



## OFFICIAL

### DECISION RECORD

AGENT	Thu Ngoc Bannan
COMPLAINT NUMBER/S	1. CAS-23767-D3X6 2. CAS-23907-Y9K7 3. CAS-24245-M8Y8
DECISION	Cancellation
DATE OF DECISION	14 November 2024
TERMS USED FOR REFERENCE	Refer Appendix A

### JURISDICTION

1. The Office of the Migration Agents Registration Authority (the Authority) performs the functions prescribed under section 316 of the *Migration Act 1958* (the Act).
2. The functions and powers of the Authority under Part 3 of the Act and *Migration Agents Regulations 1998* (the Agents Regulations) may only be exercised by the Minister or by a delegate 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

3. The functions of the Authority under the Act include:
  - to investigate complaints in relation to the provision of immigration assistance by registered migration agents (paragraph 316(1)(c)); and
  - to take appropriate disciplinary action against registered migration agents (paragraph 316(1)(d)).
4. The Authority may decide to cancel the registration of a registered migration agent (RMA) 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

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- 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)).
5. Subsection 314(2) of the Act provides that a RMA must conduct himself or herself in accordance with the Code. The *Migration (Migration Agents Code of Conduct) Regulations 2021* made under the Act prescribes the Code.
6. The Code of Conduct for RMAs in force at the time of the conduct that is the subject of this decision was the *Migration (Migration Agents Code of Conduct) Regulations 2021* is the prescribed Code of Conduct for the purposes of section 314(1) of the Act (the Code). The Code came into effect on 1 March 2022.

## **AGENT BACKGROUND**

### **Agent Registration**

7. The Agent was first registered as a migration agent on 23 February 2010 and was allocated the Migration Agent Registration Number (MARN) 0964816. The Agent's registration has been renewed annually to date, with the most recent registration commencing on 22 February 2024.
8. The Register lists the Agent's current business name as DLT Immigration and Translation Services with Australian Business Number (ABN) 55 838 717 256.

### **Prior disciplinary action**

9. No disciplinary action has previously been taken against the Agent.

## **BACKGROUND**

### **Allegations – the Authority's investigation**

10. The Authority received three complaints about the Agent's conduct as a RMA from:
- Ms TB on 13 May 2024 (CAS-23767-D3X6)
  - Mr L and Mrs H on 20 May 2024 (CAS-23908-Y9K7)
  - Ms AB on 5 June 2024 (CAS-24245-M8Y8)

#### CAS-23767-D3X6 - Ms TB

11. Ms TB made allegations primarily about the Agent's failure to lodge her partner visa application and the Agent's misuse of her money. In summary the complaint from Ms TB raised the following allegations about the Agent's conduct:
- The Agent did not enter into a written Agreement for Services and Fees with Ms TB for the immigration assistance she agreed to provide.
  - The Agent did not give Ms TB receipts or invoices for the money she paid to the Agent.
  - The Agent was unprofessional, dishonest and unethical in her interactions with Ms TB.

- The Agent did not reply to queries from Ms TB either at all or within a reasonable timeframe.
- The Agent told Ms TB that she could lodge her partner visa application if Ms TB paid additional money to the Agent.
- The Agent did not lodge a partner visa application for Ms TB despite being paid for this service.
- The Agent transferred Ms TB to another agent and the Agent asked for an additional \$4,500 because of this.
- On 15 November 2023, Ms TB notified the Agent via text that she had decided that she no longer wanted the Agent to act on her behalf. On 4 December 2023, Ms TB notified the Agent that she wanted to cease her representation.
- On 18 January 2024, Ms TB appointed another RMA to assist with her immigration matters.
- The Agent has not refunded any of the money Ms TB paid to her.
- The Agent has not provided Ms TB's client file and documents to her new RMA.

12. Ms TB included the following documents in support of her complaint:

- Correspondence the Agent had with Ms TB in the form of text messages between 17 June 2023 and 4 December 2023.
- A certified English translation of the text message correspondence.
- Evidence of payments made to the Agent:
  - 27 December 2022 – payment of \$3,100
  - 26 June 2023 – payment of \$8,135
  - 17 October 2023 – payment of \$3,500
  - 21 October 2023 – payment of \$1,000
- Copy of a receipt dated 27 December 2022 for payment of services of \$3,100.
- Copies of emails sent on 18 January, 31 January, 14 February and 7 March 2024 to the Agent from the complainant's new RMA requesting her client file, documents and return of funds.

CAS-23907-Y9K7 – Mr L and Mrs H

13. Mr L and Mrs H lodged a previous complaint about the Agent on 19 March 2023; CAS-16250-K0K1 refers. Mr L subsequently withdrew this complaint on 25 August 2023 upon the Agent's promise that she would resolve the matter by providing him and his wife Mrs H with a refund. This did not occur.
14. On 20 May 2024, Mr L lodged another complaint, as matters between him and the Agent had not been resolved; CAS -23907-Y9K7 refers.
15. Mr L and Mrs H made allegations primarily about the Agent's unprofessional conduct, inadequate provision of immigration assistance and services and failing to provide a refund. In summary the complaint raised the following allegations about the Agent's conduct:
  - In March 2022, Mr L and Mrs H engaged the Agent's professional services for assistance with nine visa applications for '*farm workers*' that would be lodged with the Department of Home Affairs (the Department). The Agent told them that her fees were \$5,500 per person.
  - Mrs H gave the Agent names of nine prospective visa applicants along with their curricula vitae, which were to be included with the nine visa applications.
  - The Agent did not enter into an Agreement for Services and Fees with Mr L and Mrs H for the immigration assistance she agreed to provide.
  - The Agent did not give Mr L and Mrs H receipts or invoices for the money they paid to the Agent.
  - The Agent was unprofessional, dishonest and unethical in her interactions with Mr L and Mrs H.
  - The Agent did not reply to queries from Mr L or Mrs H either at all or within a reasonable timeframe.
  - The Agent told Mr L and Mrs H that she could refund their money if they withdrew the initial complaint they lodged with the Authority (CAS-16250-K0K1).
  - The Agent failed to lodge any visa applications for Mr L and Mrs H despite being paid for this service.
  - The Agent has not refunded any of the money Mr L and Mrs H paid her in April 2022, despite her promise to do so.
16. Mr L included the following documents in support of his complaint:
  - A statutory declaration detailing the complaint.
  - Evidence of payments made to the Agent:
    - 6 April 2022 – payment of \$20,000
    - 12 April 2022 – payment of \$29,500
  - Copy of a letter received from the Agent dated 24 August 2023, giving her reasons for not providing a refund.

CAS-24245-M8Y8 – Ms AB

17. Ms AB was helping her family members Mrs N, Mr VL and Mr TL to apply for a Contributory Parent (subclass 143) visa.
18. Ms AB made allegations primarily about the time it took the Agent to lodge the subclass 143 visa application and the Agent's unprofessional and dishonest conduct. In summary the complaint raised the following concerns about the Agent's conduct:
  - In November 2023, Ms AB engaged the Agent's professional services for assistance with the visa application that would be lodged on behalf of her family members. The Agent told Ms AB that her fees were \$4,500.
  - The Agent did not give Ms AB receipts or invoices for the money she was paid.
  - The Agent did not enter into an Agreement for Services and Fees with either Ms AB or Mrs N for the immigration assistance she agreed to provide.
  - Mrs N and Mr TL were both offshore at the time. Mr VL was onshore and held a Sponsored Parent (Temporary) (subclass 870) visa. The Agent advised Ms AB that Mr VL must depart Australia and volunteer to cancel his current subclass 870 visa.
  - The Agent was unprofessional, dishonest and unethical in her interactions with Ms AB.
  - The Agent did not reply to queries from Ms AB either within a reasonable timeframe or at all.
  - The Agent caused long, unexplained and unacceptable delays in submitting the subclass 143 visa application.
  - The Agent lodged the subclass 143 visa application for Mrs N, Mr VL and Mr TL only after Ms AB notified the Agent of her intention to contact the Authority.
19. Ms AB included the following documents in support of her complaint:
  - Evidence of payments Ms AB made to the Agent:
    - 28 November 2023 – payment of \$2,500
    - 4 January 2024 – payment of \$7,975
    - 20 January 2024 – payment of \$2,000
  - Correspondence between the Agent and Ms AB in the form of text messages.

