



DECISION RECORD

AGENT	Hany Boulous
COMPLAINT NUMBERS	CMP-27926, CMP-30363, CMP-47489
DECISION	Suspension (12 Months)
DATE OF DECISION	22 June 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>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 Regulations</i>	<i>The Migration Regulations 1994</i>
<i>The Act</i>	<i>The Migration Act 1958</i>
<i>The Agent</i>	Hany Boulous
<i>The Authority</i>	The Office of the Migration Agents Registration Authority
<i>The Code</i>	The Migration Agents Code of Conduct prescribed under Regulation 8 and Schedule 2 to the Agents Regulations
<i>The Department</i>	The Department of Home Affairs
<i>The Register</i>	Register of migration agents kept under section 287 of the Act
<i>The Agents Regulations</i>	<i>Migration Agents Regulations 1998</i>
<i>VEVO</i>	Visa Entitlement Verification Online
<i>DEU</i>	Department of Home Affairs Document Examination Unit

STATEMENT OF REASONS

Background

2. The Agent was first registered as a migration agent on 24 April 2007 and was allocated the MARN 0639283. The Agent's registration had been renewed annually to date, with the most recent registration commencing on 13 June 2019.
3. The Register lists the Agent's business name as Frontier Immigration Pty Ltd with the ABN 80 166 199 677.

Prior Disciplinary action

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

Complaints

CMP-27926

Background

1. On 17 November 2016 the Authority received a complaint from Ms RNFN regarding the Agent's conduct as a registered migration agent. Ms RNFN alleged that:
 - She had engaged the Agent's services to apply for protection and provided all of her documents in Arabic, which she asked him to translate into English.
 - The Agent had failed to accurately translate these documents and added additional information regarding Ms RNFN's claims inconsistent with the contents of the documents.
 - She signed the forms and supporting documents for her application, including the translations.
 - She met with the Agent before attending the Tribunal, where he told her what to say, which included claims that had been included in her application based on the incorrectly translated documents. Ms RNFN alleged she was not aware of these claims prior to this discussion.
 - She told the Agent at this meeting that the claims were incorrect. In response, the Agent advised her that she had agreed to the claims when she signed her application documents, and that it was too late to change her claims once the documents were before the Tribunal.
 - When requested by the Authority to provide copies of supporting documentation, Ms RNFN alleged that the Agent did not provide her with any documents, including a service agreement or any invoices, receipts or statements of service for the cash payments she made to the Agent for professional fees.

Publication of CMP-27926

2. Ms RNFN's complaint was published to the Agent on 7 June 2017 in a notice pursuant to section 308(1) of the Act (the first section 308 notice). The Agent was required to respond to the Authority's questions in a statutory declaration and provide the complete client file for Ms RNFN.

The Agent's response to the first section 308 notice

3. The Authority received the Agent's response on 30 June 2017 in the form of a statutory declaration containing responses to the Authority's questions, and copies of supporting documents. However, the Agent did not provide Ms RNFN's complete client file. In summary, the Agent's response as relevant to the allegations stated:

- (a) He met Ms RNFN for the first time at the Southern Migrant and Refugee Centre (SMRC) in Dandenong, where he has been working for over five years. She was referred by her brother Mr MN, who had been the Agent's friend for many years. The Agent does not have exact dates of his interactions with Ms RNFN, because she would attend his office, accompanied by her brother or sister in law, without scheduling an appointment.
- (b) In addition to his above statement, the Agent also asserted in his statutory declaration that the email correspondence he submitted as part of his response to Ms RNFN's complaint proved that Ms RNFN met the Agent in [country] and asked him to meet her in Australia to help her.
- (c) The Agent told Ms RNFN to speak to one of his colleagues at SMRC, Ms NT who was also from an [country] background. Ms NT undertook most of the work on the application including the preparation of Ms RNFN's statement of claims in Arabic, which was consistent with the English translation provided to the Department, and the finalising of all her application forms. Ms NT maintained contact with Ms RNFN for the duration of the application preparation.
- (d) All conversations with Ms RNFN regarding her case were conducted in the presence of her brother and her sister in law. The Agent also provided any advice to Ms RNFN's husband, Mr A, by telephone. Ms RNFN, along with her husband, brother and sister in law, were all involved in the preparation of her application. As such, her claim that she did not know what was contained in her statement of claims for her permanent Protection (subclass 866) visa is baseless;
- (e) The Agent did not enter into any written agreement with Ms RNFN. The Agent never charged Ms RNFN any money, and the only fees she paid, being \$1000, was for the work completed by Ms NT. There was no additional money paid to the Agent or anyone else involved in the case. The Agent conceded that it is uncommon for migration agents to not charge clients any fees for services. However, he asserted that he has been referred numerous cases by SMRC and other community welfare organisations where he provided free immigration assistance and even covered the visa application charge because the clients were experiencing financial hardship and there was a lack of government funding to assist them.
- (f) The Agent argued that his role in Ms RNFN's matter was only to attach the statement and make sure the application was valid with the required documents included. This was because while he was employed at SMRC during the same time he was assisting Ms RNFN, he was working on over 500 separate matters involving different types of visa subclasses.
- (g) Contrary to the above submissions regarding what work he undertook on Ms RNFN's application, the Agent asserted that he had prepared the statement of claims, and provided Ms RNFN with a copy of the statement prior to the lodgement of her application, and her brother and sister-in-law were both present when this occurred. The Agent also asserted that the information in Ms RNFN's statement of claims was "exactly passage by passage" what she had told him and she would have commented on any information that he added during their interview. Ms RNFN had checked her statement and any comments added by the Agent prior to the English translation of the statement of claims was sent to the Department. Ms RNFN did not sign or initial the statement of claims that was provided to the Department.
- (h) The Agent denies responsibility for any translating errors, stating that he does not translate documents provided by clients, as he is not accredited to do so. Instead, he refers all clients requiring translation work to an accredited translator, in accordance with the Department's requirements. He refers all Arabic to English translations to Mrs JS who is an accredited NAATI translator.
- (i) After lodging the application and supporting documentation, the Agent attended the protection interview with Ms RNFN. During the interview, she did not raise

any concerns with the interviewing officer that the translated statement of claims contained untrue or altered details, despite being asked prior to the interview if she had read the statement and was satisfied that it was accurate.

- (j) This is the first time the Agent has received such allegations against him, and believes that Ms RNFN's allegations are untrue and are without any supporting evidence. The allegations have caused the Agent stress, affecting his work and wellbeing.
 - (k) While the Agent lodged Ms RNFN's application to the Refugee Review Tribunal (RRT),¹ he did not assist her with the preparation of any submissions, nor did he speak or physically meet with her once the application was lodged. Ms RNFN did not sign any documentation authorising the Agent to act on her behalf at the RRT so he did not communicate with the tribunal on her behalf. Ms RNFN continued to maintain contact with the Agent until May 2015, despite having access to the refusal decision record and the statement of claims. She did not raise concerns with the statement of claims until late 2016.
 - (l) The Agent has practiced for over 10 years, has extensive experience, and has always ensured his clients are satisfied with his services. If any of his clients raised concerns, he would follow all the required policies and procedures to resolve these with the client. He has acted honestly and never misled or tried to mislead any client or government institution.
 - (m) The Agent is the only registered migration agent working in his business, trading as Frontier Immigration Pty Ltd, and prior to his employment with SMRC ceasing, the Agent was asked to take over all the outstanding cases being handled by the SMRC at no charge, which were in excess of 600 cases.
 - (n) Since leaving SMRC and working independently in his own business, the Agent has never had any negative feedback from clients, despite managing a large volume of cases and often without charging fees.
4. In response to the Authority's request for Ms RNFN's complete client file, the Agent provided the following documents:
- Text message correspondence in English and Arabic between the Agent and Ms RNFN, from 20 August to 3 October 2013, regarding their meeting in [country] and arrangements to discuss Ms RNFN's application and supporting documentation once she arrived in Australia, with an appointment address of "7A Logie Street Oakleigh";
 - Email from Ms NT to the Agent on 23 September 2013, requesting that he check Ms RNFN's subclass 866 visa application (attached) forms for Ms RNFN and updating Ms RNFN's contact details.
 - Email from the Agent to Ms RNFN's brother Mr MN, on behalf of Ms RNFN, on 24 October 2013, containing a copy of Ms RNFN's statement of protection claims, labelled as "*Arabic story*"
 - Email from Ms NT to the Agent on 25 October 2013, requesting that he check the attached statement
 - Undated handwritten statement in Arabic titled "*Arabic story*"
 - Email from the Agent to the Department on 2 September 2014, requesting an update on the progress of Ms RNFN's subclass 866 visa application, which he advised in the email was lodged in November 2013
 - Email from the Agent to Michael RNFN dated 16 November 2014, forwarding the Department's Invitation to attend an interview for a Protection (Class XA) visa application for Ms RNFN².

¹ Subsequently amalgamated into the Administrative Appeals Tribunal (AAT)

² The Department sent this invitation to the Agent on 11 November 2014.

- Email correspondence from Mr MN to the Agent on 18 November 2014, containing an unknown document titled in Arabic, purportedly containing information on the family's assets and companies, which was emailed to him from Ms RNFN's husband, Mr A, on the same day;
- Brief Viper message correspondence in Arabic between Ms RNFN's husband, Mr A, and the Agent on three separate occasions between 15 October 2014 and 28 April 2015.
- Email from the AAT to the Agent confirming lodgement of Ms RNFN's application for review of the Department's decision to refuse her subclass 866 visa, sent on 23 April 2015; and
- Screen shot of text messages in Arabic from Ms RNFN to the Agent on 28 April 2015 and 15 May 2015, providing a new email address, and asking whether she could apply for a Carer visa instead of the subclass 866 visa.

