.2 and 7.4 of the Code**.

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<sup>57</sup> Clause 7.1 of the Code was noted at paragraph 8 of the section 309 notice however potential findings were not discussed within the notice nor did the Agent address this clause in her response to the notice pursuant to section 309.

<sup>58</sup> The Authority made no mention of this clause in the section 309 notice rather a breach of clause 7.4 of the Code was open to be found to have been breached. I am taking the Agent's response to be a typo.

### **Maintaining Proper Client Records**

110. Clauses 6.1 and 6.4 of the Code as relevant provide

- 6.1 *A registered migration agent must maintain proper records that can be made available for inspection on request by the Authority, including files containing:*  
*(a) a copy of each client's application; and*  
*(b) copies of each written communication between:*  
*(i) the client and the agent; and*  
*(ii) the agent and any relevant statutory authority; and*  
*(iii) the agent and the Department regarding the client; and*  
*(c) file notes of every substantive or material oral communication between:*  
*(i) the client and the agent; and*  
*(ii) the agent and an official of any relevant statutory authority; and*  
*(iii) the agent and the Department regarding the client.*
- 6.4 *A registered migration agent must act on the basis that the agent's electronic communications are part of the agent's records and documents.*

111. During the investigation into the Agent's conduct, the Authority identified deficiencies with her recording keeping, as the client files provided to the Authority appeared to be incomplete. Given the volume of clients and applications that are managed simultaneously by registered migration agents, file notes would form an essential component of a client file to reflect the interactions, instructions and advice that transpired. However, file notes did not form part of any of client files which the Agent had provided to the Authority. Additionally, no electronic communication had been included in the client files that would likely have occurred between the Agent and her clients, given that not all her clients would have been in Australia at the time the application was submitted. The bulk of the communication provided to the Authority relates to the Agent's correspondence with the Department where requests for further information have been made.

112. In her response to the section 309 notice, the Agent maintained that she had provided "*the entire files as requested*" and that "*the way [she] has managed [her] practice has proven successful over the years*". Further, that each migration agency has a different way of record keeping and that in her time as a registered migration agent no client has complained about her record keeping practices and as such, she has not breached clauses 6.1 or 6.4 of the Code. To evidence her claims, the Agent provided one email exchange and six screenshots of text message correspondence between her and her clients. While I acknowledge the Agent evidenced some communication exchange with her clients, this does not absolve her of her record keeping obligations. The Agent appears not to comprehend that she has an obligation to comply with the Code, which prescribes the manner in which she should conduct her file management and record keeping practises, irrespective of what she considers effective and whether or not her clients have lodged a complaint on the matter.

113. On the evidence before me, I find the Agent has engaged in conduct in breach of **clauses 6.1 and 6.4** of the Code.

**Client instructions and providing updates to clients**

**114. Clause 2.8 of the Code as relevant states**

*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.*

**115.** A registered migration agent upon agreeing to represent a client is to confirm, in writing, the client's instructions. The client files provided to the Authority by the Agent do not contain evidence of instructions from her clients or her written confirmation of them. Registered Migration Agents are obligated under the Code to ensure that they are acting upon instructions from their clients and that their clients are provided with updates as to the progress of their cases. The Agent's client files provided with the Agent's responses to the complaints indicate that the Agent's recording keeping practices were below the standard expected of a registered migration agent and inconsistent with her obligations as set out in the Code

**116.** The section 308 notice published to the Agent, requested that she comment on the allegation that template responses formed part of the Statutory Declarations and Form 888's submitted to the Department. In her response the Agent argued that she followed her client's instructions and executed, in her capacity as a witness, the declarations and the forms. However the Agent did not provide evidence to support her claims.

**117.** In her response to the section 309 notice, the Agent stated "*[t]he client's actions in executing/signing the documentation are evidence that they have instructed my office to represent them*". Furthermore, the Agent noted that it is not "*in [her] practice to maintain a separate written confirmation that [she has] taken instructions from [her] clients and that [she has] understood their instructions*". The Agent asserts that by assisting the clients with completing their forms and preparing their statutory declaration along with the signing of the Form 956, is confirmation that the clients have instructed her to act on their behalf.