**DEPARTMENTAL RECORDS**

20. Records held by the Department, indicate the following:

CAS-23767-D3X6

- There is no evidence that the Agent lodged a partner visa application on behalf of Ms TB.

CAS-23908-Y9K7

- There is no evidence that the Agent lodged any visa applications on behalf of Mr L and Mrs H.

CAS-24245-M8Y8

- On 4 January 2024, the Parent Visa Processing Centre (PVPC) received a request from the Agent to cancel Mr VL's subclass 870 visa.
- On 5 January 2024, a Notification of Decision for the cancellation of Mr VL's subclass 870 visa was emailed to the Agent.
- On 10 June 2024, the Agent made a payment of \$7,975 for a Visa Application Charge (VAC) for a subclass 143 visa application from her ImmiAccount for Mrs N and family.
- On 12 June 2024, the PVPC received the paper application for the subclass 143 visa.
- On 21 June 2024, the Department emailed the valid application acknowledgement letter for the subclass 143 visa to the Agent.

**Notices under section 308 of the Act (the section 308 notices)**

Mr L and Mrs H

21. On 19 June 2024, the Authority sent a section 308 notice to the Agent, requiring her to answer questions in relation to Mr L and Mrs H's allegations and to provide a copy of their client file, Agreement for Service and Fees, invoices and receipts. The Agent's response, including the requested documents was to be provided by 19 July 2024.
22. On 19 July 2024, the Agent sought an extension of two weeks in which to provide a response to the notice due to health issues. The Authority granted the Agent an extension until 2 August 2024.

Ms TB

23. On 26 June 2024, the Authority sent a section 308 notice to the Agent, requiring her to answer questions in relation to Ms TB's allegations and to provide a copy of Ms TB's client file, Agreement for Service and Fees, invoices and receipts. The response was to be provided by 24 July 2024.
24. On 29 July 2024, the Agent made a second request for an extension of three weeks in which to provide responses to the notices due to health issues. The Authority granted the Agent an extension until 12 August 2024 for the Agent to provide responses to the section 308 notices.

Ms AB

25. On 11 July 2024, the Authority sent a section 308 notice to the Agent, requiring her to answer questions in relation to Ms AB's allegations and to provide a copy of Ms AB's client file, Agreement for Services and Fees, invoices and receipts. The response was to be provided by 8 August 2024.
26. The Authority gave the Agent additional time to respond, in line with the extension of time given for the two other complaints, and she was required to provide a response to the notice by 12 August 2024.

**The Agents response to the section 308 notices**

26. The Agents responses to each section 308 notice was due on 12 August 2024. On 13 August 2024, the Agent contacted the Authority by email. The Agent stated in the email that she was still very sick and would complete her statutory declarations as soon as she could.
27. On 19 August 2024, the Agent made a third request for an extension of time and provided a medical certificate that stated she was unfit for work from 16 August 2024 to 30 August 2024.
28. The Authority granted the Agent an extension of time to respond until 26 August 2024.
29. On 26 August 2024, the Authority received an email from the Agent that included her statutory declaration responses to the three section 308 notices and documents pertaining to personal matters. The Agent did not include any client related documents as requested by the Authority. In the Agent's email, she wrote *'I have tried to provide you with much response regarding the cases ..... I am not working at present and I don't think I will continue to work as a Migration Agent.'* [sic]

Mr L and Mrs H

30. In respect of Mr L and Mrs H, the Agent made the following claims/submissions:
  - The Agent did not enter into an Agreement for Services and Fees with Mr L and Mrs H for immigration assistance because the money she received was an advance payment for prospective *'farmers visas.'* However, that did not eventuate.
  - The Agent claims that Mr L and Mrs H then agreed to give her the money as a form of loan, while waiting for more information about the farm owner.
  - The reason that Mr L and Mrs H paid the Agent a large sum of money is that they had a good client-agent relationship with her and they had a mutual trust.
  - Mr L and Mrs H understood that if the Agent could not assist with *'farmers visas'* the money they paid her was to be regarded as *'parked'* with her. They understood they could use the money they had paid to the Agent for another type of visa if required.
  - After the Agent explained to Mrs H that she needed money for a personal matter, Mrs H agreed that the Agent could keep the money as a *'personal loan'* and that the Agent would repay their money upon the completion of the Agent's personal matters.
  - Due to the uncertainty of the types of visas the Agent could find to assist Mrs H and her family, Mrs H agreed not to have an Agreement for Services and Fees and she accepted the bank transfers, made to the Agent, as a form of formal receipts and invoices.



- The money the Agent received from Mr L and Mrs H was for a '*prospective visa service*'. However, the farmer the Agent had been in contact with '*went against their words*' and as a result, the '*farmers visas*' were no longer an option for Mr L and Mrs H's family members. Mrs H agreed the money the Agent had been paid, could be used for another visa type.
- Mrs H asked the Agent for assistance with a partner visa application for a family member, to be paid for with the money they had previously paid the Agent. The Agent told her that she would need to seek assistance from another agent as the Agent claimed Mrs H agreed that the money they had paid her previously for the '*farmers visas*' could be used as a form of personal loan.
- The Agent claimed that at all times, during every phone call with Mrs H, they both agreed that the money owed to them by the Agent was regarded as a personal debt not a migration related matter.
- The Agent was unable to repay Mr L and Mrs H in instalments by May 2024 as she had promised because her personal matters were ongoing.
- The Agent stated she was willing and prepared to pay back the money Mr L and Mrs H paid her once her personal matters were finalised.
- The Agent asked Mr L and Mrs H if she could pay them back in small amounts to begin with, but they refused.
- The Agent wrote a letter to Mr L and Mrs H on 25 August 2023, and stated that if she was not able to work as a migration agent she would not be able to pay back the money they had paid her.
- The Agent does not have a client file for Mr L and Mrs H, as she does not consider them her clients, only old clients from a previous business matter.

Ms TB

31. In respect of Ms TB, the Agent made the following claims/submissions:

- The Agent had doubts about the genuine nature of Ms TB's relationship with her husband after preparing their statements and documentation for their partner visa application and asked them to give her additional evidence.
- While the Agent was waiting for the additional evidence, she asked Ms TB if she could use the fees she had been paid for her own personal use for a short time. The Agent claims Ms TB agreed to this.
- The Agent then considered the money Ms TB had transferred to her to be a loan.
- As time went by, there was still not much supporting documentation for the partner visa application, but Ms TB still insisted the Agent lodge the application anyway. The Agent was not sure if she would either return the money to Ms TB after her personal matters were resolved or submit the partner visa application despite her ongoing doubts about the genuine nature of the relationship.
- The Agent planned to refund Ms TB's money in September 2024.



Ms AB

32. In respect of Ms AB, the Agent made the following claims/submissions:

- The Agent did not enter into an Agreement for Services and Fees with Ms AB in December 2023, as Ms AB made a general enquiry only about a subclass 143 visa.
- After the Agent providing more information and advising that as Mr VL, the husband of the main visa applicant was on a subclass 870 visa, he was required to depart Australia in order to apply for the subclass 143 visa, Ms AB then asked for the Agent's assistance.
- It took the Agent a few months to complete this requirement.
- The Agent met Ms AB a few years ago when she was assisting someone who had his visa cancelled '*because of his character.*'
- The Agent claims Ms AB had previously been willing to provide unreliable statements to support an application in the past; and this led her to have doubts about the genuineness of Mr VL's situation.
- Based on these concerns, the Agent claimed she did not want to lodge the subclass 143 visa for Ms AB's family members and intentionally delayed doing so because she did not know how to refuse her assistance.
- The Agent finally lodged the subclass 143 visa application<sup>1</sup>.