CMP-30363

Background

5. On 5 April 2017, the Authority received a complaint from the AAT concerning the Agent's conduct as a migration agent. The AAT alleged that the Agent had:
 - Assisted an applicant for review, Ms MYZBE, to procure false police and court documents, to support her subclass 866 visa application. In her testimony during the Tribunal hearing, Ms MYZBE alleged that:
 - (a) All the supporting documents provided with her subclass 866 visa application, inclusive of police reports, prosecution reports, fatwa and court documents, were bogus
 - (b) The Agent had organised the procurement of the supporting documents, on Ms MYZBE's behalf, from a contact of his in [country]
 - (c) She paid the Agent \$1500 in professional fees, and an additional \$2500 to facilitate the manufacture of the supporting documents before she arrived in Australia
 - (d) The Agent had advised her that her real claims were not strong enough to result in a successful subclass 866 visa outcome and that by following his advice, she would be granted a visa within six months.
 - The AAT raised concerns that the Agent's alleged conduct in Ms MYZBE's case may also extend to other subclass 866 visa applicants. The Department's delegate, in making the decision to refuse Ms MYZBE's application, referenced a report from the Document Examination Unit (DEU), which was also referenced in the AAT's findings. This DEU report identified that non-genuine supporting documents provided by a number of [country] nationals in their subclass 866 visa applications to the Department, including by Ms MYZBE, appeared to have been created by the same source.

Departmental records

6. Following receipt of the AAT's complaint, the Authority undertook a review of departmental records, including those from the DEU report and the Agent's client caseload.
7. The findings of the DEU examination and report had been published to Ms MYZBE in an invitation to comment on information (section 57 notice) sent to the Agent on 10 October 2014, prior to a decision being made on her subclass 866 visa application. The Agent responded on behalf of Ms MYZBE on 22 October 2014, rejecting the DEU's findings and stating that he had an expert from [country] that could verify that the police

documents were genuine. The Agent provided a translated statement from a purported forensic expert in [country], and a translated copy of the expert's qualifications.

8. Departmental records indicate that the Agent was the registered migration agent for, or directly linked to, seven other referrals to the DEU between January 2013 and late 2016 in respect of similar police and prosecution reports from [country] submitted in support of subclass 866 visa applications. The other applicants identified were:
 - (a) Ms NS
 - (b) Mr MB
 - (c) Mr MMSB
 - (d) Mr RAR and Ms MGA
 - (e) Ms NY
 - (f) Ms LTAG
 - (g) Mr MAEA

Publication of complaint CMP-30363

9. The complaint was published to the Agent on 18 December 2017 by way of a second notice pursuant to section 308(1) of the Act (the second section 308 notice). The Agent was required to respond to the Authority's questions in a statutory declaration and provide the complete client files for the eight identified clients listed above as well as for Ms MYZBE.

The Agent's response to the second s308 notice

10. On 29 January 2018 the Authority received the Agent's response to the second section 308 notice. While the Agent provided the statutory declaration in response to the Authority's questions, he did not provide complete client files for the eight clients including Ms MYZBE, as requested in the notice. The Agent provided a lengthy submission detailing his personal and cultural background, charitable work, and his association with the [church] and community. He also made a number of statements regarding the involvement of the [church] in visa applications but did not provide any supporting evidence. His responses, as relevant to allegations and findings by the Authority, are summarised below:

Ms MYZBE

- (a) Ms MYZBE is a relative of both the first complainant Ms RNFN, and another client identified in relation to fraudulent police reports, Ms NY. The Agent alleged that they had recommended his services amongst themselves. He was still employed at SMRC when he was introduced to Ms MYZBE by her brother, who is a [removed] priest at a Melbourne church, to handle her immigration matter because he was an experienced agent from the same ethnic background and country.
- (b) The Agent did not receive the \$1500 fee paid by Ms MYZBE to SMRC. Instead, the SMRC employee who was helping to fill out her application form and translate her statement into English received this money. The Agent helped Ms MYZBE to present a detailed statement of her claims and told her that he would continue to represent her after he resigned from SMRC.
- (c) The Agent asserted that he had been accused of something that he did not do and had strong evidence that Ms MYZBE had received the documents from another party, which she then forwarded to him. The Agent argued that the copies of email correspondence he provided would demonstrate that he was not involved in preparing or forging these documents in any capacity.
- (d) The Agent requested that Ms MYZBE provide him with proof of her obtaining the supporting documents. Ms MYZBE's husband emailed her a copy of the letter issued by their lawyer in [country], which she then forwarded to the Agent. This

letter has subsequently been translated. The Agent believes this is reasonable evidence that he did not provide Ms MYZBE with any documents, nor that he instructed her to obtain, or had produced, the police report.

- (e) On 11 May 2014 the Agent received an email from the Department, inviting Ms MYZBE to attend a protection interview. On 15 May 2014, once she became aware of this correspondence, she emailed the Agent copies of 16 attachments that contained all police reports and legal documents, prior to her attending the departmental interview. Contrary to her allegations regarding the contents of her statement of claims, and validity of her supporting documentation, the Agent argued that Ms MYZBE may have forgotten that she emailed him the supporting documentation on 15 May 2014. The Agent was only following procedure and had no involvement in obtaining the police report documents. He was only responsible for representing Ms MYZBE's case, but was not involved in preparing any documents for her subclass 866 visa applications.
- (f) The Agent argued that the email correspondence he had provided to the Authority demonstrated that he had forwarded the copies of the police report received for Ms MYZBE to the translator, Ms Janet JS, to be translated.
- (g) In contesting that he was involved in obtaining Ms MYZBE's police report, the Agent argued that he had contacted her doctor, IK on 27 May 2017 to provide a medical report about Ms MYZBE's mental health issues in support of her application. The Agent asserted the letter provided by Dr IK was identical to Ms MYZBE's statement of claims, regarding her mental health prior to her arrival in Australia, including what treatment she sought in [country], and her experiences and interactions with the [country] police. Given he had never met Dr IK, or had any interactions with her as Ms MYZBE obtained the letter from the doctor, the Agent argued that this demonstrated that:
 - i. he was not involved in preparing any kind of supporting evidence for her case;
 - ii. he had never arranged nor was involved in preparing any sort of documentation;
 - iii. Ms MYZBE had organised the altered documents and provided them to the Agent without his assistance;
 - iv. Ms MYZBE knew what she was doing and was responsible for her actions;
 - v. and
 - vi. Accordingly, the Agent considers the allegation that he fabricated Ms MYZBE's protection claims to be invalid and without supporting evidence.
- (h) The Agent asserted that he had received all evidence in support of Ms MYZBE's subclass 866 visa application from her and her family by email, and that these documents contained information consistent with the statement of claims submitted to the Department. This included a letter of support the Agent received from Ms MYZBE's husband by email on 27 May 2015 in support of her subclass 866 visa application, which contained information about her cousin's conversion to Islam and her mental health treatment in [country], which were consistent with the contents of the statement of claims. The Agent also argued that Ms MYZBE had authorised a lawyer in [country] with a Power of Attorney to obtain the police report on her behalf. Furthermore, the Agent claimed Ms MYZBE sent him a translated copy of the Power of Attorney letter on 21 June 2014. The Agent provided a copy of the translated email from Ms MYZBE on this date containing an attachment named "Mary's lawyer letter". The Agent did not provide a copy of this letter.
- (i) The Agent assumes that once Ms MYZBE's visa application was refused by the Department she sought help from the lawyer working for the [church]. He also assumed that this lawyer had provided Ms MYZBE with assurances that they could help her if she withdrew the Agent's representation and alleged that he had mislead

her. As such, the Agent argued that Ms MYZBE was coerced by the [church] to engage a new registered migration agent for her AAT appeal in exchange for their support of her matter. When Ms MYZBE terminated the Agent's services, he accepted her instructions and wished her all the best, and has not been in touch or involved in any part of her application since. He refused to accept any money from Ms MYZBE³ because her application had not been finalised by the AAT, and the assistance the Agent provided her was to support her as a person from the community.

- (j) In regards to the allegations Ms MYZBE made at the AAT hearing that the Agent had organised for her to procure the fraudulent supporting documents, the Agent asserted that he was not involved in providing any false documents to Ms MYZBE and that the allegations were baseless as:
 - i. He would never ask for such documents or translations
 - ii. \$1500 was a small sum to arrange fabricated documents
 - iii. if he had arranged fabricated documents he would have sought more money to do so
 - iv. Ms MYZBE would not have apologised for approaching the [church] lawyer instead.
- (k) The Agent argued that he could produce more information and evidence but feels down as a result of receiving the complaint when he expected that Ms MYZBE would be thankful for his understanding and support.

Other clients of the Agent identified by the DEU

- (l) The Agent rejected the concerns raised by the AAT and the Department in relation to his alleged role in the fabrication of police reports for the other visa applicants identified in paragraph (8). He argued he was not involved in providing or obtaining any documents, including police reports, for any of the applications, and that these were instead obtained by the applicants and/or their family members, before being provided to him. He did not directly respond to the allegations in relation to two of the identified visa applicants, Mr RAR and Mrs MGA.
- (m) In relation to the supporting documents for Mr MMSB's and Mr MB's visa applications, the Agent argued that he could not have been involved, as he did not prepare or lodge their subclass 866 visa applications and was only engaged to assist with their review applications. The Agent did not ask Mr MB for any payment for his services because he was in financial hardship. Mr MB was referred to the Agent by his brother, to whom the Agent had previously provided free immigration assistance.

Police reports

- (o) The Agent made a number of unsubstantiated allegations that the concerns raised by the Department and AAT relating to visa applicants providing non-genuine police reports also included visa applicants represented by a lawyer working for the [church]. He argued that if the Authority examined these applications containing the non-genuine police reports, as well as the visa applications he submitted, it may identify the responsible party.
- (n) In relation to the allegation that he was involved in the production of, and/or distribution of, fraudulent police reports from [country], for [removed] clients, the Agent made the following statements:
 - i. He has built a good reputation among the [removed] in Australia and overseas, including the family of the applicants, who requested his services based on his reputation;

³ Despite her asking the Agent how much was owed.

