



DECISION RECORD

AGENT	Dr Timea POCZE-GRAF
COMPLAINT NUMBERS	CMP-33620 and CMP-36338
DECISION	Suspension – 18 Months
DATE OF DECISION	22 May 2020

Terms used for reference

1. The following abbreviations are used in this decision:

<i>ABN</i>	Australian Business Number
<i>AAT</i>	The Administrative Appeals Tribunal
<i>BVA/B/E</i>	Bridging Visa A, B or E
<i>MARN</i>	Migration Agent Registration Number
<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 Timea POCZE-GRAF
<i>The Authority</i>	The Office of the Migration Agents Registration Authority
<i>The Code</i>	The Migration Agents Code of Conduct prescribed pursuant to section 314 of the Act under Regulation 8 and Schedule 2 of the Agents Regulations
<i>The Department</i>	The Department of Home Affairs
<i>The Register</i>	Register of migration agents kept under section 287 of the Act
<i>The Agents Regulations</i>	<i>Migration Agents Regulations 1998</i>

STATEMENT OF REASONS

Background

2. The Agent was first registered as a migration agent on 12 February 2013 and was allocated the MARN 1382041. The Agent's registration has been renewed annually to date, with the most recent registration application being lodged on 12 February 2020 the finalisation of which is pending the outcome of this decision.
3. The Register lists the Agent's business name as Open Migration with the ABN 71 976 406 604.

Prior Disciplinary action

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

Complaints

5. The Authority received two complaints about the Agent's conduct as a registered migration agent from Mr [NS] on 10 October 2017 (CMP-33620) and Mrs [MK] on 21 March 2018 (CMP-36338).

CMP-33620

6. Mr [NS] alleged the following:
 - he engaged the Agent's services to assist him with a 457 Business Nomination;
 - the Agent did not communicate or respond to his emails in a timely manner;
 - the Agent did not provide him with any progress updates on his case;
 - the Agent failed to notify him of the Department's decision on the Business Nomination in a timely manner;
 - the Agent lodged a new Business nomination and 457 visa without his knowledge or consent;
 - the Agent did not act in accordance with her client's instructions and "*deleted [BP]'s wife from the 457 application*"; and
 - owing to the Agent's incompetence, he terminated her services.

Departmental Records

- On 1 February 2017, the Agent lodged a Standard Business Sponsorship (UC457) application on behalf of [RSE] Australia Pty Ltd atf¹ TSFT ([RSE]).
- On 1 February 2017, the Agent lodged a 457 nomination application on behalf of the [RSE] in which Mr [BP] was the nominee.
- On 1 February 2017, the Department's acknowledgement of the sponsorship and nomination applications was sent to the Agent's email address timipoczegraf@gmail.com.

¹ As trustee for

- On 3 February 2017, the Agent emailed recruitment documents to the Department as the Agent had an issue uploading documents online.
- On 3 March 2017, supporting documents were uploaded online and included online reservations, photo of restaurant, business licence, recruitment activity and employment contract.
- On 14 March 2017, the Department emailed the Agent a request for more information from [RSE].
- On 6 April 2017, Business Activity Statements (BAS) were uploaded for [RSE].
- On 10 April 2017, market salary analysis documentation was uploaded.
- On 9 May 2017, the Department received a request for priority processing for the nomination application.
- On 26 June 2017, the Department emailed the Agent with information that the nominated position may be excluded by the occupation restrictions. Additional information was requested to support the assessment of the nomination application. An option to withdraw the application was also provided.
- On 28 July 2017, not having received a response from the applicant, the Department refused the nomination application. The notification was sent to the Agent's email address timipoczegraf@gmail.com.
- On 15 August 2017, the Agent departed Australia for an overseas trip. The Agent returned to Australia on 26 September 2017.

CMP-36338

7. Mrs [MK] alleged the following:

- The Agent lodged a subclass 187 visa application on behalf of Mrs [MK] and her husband in April 2017.
- On 5 May 2017, the Department refused the associated business nomination.
- When Ms [MK] telephoned the Agent on 12 May 2017 to advise the Agent about her husband's IELTS, the Agent advised that she would be required to make the second VAC payment but the Agent did not tell her that the business nomination had been refused.
- She sent the Agent messages on 16, 22 and 26 May 2017 about the second VAC payment but the Agent did not respond.
- On 29 May 2017, the Agent sent her a message that the Agent would call her shortly but she did not receive a call from the Agent.
- On 2 June 2017, she received an email from the Agent that the RSMS nomination application had been refused.
- She asked the Agent why it had taken so long to advise her about the Department's decision. The Agent told her she had not received any correspondence from the Department.

Departmental Records

Sponsorship agreement

Application 1

- On 16 January 2016, the Agent lodged a sponsorship application on behalf of [YC] Pty Ltd
- On 1 March 2016, the Department requested more information in relation to the organisation operating lawfully in Australia; the organisation actively operating in Australia; and the training benchmark requirement.
- As the Department did not receive a response to its 1 March 2016 request for more information, the application was refused on 5 April 2016.
- On 22 April 2016, the Agent wrote to the Department in respect to the refusal of the sponsorship and first nomination application stating that the Agent had lodged the documents in question *“on or about 22 March 2016”*.
- On 11 May 2016, the Department replied to the Agent's email of 22 April 2016, stating that the *“Department has investigated whether any auditable training plan was provided on or about 22 March 2016 and can find no evidence of this. Accordingly, the decision is not impacted by jurisdictional error. I note that your new sponsorship application will be assessed shortly.”*

Application 2

- On 5 April 2016, the Agent lodged a second sponsorship agreement on behalf of [YC] Pty Ltd.
- On 5 April 2016, a statement regarding the training plan was uploaded to the application.
- On 3 May 2016, the Agent wrote to the Department to seek a response to her email of 22 April 2016 and to request priority processing of the application.
- On 11 May 2016, the Department requested more information in regard to the training benchmark requirement.
- On 7 July 2016, a statement regarding the training plan was uploaded to the application.
- On 14 July 2016, an additional statement regarding the training plan was uploaded to the application with a screenshot of applications received on 'MEGT account' and a quote from Steps Institute of Training.
- On 9 August 2016, the application was refused by the Department as no evidence of an auditable training plan had been provided.

Application 3

- On 30 August 2016, the Agent lodged a third sponsorship application on behalf of [YC] Pty Ltd.
- On 19 September 2016, the Agent wrote to the Department to request priority processing of the sponsorship and associated nomination applications.
- On 22 September 2016, the Department requested more information regarding the training benchmark requirement.
- On 23 September 2016, a letter from the sponsor regarding the training benchmark requirement was uploaded to the application.
- On 23 September 2016, the application was approved.

Nomination applications

Application 1

- On 27 January 2016, the Agent lodged a nomination application on behalf of [YC] Pty Ltd in which Mrs [MK] was the nominee.
- On 5 April 2016, the Department refused the first sponsorship application and the first nomination application was otherwise finalised.

Application 2

- On 5 April 2016, the Agent lodged a second nomination application on behalf of [YC] Pty Ltd in which Mrs [MK] was the nominee.
- On 16 March 2017, the Department requested more information regarding vacancy, position description and the two year full time/no exclusion of extending requirement.
- On 5 May 2017, the Department refused the application as the applicant had not satisfied the requirements against sub-regulation 5.19(3) of the Act.

Visa application

- On 5 April 2016, the Agent lodged a subclass 187 visa application on behalf of Mrs [MK].
- On 30 March 2017, the Department sent a request for further information to Mrs [MK] which included an Australian Federal Police check, personal particulars for character assessment; a letter from the employer which included the nominee's newborn child; and English language assessment for the dependent applicant.
- On 4 April 2017, the Department emailed the Agent in regard to the addition of a child to the visa application.
- On 8 April 2017, the Agent emailed the Department regarding their request for further information, noting that her client was gathering the required information. The Agent also noted that the application status in the Agent's ImmiAccount was "information provided" and should have been "assessment in progress".
- On 5 May 2017, the Department invited Mrs [MK] to comment on the nomination refusal for [YC] Pty Ltd or to withdraw her application.
- On 9 June 2017, not having received a response from Mrs [MK], the Department refused the visa application.