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

27. On 9 October 2024, the Authority sent the Agent a notice pursuant to section 309(2) of the Act, advising the Agent that it was considering cautioning her, or suspending or cancelling the Agent's registration under section 303(1) of the Act. The Agent's response to the notice was due by 6 November 2024.
28. The Agent was notified that having regard to the information before the Authority, it was open to the delegate to be satisfied that the Agent:
- had engaged in conduct that breached the Agent's obligations under **sections 13, 14, 15, 17, 29, 32, 33, 34, 39, 40, 42, 50, 51, 52, 54 and 56** of the Code, and;
  - was not a person of integrity or otherwise a fit and proper person to provide immigration assistance as per paragraph 303(1)(f) of the Act.
29. Pursuant to section 309(2) of the Act, the Authority invited the Agent to provide written submissions on the matter.
30. The Agent has not provided any submissions in response to the section 309 notice.

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<sup>1</sup> Received by PVPC on 12 June 2024

**Notice under section 305C of the Act**

31. On 9 October 2024, the Authority sent the Agent a notice pursuant to section 305C of the Act. The notice required the Agent to provide copies of the complete client files, copies of client ledgers, client accounts and other financial documentation relating to the monies paid or owed to Ms TB, Mr L and Mrs H and the family members of Ms AB. The requested information/documents was due by 6 November 2024.
32. The Agent has not provided the Authority any of the prescribed information or documents listed in the section 305C notice.

**DECISION: FINDINGS ON MATERIAL QUESTIONS OF FACT**

33. In reaching the findings of fact discussed in this decision record, the Authority considered the following evidence:
  - Documentation and evidence contained in the Authority's complaint files for CAS-23767-D3X6, CAS-23907-Y9K7 and CAS-24245-M8Y8;
  - Information held by the Authority in relation to the Agent;
  - Records held by the Department; and
  - The Agent's submissions and supporting documents provided to the Authority in response to the section 308 notice.
34. Having considered the information before me, I am satisfied the Agent:
  - Failed to comply with the section 305C notice contrary to **section 305C(4)** of the Act.
  - Failed to act professionally, competently and diligently and engaged in conduct that is reasonably likely to damage the reputation of migration agents or the immigration advice industry contrary to **section 13** of the code.
  - Failed to treat her clients with appropriate respect contrary to **section 14** of the Code.
  - Failed in her duty not to make false or misleading statements contrary to **section 15** of the Code.
  - Failed to comply with migration law contrary to **section 17** of the Code.
  - Failed in her duty to notify the Authority of changes in circumstances relevant to the Agent continued registration contrary to **section 29** of the Code.
  - Failed to provide all requested information and documents to the Authority contrary to **section 32(3)(c)** of the Code.
  - Displayed a significant conflict of interest by putting her personal financial interests ahead of the interests of her clients contrary to **section 34** of the Code.
  - Failed to keep clients informed about their respective immigration matters and further failed to respond to her clients in a timely matter contrary to **sections 33 and 39** of the Code.

- Acted in a way that caused unnecessary expenses or delays to clients contrary to **section 40** of the Code.
- Failed to enter in to and issue an Agreement for Services and Fees, receipts and/or invoices to her clients contrary to **sections 42, 50, 51** of the Code.
- Failed to provide clients with a refund contrary to **section 52** of the Code.
- Failed to return client documents to which the client is entitled within 14 days of receiving the request contrary to **section 54** of the Code.
- Failed to maintain client files contrary to **section 56** of the Code.
- Is not a person of integrity or otherwise a fit and proper person to provide immigration assistance as per paragraph 303(1)(f) of the Act.

35. My findings and full reasons for the decision are set out below.

#### **Agent-client relationship and provision of immigration assistance**

36. The meaning of 'client' is set out in section 306C of the Act. A client of an RMA is a person to whom the agent has given, or has agreed to give (whether or not in writing) immigration assistance.
37. Immigration assistance is defined in section 276 of the Act, as the use or purported use of knowledge of, experience in migration procedure by preparing, or helping to prepare a visa application or nominations.
38. The evidence and information provided to the Authority from each complainant indicates they paid the Agent money for professional assistance and provided her with documents relevant to their respective immigration matters as discussed with the Agent.
39. The Agent's responses and communications with the Authority regarding each of the complainants indicates that she used her knowledge and experience to provide immigration assistance to the visa applicants; therefore, I am satisfied that an agent-client relationship existed between the Agent and all three complainants.
40. As such, I am satisfied that the Agent owed them all obligations under the Code, and that three complaints relate to the Agent's provision of immigration assistance as defined in section 276 of the Act.

#### **Failure to Provide Agreement for Services and Fees/invoices and receipts**

41. The Code states a responsible RMA must not receive money from a client or give immigration assistance unless they have given the client an Agreement for Services and Fees that covers the immigration assistance and authority for the agent to act on the client's behalf. The purpose of an Agreement for Services and Fees is to provide the client with details of the work or services to be undertaken and information relevant to fees for these services and the disbursements the client is likely to incur as part of the service.

42. The Code also states a responsible RMA must not:
- charge a client for work/services unless the client is given an itemised invoice containing details of the work/services to which the fee relates; and
  - must ensure that, after the client pays such a fee, the client is given a receipt that identifies the work/services to which the payment relates.
43. In their complaints to the Authority, all three complainants alleged that the Agent did not enter into a written Agreement for Services and Fees with them before requesting payment and receiving money, nor did the Agent provide receipts and invoices for all payments made to her.
44. In the section 308 notices issued to the Agent<sup>2</sup>, the Authority requested the Agent to provide copies of Agreements for Services and Fees, invoices and receipts for each complainant and asked her specific questions in each section 308 notice relating to the payment of fees. The Agent did not provide any of the requested documents. In addition, the Agent did not provide these documents requested under section 305C of the Act.
45. In her response to the Authority, the Agent confirmed that she did not enter into an Agreement for Services and Fees with Mr L and Ms AB. The Agent did not answer the Authority's question about an Agreement for Services and Fees for Ms TB and in the absence of evidence to suggest otherwise, I am of the view that she did not enter into an Agreement for Services and Fees with Ms TB either.
46. Regarding Ms AB, in paragraph two of her response to the section 308 notice, the Agent states *'I did not enter into a service agreement with Ms AB at the beginning in early December because she made a general enquiry about the visa subclass 143'*. However, the information provided by Ms AB does not support the Agent's version of events.
47. As mentioned earlier in this notice, Ms AB paid the Agent \$2,500 on 28 November 2023, which according to her was a little over half of the Agent's fee. She then paid the Agent the VAC fee of \$7,975 for the subclass 143 visa application on 4 January 2024 and the balance of the Agent's fee of \$2,000 on 20 January 2024.
48. The Agent's assertion that her discussions with Ms AB in December 2023 were of a general nature does not align with the fact that she requested and received payment from Ms AB on 28 November 2023. A responsible RMA would not charge a client for an initial consultation or general enquiry.
49. The Agent's reason for not providing an Agreement for Services and Fees for Mr L was that the money they paid was an advance for prospective visas. The Agent claims that *'Mrs H agreed not to have any service agreement, and she accepted the bank transfer as a form of formal receipts and invoices'*. This is not an acceptable reason for failing to provide a client with an Agreement for Services and Fees and invoices and receipts. In other words, it is not up to a client to agree not to have an Agreement for Services and Fees or accept their bank transfer as a receipt, it is up to the Agent, as the responsible RMA to meet her obligations as stipulated by the Code.