- ii. He would not jeopardise his reputation and honesty to be paid only \$2500 to procure non-genuine documents;
- iii. As he has over 600 cases or more each year, the Agent does not have the time to arrange fabricated documents for such a little amount of money.

Client caseload

- (o) The Agent is currently handling cases given to him by the SMRC that were still in progress at the time funding for the organisation's migration assistance services ceased.
- (p) He argued that his client caseload, which is diverse, has a success rate of approximately 80 per cent for AAT matters, which he believed was proof of his professional approach and integrity.
- (q) At the time of responding to the notice, the Agent had more than 700 active cases before the Department, the AAT and the Minister's office. These clients have been disadvantaged because his attention has been focussed on addressing the allegations against him, rather than dealing with his clients' matters.

Broader statements

- (r) The Agent made a number of statements regarding his reputation, which he likened to 'perfection', and was based on his hard work and charitable acts towards disadvantaged clients.
- (s) The Agent has been adversely affected by the allegations of his involvement with fraudulent documents, as he has been unable to concentrate on his many cases and responsibilities, and has lost confidence in his work. Similar allegations had been spread through the [church] well before the Authority published CMP-30363 to him, and has placed the Agent and his family under a large amount of stress. He believes that someone is working to destroy his reputation by making such allegations.
- (t) Regardless of the outcome of the matter, the Agent is considering a career change, as a result of the complaints he has received for helping disadvantaged clients.

11. In support of his response to the second section 308 notice, the Agent provided the Authority with the following documentation:

- Email titled "*id*" sent to Ms MYZBE from [removed email address] on 13 May 2014, containing five attachments with no discernible titles, forwarded to Ms MYZBE's brother⁴, and subsequently sent by the Agent to Ms JS on 15 May 2014;
- Email sent from Ms MYZBE's email address to the Agent on 15 May 2014, untitled, containing 16 scanned attachments with no discernible titles, which he advised was the response he provided, on behalf of Ms MYZBE, to the AAT for the hearing, inclusive of all police reports and letters;
- Email from Ms MYZBE to the Agent, dated 22 June 2014, containing a forwarded email dated 20 June 2014 and attachment, which the Agent advised was a power of attorney letter from her husband;
- Email correspondence showing Ms MYZBE receiving the power of attorney letter⁵ from the email address for Nariman MYZBE on 6 June 2014, then forwarding it for translation to Ms JS on the same day, and receiving a return email from Ms JS on 21 June 2014, stating that she had corrected the date in the translated power of attorney letter;

⁴From the records provided by the Agent, the email address [remove email address] included in this correspondence appears to belong to Ms MYZBE's brother.

⁵ Referred to in this email as "Mary's lawyer letter"

- Email from Ms MYZBE to the Agent, dated 21 June 2014, forwarding the translated power of attorney letter translated by Ms JS, and containing the aforementioned correspondence history relating to the translation;
- Email from the Agent to Dr IK, dated 27 May 2014, requesting that she provide a medical report for Ms MYZBE's mental health, in support of the subclass 866 visa application; and
- Copy of Dr IK's medical report, dated 23 May 2014, containing handwritten amendments.

12. To date, the Agent has not provided any client files for the clients identified by the Department's DEU, excluding the aforementioned documents from Ms MYZBE's file.

Subsequent request for additional information

13. On 13 April 2018 the Authority requested that the Agent:

- clarify information he provided in response to the section 308 notices;
- provide the documents that he had failed to provide in response to these notices; and
- explain a number of inconsistencies within his responses as well as some inconsistencies with other information held by the Authority.

14. The Authority received the Agent's response, including a spreadsheet containing client details and payments made, on 23 April 2018. This document does not contain the details or payments of any [country] clients, including those identified in this decision. In summary, the Agent advised:

Cessation of employment from SMRC

- (a) In response to his failure to provide client records, the Authority asked the Agent to clarify how his employment had ceased with SMRC and when precisely this had occurred, given his inconsistent references to SMRC terminating his employment or him resigning, and statements implying that he worked at SMRC beyond when he said his employment ceased. The Agent clarified that he did not resign from SMRC willingly, as he was committed to his workplace and the community, but had little choice following the cessation of Government funding for free immigration services. His motivations in working for SMRC, who he was employed with for seven years, were purely altruistic. Otherwise, he would have started his own business earlier and not taken the existing caseload from SMRC who had already paid fees, had he been driven by money or other benefits. He advised that the Chief Executive Officer (CEO) of SMRC, Ms JI, and the Human Resources (HR) manager, Mr JL, asked him to transfer to his business all clients who had already paid 80 per cent of their fees, and would be otherwise disadvantaged because they still had their outstanding applications to his own new business. Some of the clients who the Agent transferred to his private business following this conversation had cases dating back to 2012-2013 when they arrived in Australia as illegal maritime arrivals (IMAs).

Clarification of services provided to Ms MYZBE

- (b) The Authority asked the Agent to clarify all the services he had provided Ms MYZBE in relation to her subclass 866 visa application as he had only stated that he had helped Ms MYZBE present a detailed statement but had not prepared the statement of claims in his response to the second section 308 notice on 29 January 2018. In response, the Agent advised that he was asked by one of Ms MYZBE's relatives, who worked part time at SMRC⁶ to review her prepared statement of claims and

⁶ The Agent advised in his response to the second section 308 notice that he was introduced by Ms MYZBE's brother who was a priest working at the [church] in Melbourne.

brief Ms MYZBE before her Protection visa interview. Ms MYZBE complained to the Agent that she was experiencing financial hardship, and he believed she was receiving financial and mental health support. The Agent challenged Ms MYZBE's allegations that she paid him a large sum of money for his professional fees, and to procure non-genuine documents on the basis that he would not take advantage of someone with mental health concerns for personal gain.

Failure to provide the Authority with Ms MYZBE's complete client file

- (c) The Agent failed to directly address why he had not provided Ms MYZBE's complete client file. Instead, he asserted that he had previously provided a complete description of his engagement with both clients⁷, which occurred during the time he was employed at the not-for-profit SMRC on a full-time basis. The Agent also made statements regarding his period of work at SMRC⁸, his caseload and the fees paid by clients, which did not explain why he failed to provide a copy of Ms MYZBE's complete client file. Despite being requested to do so for a second time, he did not provide a copy of Ms MYZBE's complete client file to the Authority.

Mr MB

- (d) Departmental records show that the Agent was in contact with Mr MB in relation to his Protection visa application before 6 March 2013, prior to him lodging this application on 12 July 2013, and subsequently on 20 August 2014. The Agent was listed as the appointed representative in Mr MB's application to the AAT on 1 June 2015 to appeal the Department's refusal of his subclass 866 visa application. Departmental records also show that in his testimony to the AAT, recorded in the AAT's decision record dated 9 May 2017, Mr MB advised that the Agent had assisted him in applying for the subclass 866 visa "at time of application". In light of this information, the Authority asked the Agent to clarify his statutory declaration response from 29 January 2018 that he was not involved in Mr MB's visa application and only engaged by Mr MB for his AAT appeal. The Agent did not directly address this inconsistent information. He only responded by reiterating that he had helped Mr MB's brother, Mr HB, with his own appeal at the former AAT after his visa application was refused, and obtained a positive appeal outcome. As a result, Mr HB asked the Agent to provide feedback on his brother's subclass 866 visa application. The Agent also reiterated that he had not received any money from either Mr MB or his brother, and that if the Authority accessed the Department's records, it would see Mr MB's application was handled by his agent "*Mr Jeff*"⁹.

Allegations against the [Church]

- (e) The Authority asked the Agent to provide further information and evidence to support his allegations that the [church] in Melbourne were also involved in applications containing similar fraudulent police reports. The Agent asserted that he was not in a position to give evidence to substantiate his allegations but maintained he could not be solely responsible for producing the police reports if the lawyer working for the [church] had also represented visa applicants with the same non-genuine documents.

Financial management

- (f) When asked to provide an explanation of his financial management practices, and make available for inspection records of his client's account and records of each account into which money paid by his clients is deposited, the Agent stated that he was collecting a wage while working at SMRC, which could be easily verified. He started his own business in Dandenong approximately four years ago, and offers

⁷ In the Agent's responses to the first two section 308 notices

⁸ The Agent stated that he had worked at SMRC for over seven years –evidenced by his applications for repeat registration, and had provided subsidised immigration assistance to clients for \$1000 which was paid to SMRC for the staff handling the administrative tasks, and not to him.

⁹ A review of the Department's records identified that no migration agent was declared for Mr MB's PPV application.

both free and paid services. He still handles legacy client caseloads referred from SMRC who had paid 80 per cent of their fees upfront and the balance upon visa grant¹⁰. He also receives referrals for disadvantaged clients including IMAs, and offers them a consultation fee of only \$50, and follow up visits free of charge.

Broader statements

- (i) The Agent made a number of unsubstantiated claims around the success of his business in relation to the size and composition of his client caseload, lodgement and grant rates, his business' reputation amongst client cohorts, and relationship with the [church].
- (j) The Authority requested that the Agent provide evidence of receiving the police reports from the clients identified¹¹ to support his statements that he was not involved in their procurement from [country]. In response, the Agent stated that he would need a bit of time to be able to locate all other information and evidence, as he had [removed]. The Agent also stated that he [removed] but was recovering and would be in touch once he was fully recovered and well enough to work full time¹². The Agent asked the Authority to consider that his health has been affected by the investigation, which is causing him to work less and only focus on cases of disadvantaged people. If he did not have disadvantaged clients, he would consider leaving the profession.
- (k) The Agent argued he had never received any complaints, and was now only receiving complaints from clients who are members of the [church].
- (l) The Agent was previously employed for 11 years as an Information Technology (IT) lecturer at different educational institutions¹³. He earned a salary from SMRC of approximately \$55 000 AUD a year, but due to his wife's income [removed], and the Agent's property, he is in a very good financial position and does not need to work as a registered migration agent for financial reasons. Further, he would not jeopardise his reputation and career, which he has built over the previous ten years, by providing clients with fraudulent documents for only payments of \$1000.