**118.** According to the Agent, in her response to the section 309 notice, her clients are provided updates in regard to their immigration matters and they are informed of their outcome which is "*...relayed to them either by way of text messages, emails or direct phone calls...*" Moreover, the "*communications between are usually in the Vietnamese language. It is not [her agency's] normal practice to print out these communications and placing them physically in the clients file*" [sic]. The Agent again reiterates that her clients have not complained about her communication practices with them and that she has not breached this clause of the Code.

119. As discussed elsewhere in this decision, there were no records of communication between the Agent and her clients, contained within the client files provided to the Authority. The only evidence of communication provided by the Agent to the Authority were some screenshots of the text messages and one email exchange. Specifically, the Agent has provided no evidence to the Authority in relation to:

- the advice she gave to her clients in relation to their immigration matters and potential visa pathways;
- written confirmation of her clients' instructions;
- written progress updates on her clients' respective applications;
- written confirmation of the relevant migration outcomes; and
- any other written communication between the Agent and her clients.

120. The obligation of an agent to keep records in accordance to the Code, and the power of the Authority under section 308 of the Act to access those records, is fundamental to the exercise of the Authority's regulatory and consumer protection functions. Having access to records held by migration agents is relevant to the Authority's consideration of a complaint as it allows an assessment of whether an agent has complied with their obligations under the Code.

121. Given my discussion and no evidence from the Agent to the contrary to support her assertions, I am satisfied that the Agent has engaged in conduct in breach of **clause 2.8** of the Code.

### **Responding to the Authority**

122. Clauses 2.9A and 9.3 of the Code provide as relevant:

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

9.3 *If the Authority gives a registered migration agent details of a complaint made to the Authority about:*  
*(a) the work or services carried out by the agent or the agent's employees; or*  
*(b) any other matter relating to the agent's compliance with this Code —*  
*the agent must respond properly to the Authority, within a reasonable time specified by the Authority when it gives the details to the agent.*

123. The Agent's responses to the questions put forward within the section 308 notice did not wholly address the questions nor provide sufficient clarity on the matters raised by the Authority. Additionally, the Agent's initial response to the section 308 notice, was not provided in the prescribed form of a statutory declaration, as required, until the delegate of the Authority prompted the Agent of the requirement. As such, I find that such responses served to hamper the investigation.



124. In response to question five<sup>59</sup> of the section 308 notice, the Agent was asked to comment on the allegation that she signed a form on behalf of a client. However, rather than respond to the question directly. The Agent contacted the client and provided a *'Letter of Confirmation'* taken to be an affidavit from the client (Mr MQV). Mr MQV claimed that in his interview, with the Department in 2013, that he did not sign the Form 888 provided in support of an application where he was the witness/third party declarant and that the Agent, as his agent, had signed it. However, in his response to the AAT, Mr MQV stated that he did sign it. The affidavit provided to the Authority reiterates the same. Whilst I accept that the matter was in relation to the client, and therefore providing an affidavit from the client would support the Agent's response to the question posed, the Agent nevertheless failed to respond to the question, other than to advise that the question would be explained in Mr MQV's letter of confirmation. I therefore find that the Agent was attempting to mislead the Authority and distance herself from the conduct and apportion blame onto a third party.

125. Likewise, the Agent's response to *"Who completes the Form 888?"* (posed to her within the section 308 notice) was ambiguous in nature. Further responses put forward to a number of additional questions in respect of who had completed the forms included:

- a. *"Forms witnessed by me are completed with full instructions from the witness in my presence in my office"*
- b. *"The applications forms are completed by my office"*

The Agent's answers did not provide insight into who had completed the Form 888, did not address the questions directly, and omitted the relevant detail.

126. In response to the allegation from HCMC post that the Agent whited out dates of significance in the visa application forms, the Agent contended that this was undertaken in instances where corrections were required. However, a review of forms does not reveal that any corrections, following the obliteration, were made. In the Agent's statutory declaration the Agent argued that there *"is absolutely nothing wrong with having white outs in the application forms"* and then apportioned blame on Ms NTP, for not knowing the required information. Moreover, the Agent indicated that this only occurred in the case of Ms NTP, mentioned in the HCMC allegations, and where this was evident, other cases these should be brought to her attention.