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<sup>2</sup> On 16 June, 24 June and 7 July 2024.

50. As mentioned above, the Agent confirms she did not enter into a written Agreement for Services and Fees with Mr L and Mrs H and Ms AB, and in the absence of evidence to the contrary regarding Ms TB, I am satisfied the Agent received money from each client without an Agreement for Services and Fees in place. Therefore, I find that Agent has breached **sections 42 and section 51** of the Code.
51. In their complaint, Mr L and Mrs H provided evidence of payments made to the Agent on 6 April and 12 April 2022. The Agent provided one receipt dated 6 April 2022 for the payment of \$20,000 with the wording '*Professional Fees Working Visas for 9 family members*', along with the names of nine individuals. According to Mr L and Mrs H, although they asked several times, the Agent did not provide a receipt for the \$29,500 payment to the Agent on 12 April 2022.
52. Further, the Agent failed to provide the Authority with any invoices or receipts for the payments she received from Mr L, Ms TB and Ms AB. The evidence before me, provided by the clients, is one receipt to Mr L and Mrs H and one receipt to Ms TB respectively. These two receipts do not represent the total amount of fees paid to the Agent by each client and falls well short of the Agent's financial duties and obligations under the Code. Accordingly, I am satisfied the Agent failed to issue invoices and receipts to Mr L, Ms TB and Ms AB for the payments made to her, in breach of **section 49** of the Code.

**Duty to maintain client file and to return client documents upon request**

53. RMAs have a duty to create and maintain client files that include copies of the client's visa application, Agreements for Services and Fees, written communications, written record of oral communications, invoices, receipts, copies of personal documents given to the agent by the client and evidence of the safe return of any original documents given to the agent.
54. In the section 308 notices sent to the Agent on 16 June, 24 June and 7 July 2024, the Authority asked the Agent to provide complete client files for each of the respective complainants. The Agent's response to the Authority on 26 August 2024 included three statutory declarations; there were no client files or client documents. Further, the Agent did not provide these documents requested under section 305C of the Act.
55. Additionally, RMAs have a duty to return to the client or new RMA all documents to which the client is entitled within 14 days of receiving the request.
56. On 18 January 2024, the Agent was sent an email from Ms TB's new RMA. The email was a request for the Agent to transfer Ms TB's client file, documents and return all funds held. An Authority to Act was included in the email.
57. On 31 January 2024, a second request was emailed to the Agent regarding the transfer of Ms TB's client file and documents. In addition, that day, a representative for Ms TB's new RMA called the Agent on her mobile telephone and the Agent verbally confirmed receipt of their emails.
58. On 14 February 2024 and 7 March 2024, further emails were sent to the Agent requesting the transfer of Ms TB's client documents. The Agent did not respond.
59. To date, Ms TB's RMA advised the Authority that they have received no correspondence from the Agent regarding the transfer of Ms TB's client files and documents as requested.

60. As mentioned earlier, the Agent provided no client files for each of the complainants in her response to the section 308 notices, nor as requested in the section 305C notice. The Agent also did not respond to Ms TB's new RMA when they requested a copy of her client file from the Agent in January 2024. Therefore, it would be reasonable for me to conclude that no such client files exist.
61. Without evidence to the contrary, I am satisfied that the Agent failed to maintain proper records and failed in her duty to return client documents contrary to **sections 54 and 56** of the Code.

**Failure to provide the Authority with all requested information and documents**

62. Under the Code, as an RMA the Agent has a duty to respond to requests from the Authority for information and documents in its entirety. RMAs are not excused from giving information or documents because the provision of such may incriminate them.<sup>3</sup> By failing to comply with a section 308 notice and a section 305C notice, an RMA not only acts contrary to the Code, the Act and the migration law, but also undermines the purpose and intent of the migration agents' regulatory scheme.
63. The Agent was required to provide the Authority with information by answering the questions in each of the section 308 notices. Across the three section 308 notices there were forty-seven questions, the Agent only answered six questions.
64. The Agent was also required to provide client files for each complainant, bank statements for her clients' accounts and evidence of an agreement with a farm owner regarding sponsorship or employment opportunities for temporary work visas. The Agent did not provide the Authority with any of the documents requested under section 308 and section 305C.
65. Given that the Agent has not responded adequately to each of the three section 308 notices, nor provided the requested documents, I am satisfied that the Agent has failed to meet her duties under **section 17 and section 32(3)(c)** of the Code. Moreover the Agent has not complied with **section 305C(4)** of the Act.

**Failed to respond to clients in a timely manner and not act in a way that causes unnecessary expense or delay**

66. The three complainants have provided the Authority with copies of correspondence they had with the Agent in the form of either text messages or emails. They show that there were several days, weeks and even months before the Agent responded to the complainants' enquiries or requests.
67. The text messages and information provided by each complainant revealed common patterns of behaviour from the Agent that led to ongoing and repeated delays in response times and outcomes for each client.
68. Of note, the Agent received Ms TB's VAC payment on 26 June 2023 and by 3 December 2023, she still had not lodged Ms TB's partner visa application.
69. Additionally, although the Agent received the VAC payment on 4 January 2024 from Ms AB on behalf of her family members, she did not submit the VAC payment to the Department for their subclass 143 visa application until 7 June 2024.

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<sup>3</sup> Refer section 308(1) and section 308(3) of the Migration Act 1958



Ms TB

70. Ms TB provided screenshots of the original text messages and a certified English translation of the text message conversations she had with the Agent commencing 17 June 2023. These messages show back and forth correspondence she had with the Agent between 17 June 2023 and 4 December 2023.
71. On 29 June 2023, Ms TB sent a text message to the Agent and asked the Agent if she had received the VAC payment. The Agent responded via text message confirming she had received the funds for Ms TB's partner visa application and that was preparing to 'lodge soon.'
72. Between 9 August 2023 and 8 September 2023, the Agent's responses to Ms TB's text messages appear to avoid addressing her questions directly. More often than not, the Agent's reply to Ms TB would be '*can I call you later?*'
73. On 15 November 2023, Ms TB messaged the Agent and stated '*If you feel that you can't manage to do my application can I have all my documents and money back, my husband and I can't keep waiting for you like this. I gave you so many chances. If you're really struggling and too busy I can find someone else to do this for me and you can return my documents and money.*'
74. To which the Agent responded '*Certainly next Monday I will lodge everything for you*'. The Agent arranged to meet with Ms TB on Monday 20 November 2023 and indicated she would lodge Ms TB's partner visa application at that time. An hour before the scheduled appointment the Agent cancelled the meeting, telling Ms TB that, '*I'm going to prepare your application carefully tonight and send it to you via email to check then we'll submit. .... I will finalise your case this week.*'
75. By early December 2023, the Agent had not lodged a partner visa application for Ms TB although she had received the VAC payment in June 2023 and previously told Ms TB in a text message, on 7 July 2023, that the Agent had lodged her application.
76. On 26 June 2024, as part of the section 308 notice, the Authority asked the Agent to provide the reasons why she had made no progress on Ms TB's partner visa application. In her response, the Agent stated that she had doubts about the genuine nature of Ms TB's relationship and had requested additional documentation. The Agent also stated that Ms TB had agreed that the Agent could use the partner visa application fee for her personal use. The Agent's version of events is quite different from the text message communications provided to the Authority by Ms TB.