Authority records

- 15. A review of the Authority's records found no record of Ms Nancy NT as having ever applied for, or held, registration as a migration agent.
- 16. The Authority received a letter from SMRC, following lodgement of the Agent's 2015 application for repeat registration on 25 March 2015. The letter, dated 21 April 2015, advised that the Agent had been employed as a migration agent by SMRC from 14 August 2007 to 31 January 2015, and that from 1 February 2015 he would continue to provide migration advice to SMRC staff and clients as a volunteer.

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- 17. On 9 October 2019 the Authority received a complaint from Mr MBO regarding the Agent's conduct as a registered migration agent. In summary, Mr MBO alleged:
 - The Agent had provided him with immigration assistance in association with his initial Temporary Protection (subclass 785) visa (TPV) application, for which he entered into a Service Agreement with the Agent and paid him professional fees as set out in the agreement. The Department granted Mr MBO's first TPV in April 2016.
 - In August 2018, the Department sent Mr MBO an invitation to apply for a further TPV or Safe Haven Enterprise visa (SHEV). He approached the Agent to provide

¹⁰ The Agent provided a spreadsheet listing clients who he advised he had received from SMRC.

¹¹ In the second section 308 notice

¹² The Agent to date has failed to provide these records to support his submissions since making this statement in April 2018.

¹³ Identified in the Agent's response [removed].

immigration assistance for this second application. At the time, Mr MBO ran his own cleaning business. The Agent advised him that he usually charged \$2000 for such applications but that he would be happy to "*do it cheaper*" for Mr MBO if he moved old furniture from the Agent's house into a skip and then cleaned the house.

- Mr MBO agreed and spent four days completing this work at the Agent's house, due to the large amount of furniture required to be removed from the house to skip bins. The Agent did not provide Mr MBO with an Agreement for Services and Fees nor provide a receipt for any 'payment' made.
- The Agent advised Mr MBO that he had paid the \$30 visa application charge (VAC) on his behalf in August 2018 and had subsequently lodged the application in January 2019.¹⁴ However, Mr MBO subsequently discovered in June 2019 that the visa application had never been received by the Department.
- The Agent wrote to the Department stating that he had attempted to lodge the application online in January 2019 but was unable to make a credit card payment. Instead, the Agent had sent a physical version of the application by post, along with an application for an offshore humanitarian visa for an unrelated person to the Department's Melbourne office.
- Mr MBO obtained the Agent's correspondence with the Department on this matter through a freedom of information (FOI) request. In this correspondence, the Department advised the Agent that it had received the other application for the unrelated applicant but did not receive Mr MBO's application. Further, the Department advised that even if it had received Mr MBO's application by post, it would have been invalid because the Melbourne office was not an authorised address for lodgement of a TPV.
- The Agent tried to persuade the Department to permit Mr MBO to lodge another application, but had not been successful at the time Mr MBO lodged his complaint.
- As a result of the Agent's incompetence, Mr MBO has not had a visa since April 2019 and is currently unlawful. He is not permitted to apply for any new visa because the legislation states that anyone who arrived by boat must first obtain Ministerial consent before they can lodge a valid visa application. He is now experiencing depression as a result of his immigration status and is taking medication.

18. In support of his complaint, Mr MBO provided the Authority with the following documentation:

- Email correspondence between the Agent and the Department between 24 June and 18 September 2019, which was obtained by Mr MBO through an FOI request. The correspondence relates to the Department's investigation of the purported visa application lodged by the Agent, on behalf of Mr MBO, in January 2019;
- Medicine prescriptions relating to Mr MBO's allegation that he has experienced a decline in his mental health as a result of the Agent's conduct; and
- Whatsapp messaging correspondence in Arabic between 31 July and 24 September 2019, purportedly between the Agent and Mr MBO.

19. The Authority subsequently contacted Mr MBO by email on 22 and 29 November 2019 to request further information, and received his responses on 25 and 29 November 2019, respectively. In this further correspondence, Mr MBO alleged that he had advised the Agent that he was owed \$2000 for the removal and cleaning services he had provided, but in response the Agent advised that this amount would cover his fees for the TPV application. Mr MBO also alleged that two weeks after this conversation the Agent asked him to pay money for additional fees in cash, which he preferred as a form

¹⁴ It is unclear how there could be a significant amount of time between these two events as payment is generally made at time of lodgement.

of payment. Mr MBO allegedly paid the Agent \$100, as well as a further \$50 in August 2019 but did not receive any receipts from the Agent for these payments.

Departmental records

20. Departmental records show that Mr MBO was granted a TPV on 22 April 2016, with the notification emailed to the Agent, as Mr MBO's appointed registered migration agent. A copy of the decision was also sent to Mr MBO by registered post. The decision record noted that Mr MBO's visa would cease on 22 April 2019.
21. On 8 June 2018 the Department sent Mr MBO a letter titled '*Applying for your next Temporary Protection visa or Safe Haven Enterprise visa*', which advised that Mr MBO had to apply for a subsequent TPV or Safe Haven Enterprise visa (SHEV) prior to the cease date.
22. On 21 February 2019 the Department sent a short messaging service (SMS) to Mr MBO's mobile telephone number advising him to apply for another TPV or SHEV prior to 22 April 2019 to remain lawfully in Australia. The Department sent this SMS to Mr MBO's mobile telephone again on 23 March 2019. The Department did not receive a visa application for Mr MBO prior to 22 April 2019 when his TPV ceased and he became unlawful.
23. On 24 June 2019 the Agent emailed the Department to check on the progress of Mr MBO's TPV application as a check of Mr MBO's immigration status through VEVO indicated that he did not have a visa. He advised that he had completed the TPV application online through IMMiAccount but due to a problem with the credit card payment, he posted the application with credit card details to the "TPV office" in January 2019. The Agent asserted that he had not received acknowledgements from the Department for many other TPV applicants but this was the first application the Department had advised it had not received. He asked the Department to advise what evidence he needed to provide to prove the application had been sent in January 2019. He further advised that Mr MBO was very stressed because he required urgent surgery but was no longer eligible for Medicare.
24. On 25 June 2019, a departmental officer responded to the Agent and advised that the Department had no record of receiving a subsequent application for Mr MBO. The officer requested that the Agent confirm the address to which he had sent the application, and provide the tracking number so its delivery could be confirmed with Australia Post.
25. Also on 25 June 2019, the Agent, lodged a TPV application through ImmiAccount on behalf of Mr MBO. On the same day, the Department notified the Agent that the application was invalid because Mr MBO was barred from making a valid application by section 46A of the Act.
26. Communication between the Agent and the Department continued during June and July 2019 (*Appendix A*), however, no evidence could be found that a valid application for a TPV for Mr MBO had been made.
27. The Department wrote to the Agent again on 1 August 2019 and confirmed that the electronic lodgement of Mr MBO's subsequent TPV application had not proceeded due to the client/agent ceasing the lodgement process. As such, there was no error or barrier to lodgement of the application and the Department had received no request from the client or agent for technical assistance. The Department also advised that there was no evidence that an application for Mr MBO had been received by registered post as the tracking number provided by the Agent was not recognised by Australia Post. Based on this information, the Department concluded that it had not received a subsequent application before Mr MBO's TPV ceased on 22 April 2019. The Agent was advised to contact the Status Resolution team in Victoria to regularise Mr MBO's unlawful visa status.
28. The Agent emailed the Department on 5 August 2019 and claimed Mr MBO's TPV application was sent to the Department's Melbourne office address (GPO Box 241,

Melbourne VIC 3001) in the same parcel as a visa application for another client, Mr SNZ. The Agent claimed that the two applications were in separate envelopes in the one parcel. He claims that Mr MBO's application was addressed to "Att. of Temp onshore Protection Vic", and that Mr SNZ's application was addressed to the Department's Offshore Humanitarian Processing Centre. The Agent provided a copy of Mr SNZ's acknowledgment and decision letters and argued that this was evidence that Mr MBO's application must have been received by the Department too.

29. On 7 August 2019 the Department advised the Agent that:

- (a) there was no evidence to establish that Mr MBO's application was received
- (b) even if Mr MBO's paper application had been sent to the Melbourne office as claimed, it would have been deemed invalid as this address was not a prescribed location for lodgement of the application under Item 1404 of Schedule 1 of the *Migration Regulations 1994* (the Regulations), being instead GPO Box 9984, Sydney NSW 2001.

30. The Agent continued to argue the matter with the Department, emailing further submissions on 14 August 2019 and on 5 September 2019. The Department responded on 15 August 2019 and finally on 18 September 2019. The Department reiterated its previous advice and advised that it had conducted a thorough search of Mr SNZ's file and was unable to locate any evidence that a Form 1505, being a TPV and SHEV application form, for Mr MBO was included with Mr SNZ's application form. The Department concluded that it was satisfied, following its substantial investigation that no application had been lodged for Mr MBO prior to the cessation of his TPV on 22 April 2019, and that it would not pursue the matter further.

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

31. On 9 January 2020 the Authority sent to the Agent a notice pursuant to section 309(2) of the Act, advising the Agent that it was considering cautioning, or suspending or cancelling the Agent's registration under section 303(1) of the Act.

32. The Agent was notified that having regard to the information before the Authority, it was open to the delegate to find that the Agent had failed to lodge Mr MBO's TPV application, had repeatedly been dishonest with the Authority, and failed to properly respond to its requests, and had repeatedly failed to comply with his professional obligations. Accordingly, it was open for the delegate to be satisfied that the Agent had engaged in conduct that breached the Agent's obligations under clauses 2.1, 2.3, 2.4, 2.9A, 2.18, 2.22B, 5.2, 6.1, 6.1A, and 7.4 of the Code, and was not a person of integrity or otherwise not a fit and proper person to give immigration assistance.