8. In relation to Mrs [MK]'s matter, departmental records, as outlined above, show all correspondence was sent to timipoczegraf@gmail.com.

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

9. On 9 March 2018, the Authority published the complaint from Mr [NS] (CMP-33620) to the Agent, advising the Agent that it raised concerns regarding the Agent's compliance with clauses 2.1 (b), 2.8, 2.17, 2.23, 11.3 and 11.4 of the Code.
10. Pursuant to section 308 of the Act, the Authority requested the Agent to provide the following information:
 - A copy of Mr [NS]'s complete client file.

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

11. Between 22 and 26 March 2018, the Authority received the Agent's response to the complaint which included a statutory declaration (*the first statutory declaration*) and a copy of Mr [NS]'s client file documents. The Agent made the following claims/submissions:

- Mr [BP] had been a long term client of the Agent. Mr [BP] approached the Agent because he had been offered a new position with Mr [NS]. After a telephone consultation with the Agent, Mr [NS] decided to proceed with a sponsorship and nomination application in which Mr [BP] was the nominee. On that basis, the Agent sent Mr [NS] a list of required documentation on 13 and 24 January 2017.
- The Agent did not sign an Agreement for Services and Fees (Agreement) with Mr [NS] because it was the Agent's understanding that *"based on [her] studies, that if the professional fees charged are less than \$1,500, we do not have to enter into any agreement, an invoice suffices."*
- The Agent provided continuous updates to Mr [NS] and Mr [BP] from about January 2017 to June 2017. The Agent was waiting for a response from the Department from June 2017 but was in regular contact with Mr [BP] and as far as the Agent could remember, she was only in contact with Mr [NS] twice by phone between June and October 2017. It was also the Agent's understanding that Mr [NS] and Mr [BP] *"communicate to each other provided that they were in an employer-employee relationship, as they are/were both equally involved."*
- The Agent did not receive the Department's approval or refusal notifications. The Agent now checks her ImmiAccount on a regular basis to monitor applications.
- The Agent was in Europe for six weeks during which time the Agent had issues with her business mobile phone which also happened to the Agent during her previous trip in 2016. The Agent believes this is why Mr [NS] and Mr [BP] had difficulty reaching her between August and September 2017.
- The Agent was on maternity leave between March 2017 and September 2017 and another migration agent assisted the Agent so that she did not miss any deadlines. When the Agent became aware that the nomination application had been refused and the visa application withdrawn, the Agent's view was that these applications had to be re-lodged *"otherwise Mr [BP] would become unlawful."* The Agent was under the impression that the applicants had been advised about the lodgement of the second applications and that the Agent paid for the applications to prevent Mr [BP] from becoming unlawful.
- Mr [NS] was directly informed about the sponsorship approval in April 2017. The Agent did not directly advise Mr [NS] about the refusal of the nomination application because it was the Agent's understanding that Mr [BP] had informed him in September 2017. It is the Agent's understanding that representing Mr [NS] and Mr [BP] is a joint representation given that the nomination application was relevant to both Mr [NS] and Mr [BP] *"so it would not matter which party is informed"*.
- In September 2017, the Agent met with Mr [BP] to *"discuss the next step and we went through everything and [she] explained him exactly what has happened and what is going on with the nomination application as well as the visa application"*. The Agent also advised him that his wife had not been included on his visa application and Mr [BP] seemed happy with this arrangement. The Agent believed that Mr [BP] *"understood and he would have discussed these with Mr [NS]"*.

- A few days after the Agent's meeting with Mr [BP], Mr [BP] advised the Agent that Mr [NS] was considering changing migration agents but Mr [BP] still wanted the Agent to represent him.
- On 29 September 2017, Mr [NS]'s new agent requested documents from the Agent which the Agent provided within a few days. The Agent also shared the nomination and visa applications in ImmiAccount with the new agent around 26 October 2017.

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

12. On 25 September 2018, the Authority published both of the complaints which are the subject of this decision to the Agent, advising the Agent that they raised concerns regarding the Agent's compliance with clauses 2.1(b), 2.3, 2.17, 2.23, 3.4, 5.2, 5.4, 5.5, 6.1 and 11.4 of the Code.
13. Pursuant to section 308 of the Act, the Authority requested the Agent to provide the following information:
 - Additional documentation from Mr [NS]'s file
 - Client files for Mrs [MK]
 - Client files for [YC] Pty Ltd

The Agent's response to the Authority's second section 308 notice

14. On 23 October 2018, the Authority received the Agent's response to the complaints by way of a statutory declaration (*the second statutory declaration*). The Agent made the following claims/submissions:
 - The Agent did not advise Mr [NS] that migration agent Ms [BG] was handling his matters while she was away or on maternity leave.
 - Based on the Agent's conversation with Mr [BP] the Agent was of the view that the applicants were aware that new applications would be lodged on their behalf while she was away.
 - The Agent did not receive written instructions from Mr [NS] to lodge the second applications.
 - The Agent relayed the information contained in the Department's request for further information² to Mr [BP]. The Agent advised that she believed "*the position of restaurant manager for fine dining was not excluded under the amendment referred to in question 3, and accordingly I advised Mr [BP] that Mr [NS]'s restaurant should not be affected by the change as I understand that it was not a takeaway or fast food outlet.*"
 - The Agent does not remember the precise date she became aware that the nomination application had been refused.
 - The Agent had not received the Department's notification that Mrs [MK]'s visa application had been refused.
 - The Agent became aware of the Department's decision around June 2017 when Mrs [MK] called the Agent to advise her application had been refused.
 - The Agent did not fail to respond to Mrs [MK]'s messages. The Agent adopted the practice of calling or texting to messages that required a response.
 - The Agent advised her client by telephone sometime in June 2017 about her options when the Department's invitation to comment was received.

² Sent 26 June 2017

Website

15. In its second section 308 notice, the Authority notified the Agent that the link to the Code of Conduct was inactive.
16. In the Agent's response to the Authority on 23 October 2018, the Agent stated that a *"link has been added to the website on a temporary basis until the main link is rectified"*.

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

17. On 27 November 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.
18. The Agent was notified that having regard to the information before the Authority, it was open to the delegate to be satisfied that the Agent had engaged in conduct that breached the Agent's obligations under clauses 2.1(b), 2.3, 2.4, 2.8, 2.9A, 2.19, 3.1, 3.2, 3.4, Part 5, 6.1(c), 7.4 and 7.5 of the Code.
19. Pursuant to section 309(2) of the Act, the Authority invited the Agent to provide written submissions on the matter by 15 January 2020. The Agent was also requested to provide client files for:

Client ID	Client
6*****2	AC&C PTY. LTD
5*****4	AK & E PTY. LTD
1*****8	A PTY LTD
6*****5	A&F PTY LTD ATF TAFT,
2*****1	ABAR PTY LTD
4*****5	SK
6*****5	ST PTY LTD
6*****8	S, CT

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

20. On 15 January 2020, the Authority received the Agent's submissions by statutory declaration. The Agent advised:
 - The Agent accepts that some of her conduct fell below the standard required of her as per the Code. However, disciplinary action in the form of a sanction decision should not be made.

Agent – Client Relationship

- The Agent further accepts that
"she had not properly appreciated the possibility of a conflict of interest arising when advising Mr [NS] (on behalf of [RSE] Pty Ltd ([RSE])) and Mr [BP] (even though such a conflict did not arise); that the processes that she followed when representing a sponsor and a visa applicant did not sufficiently take into account her obligation not to disclose confidential information about a client or a client's business without the written consent of the client; and that she failed to keep properly informed both Mr [BP] and Mr [NS] (on behalf of [RSE]) about the progress of the applications."