Mr L and Mrs H

77. According to Mr L and Mrs H, the Agent told them she was in contact with a farm owner in Victoria and that she could arrange sponsored work visas for nine of their family members.
78. On 22 July 2022, Mrs H sent the Agent a text message and asked if she had lodged the visa applications. The Agent replied that the farm owner was required to provide evidence to the Department that they advertised the vacancies for two months and that local applicants could not fill the positions before the positions could be offered to the nine applicants.
79. One month later, on 20 August 2022, Mrs H sent the Agent a text message and enquired again about the status of the visa applications. Mrs H told the Agent that if she had made no progress with the applications or could not provide evidence the visas had been lodged with the Department then she should refund the money she had been paid.



80. On 11 September 2022, Mrs H called the Agent on the telephone and asked for an update on the visa applications and the name of the farm owner. The Agent asked for her patience and said, *'Who knows, we can hear from the Department soon, maybe even today.'* [sic] The Agent did not answer Mrs H's question about the name of the farm owner and the Agent's response indicated that she had lodged the visa applications.
81. On 12 and 17 September 2022, Mrs H called the Agent again. The Agent asked for Mrs H's understanding and that she was taking sick leave for four weeks.
82. According to Mr L, he called the Agent on 25 November 2022 and asked her to refund all the money they had paid to her. The Agent begged him to give her until February or March 2023 to obtain funds to do so. Although they were both frustrated and concerned with the Agent's conduct, he and Mrs H agreed to give her until March 2023 to repay their money.
83. In their complaint to the Authority, Mr L said that he and Mrs H found it difficult to understand how the Agent's personal circumstances would affect her ability to refund their money, given she did not lodge any of the nine visa applications they paid her for.
84. In the section 308 notice sent to the Agent on 24 June 2024, the Authority asked her to provide information and any documents in relation to the *'farmers visas'* as discussed with Mr L and Mrs H. The Agent's only response was that the farmer *'went against their words'* and the *'farmers visas'* were no longer an option. The Agent did not answer the questions about having an established agreement with a farm owner or if any labour market testing had begun which leads me to conclude that no such arrangements existed.

Ms AB

85. In November 2023, Ms AB engaged the Agent's services for assistance with a subclass 143 visa application. On 4 January 2024, Ms AB paid the VAC of \$7,975 for the visa application into the Agent's account.
86. On 8 January 2024, Ms AB called the Agent and asked if she had posted the visa application documents to the Department. The Agent said she was unable to get to the post office as her dog had an injury. The Agent assured Ms AB that she would post the visa application documentation the following day and provide her with the Australia Post tracking number.
87. On 13 January 2024, Ms AB called the Agent again to enquire about the tracking number. The Agent told her it was in *'the file'* and asked her to pay the remainder of her \$2,000 service fee. Ms AB replied that she would pay the Agent's remaining fee upon receiving the tracking number that had not been provided to her.
88. Then on 18 January 2024, the Agent provided the tracking number to Ms AB and said she had *'just posted the documents'* and that Ms AB should *'allow a few days'* for the tracking to be active.
89. Around late February or early March 2024, Ms AB sent the Agent a text message advising that the tracking number she provided was showing as *'still pending'* and asked her to follow up with Australia Post. The Agent apologised for missing Ms AB's phone calls, she said she had been at a funeral but would call the post office.

90. On or around 6 March 2024, Ms AB sent the Agent a text message and said that the Department had confirmed with her that the visa application had not yet arrived in the post. Ms AB asked the Agent to confirm when she had posted the documents. The Agent replied that she had not been answering any phone calls due to personal matters and that she would send the acknowledgement letter the following week.
91. On 3 May 2024, Ms AB sent the Agent a text message expressing frustration that the Agent had not returned her calls nor provided any updates on the progress of the visa application. Ms AB asked the Agent to refund of the money she had paid to her.
92. On 6 May 2024, Ms AB said that she would submit a complaint to the Authority if the Agent was not able to provide an update by the end of that day. The Agent replied that she was still trying to *'sort it out'*.
93. On or around 8 May 2024, the Agent sent Ms AB a text message and said she had attempted to follow up with the Department and asked Ms AB to give her *'until the end of the week'*.
94. On 10 May 2024, Ms AB asked the Agent again to provide a copy of the VAC receipt. She said the Agent did not reply.
95. On 11 May 2024, the Agent sent Ms AB a text message and said there had been a mix up with her ImmiAccount and that she would not have access to the VAC receipt until 13 May 2024.
96. On 13 May 2024, Ms AB said that if the Agent had not yet submitted the subclass 143 visa application, then she was to refund Ms AB's money. Ms AB attempted to contact the Agent on the telephone and her call was unanswered.
97. Soon after, Ms AB sent the Agent another text message and said *'Pls pick up the call as I need to know what is happening with the application.'* [sic]
98. In response to Ms AB's message, the Agent replied *'My assistant could only print out the receipt but still wait for the letter. 'Geez plse will send, I am catching the flight.'* [sic]
99. On 17 May 2024, the Agent messaged Ms AB and said she would email scanned copies of the documents to her. Ms AB asked the Agent to send a copy of the VAC receipt and the reference number for the submitted visa application as well. Ms AB said that the Agent should refund her money and they would seek assistance from another RMA if the Agent were unable to continue assisting her.
100. The Agent further said she had re-sent the application and all the documents to the Department and *'attached the credit form to the application. Next week the dept will send letters & receipts. Please wait the next few days.'* [sic]
101. On or around 19 May 2024, the Agent sent a text message to Ms AB and said *'I am asking your last favour to be patience and a bit more and all good.'* [sic] Ms AB again expressed frustration in that they had been patient with the Agent, despite the lengthy delay they had experienced waiting for updates on the visa application and that many of her calls and messages to the Agent went unanswered.
102. On 21 May 2024, Ms AB emailed a letter to the Agent and requested a full refund of the money she had paid to her within seven days.

103. On 22 May 2024, Ms AB sent the Agent a text message and said she had been to her office location in Collins Street and she did not believe it to be her office and she felt that the Agent had not been truthful. Ms AB also said she would contact Consumer Affairs Victoria and the Authority if the Agent did not refund the money paid to her.
104. In response to Ms AB's message, the Agent wrote '*Whether I am around there is not relevant. Please do not act in a Vietnamese way.*' [sic]
105. On 28 May 2024, Ms AB sent the Agent a text message confirming she would proceed with submitting complaints to Consumer Affairs Victoria and the Authority the following day if there was no resolution from the Agent to her refund request.
106. Then on 29 May 2024, in response to her previous message the Agent said she would withdraw the money two days later.
107. On 30 May 2024, Ms AB asked again in a text message if the Agent would be providing a refund.
108. Based on the above and the evidence before me, I am satisfied the Agent had not paid the VAC fee for the subclass 143 visa, although she continued to maintain with Ms AB that she had.
109. On 10 June 2024, the Agent paid the VAC fee of \$7,975 and posted the subclass 143 visa application documents to the Department by way of Zoom 2 you Couriers.
110. With regard to Ms AB, the subclass 143 visa VAC payment was made on 10 June 2024, although the Agent claims to have made the payment months earlier. Additionally by her own admission, the Agent delayed lodging the subclass 143 visa application because she claimed she did not know how to refuse her assistance.
111. In the section 308 notice sent to the Agent on 11 July 2024, the Authority asked the Agent for information and documents in relation to when she originally posted the subclass 143 visa application. The Agent did not answer the question about when she posted the application nor did she provide any post office receipts or evidence of a tracking number. Therefore, in the absence of evidence to suggest otherwise, I am satisfied the Agent only posted the subclass 143 visa application documents in June 2024.
112. Consequently, and in consideration of the matters already discussed within this notice, I am satisfied the Agent has acted in ways that caused unnecessary delays to her clients. In addition, I am also satisfied the Agent misled her clients by telling them that she had lodged their applications and paid their VAC fees when she had in fact not done so. Therefore, I am satisfied the Agent has acted in contravention to **sections 15, 33 and 40** of the Code.