33. Pursuant to section 309(2) of the Act, the Authority invited the Agent to provide written submissions on the matter by 6 February 2020.

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

34. On 24 January 2020 the Authority received an email from the Agent that advised he had previously provided 'everything' for the applicant and had finalised the matter on his side. He requested that the Authority notify if he was required to provide any further information or documents.

35. On 5 February 2020 the Authority wrote to the Agent to request that he confirm whether the email was his submission responding to the section 309 notice, or whether he intended to provide further submissions by the deadline for response. On the same day the Agent responded by email, in which he reiterated his prior statements regarding the charitable immigration services he provides to disadvantaged clients. He did not provide any response to the potential findings in relation to CMP-27926 and CMP-30363. His submission in relation to Mr MBO's complaint (CMP-47489), and as relevant to the potential findings in the section 309 notice, is set out below:

- (a) From January until March 2020¹⁵ the Agent repeatedly asked Mr MBO to cover the VAC of \$40 but he kept making excuses not to pay. Instead, the Agent alleged that Mr MBO asked him to cover the VAC cost. As the Agent did not charge any professional fees to reapply for the same visa, he considers it unreasonable that he should have to cover Mr MBO's VAC as well. The Agent does not have a credit card, so he had to use one of his employee's to pay for the VAC for the electronic application. The payment from his employee's credit card was either declined or stopped but the Agent pursued Mr MBO for over two months prior to his visa expiry date for the \$40 payment.
- (b) Despite Mr MBO's unwillingness to pay the Agent the VAC, the Agent was still willing to help him after his visa ceased by communicating with the relevant area of the Department including emailing them repeatedly with copies of supporting documents to explain what happened.
- (c) The Agent confirmed that Mr MBO did not make any payments or sign any service agreement with him. As such, he argued Mr MBO has no right to lodge a complaint with the Authority.
- (d) The Agent approached an Iraqi community leader¹⁶ who he alleges advised him that Mr MBO was in financial difficulty and owed money to many people. The Agent pitied Mr MBO because he had been told to make a silly and baseless complaint against the Agent by his lawyer to support his matter before the Federal Court. The Agent is unsure what he needs to do in the future to protect himself from people who made accusations against him to damage his reputation after he has assisted free of charge.

36. In support of his response, the Agent provided the Authority with:

- copies of the same email correspondence provided by Mr MBO in his complaint;
- text messages in Arabic between the Agent and Mr MBO between 13 January and 25 June 2019¹⁷; and
- an email from the Agent to the Department dated 5 February 2020 following up on the visa application of a different client, Mrs KBMS¹⁸.

Jurisdiction

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

38. 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 his 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

39. 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)).

¹⁵ This appears to be a typographical error and should read January to March 2019, given Mr MBO's visa ceased on 22 April 2019.

¹⁶ The Agent provided the name and telephone number for this community leader, Mr ZAE

¹⁷ Referenced in his written submission. Review of this correspondence indicated a conversation about money between the Agent and Mr MBO, including the Agent giving Mr MBO his bank account details.

¹⁸ Who was referenced in the Agent's email.

40. 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)).
41. 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.
42. 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 a fit and proper person to give immigration assistance;
 - (ia) being a person of integrity and 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

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

- Documents contained in the Authority's complaint files for CMP-27926, CMP-30363, and CMP-47489, including information and documents provided by the Agent in response to the Authority's notices;
- Information held by the Authority in relation to the Agent; and
- Records held by the Department.

DECISION AND REASONS

Failure to lodge Mr MBO's TPV within the prescribed timeframe

Clause 2.1 of the Code as relevant states:

2.1 A registered migration agent must always:

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

Clause 2.3 of the Code as relevant states:

2.3 A registered migration agent's professionalism must be reflected in a sound working knowledge of the Migration Act and Migration Regulations, and other legislation relating to migration procedure, and a capacity to provide accurate and timely advice.

Clause 2.4 of the Code as relevant states:

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

Clause 2.8 of the Code as relevant states:

2.8 A registered migration agent must:

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

Clause 2.18 of the Code as relevant states:

2.18 A registered migration agent must act in a timely manner if the client has provided all the necessary information and documentation in time for statutory deadlines. For example, in most circumstances an application under the Migration Act or Migration Regulations must be submitted before a person's visa ceases to be in effect.

44. Mr MBO alleged that the Agent had failed to lodge his second TPV application within the prescribed timeframe prior to his first visa ceasing on 22 April 2019, despite him instructing the Agent in August 2018 to prepare the application. This resulted in Mr MBO becoming unlawful and from being prevented from lodging a valid visa application onshore.

45. Departmental records demonstrate that no valid application for Mr MBO had been lodged before his TPV expired on 22 April 2019. The Agent has not provided satisfactory evidence that he lodged a TPV application for Mr MBO prior to the expiry of his first TPV. Accordingly, I am satisfied that the Agent failed to lodge a TPV for Mr MBO by the statutory deadline.
46. The Agent claimed that he had experienced technical difficulties when lodging Mr MBO's application online. The Authority's review of departmental records of the Agent's online visa application lodgements (ImmiAccount records) show:
- a. the Agent created a TPV application for Mr MBO on 10 January 2019;
 - b. attempted to lodge that TPV application on 11 January 2019 but lodgement did not progress past the credit card payment step;
 - c. the Agent accessed Mr MBO's draft application in the Agent's ImmiAccount on 31 March 2019;
 - d. the Agent again accessed Mr MBO's draft application in ImmiAccount on 1 May 2019, after Mr MBO had become unlawful, and attempted to lodge it but did not proceed past the payment step; and
 - e. on 1 August 2019 the Department advised the Agent that there was no system error with the lodgement, and instead the fault was due to user error with the credit card declining or incorrect payment details used.
47. The Agent successfully lodged this drafted application on 25 June 2019, after he was advised by the Department that no application had been received.¹⁹ There is no evidence that the Agent contacted the Department to resolve any difficulties or error he encountered in making the credit card payments for the failed lodgement of the application on 11 January and 1 May 2019. Further, the Department stated that had it received a paper application for Mr MBO by registered post to the departmental address the Agent asserted he had sent it to, it would have been invalidated as this was not a prescribed address as set out in the Regulations. If this had occurred, the Department would have notified the Agent, on behalf of Mr MBO, of the invalidation on the same day, as was the case with the application he lodged for Mr MBO on 25 June 2019. The Department informed the Agent on 18 September 2019 that following a thorough investigation, there was no evidence that an application, valid or otherwise, had been received for Mr MBO prior to his TPV ceasing on 22 April 2019.
48. The Agent subsequently advised the Department that he had included it in a registered post envelope with another visa application for a different client, Mr SNZ, which the Agent sent to the Department's Melbourne office but he was unable to provide evidence confirming this. He argued that he had assumed that Mr MBO's application had been received upon receipt of the Department's acknowledgement of lodgement and decision to refuse Mr SNZ's application on 5 February 2019. Despite receiving no acknowledgement or receipt of the application from the Department, the Agent argued that he considered the Department's correspondence for Mr SNZ as evidence that both applications had been received by the Department. There is no evidence before the Authority that he attempted to contact the Department to seek confirmation of whether the application was received in the three months after he alleged he had sent the application by registered post, and prior to Mr MBO's visa ceasing.
49. Contrary to his arguments, the Agent's receipt of Mr SNZ's acknowledgement should have raised concerns as to why he had not received correspondence from the Department for Mr MBO's application. He ought to have been particularly concerned when he still had not received any correspondence from the Department in the subsequent months leading up to the cessation of Mr MBO's existing TPV. The Agent did not contact the Department at any time to seek assistance with the credit card error that may have prevented him from lodging Mr MBO's TPV application through ImmiAccount or verify that Mr MBO's paper application had been received. It would be

¹⁹ The Department's records show that the Department sent [footnotes should not be addressed to the agent] the email on 25 June 2019 at 12:11pm, with the TPV application lodged with the Department at 12:56pm.

expected that the Agent would have sought assistance from the Department to rectify the error, or ensured that he validly lodged the application by another prescribed means. This would particularly be the case given the substantial period of time over which Mr MBO contacted the Agent and allegedly instructed him to prepare and lodge this application prior to his visa ceasing. All the attached documentation in the invalidated application the Agent lodged for Mr MBO on 25 June 2019, was uploaded ahead of the first lodgement attempt on 11 January 2019. I am satisfied, therefore, that Mr MBO had provided the Agent with all the necessary information and documentation for the application in advance of the statutory deadline for its lodgement.