- For the reasons outlined above the Agent accepts that her conduct fell below the standards required as per clause 2.3.
- The Agent has *“previously obtained written authority from clients by using the paper Form 956 published by the Department, which recorded the written consent of both visa applicant’s and sponsors, but that she ceased doing so because of the ability for this form now to be completed online”*
- The Agent has implemented a new process *“before acting in or commencing work on any sponsorship application”* the Agent will provide a service agreement to the director of the business as well as the visa applicant. The Agent will also provide clients with a paper Form 956 and will keep copies of the signed form for each client.
- The Agent was providing immigration assistance to [RSE] and not Mr [NS] because of the *“mis-identification of the client”* the delegate is unable to make a finding that the Agent breached clause 3.1 or 3.2 of the Code.
- The Agent believes that no confidential information was provided to Mr [BP] regarding [RSE] as such clause 2.1(b) cannot be found to have been breached by the Agent.
- The Agent has evidenced documents, one of which was executed prior to the lodgement of the applications for Mrs [MK] that were not included in her client files for Mrs [MK]. As a result, the Agent is claiming that it is not open for the delegate to find that she acted on Mrs [MK]’s instructions without the Authority of Mr [GS].
- The Agent further stated *“Although there may have been some informality in the way that instructions were conveyed, that cannot be equated with a lack of authority in light of the signed documentation which patently indicates that Mr [GS] had at the very least implicitly authorised the making of the application.”*
- The Agent however accepts that she should have obtained a signed agreement from the sponsoring business [YC] Pty Ltd, to ensure that the instructions were properly confirmed.

Alleged lodgement of applications without consent or knowledge of the client

- The Agent has acknowledged that Mr [NS] was not informed, in a timely manner, of the refusal of the first application. The Agent is unable to find any records of conversations to prove she discussed lodgement of the second application with Mr [NS] prior to doing so.
- The Agent *“therefore accepts that it may well be the case that the second application was lodged without the express consent of Mr [NS], but she does not know how that occurred.”*
- The Agent disputes that the second application was lodged to conceal the outcome of the first application. The Agent has stated that the second application was lodged to ensure that Mr [BP] did not become unlawful. Upon her return from overseas, the Agent explained to Mr [BP] what had occurred.
- The Agent *“also acknowledged that she ought not [to] have relied on Mr [BP] to tell Mr [NS] about the applications”* [sic]. The Agent claims that the fact she relied on Mr [BP] to inform Mr [NS] is indicative that she was not concealing the application from Mr [NS].

Potential finding that Agreement for Services not provided to client

- The Agent accepts that she has breached Part 5 of the Code by failing to provide a statement of services to [RSE], and was mistaken as to the requirements of section 313 of the Act in issuing service agreements to clients.
- The invoice to which the notice referred to was a sum of \$2898.10 which when broken down into separate payments, the highest charge was for \$1200 to lodge the sponsorship and nomination applications respectively. *“The invoice is therefore consistent with [the Agent’s] mistaken understanding as to the requirements of the Code”*

Potential finding the nomination application had little prospect for success

- The Agent “accepts that more diligent steps should have been taken to check whether Mr [BP]’s visa application was at risk, and that further information and advice should have been provided to Mr [NS] on behalf of [RSE] about this.”
- “Her erroneous view that the position for which Mr [BP] was being nominated would not be affected is explained by [the Agent’s] second statutory declaration. There she also states that she gave advice to Mr [BP] to that effect.”
- The Agent states that although the advice was regarding the nomination application, the Agent has advised she relayed the information to Mr [BP] in a statutory declaration response. This is evidence “of the fact that she spoke with Mr [BP] about the application.”

Allegation that the Agent was not contactable

- The Agent “accepts, having nothing further to add to the submissions she has made in the First Declaration and in her second statutory declaration, that it is open to the delegate to find that in respect of both Mr [NS], on behalf of [RSE], and Mrs [MK], that she failed to be contactable and to provide correspondence to Mrs [MK] in an appropriate timeframe.”

Potential finding that the Agent failed to maintain proper records

- The Agent “also accepts that it is open for it to be found that she has not maintained proper records, even though she has been able to locate additional documents in the course of responding to this Notice”
- The Agent has created a new form to ensure more detailed written records are taken when accepting new clients as well as taking file notes about substantive conversations. The Agent accepts that this practice should have already been in place.

Potential finding in relation to fitness and propriety

- While the Agent acknowledges that she has breached clauses of the Code that may justify findings being made by the delegate in relation to fitness and integrity this should not be the only consideration by the delegate.
- The Agent has, as a result of the notice published to the Agent, started implementing processes in her current practice to address the conduct such as issuing each client with a service agreement and a new record keeping practice with regards to notetaking and the recording of client conversations.
- The conduct is “not likely to occur again”.
- The Agent has recognised “her work practices fell below what was required” she has acknowledged this and asserts that consumers can have confidence to know this is unlikely to occur again.
- With regards to Mr [BP]’s matter, the Agent’s failings were “matters of technical compliance with the Code and procedure, rather than evidencing substantive issues with her understanding of the Act”. The Agent stated that this “submission should not be taken to suggest that technical breaches of the Code are acceptable” it is to demonstrate that there is no suggestion that the Agent is “not capable of providing proper advice and assistance to people who need it”

- The Agent provides her clients with a secondary number, namely her husband's, for them to contact her. The period in which the Agent was not contactable was during [removed for privacy reasons] as well as during her overseas travel. *"[T]here is no evidence that they were anything other than isolated incidents. When, during holiday periods her office is unattended, she nevertheless has access to her emails, informs clients or at the office is unattended with an out of office message, but diligently still works on urgent matters when required"*
- In regards to the Code of conduct being available on the Agent's website the issue has now been rectified.

Jurisdiction

21. The Authority performs the functions prescribed under section 316 of the Act.
22. 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

23. 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)).
24. 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)).
25. 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.
26. 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

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

- Documentation contained in the Authority's complaint files for CMP-33620 and CMP-36338;
- 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 notices and the section 309 notice being:
 - Statutory Declarations dated 22 and 26 March 2018, 23 October 2018 and 7 April 2019 in response to the section 308 notices
 - Response to the section 309 notice dated 15 January 2020.

DECISION AND REASONS

Finding on material questions of fact

Agent-client relationship

28. The meaning of "client" is set out in the *Migration Agents Regulations 1998* (Cth) (the Regulations) 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."

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

- "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 purpose of the regulations; or*
 - b) advising the other person about nominating or sponsoring a visa applicant for the purposes of the regulations..."*

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

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

31. Furthermore, at [97] per Dwyer SM:

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

CMP-33620 (NS)

32. There does not appear to be any contention that the Agent was engaged by the complainant to assist him with his sponsorship and subclass 457 nomination applications in which Mr [BP] was the nominee. In the Agent's response, to the Authority's first section 308 notice the Agent stated that Mr [NS] had been referred to the Agent by, Mr [BP] his prospective new employee. The Agent stated in paragraphs 4 and 5 of the first statutory declaration:

"Sometimes in early January I talked Mr [NS] on the phone as per Mr [BP]'s request in relation to a possible 457 sponsorship and 457 nomination applications, during which conversation I confirmed our professional fees. as I always do during first consultations.

Mr [NS] decided to go ahead with the application for the 457 sponsorship and 457 nomination applications, nominating Mr [BP], therefore I sent an email to Mr [NS] including the list of required documentation for each application on 13 January 2017."[sic]

33. Nor does there appear to be any contention that Mr [BP] was the Agent's client for the purpose of his subclass 457 visa application. Departmental records show that the Agent was the authorised migration agent for Mr [BP]'s relevant visa application and the Agent had acknowledged that she had provided him with assistance in her responses to the Authority.
34. Migration agents may find themselves acting for two clients in relation to the same matter, otherwise considered 'dual representation' but not as the Agent stated "joint representation". In this case, the Agent was appointed as the migration agent for the visa applicant and for the sponsor. Both the complainant and the visa applicant are considered, under the Agents Regulations to be clients of the Agent as she agreed to provide immigration assistance to both Mr [NS] and Mr [BP].
35. Migration agents must be cognisant of the possibility that the competing interests of two clients, when represented by the same agent, may give rise to a conflict in certain circumstances. While it is not uncommon to represent both parties in a sponsorship matter, the Agent, as a registered migration agent, should recognise the potential for the legitimate interests of one client to adversely impact on the other client. Migration matters where the representation extends to both the sponsor and the visa applicant are susceptible to conflicts of interest arising. A migration agent is therefore required to identify and appropriately manage conflicts of interest as they arise.
36. While I accept that Mr [NS]'s complaint may not turn on whether a conflict of interest actually arose, the Agent's statements to the Authority indicate that she did not recognise either the potential for a conflict of interest to arise or consider her position and conduct if such were to arise. To the contrary, in the Agent's first statutory declaration, she stated that:

"My understanding is that representing Mr [NS] and Mr [BP] is a joint representation given that the nomination application was relevant to both Mr [NS] and Mr [BP], provided that both parties are involved in that matter, so it would not matter which party is informed."

and further

"During my years of experience, I experienced that most of the times sponsors/nominators do not have the want to be informed directly as they keep in touch with the nominees/applicants and that suffices them. I should have seen that Mr [NS] had the need as he would have preferred to be communicated with him more."[sic]

37. The Agent's advice that her sponsorship clients prefer that she communicate with their nominees has been noted. This is acceptable, as long as the Agent has obtained her client's instructions to this effect in writing. The Agent confirmed she did not obtain such instruction and given Mr [NS]'s regular enquiry about the status of his applications, it is unclear why the Agent considered it more appropriate to discuss his applications with Mr [BP].
38. In light of the Agent's above noted comments, I am satisfied that discussing the sponsor's applications with the visa applicant is indicative of the Agent's usual practice and not isolated to one instance. On that basis, I am satisfied the Agent's conduct in this regard demonstrates a lack of understanding of the agent-client relationship and its associated obligations. I also find that the Agent's 'business as usual' practices do not take into consideration the need to identify and manage potential for conflicts of interest and consequently such conduct represents a risk to consumers.
39. The Agent in her response to the section 309 notice stated that she had not properly "*appreciated the possibility of a conflict of interest arising*" when she was providing advice to Mr [NS] and Mr [BP]. Furthermore, the Agent advised that it was the business, [RSE], to whom she was providing immigration assistance and not Mr [NS]. I reject the Agent's argument that she provided immigration assistance to the business and not Mr [NS]. Documents obtained from the Australian Securities and Investment Commission (ASIC) show that Mr [NS] was the sole director of [RSE]. As such he is an office holder of the business and therefore was in a position to make decisions for the business such as that of who the business nominates and sponsors for visa applications. Given that he is the director of the business, immigration assistance was provided by the Agent to him and not the business itself as stated by the Agent.
40. As already discussed, the Agent's clients for the purpose of this matter consisted of two separate parties to whom the Agent had agreed to provide immigration assistance and to whom the Agent owed obligations. Under the Code, registered migration agents are expected to preserve the confidentiality of their clients and must not disclose or allow to be disclosed confidential information about a client or a client's business without the client's written consent. However, based on the information before the Authority, I find that the Agent failed to do so in regard to Mr [NS]'s matters as noted in the below example:
- "Once I returned to Australia in September 2017, I met the nominee Mr [BP] to discuss the next step and we went through everything and I explained him exactly what has happened and what is going on with the nomination application as well as the visa application.....Mr [BP] said that he will discuss all these with Mr [NS] and will get back to me. I honestly believe that Mr [BP] understood and he would have discussed these with Mr [NS]."*³ [sic]
41. The Agent has argued that she believes that no confidential information was disclosed to Mr [BP] about [RSE]. As such the Authority cannot draw any inference that confidential information was disclosed. The bigger consideration for the Authority is that the Agent at no point turned her mind to the possibility that she was disclosing confidential information given that the Agent was of the view that she was jointly representing Mr [BP] and [RSE]. The Agent has stated in her responses to the Authority that she was providing information to Mr [BP] with the understanding that he would then relay the information to Mr [NS] the director of [RSE].

³ Paragraph 17 of the Agent's statutory declaration dated 26 March 2018

42. Moreover, it was not the responsibility of Mr [BP] to ensure that Mr [NS] was kept informed about his applications. This responsibility clearly lies with the Agent, as the registered migration agent. Such responsibility cannot be abrogated without the express written consent of the client and there is no evidence before the Authority that such consent was provided by Mr [NS].
43. Having regard for that discussed above, I am satisfied that the Agent has failed to understand her obligations to her clients and in so doing has also demonstrated a lack of a sound working knowledge of migration law and procedure. On that basis, I find that the Agent has failed to exercise the diligence and competence expected of registered migration agents in **breach of clauses 2.1(b) and 2.3 of the Code**. I am satisfied that the Agent's failure to understand her obligations may have resulted in the disclosure by the Agent of Mr [NS]'s information to Mr [BP]. However, without knowing what precisely had been conveyed to Mr [BP], I cannot make a finding if the Agent's conduct is in breach of clauses 3.1 and 3.2 of the Code.

CMP-36338 (MK)

44. There does not appear to be any contention that the Agent was engaged by the complainant to provide immigration assistance in relation to her subclass 187 visa application. The Agent provided the Authority with copies of correspondence between the Agent and with Mrs [MK] which supports this view. Additionally, contained in the client file provided to the Authority is a copy of a 'Client Agreement for Services and Fees', albeit unsigned, in which Mrs [MK] is listed as the client. The services listed in this Agreement included:
- Preparation and lodgement of a Subclass 187 RSMS nomination and visa application – Direct scheme
 - Preparation and lodgement of an RCB application
45. However, there was no evidence on the client file to show that Mrs [MK] had any authority to bind or represent [YC] Pty Ltd and therefore had no authority to instruct the Agent to lodge sponsorship and nomination applications on behalf of the company. I have obtained an ASIC historical company extract which shows that [GS] (Mr [GS]) became the sole office holder and shareholder of [YC] Pty Ltd on 18 January 2016. One of the two previous office holders and shareholders was Mr [AS], who departmental records show is the husband of Mrs [MK].
46. I accept that at the time the Agent was engaged by Mrs [MK],⁴ that Mrs [MK]'s husband was a director of [YC] Pty Ltd. However, Mrs [MK] had no legal authority to engage the Agent to submit a sponsorship or nomination application on behalf of the company and there is no evidence on the client file that such authority had been provided to her. Moreover, at the time the first sponsorship application was lodged, neither Mrs [MK] nor her husband had any authority to bind or represent the company.

⁴ The Agent's email to Mrs [MK] dated 21 December 2015 noted two Agreements for Services were attached

47. Mr [GS] has been listed as the company contact in the sponsorship and nomination applications the Agent submitted on behalf of [YC] Pty Ltd. Despite this, there is no evidence on the client file that the Agent had any communication with him. To the contrary, all the evidence the Agent has submitted to the Authority indicates that she only communicated with the visa applicant, Mrs [MK], and that she received instructions about the sponsorship and nomination applications from her. For example, in the Agent's email to Mrs [MK] dated 21 December 2015 the Agent requested a list of required business documents and noted:

"I am sending the client agreements for the RSMS applications as well as for the 457 sponsorship and nomination. Please see attached the 2 separate agreements. (I send [AS]'s agreement for the RSMS separately)."

and

I note that we need to do 1 sponsorship application and 2 separate nominations, This agreement has to be issued under the company's name, I however do not know that, so I left that part blank." [sic]

48. There are no instructions from Mr [GS] on the client file and he has only been mentioned once by name in the Agent's correspondence with Mrs [MK]. On 5 April 2016, the Agent noted she had attached a *"certification form – to be signed and dated by Gurtej Singh"*.
49. In the response to the section 309 notice, the Agent argued that she had informally received, instruction from Mrs [MK] to lodge the applications. In support of this claim the Agent provided documentary evidence in the form of a signed employment agreement, dated 25 January 2016, between Mrs [MK] and Mr [GS], as well as other documentation to support the need for the nomination. The documents however do not support the Agent's argument that Mrs [MK] was able to bind the company, in place of Mr [GS] nor do the documents attached provide authority to the Agent to lodge the applications with the Department. These documents reveal that the business had an intention to sponsor and nominate a person, namely Mrs [MK] in a role. A signed employment agreement is not evidence that instructions were received from the director of the company to lodge the applications.
50. As discussed above there is no evidence before me to show that the Agent had instructions from Mr [GS] to lodge the application. Furthermore, the Agent stated in her section 309 response she *"accepts that she ought to have obtained a signed client agreement from [YC] Pty Ltd, executed on its behalf by Mr [GS], so as to ensure that those instructions were properly confirmed"*. I am of the view that this statement from the Agent shows that upon reflection she realises that authority was required from Mr [GS].
51. Based on the available information, it appears the Agent was aware Mr [GS] was the authorised representative for [YC] Pty Ltd.⁵ However, there is no evidence before the Authority that Mr [GS] was the Agent's client for the purpose of lodging the sponsorship and nomination applications for this company. In light of this, I am satisfied that:
- the Agent should not have taken instructions from Mrs [MK] in relation to the aforementioned sponsorship and nomination applications;
 - the Agent did act on Mrs [MK]'s instructions;

⁵ Mr [GS] is listed in the first sponsorship application dated 19 January 2016

- the Agent lodged a nomination application on behalf of Mrs [MK] for which she had no authority and which did not fully reflect the applicant's circumstances;
- this conduct is indicative of someone who does not understand the agent-client relationship; and
- this conduct is indicative of someone who has not exercised the competence and diligence expected of a registered migration agent.