**Duty in relation to client's money/retaining a substantial amount of money without entitlement**

113. A responsible RMA has a duty to follow the requirements as stated in the Code in relation to client money, including but not limited to the refund of money to a client for services not rendered.

114. The Code stipulates that client money must not be paid out of the account other than:
- to pay the agent/agent's business<sup>4</sup>; or
  - to pay amounts required to be paid to the Department or a review authority; or
  - to pay disbursements in accordance with the agreement; or
  - to refund client money to a client; or
  - to refund client money by transferring amounts to other RMAs, as the instruction of a client.
115. Two of the complainants (Mr L and Ms TB) alleged that they paid money in advance to the Agent for services which the Agent did not provide. The third complainant, (Ms AB) alleged that she paid money in advance to the agent and the Agent lodged the visa application six months after she was paid the money. All three complainants have alleged that they also paid VAC fees to the Agent, which she was to pass on to the Department.
116. The allegations and evidence before the Authority in respect of this conduct indicates that:
- In relation to Ms TB, the Agent was paid \$15,735 for fees and services that she did not provide, with no partner visa application being lodged as instructed.
  - In relation to Mr L and Mrs H, the Agent was paid \$49,500 for fees and services that she did not provide for nine temporary work visa applications being lodged as instructed.
  - In relation to Ms AB, the Agent was paid \$12,475 for fees and services for a subclass 143 visa application to be lodged in January 2024 as agreed. The Agent did not lodge the subclass 143 visa application until June 2024.
117. In the section 308 notices sent to the Agent on 19 and 26 June 2024 respectively, the Authority asked the Agent why she had not refunded either clients' money. In her response, the Agent claimed that both Mrs H and Ms TB agreed that she could use the money they had paid her for her own personal use instead of their respective immigration matters. The Agent claims she did not provide a refund to Mr L and Mrs H because Mrs H agreed she could use their money to pay for personal matters.
118. The Agent's response as to why she had not provided a refund to Ms TB is because Ms TB agreed that the Agent could use the money for her own personal use. The Agent claims that while waiting for Ms TB to submit additional documents to evidence the genuineness of her relationship, she considered the money paid to her by Ms TB was hers to use.
119. It is difficult to accept that clients would forego their respective immigration matters by agreeing to allow their RMA to use their money as a personal loan. Moreover, it is even more difficult to accept that the Agent would impose such a request on her clients.
120. There is no evidence before me to suggest that either client agreed the Agent could use the money they had paid for anything other than immigration assistance. It is concerning the Agent would remove money from her clients' account for her personal use. There is no provision in the Code that allows for such conduct. This conduct is a significant breach of the Agents professional obligations, financially and ethically.

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<sup>4</sup> (but not if, under section 313 of the Act, a migration agent is not entitled to be paid the amount)

121. As already discussed, and by her own admission, the Agent considered the fees paid to her by her clients were hers to use for her own personal use, as evidenced in her text messages with the respective clients.
122. The combination of the Agent's email and text message communications with each client indicates she has used client money to pay fees towards personal matters. Such conduct is not acceptable from a RMA.
123. The Agents misuse of client funds raises serious integrity concerns, and calls into question whether the Agent had any genuine intention to provide the services for which she accepted payment or if her primary motive was to access her clients' money for personal use.
124. Based on information available to the Authority, the client money referred to above does not appear to have remained in a clients' account until the work was completed and a statement of services issued, as required by the Code.
125. The Agent was requested under section 305C of the Act to provide to the Authority copies of client ledgers, client accounts and other financial documentation relating to the monies paid or owed to Ms TB, Mr L and Ms H, and the family members of Ms AB. The Agent did not provide any of the requested documents to the Authority.
126. There is no evidence before me that the Agent has refunded the \$49,500 Mr L and Mrs H paid her for immigration assistance that she failed to provide.
127. There is also no evidence before me that the Agent has refunded the \$15,735 Ms TB paid her for immigration services that she failed to provide.
128. In light of the above, I find that the Agent has mismanaged client money of at least \$65,235 and retained said money without entitlement to do so as alleged by the complainants.
129. Accordingly, in the absence of evidence from the Agent, I am satisfied the Agent has failed in her duty in relation to clients' money in breach of **sections 50 and 52** of the Code.
130. Furthermore, the Agent has demonstrated a significant conflict of interest by putting her own financial needs before those of her clients by using client monies for her own personal use. The Agent has compromised the trust and confidence that her clients may have had in her and this brings her objectivity into question. It also reflects poorly on the reputation of the immigration advice industry.
131. For these reasons, I am also satisfied that the Agent did not act in the legitimate interests of her clients, and in the absence of evidence to the contrary, I find the Agent was acting solely on obtaining financial benefits for her own personal gain in breach of **sections 33 and 34** of the Code. I am also satisfied that the Agent's conduct is reasonably likely to damage the reputation of migration agents and the immigration advice industry in contravention of **section 13** of the Code.

#### **Failure to act professionally and respectfully**

132. RMA's have a duty to act professionally, competently, diligently, ethically, honestly and with integrity. A migration agent must treat all people with appropriate respect. Section 14 of the Code, in particular stipulates that a migration agent must not harass, coerce or engage in unconscionable conduct targeted at another person based on the person's status under migration law. Additionally, RMA's must not engage in conduct that is reasonably likely to damage the reputation of migration agents or the migration advice industry.

133. Text messages and email correspondence between the Agent and each complainant provided as part of their complaints, indicates that the Agent has not complied with these obligations.

Ms TB

134. The Agent told Ms TB on 19 September 2023 that someone else was working on her visa application on the Agent's behalf when she enquired again if the Agent had lodged her partner visa application. The Agent said that she had the reference number and was *'following up with them'*. Then on 25 September 2023, the Agent indicated that she would process Ms TB's application *'in one go'*, which suggested to Ms TB that the Agent still had not lodged her partner visa.
135. When Ms TB asked why the Agent had not made the payment for her partner visa application, the Agent's response was, that upon receiving documents and payment for her partner visa that the Agent had asked one of her associates to *'do all the work'* as they had recently graduated and had asked the Agent to mentor them. The Agent went on to explain in the text message to Ms TB that the Agent had *'split paths'* with her associate and had to *'chase up them to get the documents back.'* [sic]
136. Although not specifically stated in the Agent's text message response to Ms TB that her associate had also taken money, it appears that the Agent inferred as such when she asked Ms TB if her family could help the Agent out by *'paying this time'* and that she would return the money back within a few weeks after the Agent received it.
137. On 17 October 2023, Ms TB paid the Agent \$3,500 and said it was inclusive of her tuition fee and asked the Agent to finalise her application.
138. On 21 October 2023, the Agent sent a text message<sup>5</sup> to Ms TB asking her to pay additional money, the Agent said in the text message *'could you please help me out one last time so that I can complete your application and it's also a way to do good deeds helping me...'* [sic]
139. The Agent's response to the Authority appears to contradict the text message correspondence she had with Ms TB. The Agent claims she was considering whether to refund Ms TB's fees to her once her personal matters were resolved or submit her partner visa application, despite all her doubts about her relationship. However, in the Agent's text message to Ms TB when she asked her for money to pay for a personal matter, she said *'As long as I get it done next week, you don't have to go to any school (if that's what you want), you only have to wait for the Partner visa. I promise you that I'll do my best to make your case successful.'* [sic]
140. It raises concerns about the Agent's honesty in her responses to the Authority and in her communications with Ms TB. A diligent and honest RMA with doubts about the genuine nature of their clients' relationship is not likely to borrow client money and then lodge a partner visa application whilst promising a successful outcome.

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<sup>5</sup> Refer page 6 of Attachment A for the Agents complete text message of 21 October 2023



Ms AB

141. On 20 January 2024, the Agent sent a text message to Ms AB and asked her to pay the remaining \$2,000 of her agent service fee.
142. In her complaint to the Authority, Ms AB stated she was reluctant to pay the balance of the Agent's fee, however said she felt the Agent was sincere and later that day paid \$2,000 into the Agent's account.