50. The Agent advised the Department on 28 June 2019 that he only became aware that Mr MBO was unlawful when he received notification of outstanding funds in his ImmiAccount from the Department, and when Mr MBO experienced problems in June 2019 with his Medicare as a result of being unlawful. Had the Agent checked Mr MBO's immigration status and visa details on the Department's VEVO system at any time, this would have identified whether Mr MBO was still lawful following the cessation of the first TPV. Had he believed the Department had received the paper application months earlier, and was unaware that his client was unlawful, the Agent would not have attempted his second unsuccessful lodgement of the electronic application through ImmiAccount on 1 May 2019, shortly after Mr MBO's visa had ceased. Instead, I am satisfied that the Agent was aware or suspected that the paper application had not been received, in contradiction with his statements to the Department.
51. If he did experience difficulties lodging the application, it is expected that the Agent would have rectified the situation in a timely manner, or made alternative arrangements to lodge the visa and diligently follow it up if needed. The Agent's decision to attempt to lodge the application electronically twice after Mr MBO's visa had ceased appears to be failed attempts to cover his failure to lodge the application when instructed by his client. The Agent's conduct, in doing so, demonstrates that he does not have a sound knowledge of immigration legislation, despite being registered as a migration agent since April 2007. In his statement to the Department on 28 June 2019, the Agent advised that he had been "*managing a large number of cases for applicants under the same visa stream*". It would, therefore, be reasonable to assume that the Agent should have been well aware that Mr MBO could only apply for prescribed visa subclasses during the period that the section 46 bar was lifted, which would end once his existing visa had ceased.
52. Registered migration agents are obliged to maintain a sound working knowledge of migration legislation, policy and procedures, and provide accurate and timely advice. It is also expected that where a registered migration agent was unfamiliar with the requirements for a specific visa subclass, or considered that they did not hold the requisite knowledge to advise a client on visa options for their personal circumstances, they would seek professional guidance, and where required, refer the matter to a different registered migration agent. However, there is no evidence that the Agent took either of these courses of action.
53. In his response to the publication of Mr MBO's complaint in the section 309 notice, the Agent provided correspondence between him and Mr MBO in the months prior to Mr MBO's visa ceasing. These text messages relate to the Agent's attempts to obtain payment for the \$40 VAC between January and March 2019 but that Mr MBO had made excuses for not paying the Agent and had requested that the Agent cover the application cost instead. The Agent stated in his response to the section 309 notice that the credit card he used was declined or stopped but he was not sure.
54. The Agent argued that Mr MBO did not have a right to lodge a complaint because he had not paid the Agent any fees or entered into a written agreement. The Migration Agents Regulations²⁰ states "*any person or body may make a complaint*". Regulation 9 of the Regulations also specifies that the client of a registered migration agent, being a person whom the registered migration agent has agreed to give immigration assistance to whether or not this is in writing, can make a complaint to the Authority.

²⁰ Part 3, Regulation 9

Accordingly, I reject this argument. I also find that the Agent's response demonstrates that he lacks sound knowledge and understanding of migration legislation, contrary to his obligations under clause 2.3 of the Code.

55. The Agent's admission that he did not enter into a written agreement with Mr MBO, despite providing him with immigration assistance, will be addressed later in this decision. The message correspondence submitted by the Agent in support of his submission shows that he continued to correspond with Mr MBO for two months after supposedly lodging his application by registered post to seek payment for the VAC. In this correspondence, the Agent insisted that Mr MBO pay the \$40 VAC, as he was unable to cover it himself, and advised him he would no longer be able to assist with assisting Mr MBO with his application. This is consistent with the Agent's written submission.
56. This information is inconsistent with the Agent's written statement to the Department on 28 June 2019 in which he stated that another client of his, Mr S had requested to pay for Mr MBO's application cost, which the Agent assumed was \$30 because he could not find the correct amount to pay for the TPV. This money was prepaid onto the Agent's ImmiAccount, and he subsequently received notification from the Department on 19 June 2019 that the payment had not been linked to any application. He stated in his written statement on 28 June 2019 that he had included a receipt of the \$30 prepayment in his ImmiAccount with the paper application purportedly mailed to the Department, presumably to enable the application to be linked to this payment, in accordance with the instructions for payment on the Department's website²¹. I note that the website also clearly sets out the cost for each visa application, including the TPV which is \$40. It, therefore, appears that the Agent did not check the Department's website to confirm the cost of the visa application before taking this payment, which speaks to his knowledge and competency. Had the Agent already received \$30, he would only need to obtain a further \$10 from Mr MBO or Mr S to cover the application cost. I consider that the Agent has not provided a reasonable argument to explain why he was requesting \$40 from Mr MBO as late as 31 March 2019, if he had already received \$30 for the VAC and had lodged the application. I am, therefore, satisfied the Agent has not been honest in his submission.
57. I am satisfied that the Agent's subsequent attempts to lodge TPV applications for Mr MBO after he had become unlawful were a poorly conceived attempt to conceal his failure to ensure the Department received an application for Mr MBO prior to 22 April 2019. This is particularly evident by the Agent's decision to lodge a TPV application electronically for Mr MBO through ImmiAccount on 25 June 2019, less than an hour after the Department had emailed him to advised that no visa application had been received for Mr MBO. His conduct also demonstrates a failure to maintain the requisite knowledge expected of a registered migration agent. Had the Agent posted Mr MBO's application to the Department's GPO address in Melbourne, as he asserted, he would have sent the application to an address that was not prescribed in Schedule 1 of the Regulations. The Agent's statement that he sent a TPV application by post to this address demonstrates that he lacks familiarity with the relevant legislation, which reflects on his competency, diligence and knowledge. The Agent informed the Department that he had extensive experience with temporary protection visa subclasses. Despite this, and his significant period of registration, the Agent's actions and statements to the Department following Mr MBO's visa ceasing were demonstrative of critical shortcomings in his understanding of the relevant immigration legislation.
58. Based on my above findings, I am satisfied that the Agent demonstrated a significant disregard for Mr MBO's dependence on his knowledge and experience in the mishandling of his application. By failing to ensure that he lodged a valid visa application with the Department for Mr MBO prior to his visa ceasing on 22 April 2019 the Agent failed to act in accordance with Mr MBO's instructions in a timely, competent and diligent manner, and in his clients best interests. The Agent's conduct in not lodging

²¹ <https://immi.homeaffairs.gov.au/help-support/applying-online-or-on-paper/on-paper/how-to-pay>

the subsequent TPV application prior to the statutory deadline has resulted in an extremely detrimental migration outcome for Mr MBO, who has been restricted from regularising his immigration status as a result.

59. I am satisfied that the Agent has breached **clauses 2.1(b), 2.3, 2.4, 2.8, and 2.18** of the Code in relation to his handling of Mr MBO's matter.

Misleading statements made to the Authority

Clause 2.9A of the Code as relevant states:

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

Engagement by Ms RNFN

60. The Agent has provided conflicting written statements when responding to the publication of Ms RNFN's complaint²². In his response of 30 June 2017 to Ms RNFN's allegation that he failed to accurately translate her documents and added incorrect information to her statement of claims, the Agent advised that he was not involved in the preparation of her statement. He asserted that it was Ms RNFN, her family members, and another SMRC employee under his supervision, Ms NT, who had jointly prepared the statement of claims. However, in the same statutory declaration he conversely stated that he had prepared Ms RNFN's statement of claims for her subclass 866 visa application.

61. The Agent provided email correspondence that showed Ms NT sent him the statement to check and that he had also sent the statement to Ms RNFN's brother, in support of his responses to the Authority²³. He asserted that he had first met Ms RNFN at SMRC in Dandenong following her brother's referral, but that he could not provide dates of these interactions as she generally attended SMRC without scheduling appointments. The Agent did not provide any file notes to support this statement, and from his statements, it appears he made no record of these interactions, contrary to clause 6.1 and 6.1A of the Code. However, text message correspondence provided by the Agent and dated from 20 August 2013 to 16 October 2013 conversely shows that he had met with Ms RNFN while she was still in [country], and that she had contacted him once in Australia to engage his services. In this correspondence, Ms RNFN references a meeting that had taken place in [country], and the Agent requests that she contact him once she arrived in Australia on a temporary visa so that he could commence preparation of her subclass 866 visa application. It would appear that the Agent was aware that Ms RNFN was not a genuine temporary entrant prior to her applying for a subclass 600 visa²⁴ because he knew she intended to apply for a permanent visa on arrival in Australia. The Agent advised Ms RNFN that once in Australia, she should meet with him at an address, 7A Logie Street, Oakleigh, to discuss preparation of her visa application in early October 2013. The Department's records show that Ms RNFN's subclass 866 visa application was lodged in November 2013. Publically available information on 7A Logie Street, Oakleigh, indicates that this address is for a residential property, located some distance away from the SMRC's office in the suburb of Dandenong.

62. On the basis of the information before the Authority, I am satisfied that Ms RNFN approached the Agent to engage his immigration services before arriving in Australia in 2013. I am also satisfied that, from the evidence before the Authority, the Agent organised to meet Ms RNFN at an address that was not any SMRC office or building.

²² In the first section 308 notice

²³ The email from the Agent containing the statement titled 'Arabic story' was sent to Mr Michael RNFN on 24 October 2013. The email from Ms NT containing the statement for the Agent to check was sent on 25 October 2013.

²⁴ No registered migration agent was declared in association with Ms RNFN's Visitor (subclass 600) visa application.

As such, I reject the Agent's statements that Ms RNFN had met him for the first time at the SMRC office and that her appointment was conducted at the centre's office, and instead find that Ms RNFN appears to have engaged the Agent separately as a private client. I am, therefore, satisfied that he has not been honest with the Authority regarding his engagement by Ms RNFN.

63. The Agent has stated that his role in Ms RNFN's matter was "*only to attach the statement and make sure the application is valid with the required forms would be attached*", with most of the preparation of the subclass 866 visa application being undertaken by Ms NT. However, the Agent's text message correspondence with Ms RNFN indicates that he had greater involvement in the preparation of her statement of claims and application. He has provided conflicting statements in relation to the services he provided to Ms RNFN²⁵, simultaneously stating that he did, and did not, assist her in the preparation of her statement of claims. I am satisfied that this was an attempt by the Agent to mislead the Authority about his involvement in Ms RNFN's subclass 866 visa application, in order to avoid accountability for his actions.
64. While there is insufficient evidence before the Authority to make out the substance of Ms RNFN's complaint, I consider that the Agent's contradictory responses are an attempt to mislead the Authority as to his engagement by her, contrary to **clause 2.9A** of the Code.