127. The Agent provided a client file for Mr QTT, following a request made by the Authority. A review of the client file reveals that relevant dates, contained within the Form 80, were also whited out. The form contains specific information about the client, including that of family members, and dates which are relevant to the assessment of the visa application. While the Agent has argued that information is whited out as a consequence of not having the correct information at hand, from the information before the Authority no correction appears to have been subsequently provided to the Department in relation to the dates for either Ms NTP or Mr QTT.

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<sup>59</sup>Mr MQV stated, during an interview with a DIBP officer regarding his Partner Visa application, that the relationship statement, provided in support of the visa application, and the application form were not signed by him. What comment do you have on the claim that allegedly you have signed forms on behalf of applicants?

128. The review of the Agent's client files also highlighted that a significant proportion of the documentation submitted to the Department, whether a Form 956 or a visa application form, are undated. The Department places significance on the completion of the visa application forms, including relevant information such as dates. In instances where amendments are required, these are generally made at the time of completion, and initialled by the client, else submitted when the information became available.
129. In her response to the section 309 notice, the Agent did not address any of the concerns raised by the Authority in regards to the above discussed. Rather the Agent stated that she had provided her response to the section 308 notice in a "*timely manner*" and requested that the Authority "*[p]lease clarify how [her] response was designed to mislead or deceive the Authority?*"
130. It is not in dispute that the Agent provided a timely response, what is in dispute however is the quality of the response provided as discussed in the preceding paragraphs. Further, that the response was not of the standard that would be expected of an Agent given the nature of the content of the notice, nor did the response provide clarity to the matters ongoing. I am of the view that a more substantive response was required in which to address adequately the conduct discussed within the Authority's notices.
131. Not providing relevant information in association with an application may otherwise be perceived as deliberately withholding information, which is significant to the application assessment, and may serve to mislead the Department. Moreover, I find that the Agent in providing responses in respect of these matters, and the manner in which the questions were addressed, was designed to mislead or otherwise deceive the Authority, whether directly or by withholding relevant information.
132. Given the above discussed I find that the Agent has engaged in conduct in breach of **clauses 2.9A and 9.3** of the Code.

## **INTEGRITY, FITNESS AND PROPRIETY**

133. Pursuant to paragraph 303(1)(f) of the Act, the Authority may caution a registered migration agent, or suspend or cancel their registration, if the Authority becomes satisfied that the agent is not a person of integrity or otherwise not a fit and proper person to give immigration assistance.

134. There is a degree of overlap between 'fit and proper' and 'integrity' to the extent that fitness and propriety include consideration of the honesty of the actions of an individual.

*'Integrity' means 'soundness of moral principle and character, uprightness and honesty'.<sup>60</sup>*

135. Whether a person is a 'fit and proper person to give immigration assistance' is an enquiry which looks broadly at three factors – honesty, knowledge and competency.

136. At common law, the basic test to determine whether a person is “fit and proper” is known as the “Allinson test”. A person is not fit and proper person if his or her conduct “would be reasonably regarded as disgraceful or dishonourable by his professional colleagues of good repute and competency”.<sup>61</sup>

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

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

138. The formula 'fit and proper' (and 'person of integrity') must be construed in light of the particular legislative context at the registration scheme underpinning the migration advice profession.<sup>62</sup>

139. The context in which the reference to 'fit and proper' person occurs in section 290 of the Act is the applicant's giving of immigration assistance. The context also includes:

- a) the Act which creates offences for misleading statements and advertising, practising when unregistered and misrepresenting a matter; and

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<sup>60</sup> See *Re Peng and Department of Immigration and Multicultural Affairs* [1998] AATA 12 at paragraph [26].

<sup>61</sup> See *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750

<sup>62</sup> See *Cunliffe v Commonwealth* (1994) 182 CLR 272

- b) the Code contained within the Agents Regulations which refers to the applicant being able to perform diligently and honestly, being able and willing to deal fairly with clients, having knowledge of business procedure and properly managing and maintaining client records and maintaining client confidentiality.