52. On that basis, I find the Agent's conduct to be in **breach of clauses 2.1, 2.3 and 2.19 of the Code**.

Lodgement of applications without consent or knowledge of the client

CMP-33620 (NS)

53. Mr [NS] has alleged that after his original nomination was refused, the Agent lodged a second nomination application without his consent or knowledge.

54. The Agent confirmed in her second statutory declaration to the Authority that she did not receive written instructions from Mr [NS] in relation to the lodgement of the second sponsorship and nomination applications. The Agent provided an explanation for lodging the second sponsorship and nomination applications in her first statutory declaration in which she stated:

"I was assisted with Mr [NS]'s file as well and I became aware what happened with the nomination (refusal) and visa application (automatic withdrawal) and that these applications had to be re-lodged otherwise Mr [BP] would become unlawful. I was under the impression that it was or will be communicated with the applicants given that I was away, but in the interim new applications could be lodged and when I am back to Australia and I can see them and advise." [sic]

55. While I have noted the Agent's claim that another migration agent assisted the Agent, the Agent has provided no evidence of this to the Authority. Regardless, the Agents obligations to Mr [NS] cannot be abrogated to another party engaged to assist the Agent. As the responsible migration agent for Mr [NS]'s matter the Agent was obliged to ensure that her client was advised about the application outcome and her proposal to submit subsequent applications on his behalf. The Agent was also obliged to obtain Mr [NS]'s written instructions before proceeding. The Agent has confirmed that she did not undertake any of these things.

56. Departmental records show the Agent lodged the second nomination on 1 September 2017. However, there is no evidence in Mr [NS]'s client file that the Agent advised anyone about the second nomination. In the Agent's first statutory declaration she stated that when she returned to Australia in September 2017, the Agent met with Mr [BP] *"to discuss the next step and we went through everything and I explained him exactly what has happened and what is going on with the nomination application..."* [sic]. The Agent provided a screenshot of a text message from Mr [BP] dated 27 September 2017 in which he stated *"I just discuss with [removed for privacy] as per our discussion"* [sic]. While it is, open for the delegate to accept that this is the same discussion the Agent noted in her statutory declaration it must also be noted that it took place nearly four weeks after the second nomination application was lodged. Moreover, the alleged discussion was with the visa applicant, not the sponsor so cannot be relied upon as being advice provided to Mr [NS].

57. In response to the section 309 notice the Agent claims that she has been unable to find any records of conversation to provide that Mr [NS] was consulted prior to the lodgement of the second sponsorship and nomination applications. The Agent stated that she accepts that it may well have been the case that the application was lodged without the express consent of Mr [NS] however, she *“does not know how that occurred”*.
58. On that basis and in the absence of any evidence to the contrary, I find that the Agent lodged or allowed someone in the Agent’s organisation to lodge applications on behalf of Mr [NS] without his knowledge or consent and that such conduct is in breach of **clauses 2.1(b), 2.4, 2.8(a) and 2.8(b) of the Code**.
59. In the Agent’s second statutory declaration, the Agent stated that she could not recall when she became aware of the Department’s decision to refuse Mr [NS]’s nomination application. The Agent did not, however, provide any information as to the circumstances that led to the Agent becoming aware of the decision. The Agent lodged a second nomination application on behalf of Mr [NS] on 1 September 2017, and on that basis, I am satisfied the Agent was aware of the Department’s decision to refuse the nomination application at least in August 2017.
60. The Agent however disputes that the applications were lodged so as to conceal the refusal of the first. The Agent claimed that the lodgement of the second set of applications was to ensure that Mr [BP] did not become unlawful. The Agent has however acknowledged that she should not have relied on the applicant to inform the sponsor of the applications. Given there is no evidence that the Agent endeavoured to advise Mr [NS] about this outcome until her discussion with Mr [BP] on 27 September 2017,⁶ I find that the Agent lodged the second nomination in an endeavour to conceal the outcome from her client. Subsequently the Agent failed to advise him about the refusal of the first nomination application in a timely manner I find that the Agent is in breach of **clauses 2.1(b) and 2.8(d) of the Code**.

Failure to keep client updated on progress of application

61. In the Agent’s responses to the Authority, the Agent stated that she did not receive the Department’s notifications in relation to both complainants’ migration matters. The Agent has not provided any evidence to substantiate her claim and I do not accept the Agent’s recall of events some eighteen months after the events as proof the Agent did not receive the notifications. Further, departmental records show that in the same period as the two complainants’ matters were notified, departmental emails were successfully sent to and responses were received from the Agent’s email address timipoczegraf@gmail.com in relation to the Agent’s other clients’ matters. In the absence of any evidence to the contrary, I am satisfied that the Agent received the relevant email notifications sent to the Agent by the Department to the same email address, in respect of the complainants, consistent with departmental records.

CMP-33620 (NS)

62. Mr [NS] has alleged that the Agent did not communicate or respond to his emails in a timely manner. Mr [NS] has also alleged that the Agent failed to notify him in a timely manner about the Department’s decision on his nomination application. A review of the client file documents the Agent provided to the Authority appears to support these allegations as noted below:

⁶ Two months after the application was refused

- On 13 April 2017, Mr [NS] telephoned the Agent's office to find out about the sponsorship application. This was confirmed in an email from [AC]⁷ to the Agent in which she advised *"I've just advised him that we have not received a letter from the department yet but it does say on the system that their sponsorship has been approved."*
- On 5 May 2017, Ms [AC] emailed the Agent about a call received from Mr [NS] in which she advised *"He says he is considering employing someone else as it is taking too long for the application to be processed. I've said to him that it is best for you to discuss with him on his concerns. He says he asked you a number of questions previously and have not heard back from you."*
- On 11 May 2017, Ms [AC] emailed the Agent to advise she had received a call from Mr [NS] about the status of his application.
- On 3 August 2017, Mr [NS] emailed the Agent *"Could you please update me on whats happening with this nomination application. It has been over 6 months since the file was lodged and nearly 4 months since all the requested documents have been provided. I've rung and left several messages at your office with [AC]. I would request a courtesy call back letting me know whats happening since the entire purpose of going through the process is being defeated if we were to keep waiting without being given a reason what are we waiting for and how long more to wait for."* [sic]
- The Agent provided a number of text message screenshots of communication with Mr [BP] in regard to the nomination application. Those messages show Mr [BP] also pursued the Agent for a response a number of times. On 3 August 2017,⁸ Mr [BP] wrote *"Will u pls talk with [removed for privacy]. He is getting angry on me. Just give a call to him for 2 min. And just say nothing comes from immigration"* [sic].
- On 19 September 2017, Mr [NS] emailed the Agent that he was disappointed in the Agent's services and also stated *"I've waited once again to hear back from you and as usual haven't had a courtesy of your phone call"* and *"As we don't want to keep wasting our time on having to chase you to get an answer."*
- On 20 September 2017, Mr [NS] responded to the Agent's email of the same day and stated *"What number did you call me on. Since I have no missed calls on my mobile in the last 2 days. As we are constantly struggling to get you to sort our queries out, we would like to terminate your services and appoint migration guru as our representatives on this file."*

63. There is no evidence before the Authority that the Agent responded to any of the above communications until 20 September 2017. The Agent confirmed in her first statutory declaration that *"Between about June 2017 and October 2017, I only talked to Mr [NS] on the phone probably twice (as far as I remember) and we exchanged emails in or about September 2017"*. On this basis, I am satisfied that Mr [NS] was not kept updated as to the status of his application, as alleged.