Mr L and Mrs H

143. According to Mr L, the Agent called him on the telephone on 24 August 2023 and told him she was going through a difficult time. The Agent told Mr L that if the complaint he and Mrs H made to the Authority led to the loss of her job as a migration agent, she would not be able to refund the \$49,500 that she owed them; and she asked them to withdraw the complaint.
144. Then, on or around 25 August 2023, the Agent emailed a letter to Mr L and Mrs H in which she promised to refund their money in full. The Agent said she would pay \$10,000 in October 2023, \$20,000 in November 2023 and the remaining amount by the Vietnamese New Year on 25 January 2024.
145. In the letter, the Agent said the reason she had not been able to repay their money was that she had had many personal problems including [removed for privacy]. The Agent made the following statements referencing the significant emotional and financial distress the Agent were experiencing. She wrote:
- *'I hope I can keep my migration agent license in order to be able to work to start to generate income again and return money to you quicker' [sic].*
  - *'Hope you can understand, if I cannot work now, I will not have a chance to earn money to repay what I am owing you' [sic].*
  - *'Right now, my only wish is to be able to continue to work. And with work, I will have the money to pay you as quickly as possible' [sic].*
146. On 25 August 2023, Mr L advised the Authority he was withdrawing the complaint.
147. The letter the Agent wrote to Mr L and Mrs H, stated that her life would be *'ruined'* and she would be unable to repay the money she owed them, due to their complaint, appears to infer Mr L and Mrs H would be at fault for the consequences of her actions.
148. The Agent made repeated references to her ability to repay their money being conditional upon her *'keeping her job'* as a RMA. The conduct described above is not in keeping with the expected conduct of a RMA.
149. Additionally, the Agent intimated that if she lost her job, because of their complaint, it would result in severe personal consequences. Mr L told the Authority the reason they withdrew the first complaint, was they believed they should give the Agent a chance to continue her work.
150. This conduct is unacceptable and undermines the trust and confidence that clients must be able to place in their RMA. Such actions not only potentially have adverse consequences for individual clients but also tarnish the reputation of the migration agent profession as a whole. The integrity of the profession depends on each agent adhering strictly to ethical and professional standards.



151. Mr L and Mrs H have suffered a financial loss of \$49,500 because of the Agent's conduct and it would seem highly likely that they will not recoup their money. They trusted the Agent would provide the services they paid her for and would act in their legitimate interests. The Agent represented herself as an RMA in contact with a farm owner who could provide temporary work visas for nine of their family members. It appears this was not the case. Mr L and Mrs H paid the Agent a significant amount of money in April 2022, for immigration services she did not provide.
152. Further, Ms TB spent more than six months and \$15,735 for a partner visa that did not eventuate. The Agent made promises of a successful partner visa outcome to Ms TB, asked her for money over and above what she had already paid the Agent; and yet the Agent declared to the Authority that she doubted the genuineness of her relationship.
153. The Agent also asked Ms AB to pay the balance of her agent fee despite the fact she had not lodged the subclass 143 visa. This conduct is not consistent with the standard of integrity, diligence and honesty expected of RMAs.
154. In light of the above, I am satisfied that the Agent shared information about her personal circumstances with all three complainants in an attempt to elicit pity and coerce their compliance with her requests. Specifically the letter written to Mr L and Mrs H appears to be a deliberate action on the Agent's part to put pressure on them to withdraw their first complaint, which in fact they did.
155. When considering the totality of the above information and the available evidence, I am satisfied the Agent failed to treat her clients with appropriate respect and failed in her duty to act professionally, ethically, and honestly with integrity, contrary to **sections 13, 14 and 33** of the Code.

**Duty to respond to the Authority and to notify of matters that may affect fitness and propriety**

156. RMAs have a duty to notify the Authority within fourteen days after becoming aware of any change to their personal circumstances that is reasonably likely to have a negative impact on the Authority's satisfaction that the RMA is fit and proper to give immigration assistance.
157. On 21 January 2022, 22 February 2023 and 21 February 2024, The Agent lodged repeat registration renewal applications with the Authority.
158. As part of the applications the Agent was asked:
- *'Have you been involved in any event, inquiry or investigation, or any other matter, that is relevant to your role in providing immigration assistance which may be of interest to the OMARA when determining whether you are a person of integrity or a fit and proper person to provide immigration assistance?'* and;
  - *'Is there any other finding, event, conduct or fact which may affect your fitness, propriety and/or integrity to provide immigration assistance? (other than disclosed in this application).'*
159. The Agent answered 'no' to both questions in the 2021, 2022 and 2023 repeat applications.
160. Further, the Authority has not received any such notifications from the Agent since September 2022 nor in her declarations to the Authority for her 2023 and 2024 registration applications.

161. RMAs are required to notify the Authority of changes to their personal circumstances that may negatively affect their ability to provide immigration assistance in a fit and proper manner. As noted above, the Authority has not received any such notifications from the Agent nor has she declared any change in circumstances to the Authority in her 2022, 2023 and 2024 repeat registration applications.
162. According to information provided by each of the complainants and the available evidence, the Agent provided various reasons for her inability to provide the services and immigration assistance each client paid for, including being unwell for long periods of time and dealing with personal matters.
163. This indicates the Agent was aware that her personal circumstances were having a negative impact on her clients and her performance as an RMA, yet she failed to notify the Authority in her last three repeat registration applications.
164. In light of the above, I am also satisfied that the Agent failed to notify the Authority of changes to her personal circumstances that may have negatively affected the Agent's ability to provide immigration assistance in a fit and proper manner, in contravention of **sections 29 and 32** of the Code.

## **INTEGRITY, FITNESS AND PROPRIETY – SECTION 303(1)(F) OF THE ACT**

### **Integrity**

165. Pursuant to paragraph 303(1)(f) of the Act, the Authority may caution a RMA, or suspend or cancel their registration, if it becomes satisfied that the agent is not a person of integrity or is otherwise not a fit and proper person to give immigration assistance.
166. There is a degree of overlap between 'fit and proper' and 'integrity' to the extent that fitness and propriety includes consideration of the honesty of the actions of an individual.
167. 'Integrity' means 'soundness of moral principle and character, uprightness and honesty'.<sup>6</sup>

### **Fitness and Propriety**

168. 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.

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<sup>6</sup> See *Re Peng and Department of Immigration and Multicultural Affairs* [1998] AATA 12 at paragraph [26].

169. 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. At 380 their Honours stated:
- '[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.'*
170. 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>7</sup>
171. The context in which the reference to 'fit and proper' person occurs in section 303(1)(f) is the person's giving of immigration assistance. The context also includes:
- the Act, which creates offences for misleading statements and advertising, practicing when unregistered and misrepresenting a matter; and
  - section 290(2) of the Act, which provides that in considering whether it is satisfied that an applicant is not fit and proper or not a person of integrity, the Authority must take into account specified matters, including the person's knowledge of migration procedure; and any other matter relevant to the person's fitness to give immigration assistance.
  - the Code which refers to (among other matters) a registered migration agent acting diligently, ethically, honestly and with integrity, treating persons with appropriate respect, and properly managing and maintaining client records and maintaining client confidentiality.
172. Key elements of the fitness test are:
- the honesty of the person (*Peng and Department of Immigration and Multicultural Affairs* [1998] AATA 12); and
  - the person's knowledge of the migration scheme and ability to fulfill the position of a migration agent (*Mottaghi and Migration Agents Registration Authority* [2007] AATA 60).
173. The reference in section 303(1)(f) to a RMA not being 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 (*Tejani and Migration Agents Registration Authority* [2009] AATA 240).
174. 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;

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<sup>7</sup> See *Cunliffe v Commonwealth* (1994) 182 CLR 272

- the Agent's honesty and competency towards clients, the Department and the Authority;
- a consideration of the context in which the agent works, for example whether or not the Agent is an employee or owner of the business through which immigration assistance is provided;
- 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".