140. Key elements of the fitness test are:

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

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

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

- that the Agent's past conduct can be an indicator of the likelihood of the improper conduct occurring in the future;
- the Agent's honesty and competency towards clients, the Department and the Authority;
- a consideration of the context in which the agent works, i.e. the provision of immigration assistance to migration clients;
- the Agent's knowledge and competency in immigration law and practice;
- the reputation of the Agent as a result of their conduct and the public perception of that conduct; and
- the perception of the conduct by the Agent's "professional colleagues of good repute and competency".<sup>63</sup>

143. Having regard to the totality of the Agent's conduct in relation to the complaints and my findings above, I am satisfied that the Agent is 'not a person of integrity or is otherwise not a fit and proper person to give immigration assistance'. Based on the evidence before me, I am satisfied that the Agent has:

- Provided false and misleading information to the Department to procure migration outcomes for her clients for which they would not otherwise have been eligible and thereby undermined the Department's Partner Migration programs.
- Exhibited a blatant disregard for the law through the submission of misleading information and documentation to the Department in support of visa applications.
- Exhibited a disregard for her clients' legitimate interests and her obligations as a registered migration Agent. Such conduct falls short of the standard expected of a registered migration agent and reflects poorly on the reputation and integrity of the migration advice profession.

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<sup>63</sup> *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750

- Attempted to distance herself from her personal responsibilities, as a registered migration agent, by failing to keep (and maintain) proper records, which ultimately prevented her from adequately responding to the requests made by the Authority.
- Failed to provide progress updates or follow client instructions and had not provided clients with an agreement for services or fees, invoices or statements of service.

#### *Consideration of Appropriate Disciplinary Action*

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

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

#### *Seriousness of behaviour*

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

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

- The Agent has breached multiple clauses of the Code indicating systemic poor practices.
- The Agent has demonstrated a disregard for the law by submitting misleading information and documents in the support of visa applications lodged with the Department.
- The Agent has shown a disregard or indifference to her professional obligations and failed to respond adequately to the Authority in relation to the allegations.
- The Agent has failed to maintain record and financial management practices consistent with her obligations.
- My finding that the Agent is not a person of integrity, nor fit and proper person to provide immigration assistance.

### *Aggravating factors*

147. I consider the Agents conduct falls short of the standard expected of a registered migration agent and find that the conduct poses a serious risk to migration consumers and to the integrity of the migration advice profession.
148. The Agent has attempted to distance herself from her personal responsibilities and obligations as a registered migration agent under the Code, by diverting and apportioning blame onto others. As such, I am not satisfied that the agent has demonstrated accountability of, or remorse for, her conduct.
149. Information available to the Authority through its record holdings, as well as the records from the Office of the Legal Services Commissioner (OLSC) reveals that the Agent has had prior disciplinary action taken by the OLSC in 2008.<sup>64</sup> The Agent was reprimanded in regards to similar conduct that is discussed within this decision. Specifically, where the Agent was found to have “*falsely witnessed the signing of an affidavit*” and had made/provided statements to a Federal Court Magistrate that were “*misleading*”. Given the conduct discussed within this decision mirrors that for which the Agent was reprimanded in 2008, the Agent appears to have continued to engage in like conduct in the years following the finding by the OLSC and would likely continue to do so in the future.

### *Mitigating Factors*

150. Despite being invited to do so, the Agent has failed to provide any evidence of mitigating factors.
151. While the Agent has not had any prior disciplinary decisions made against her by the Authority, this does not mitigate the Agent’s responsibility for the impact of her conduct and the risks posed by such conduct for the Partner visa program.
152. I have also taken into account that a disciplinary decision would affect the Agent’s financial earning capacity and livelihood. However, I note that the Agent is a legal practitioner at the time of this decision and there is no evidence before me to indicate that the NSW Law Society has taken any action in respect of the Agent’s legal practising certificate. Therefore, at time of decision, there is nothing preventing the Agent from practicing in the legal profession.

### *Consumer Protection*

153. Consumers of professional services of registered migration agents are often vulnerable and place a high degree of trust in their registered migration agent. Consumers are therefore entitled to a high level of professional service from their registered migration agent.
154. I expect that a decision to sanction the 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.

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<sup>64</sup> Citation 07/2043

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

### **DECISION**

156. In all of the circumstances, and in the interests of consumer protection, I consider that it is appropriate to **cancel** the Agent's registration.

157. In making this decision, I have turned my mind to a suspension, where I would need to be satisfied that after a period of time, and remedial action, the Agent would be capable of meeting her professional obligations and deal with her clients and others with integrity. As the conduct involved providing false and misleading information to the Department so as to procure migration outcomes for her clients, I am of the view that there is no remedial action which could be undertaken to address the serious adverse conduct.

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

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

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

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

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

**Date of Decision: 9 January 2020**