⁷ Migration clerk from the Agent's office staff

⁸ Two weeks after the nomination had been refused

64. I have given consideration to who had responsibility for ensuring Mr [NS] was advised about the status and outcome of his application. The Agent stated to the Authority that the Agent had her *“migration agent friend⁹ and assistance to assist me with many files of mine, so I could ensure we do not miss any deadlines, clients are looked after in a timely manner and generally everything is done on files when needed to be”* [sic]. However, the Agent also confirmed to the Authority that she did not advise Mr [NS] that his matter had been transferred to another agent and departmental records show that only the Agent was his authorised representative for Mr [NS]’s nomination application. Further, there is no evidence in the client file documents provided to the Authority that Ms [BG] had any involvement in Mr [NS]’s matter. I am therefore satisfied that Ms [BG] did not provide any assistance in relation to Mr [NS]’s nomination application and therefore had no obligations to ensure the Agent’s client was kept up-to-date about his application.
65. I am therefore satisfied the Agent had sole responsibility for ensuring Mr [NS] was kept up-to-date about the progress of his application and respective migration outcome. As discussed above, there is no evidence on the client file that the Agent advised Mr [NS] either in writing or over the phone about the status of his application, despite there being evidence that the Agent was requested to do so.¹⁰ On that basis, I am satisfied that the Agent failed to make adequate arrangements to ensure the Agent’s client was kept up-to-date about his application and that Mr [NS]’s allegations have been substantiated.
66. In my consideration of Mr [NS]’s allegations, I have also taken note of the timeline of events based on departmental records and the client file documents the Agent provided to the Authority. Mr [NS]’s nomination application was refused on 28 July 2017 and the Agent departed for the Agent’s overseas trip on 15 August 2017. In the Agent’s response to the Authority, the Agent stated that she did not receive the refusal notification and did not become aware of the decision until the Agent was overseas. Despite the Agent’s claims, I am satisfied a diligent migration agent would have checked the status of Mr [NS]’s application on receipt of Mr [BP]’s text message on 3 August 2017 and particularly following Mr [NS]’s email to the Agent on the same day to find out about the status of his application. There is no evidence before the Authority that the Agent did so.
67. In light of that discussed above and in the absence of any evidence to the contrary, I find that the Agent failed to keep her client updated as to the status of his nomination application, even when requested to do so. I find that such conduct does not reflect the competence and diligence expected of registered migration agents by clients who have paid for their expertise. Furthermore, that such conduct is in breach of **clauses 2.1(b), 2.4 and 2.8(c) and 2.8(d) of the Code**.

CMP-36338 (MK)

68. Mrs [MK] has alleged that the Agent did not advise her until 2 June 2017 that the nomination application for [YC] Pty Ltd had been refused on 5 May 2017, despite her communication with the Agent on a number of occasions. In support of her allegations Mrs [MK] provided screenshots of text messages she sent to the Agent on:

⁹ The Agent identified as registered migration agent [BG]

¹⁰ Refer communications listed in paragraph 62 of this decision

- **12 May 2017**

Mrs [MK] (1:17 pm): Hi timi Can you please call me today it's regarding [AS]'s ielts exam.

Agent: Hi [MK] I will call yo soon

Mrs [MK] (5:45pm): Hi timi I'm still waiting for your phone.

Agent (8:52pm): Hi [MK], can I still call you?

Agent: [MK] sorry

Mrs [MK]: Hi timi He doesn't want to do ielts again. He said he better pay the money.

Agent: Ok! I will advise the department

- **16 May 2017** - Mrs [MK] texted the Agent: *"I am waiting for your call regarding [removed for privacy reasons]'s ielts"*.

- **22 May 2017** – Mrs [MK] texted the Agent: *"Just checking if you got any update from immi dept"*

- **26 May 2017** – Mrs [MK] texted the Agent: *"Have you got any update about our application"*

- **29 May 2017**

Agent (10:21am): "Good morning, I will call you back shortly"

Mrs [MK] (7:24pm): Hi timi still waiting for your call

- **1 June 2017**

Agent (4:39pm): Can I call you later?

Mrs [MK]: Yes I am waiting for your call

- **2 June 2017** – Mrs [MK] texted: *"Can you please send a corespondent or letter about our visa that you got from immi dept. your earliest attention in this matter will be much appreciated."* [sic]

69. The Agent claimed to the Authority that the Agent did not receive the notifications from the Department in relation to the nomination refusal and the visa application invitation to comment. As already discussed, the Agent has not provided any evidence to the Authority that shows the Agent did not receive these notifications. However, even if the Agent had failed to note receipt of these notifications, it is reasonable to expect that when the Agent's client had been in contact with her, as the above text messages suggest, she would have undertaken a basic check of the application status. There is no evidence that the Agent did so.
70. On 16 March 2017, the Department requested more information in relation to the nomination application for [YC] Pty Ltd. Not having received a response, the Department found the applicant had not satisfied the requirements against subregulation 5.19(3) of the Migration Regulations 1994 and refused the application on 5 May 2017. On the same day, the Department sent the Agent an invitation to comment in relation to Mrs [MK]'s visa application. All of these notifications were sent to the Agent's email address timipoczegraf@gmail.com. However, I could not find any records on the client file to show that the Agent advised her client about these notifications until 9 June 2017 when the Agent advised Mrs [MK] her visa application had been refused.

71. Mrs [MK] provided a copy of an email from the Agent to her dated 2 June 2017 which was not on the client file. In this email, the Agent advised her that the nomination application for [YC] Pty Ltd had been refused and attached a copy of the decision record dated 5 May 2017. There was no mention in this email about the Department's invitation to comment in relation to Mrs [MK]'s visa application for which a response was due by 2 June 2017. As a registered migration agent, it is reasonable to expect the Agent would have checked whether an invitation to comment had been sent on becoming aware of the nomination refusal. However, the only other communication before the Authority was an email from the Agent to Mrs [MK] dated 9 June 2017 in which the Agent advised her that her visa application had been refused. While the delegate may accept this to be a valid strategy to facilitate a review of the Department's decision, there are no client instructions on the client file in this regard.
72. Further, in paragraph 21 of the Agent's second statutory declaration the Agent stated she had advised Mrs [MK] by telephone "*sometime in June 2017*" that she could wait for a refusal of the visa application and then seek review of the decision; withdraw the application; or consider other visa application options. There are no file notes or correspondence to support this claim. However, should the delegate accept the Agent's claim that she did so advise her client "*sometime in June 2017*", I find that such was done outside of the timeframe provided for a response. It follows that I am satisfied that the Agent failed to keep her client updated as to the status of her visa application.
73. There are no other records on the client file in relation to the matters that are the subject of this decision. There is, however, email correspondence dated 13 December 2017, in which the Agent provided Mrs [MK] with bridging visa notifications from the Department and in which Mrs [MK] approached the Agent about providing assistance for a different visa application. In making this enquiry with the Agent, she asked "*How much would you charge me or you may do it as A compensation of previous file*" [sic]. I am satisfied that this comment suggests Mrs [MK] did not receive the services she expected in a previous matter and that this is consistent with the evidence before the Authority that the Agent failed to keep her client updated as to the status of her applications.
74. In light of that discussed above, I am satisfied that the Agent did not advise her client within a reasonable time about the status of her applications or the outcome of the nomination application. I find that such conduct, is a breach of **clauses 2.1(b), 2.4, 2.8(c) and 2.8(d) of the Code**.

Finding the nomination application had little prospect for success

CMP-33620 (NS)

75. On 26 June 2017, the Department wrote to Mr [NS] (to the Agent's email address) to advise that as a result of amendments made to legislative instrument F2071C00352, the occupation of café or restaurant manager was subject to a caveat which excluded positions in a limited service restaurant. The Agent was also advised that it was the Department's view the nominated position was excluded by this caveat and that the nomination application was unlikely to be successful.