175. Having regard for the totality of the matters discussed within this decision, I am satisfied that the Agent has:

- acted with a blatant disregard for, or a significant degree of indifference to, the migration law and the visa programs in general;
- made misleading, deceptive or inaccurate statements and otherwise acted dishonestly;
- acted without regard for the adverse impact the conduct would have on the reputation of the migration advice industry;
- acted in a manner not consistent with the principles of integrity nor of a person who is fit and proper to provide immigration assistance.

176. In consideration of the discussion on the Agent's conduct in this decision and my findings above, I am satisfied that the Agent is not a person of integrity and is otherwise not a fit and proper person to give immigration assistance.

## **CONSIDERATION OF APPROPRIATE DISCIPLINARY ACTION**

177. 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:

- Whether the Agent's behaviour is of a minor or serious nature. Conduct that the Authority considers to be adverse, extremely serious and therefore likely to result in discipline at the higher end of the scale includes but is not limited to:
  - criminal behaviour;
  - fraudulent behaviour;
  - behaviour that demonstrates fundamental lack of knowledge of the law; or
  - involves a blatant disregard for or a significant degree of indifference to the law;
  - repeated occurrences of the conduct described in subsection 303(1) (d)-(h) and/or;
  - agent behaviour that has resulted in significant harm or substantial loss to clients.
- Any aggravating factors that increase the Agent's culpability including but not limited to previous conduct.

- 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**

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

- whether the behaviour in question could be the subject of rehabilitation;
- the level of impact, if any, that a sanction would have on the Agent's livelihood;
- the circumstances of the clients, including any vulnerability; and
- any wider issues pertaining to consumer protection or the national interest.

179. Having regard to the matters before me, I consider that the Agent's adverse behaviour is of a serious nature because:

- The Agent misappropriated client monies for her own personal benefit to the detriment of her clients;
- The Agent requested and accepted money from her clients for services she failed to provide;
- The conduct involves a blatant disregard for, or a significant degree of indifference, to the law;
- The Agent's applications for registration were known by the Agent to be false or misleading in a material particular.
- The continued registration of the Agent is not in the public interest;
- The conduct demonstrates serious repeated breaches of the Code of Conduct, and dishonest or reckless behavior; and
- I have found that the Agent is not a person of integrity, or a fit and proper person to provide immigration assistance.

**Aggravating factors**

180. I consider the Agent's conduct well short of the standard expected of an RMA, particularly her apparent indifference towards her obligations to her clients, the Department and the Authority.

181. The Agent has used client money for her own personal use with no regard for her professional obligations, I am of the view the Agent has demonstrated a deliberate disregard for her clients and the migration law.

182. With her behaviour, the Agent has hampered the Authority's investigation into her conduct as an RMA by failing to provide proper responses to specific questions put forward and by her failure to provide client files and other documentation as requested by the Authority.

183. I consider the Agent's conduct, in failing to comply with the requirements of the section 308, 309 and 305C notices, demonstrates a disregard of Australian law, undermines the purpose and intent of the migration agent's regulatory scheme and demonstrates contempt for its consumer protection function.
184. On that basis, I consider that the serious nature of Agent's conduct poses a risk to migration consumers, reflects poorly on the Agent's integrity and her fitness to remain in the migration advice industry.

### **Mitigating Factors**

185. The Agent did not provide a response to the section 309 notice and has therefore not provided any mitigating factors for consideration.
186. Nonetheless, I have taken into account that the Agent has not previously been the subject of a sanction or disciplinary action by the Authority. However, I am not satisfied that this mitigates the seriousness of the conduct which is the subject of this decision.
187. I have considered that any disciplinary decision will have an impact on the Agent's future livelihood; however, I am of the view that any loss of income from providing immigration assistance is significantly outweighed by the need to protect the public interest.
188. Additionally, the Agent stated in her email response to the section 308 notices on 26 August 2024 that she did not think she would continue to work as a migration agent. For that, she would not be re-registering as an agent. I am therefore satisfied that any disciplinary action would not impact on her future livelihood when her current registration ceases on 22 February 2025.

### **Consumer Protection**

189. Consumers of professional services of RMAs are often vulnerable and place a high degree of trust in their RMA. Consumers are therefore entitled to a high level of professional service from their RMA.
190. The behaviour demonstrated by the Agent falls short of the standards expected of RMAs. I consider that the Agent would pose a risk not only to consumers but also to the integrity of Australia's migration law and the Department's visa programs that are made available to visa product consumers. I am satisfied that if the Agent were to continue to practice as an RMA, she would not demonstrate the requisite standard expected of an RMA. I consider that a disciplinary decision is warranted to address the serious conduct the subject of this decision, in the interests of consumer protection, and in maintaining confidence the integrity of the Australian migration program.
191. I expect that a decision to sanction the Agent would more likely than not deter other RMAs from engaging in a similar practice and ensure that public confidence in the migration agent industry is maintained.
192. Given the aggravating factors considered and that the Agent failed to recognise or accept her conduct, I am satisfied that the Agent would continue to display the same unprofessional conduct if she was registered as a migration agent, posing an ongoing risk to consumers.

**DECISION**

193. I have turned my mind to the appropriate sanction action to impose on the Agent, and whether a caution or suspension with conditions imposed on the Agent would maintain the interests of consumer protection and the migration program in general.
194. The findings made have been on the Agent's lack of integrity, honesty, judgement, knowledge and diligence. In light of the severity and extent of this conduct, which occurred over a period of no less than three years and affected multiple clients, I consider that the Agent should not be able to continue to work in the profession and requires a significant period of separation from the migration advice industry. I am, therefore, of the view that a decision to caution or suspend the Agent would not adequately address the seriousness of the misconduct in the subject of this decision.
195. Taking all of the circumstances discussed, including the Agent's responses to the section 308 notices, I am satisfied there is no remedial action that is appropriate that would enable her to continue practising as a registered migration agent at this time. In particular, the Agent has continued to assert she was entitled to use client funds for personal use, leads me to doubt that it is appropriate that she continue to work in the migration advice industry. In the interests of consumer protection and the integrity of the Department's visa programs, I consider that it is appropriate to cancel the Agent's registration.
196. 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.
197. 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 sections 13, 14, 15, 17, 29, 32, 33, 34, 39, 40, 42, 50, 51, 52, 54 and 56 of the Code.
198. In accordance with section 292 of the Act, an agent who has had their registration cancelled must not be re-registered within 5 years of the cancellation.
199. Accordingly, this cancellation will be in effect for a period of 5 years from the date of this decision.

Alecia Stubbs  
Office of the Migration Agents Registration Authority  
Department of Home Affairs

**Date of Decision: 14 November 2024**



## APPENDIX A: TERMS USED FOR REFERENCE

The following abbreviations may have been used in this decision:

ABN	Australian Business Number
MARN	Migration Agent Registration Number
Section 308 Notice	Notice issued by the Authority under section 308 of the Act
Section 309 Notice	Notice issued by the Authority under section 309 of the Act
The Act	The <i>Migration Act 1958</i>
The Regulations	<i>Migration Agents Regulations 1998</i>
The Agent	<b><i>Mrs Thu Ngoc Bannan</i></b>
The Authority	The Office of the Migration Agents Registration Authority
The Code	The <i>Migration (Migration Agents Code of Conduct) Regulations 2021</i> prescribed for the purposes of subsection 314(1) of the <i>Migration Act 1958</i>
The Department	The Department of Home Affairs
The Register	Register of migration agents kept under section 287 of the Act