Ms MYZBE's subclass 866 visa application

65. The Agent initially asserted on 29 January 2018 that he had been introduced to Ms MYZBE by her brother who was an [removed] priest from a Melbourne church, and was only engaged to represent her and assist to present a detailed statement of claim but not write the statement or prepare her application forms or supporting documents. He did not provide a date of when he first met and was engaged by Ms MYZBE. The Authority asked the Agent to clarify all the services he had provided Ms MYZBE in the request for additional information on 13 April 2018. In response, the Agent stated on 23 April 2018 that he was asked by one of her relatives who also worked at SMRC to only check Ms MYZBE's already prepared statement of claims and brief her before the interview.
66. The Agent's two responses contain contradictory statements and limited records, which have created difficulties for the Authority in ascertaining the nature of his involvement and scope of services provided to Ms MYZBE for her subclass 866 visa application. The Agent has failed to provide any evidence of emails, file notes or other records that detail all of his interactions with Ms MYZBE prior to 13 May 2014, including when she first engaged his services, or any interactions with the member of SMRC that he asserted was responsible for preparing Ms MYZBE's statement of claims and application forms. He has also failed to provide any records of how Ms MYZBE's statement of claims was prepared prior to being lodged in September 2013 or copies of the attachments in the email correspondence with Ms MYZBE, on 13 and 15 May 2014. I am satisfied that the Agent's failure to provide this documentation is indicative that he has either failed to maintain proper records on Ms MYZBE's client file, or has failed to provide the complete file to the Authority, in breach of his recordkeeping and complaints handling obligations under the Code.
67. Email correspondence provided by the Agent, as well as departmental and AAT records before the Authority demonstrate that the Agent's engagement by Ms MYZBE extended beyond what he advised the Authority in his conflicting responses. These records show that the Agent was involved in seeking translations of documents provided by Ms MYZBE, and a medical report from her doctor, to submit to the Department at the time of the protection visa interview. Departmental records also show that the Agent corresponded with the Department on a number of occasions, including when he responded to departmental requests for additional information and the publication of

²⁵ In response to the first section 308 notice

adverse information on her behalf, and subsequently lodged Ms MYZBE's application to the AAT for review of the Department's refusal decision.

68. I am, therefore, satisfied that the Agent has not been honest with the Authority in relation to this matter. I consider that his responses, which have been evasive and have not directly addressed the questions asked, are an attempt to reduce his responsibility for misconduct. I am also satisfied that he has provided conflicting information in an attempt to disassociate himself professionally from the allegations made by the AAT, and the concerns raised with his conduct identified during the Authority's investigation in relation to his engagement by Ms MYZBE.

Mr MB

69. The Department's records indicate that the Agent assisted Mr MB with his subclass 866 visa application, contrary to his statements to the Authority. In particular, departmental records show that Mr MB:

- (a) contacted the Agent to obtain documents to apply for a different visa prior to his Partner visa application being refused on 24 June 2013, and he lodged a subclass 866 visa application on 12 July 2013;
- (b) did not declare any registered migration agent at the time of lodgement, or at any time during the Department's consideration of the subclass 866 visa application;
- (c) forwarded a departmental request for original documents to the Agent on 20 August 2014 while his subclass 866 visa application was under consideration, and subsequently provided this correspondence to the Department on 28 August 2014 when responding to the request;
- (d) on 1 June 2015 made an application to the AAT, in which the Agent was listed as the appointed representative, for review of the Department's decision to refuse his subclass 866 visa application on 22 May 2015; and
- (e) stated in his testimony to the AAT during a hearing on 14 November 2016 that the Agent had assisted him in applying for the subclass 866 visa at the time of application.

70. The Agent, in his statutory declaration response on 29 January 2018 to the second section 308 notice, advised that he had not prepared or lodged a subclass 866 visa application for Mr MB, who had instead represented himself. The Agent argued that he only assisted Mr MB with his AAT application, and therefore had no knowledge about, or involvement in, the creation of Mr MB's supporting documents.

71. On 13 April 2018 the Authority asked the Agent to clarify why he had provided information that was inconsistent with the aforementioned departmental records in relation to his knowledge of, and association with Mr MB's subclass 866 visa application. In his response on 23 April 2018 the Agent stated, contrary to his earlier statement, that he had been asked by Mr MB's brother to provide feedback on the subclass 866 visa application but that another migration agent, "Mr Jeff", had been appointed for the matter. The Agent did not provide any further information or supporting documents to identify this person, and there is no evidence in the Department's records of any agent being declared for Mr MB's subclass 866 visa application.

72. On the evidence currently before me, I reject the Agent's statements that he was not involved in Mr MB subclass 866 visa application and only engaged to provide immigration assistance for appeal of the Department's decision to the AAT. Instead, I find that the Agent did provide immigration assistance to Mr MB in relation to this visa application, but did not declare this to the Department. Despite being afforded an opportunity to clarify his earlier statements, the Agent chose to continue to provide false and misleading information to the Authority. As such, I am satisfied that this conduct constitutes a breach of **clause 2.9A** of the Code.

73. I consider that the Agent has sought to purposely misrepresent the extent of his Agent-client relationship with Mr MB when responding to the Authority's publication of the DEU's examination in order to distance himself from being implicated in the adverse findings regarding Mr MB's supporting documents.
74. As I have found that the Agent provided Mr MB with immigration advice and/or assistance, in relation to his subclass 866 visa application, I am also satisfied that he has acted contrary to the Act and the Code. Even if the Agent had not been formally engaged by Mr MB or received payment, it would be expected that he would notify the Department, in accordance with section 312A of the Act²⁶, had he provided advice or assistance to prepare a visa application, or respond to a departmental request for information. Contrary to the Agent's assertions, evidence before the Authority shows that his involvement with Mr MB extends beyond the matters he has declared. On the information currently before the Authority, I am satisfied that the Agent was engaged, either formally or otherwise, by Mr MB to provide immigration advice and/or assistance but did not declare this to the Department, contrary to the Act and **clause 2.1(a)** of the Code.

Conclusion

75. I am satisfied that the Agent has repeatedly been dishonest with the Authority in responding to the complaints published, and has provided conflicting statements, despite being afforded a number of opportunities by the Authority to clarify his statements. I consider that his dishonesty in responding to the Authority are attempts to avoid responsibility for the matters discussed in this decision, and divert blame onto other parties. As such, I am satisfied that he has repeatedly breached **clause 2.9A** of the Code.

Failure to issue Service Agreements and financial documentation to clients, and retain records

Clause 5.2 of the Code as relevant states:

5.2 A registered migration agent must:

- (a) *before starting work for a client, give the client:*
- (i) *an estimate of charges in the form of fees for each hour or each service to be performed, and disbursements that the agent is likely to incur as part of the services to be performed; and*
 - (ii) *an estimate of the time likely to be taken in performing the services; and*
- (b) *as soon as possible after receiving instructions, obtain written acceptance by the client, if possible, of:*
- (i) *the estimate of fees; and*
 - (ii) *the estimate of the time likely to be taken in performing the services; and*
- (c) *give the client written confirmation (an Agreement for Services and Fees) of:*
- (i) *the services to be performed; and*
 - (ii) *the fees for the services; and*
 - (iii) *the disbursements that the agent is likely to incur as part of the services; and*
- (d) *give the client written notice of any material change to the estimated cost of providing a service, and the total likely cost because of the change, as soon as the agent becomes aware of the likelihood of a change occurring.*

Clause 6.1 of the Code as relevant states:

²⁶ Section 312A(1) of the Act stipulates that "If a registered migration gives immigration assistance to a visa applicant in relation to a visa application; and the agent gives the assistance after having agreed to represent the applicant; the agent must notify the Department in accordance with the regulations and within the period worked out in accordance with the regulations."

6.1 A registered migration agent must maintain proper records that can be made available for inspection on request by the Authority, including files containing:

- (a) a copy of each client's application; and
- (b) copies of each written communication between:
 - (i) the client and the agent; and
 - (ii) the agent and any relevant statutory authority; and
 - (iii) the agent and the Department regarding the client; and
- (c) file notes of every substantive or material oral communication between:
 - (i) the client and the agent; and
 - (ii) the agent and an official of any relevant statutory authority; and
 - (iii) the agent and the Department regarding the client.

Clause 6.1A of the Code as relevant states:

6.1A A registered migration agent must keep the records mentioned in clause 6.1 for a period of 7 years after the date of the last action on the file for the client.

Clause 6.3 of the Code as relevant states:

6.3 A registered migration agent must respond to a request for information from the Authority within a reasonable time specified by the Authority.

Clause 7.4 of the Code as relevant states:

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

Clause 9.3 of the Code as relevant states:

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

76. Ms RNFN alleged that the Agent did not provide her with copies of a Service Agreement or any invoices, receipts or Statements of Service for the cash payments she made to him. Likewise, Mr MBO also alleged that the Agent did not issue him a Service Agreement for his most recent visa application, despite doing so for his previous TPV application that was granted on 22 April 2016. Mr MBO also alleged that the Agent requested that Mr MBO perform manual labour tasks at his residential address in exchange for a 'discount' on his professional fees. As a result, he alleged that the Agent did not issue any financial documentation.

77. In the Agent's submissions to the section 308 notices, he advised that he was employed by SMRC on a full-time basis as a registered migration agent for a period of seven years until he was forced to resign due to funding cuts. He asserted that he handled a very large caseload when employed at SMRC, and while he was allocated cases as the organisation's registered migration agent, other staff members of SMRC,

particularly Ms NT, undertook the majority of work on these matters. The Authority's records confirm that Ms NT has never held registration as a migration agent. The Agent confirmed that he did not enter into Service Agreements with clients engaged through SMRC, or issue them any financial documentation, as the fees they paid were made out to SMRC and passed on to Ms NT and other staff members that assisted in these applications. The Agent also confirmed in his written response to the section 309 notice that he had not issued a Service Agreement to Mr MBO.