76. The Agent stated in her second statutory declaration that she relayed this information to Mr [BP] and advised him that the position of restaurant manager for fine dining was not excluded under the amendment and that *“Mr [NS]’s restaurant should not be affected by the change”*.¹¹ Given the Department’s view, that Mr [NS]’s application was unlikely to be successful, it is reasonable to expect that a diligent migration agent would have taken active steps to check whether or not the application was at risk. There is no evidence that the Agent did so, only the Agent’s unsubstantiated claim that the Agent relayed the Department’s request for further information to the visa applicant.
77. The Agent stated that *“it was beyond my control that the nomination application was refused”*.¹² However, the Agent provided no evidence that the Agent took any action on receipt of the Department’s request for further information. Moreover, there is no evidence that the Agent provided any advice to Mr [NS] that his application might be refused which the delegate may find precluded him from the opportunity to withdraw his nomination application. It is incumbent upon migration agents to ensure that they have due regard for their client’s dependence on their knowledge and experience by providing sufficient advice to them to make informed decisions. The Agent in her response to the section 309 notice stated that *“more diligent steps should have been taken to check whether Mr [BP]’s visa application was at risk..”*
78. Accordingly, I am satisfied that it was within the Agent’s control to ensure the Agent’s client made an informed decision as to whether he continued with or withdrew the application. The Agent’s apparent failure to advise her client or respond to the Department was within the Agent’s control. It follows that I am satisfied that the Agent had some control over the subsequent outcome for Mr [NS]’s nomination application.
79. On the basis of the evidence before the Authority, I find that the Agent has failed to consider her client’s reliance on her knowledge and experience and that this is indicative of a person who lacks the competence and diligence expected of registered migration agents. Further, I consider that this shortcoming had a direct impact on her client’s migration outcome. Accordingly, I find that the Agent has breached her obligations under **clauses 2.1(b), 2.4 and 2.8(c)**.

The Agent was not contactable

80. Clients are reliant on their migration agents to provide them with timely advice about their respective matters and for this reason migration agents are obliged to be contactable within business hours. Both complainants have alleged that the Agent was not contactable and that this had an impact on their respective migration matters.

¹¹ Paragraph 10 of the Agent’s second statutory declaration

¹² Paragraph 21 of the Agent’s first statutory declaration

CMP-33620 (NS)

81. Mr [NS] has alleged that the Agent did not respond to his communications in a timely manner. In the Agent's first statutory declaration to the Authority, the Agent attributed issues with the Agent's mobile phone and the internet while the Agent was overseas to explain why Mr [NS], Mr [BP] and other clients were not able to contact the Agent. The Agent has a staffed office in Australia and the Agent advised she had another migration agent available to assist the Agent to ensure deadlines were met. There is no evidence on the client file provided that the Agent responded to Mr [NS]'s enquiries which appears to support his allegations. Given the Agent's office arrangements, I cannot therefore perceive any reasonable explanation as to why Mr [NS] was not able to get in contact with the Agent or that his enquiries were not responded to in a timely manner.
82. Furthermore, if the Agent experienced the aforementioned issues with her mobile phone on her overseas trip in the previous year¹³ as the Agent purports, it was incumbent on the Agent to ensure that the problems were addressed in order to meet the Agent's obligations as a registered migration agent to be contactable during normal business hours. I find that the Agent's failure to do so was in **breach of clauses 2.1(b), 2.4 and 3.4 of the Code**.

CMP-36338 (MK)

83. Mrs [MK] has alleged that the Agent did not respond to text messages she sent to the Agent on 16, 22 and 26 May 2017; and that on 29 May 2017 the Agent sent her a text message that the Agent would call her shortly but that she did not receive a call from the Agent. Mrs [MK] provided screenshots of these messages¹⁴ in support of her allegations. The Agent disputed this claim in paragraph 19 of the Agent's second statutory declaration to the Authority in which the Agent stated the Agent had not failed to respond to Mrs [MK]'s messages and that "*as a matter of practice I responded to the complainants text messages by telephone*" [sic].
84. However, as already noted in this decision, I could not find any evidence of a response from the Agent to Mrs [MK]'s messages which supports Mrs [MK]'s allegations that she had difficulty getting in contact with the Agent. Moreover, there is no evidence on the client file that the Agent had any communication with her client after 6 April 2017 until the Agent advised her on 2 June 2017 the nomination application had been refused. As the decision had been made on 5 May 2017, some four weeks earlier, there was no opportunity for the Agent's client to appeal this decision, even if she were authorised to do so.
85. Accordingly, I am satisfied that the Agent failed to understand the dependence of a client on their migration agent for advice about the progress of their migration matters by failing to be contactable during normal business hours. I therefore find that the allegations have been substantiated and that the Agent's conduct is in breach of **clauses 2.1(b), 2.4 and 3.4 of the Code**.

¹³ As claimed in the Agent's first statutory declaration to the Authority

¹⁴ Refer paragraph 68 of this decision

Agreement for Services not provided to client

CMP-33620 (NS)

86. Part 5 of the Code sets out the obligations for registered migration agents in relation to Fees and Charges. Included in this section of the Code are the requirements to provide a fee estimate, obtain written acceptance of the fee estimate from the client; provide the client an Agreement; and on completion of all agreed work provide a Statement of Services (Statement). I did not find any of the aforementioned documents in my review of the client file documents the Agent submitted to the Authority. In the absence of any evidence to the contrary, I am satisfied the Agent **breached her obligations under Part 5 of the Code**.
87. Clause 5.2 of the Code states that an agent must give the client an Agreement that includes the services to be performed, the fees to be paid and the disbursements likely to be incurred. There are no provisions or exceptions associated with this requirement. However, in the Agent's first statutory declaration the Agent confirmed that she had not provided Mr [NS] with an Agreement. By way of explanation, the Agent stated that *"based on my studies, that if the professional fees charged are less than \$1,500, we do not have to enter into any agreement, an invoice suffices. As I charged \$1,200 + GST for the sponsorship application and \$1,200 + GST for the nomination, and those are two separate matters in my understanding, I did not see that necessary to issue an agreement, provided that the invoice set out the exact lump sum fees we would charge, and as the agreement did not indicate that there would be extra fees to be charged."* The Agent in her response to the section 309 notice stated that she accepts she has breached her obligations as per Part 5 of the Code and further that she has *"been mistaken as to the requirements of s 313 of the Act and cl 5.2 of the Code."*
88. In light of the above statements, I am satisfied that the Agent is not cognisant of the requirements set out in Clause 5.2 of the Code and therefore the Agent's knowledge of migration procedure is deficient and I find the Agent has breached her obligations under **clause 2.3 of the Code**.
89. Further, there is an inconsistency in the Agent's explanation as to why the Agent did not provide Mr [NS] with an Agreement. The Agent argued that the sponsorship and nomination applications were separate matters and therefore complied with the Agent's albeit unfounded position that the Agent did not need to provide an Agreement if the Agent charged less than \$1,500 for services. However, in the Agent's first statutory declaration response the Agent stated that on 27 January 2017 the Agent sent her tax invoice to Mr [NS] setting out the Agent's professional fees for the sponsorship and nomination applications. There is no indication in the invoice (in the amount of \$2,898.10) or the accompanying email that the matters were separate. Moreover, the amount of the invoice contradicts the Agent's claim that an Agreement is not necessary if the Agent's charges were less than \$1500.
90. The combined effect of the Agent's unfounded claims about Agreements and the inconsistency identified in the Agent's explanation of her actions raises doubts as to whether the Agent has been frank and candid with the Authority. The Agent in her response to the section 309 notice advised that she was not, in her explanation of what had occurred, intending to mislead the Authority. It was a matter of her mistaken understanding as to the requirements of the Code. Given such, I find that the Agent has not endeavoured to mislead the Authority so as to avoid any adverse findings but rather has simply acted upon a misunderstanding on her part of the Code. As such, at this time, I make no findings in relation to clause 2.9A of the Code.

Failed to maintain proper records

91. In paragraphs 13 and 22 of the Agent's second statutory declaration the Agent stated that she had provided "*all of the documents I have in my possession or power*" in relation to the client files for both complainants. The Agent noted the documents provided included file notes, tax invoices and statements of services, relevant client ledger entries and relevant clients' account bank statements. However, in my review of the client file documents provided, I did not find any file note entries, statements of service, client ledger entries, or clients' account entries relevant to the complainants' matters.
92. Throughout the Agent's responses to the Authority are references to substantive conversations the Agent had had with her clients. However, there was no evidence that the Agent made any file notes relating to substantive or material oral communication between the Agent and her clients. The oral communications the Agent referred to in her statutory declarations do not articulate the content of those discussions nor has the Agent been able to provide precise dates. Rather, the Agent has used vague phrases such as "*sometimes in one of the early months of 2017*" [sic] and "*Despite my best attempts, I do not remember the precise date*" or "*I may have said*" or "*as far as I remember*". The Agent in her response to the section 309 notice stated that she accepts that the Authority is open to find that she has failed to maintain proper records despite her finding further documents in the course of responding to the section 309 notice.
93. The Agent is required to record and make available to the Authority records of any substantive oral communication the Agent had with her clients. Such practice ensures that the Agent can substantiate any claim the Agent may make about the nature of the Agent's advice or a client's instructions. Had the Agent done so, the Agent would not have had to rely on her recall, some twelve months after the relevant events, and would have been in a position to substantiate the Agent's claims in relation to the complaints that are the subject of this notice. In the absence of any evidence to the contrary, I therefore find that the Agent failed to maintain proper records in breach of **clause 6.1(c) of the Code**.
94. The Agent is required to maintain and produce certain documents to comply with her obligations under Part 5, Part 7 and Part 9 of the Code.¹⁵ This obligation extends to the request by the Authority to produce copies of the statements of services, client ledger entries and clients' account bank statements relevant to both complainants' matters. Despite the Agent's claim to have provided these documents to the Authority, I could find no evidence of them in the client files.
95. Given the Agent's statutory declaration that the Agent produced "*all of the documents I have in my possession or power*", I am satisfied the abovementioned documents do not exist. As such, I am satisfied the Agent's business practices are flawed and that the Agent has not met her obligation under the Code to maintain proper records. Accordingly, I find that the Agent has breached her obligations under **clauses 5.5, 7.4 and 7.5 of the Code**.

¹⁵ Refer Annexure A of this notice

Integrity, fitness and propriety

96. 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.
97. 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.
98. *'Integrity' means 'soundness of moral principle and character, uprightness and honesty'.*¹⁶
99. 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.
100. 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”.¹⁷
101. 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.*
102. 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.¹⁸
103. 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:
- the Act which creates offences for misleading statements and advertising, practising when unregistered and misrepresenting a matter; and
 - 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.

¹⁶ See *Re Peng and Department of Immigration and Multicultural Affairs* [1998] AATA 12 at paragraph [26].

¹⁷ See *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750

¹⁸ See *Cunliffe v Commonwealth* (1994) 182 CLR 272

- 104.** 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.
- 105.** 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.
- 106.** 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:
- (a)** that the Agent's past conduct can be an indicator of the likelihood of the improper conduct occurring in the future;
 - (b)** the Agent's honesty and competency towards clients, the Department and the Authority;
 - (c)** a consideration of the context in which the agent works, i.e. the provision of immigration assistance to migration clients;
 - (d)** the Agent's knowledge and competency in immigration law and practice;
 - (e)** the reputation of the Agent as a result of their conduct and the public perception of that conduct; and
 - (f)** the perception of the conduct by the Agent's "professional colleagues of good repute and competency"¹⁹.
- 107.** Having regard to the totality of the Agent's conduct in relation to the complaint and my findings above, I am satisfied that the Agent is 'not a person of integrity or is otherwise not a fit and proper person to give immigration assistance'.
- 108.** Based on the evidence before me, I am satisfied that the Agent has:
- a.** Been dishonest in her dealings with the complainants; her former clients.
 - b.** Concealed the lodgement of an application from a client.
 - c.** Knowingly acted on instructions from a person without legal authority to bind the business
 - d.** 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.
 - e.** Failed to provide progress updates or follow client instructions
 - f.** Failed to provide clients with an agreement for services or fees, invoices or statements of service.
 - g.** Proceeded with an application, despite departmental advice that the application had little prospect of success for the client given the departmental changes to subregulation

¹⁹ *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750

- h. Demonstrated a lack of due regard for the legitimate interests of her clients and their dependence on her and
- i. The Agent has breached multiple clauses of the Code showing an indifference to her professional obligations.

Consideration of Appropriate Disciplinary Action

109. 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

110. 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.
111. Having regard to the Complaint Classification Matrix, I have considered that the Agent's conduct falls within the Moderate/Major classification for the following reasons:
- The Agent has breached multiple clauses of the Code indicating systemic poor practices.
 - 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 keeping and financial management practices consistent with her obligations.
 - My finding that the Agent is not a fit and proper person to provide immigration assistance.

Aggravating factors

112. I consider the Agents conduct falls short of the standard expected of a registered migration agent and professional colleagues of good repute and competency would also regard the Agent's conduct as unacceptable.
113. The Agent in her response to the section 309 notice conceded that she has;
- a. Demonstrated a lack of understanding about the client agent relationship
 - b. Failed to issue Agreements for services and Fees and further misunderstood as to when an agreement should be issued to a client.
 - c. Failed to maintain and keep proper records, including communication from the Department that would have assisted her in this investigation by the Authority
 - d. Failed to appreciate that the application had little prospect for success and further
 - e. That she was not sufficiently contactable by her clients.

Mitigating Factors

114. The Agent has provided the following submissions to be taken into account in making this decision.
115. The Agent has sought to address the issues outlined in this decision;
- a. She has implemented work processes to ensure that sponsors and visa applicants are both provided with agreements for fees and services.
 - b. The Agent has also implemented a new form of note taking to maintain contemporaneous notes of conversations she has with clients
 - c. Whilst she was resistant to the suggestions by the Authority that she had breached the Code, the Agent has since realised that by recognising that her work practices fell short of the standards expected of her she can now begin to rectify them.
 - d. As the Agent has identified the areas where she is lacking, consumers can be confident that such conduct is likely to not occur again.
 - e. Whilst she did not properly appreciate that the visa application for Mr [BP] would likely be refused, these failings can be attributed to technical compliance with the Code. However this should not suggest that the Agent is not capable of providing proper advice and assistance to consumers of migration advice.
 - f. She now provides clients with a secondary number as well as email address to ensure that she can be contactable at all times. The incidents of not being contactable as discussed within this decision are isolated incidents.
 - g. She has amended her website which now reflects the link to the Code of Conduct.
116. I have considered that the Agent has not previously been subject to a sanction or disciplinary action by the Authority. However, I am of the view that this alone does not mitigate the conduct, which is the subject of this decision.
117. I consider the Agent's conduct can be rectified through additional training and education, and acknowledge that she has indicated her willingness to undertake any remedial action deemed appropriate by the Authority.

118. I have also taken into account that a disciplinary decision would affect the Agent's financial earning capacity and livelihood. The Agent however in her response to the section 309 notice has not evidenced any financial considerations to be taken into account. There is no information currently before the Authority that the Agent has any other sources of income other than her employment as a registered migration agent. As such, I accept that any decision that affects the Agent's ability to practice within the migration advice profession, such as a period of suspension or cancellation, will likely have an impact on her livelihood.

Consumer Protection

119. 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.

120. The behaviour demonstrated by the Agent falls short of the reasonably expected standards of a registered migration agent. I consider that the Agent poses an ongoing 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 the Agent's shortcomings, in the interests of consumer protection.

DECISION

121. I have turned my mind to the level of disciplinary action including whether to issue a caution or to suspend or cancel the Agent's registration, in light of the findings made in relation to the Agent's integrity, propriety and fitness.
122. Following consideration of the information before me, I have decided to **suspend** the Agent under section 303(1)(b) of the Act from being registered as a migration agent from the date of this decision for a period of **eighteen (18) months**, and until the Agent has met the conditions specified. The Agent is to meet the following conditions, which are to be completed within the period of suspension or no more than four (4) years from the date of suspension:
- a. Evidence that the Agent has completed a total of 10 Continuing Professional Development (CPD) points (as approved by the Authority) for every 12 months that the suspension is in force. The CPD activities are to be completed throughout each year that the suspension is in force and should cover professional standards, conflict of interest and ethics.
 - b. Evidence that the Agent has passed the Capstone assessment offered by The College of Law (Limited) to assess the Agent's ability to meet the Occupational Competency Standards for Registered Migration Agents; and
 - c. A statutory declaration in Commonwealth form stating that the Agent has not made immigration representations for a fee, has not advertised the provision of immigration assistance and has not given immigration assistance whilst suspended.

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

Date of Decision: **22 May 2020**