78. Registered migration agents are required to provide clients written confirmation, in the form of an Agreement for Services and Fees, of the services to be performed, the fees for these services, and the disbursements to be incurred as part of the services, in accordance with clause 5.2 of the Code. The absence of professional fees charged to a client does not void the need for written confirmation of the agreed services, and any disbursements incurred. The Agent advised the Authority that he did not issue Service Agreements to any clients engaged through SMRC, including Ms RNFN. He also conceded to not entering into a Service Agreement with Mr MBO because he did not consider he needed to if Mr MBO was not paying any professional fees. It appears that this conduct extends beyond those clients he assisted at SMRC, to his broader client caseload. As such, I find that the Agent has repeatedly breached **clause 5.2** of the Code in relation to the clients identified in this notice, and that this conduct is systemic to his practice.
79. The Agent has repeatedly failed to respond properly to the Authority's requests under section 308(1)(b) of the Act to provide the complete client files for Ms RNFN, Ms MYZBE, or any of the other clients identified in CMP-30363, despite being provided with opportunities and time to do so. This has hindered the Authority's investigation of the complaints.
80. Section 308(1) of the Act stipulates that registered migration agents may be required to make a statutory declaration in answer to questions, and provide the Authority with specified documents or records relevant to the Agent's continued registration. The Agent advised in his statutory declaration on 23 April 2018 that he required some time to locate documents for these clients. Despite the Authority affording the Agent more than two years to do so since the second section 308 notice, he has not provided any documents to date.
81. I am satisfied that the Agent's failure to comply with subsection 308(1)(c) of the Act is a breach of **clauses 6.3 and 9.3** of the Code.
82. Information received from the SMRC that, following the cessation of their fee-for-service migration services provided by the Agent, they only employed registered migration agents on a volunteer basis for their Free Migration Assistance Program. Such agents were prevented from charging clients a fee or taking up private clients. However, the Agent's employment within SMRC was commercial in nature, and that a fee was paid by clients for the services he provided, albeit that SMRC collected a smaller or reduced fee amount. This is supported by the Agent's decision to maintain a commercial registration while he was employed by SMRC, and his decision to take on private clients referred by SMRC following cessation of his employment in early 2015. The Agent would still be required to maintain records of any payments for immigration assistance made to SMRC for his services, in his capacity as the organisation's employed registered migration agent. It is the responsibility of registered migration agents to ensure that they are able to maintain compliance with their professional obligations and responsibilities as set out in the Code and migration legislation, regardless of their employment arrangement. This includes non-commercial, voluntary, contractor, and third party arrangements.
83. The Agent has failed to provide complete client files for any of the identified clients and the documents he has provided do not support a significant number of his responses. The Agent has not provided any file notes of his interactions with any of the clients identified in this decision to support his responses to the Authority's questions. Where the Agent provided supporting documents to the Authority when contesting the AAT's referral that he allegedly procured Ms MYZBE's non-genuine documents, these are

limited to a small number of emails from between 13 May and 22 June 2014. These emails did not contain sufficient detail to confirm that they relate to Ms MYZBE's police documents, and were not supported with copies of the attached documents or other evidence. The Agent has provided no records associated with the preparation and lodgement of Ms MYZBE's subclass 866 visa application on 17 September 2013. I am satisfied that the Agent has not provided the Authority with all relevant records related to his involvement in the matters that are the subject of this decision. Further, the Agent has failed to provide the Authority with evidence to substantiate a number of interactions he had referred to in his responses to the Authority with the aforementioned clients during their engagement of his services. In the case of his engagement by Ms RNFN, he was unable to even recall when she first engaged his services at SMRC. He failed to provide the Authority any records of this initial interaction(s), which leaves open to a finding that the reason the Agent was unable to recall his engagement by Ms RNFN was due to his failure to maintain the required records.

84. The Agent also failed to provide the Authority with any financial documentation for any professional fees paid by Ms RNFN,²⁷ Ms MYZBE,²⁸ or any of the other clients identified in CMP-30363, as well as the payment purportedly made to the Agent by Mr S, on behalf of Mr MBO. The only financial documentation the Agent submitted to the Authority is a spreadsheet of client details and payments made by 298 clients between 2008 and 2014. However, this document does not contain the details or payments of any clients who are [country] nationals, inclusive of all the clients identified in this decision. Further, this document alone would not replace the maintenance of financial documentation issued to clients on the client file, including invoices, tax receipts and statements of service.
85. In the absence of any evidence from the Agent that he maintained documents and records of correspondence for his clients, I am satisfied that he failed to maintain proper client records, including financial records. In doing so, I find that the Agent has breached **clauses 6.1, 6.1A and 7.4** of the Code.

Breaches of the Code

86. Pursuant to paragraph 303(1)(h) of the Act, the Authority may caution a registered migration agent or suspend or cancel their registration if the agent has not complied with the Code.
87. Having regard to the findings made, I am satisfied that the Agent has engaged in conduct in breach of the Agents obligations under clauses **2.1, 2.3, 2.4, 2.8, 2.9A, 2.18, 5.2, 6.1, 6.1A, 6.3, 7.4 and 9.3** of the Code.

Integrity, fitness and propriety

88. 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.
89. 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.
90. 'Integrity' means 'soundness of moral principle and character, uprightness and honesty'.²⁹

²⁷ Which the agent stated was a payment of \$1000 to SMRC for the immigration assistance received

²⁸ A payment of \$1500, which the Agent stated was provided to the SMRC employee that assisted him to prepare Ms MYZBE's visa application.

²⁹ See *Re Peng and Department of Immigration and Multicultural Affairs* [1998] AATA 12 at paragraph [26].

91. 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.
92. 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”.³⁰
93. 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.*
94. 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.³¹
95. The context in which the reference to 'fit and proper' person occurs in section 290 of the Act is the applicant's giving of immigration assistance. The context also includes:
- (a) the Act which creates offences for misleading statements and advertising, practicing when unregistered and misrepresenting a matter; and
 - (b) the Code contained within the Agents Regulations which refers to the applicant being able to perform diligently and honestly, being able and willing to deal fairly with clients, having knowledge of business procedure and properly managing and maintaining client records and maintaining client confidentiality.
96. Key elements of the fitness test are:
- the honesty of the person; and
 - the person's knowledge of the migration scheme and ability to fulfil the position of a migration agent.
97. 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.
98. Having regard to the body of case law cited above, a consideration of whether the Agent is a fit and proper person or a person of integrity to provide immigration assistance can legitimately include the following:
- that the Agent's past conduct can be an indicator of the likelihood of the improper conduct occurring in the future;
 - the Agent's honesty and competency towards clients, the Department and the Authority;

³⁰ See *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750

³¹ See *Cunliffe v Commonwealth* (1994) 182 CLR 272

- a consideration of the context in which the agent works, i.e. the provision of immigration assistance to migration clients;
- the Agent's knowledge and competency in immigration law and practice;
- the reputation of the Agent as a result of their conduct and the public perception of that conduct; and
- the perception of the conduct by the Agent's "professional colleagues of good repute and competency"³².

99. 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'. My findings are set out below.

Failure to lodge Mr MBO's TPV application

100. The Agent repeatedly lied to both the Department and his client in an attempt to conceal that he failed to act in a timely and diligent manner to ensure that a valid visa application was lodged for Mr MBO prior to his visa ceasing on 22 April 2019. As such, I am satisfied that the Agent has acted negligently in his obligations towards his client, resulting in an extremely detrimental migration outcome for Mr MBO, who is now prevented from regulating his immigration status. Despite the Agent's significant period of registration and claims of extensive experience with temporary protection visa subclasses, his actions and statements to the Department following Mr MBO's visa ceasing demonstrate critical shortcomings in his understanding of the relevant immigration legislation and his professional obligations. These findings in relation to the Agent's conduct towards Mr MBO demonstrate that he does not possess the requisite diligence, integrity, honesty and knowledge required to provide immigration assistance.

Misleading statements made to the Authority

101. Based on the information before the Authority, I have found that the Agent has repeatedly been dishonest in his responses to the Authority's notices and requests for additional information. I consider that some statements provided may be the result of the lack of clarity in the Agent's written submissions. However, I am satisfied that the Agent has knowingly and purposefully provided false and misleading statements to the Authority to attempt to misrepresent his knowledge of, and involvement in, the aforementioned clients' migration matters to distance himself from adverse findings. In doing so, I also find that he failed to declare himself to the Department in relation to the immigration assistance he provided for Mr MB's subclass 866 visa application, in contravention of the law. Consequently, I am satisfied that the Agent has failed to demonstrate the requisite integrity, honesty, and judgement expected of a registered migration agent.

Failure to cooperate with the Authority's requests

102. I find the Agent's behaviour demonstrates an unwillingness to engage with the Authority transparently and comply with requests. I consider that his failure to do so has hindered the Authority's investigation of the complaints. I am satisfied that this lack of cooperation, and failure to respond properly to the serious allegations put to him, indicate that the Agent does not hold the requisite integrity and fitness to provide immigration assistance at this time.

Association with Ms RNFN's non-genuine Temporary visa application

103. The Authority found that the Agent had been in contact with Ms RNFN while she was still in [country] to provide advice and assistance to facilitate her Protection visa

³² *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750

application. He knew she intended to enter into Australia under the pretence of being a genuine temporary entrant visiting family, but with the sole intention of having the Agent assist her to apply for protection. Nonetheless, he provided her with advice prior to her departure, and then assisted her with the preparation and lodgement of her subclass 866 visa once she had arrived in Australia. There is no evidence before the Authority that the Agent provided immigration assistance in regards to Ms RNFN's subclass 600 visa. However, the Agent failed to exercise good ethical judgement and integrity when he chose to engage in a course of action, which he knew, or should have reasonably known, would undermine the integrity of Australia's Temporary visa program. I consider that his conduct speaks to his judgement, and ethics, and demonstrates that the Agent lacks the requisite integrity and propriety to provide immigration advice and assistance.

Consideration of Appropriate Disciplinary Action

104. 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

105. 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.

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

- (a) The Agent's negligence has had a significant negative effect on Mr MBO' migration outcome and has been dishonest with both the Department and his client in order to conceal his involvement;
- (b) The Agent has repeatedly attempted to mislead the Authority during its investigation and has provided false and misleading information in statutory declarations, in breach of the law;
- (c) The Agent failed to fully cooperate with the Authority's investigation into five complaints over a significant period; and
- (d) The Agent has breached multiple clauses of the Code indicating systemic poor practices and a failure to satisfy his professional obligations.

Aggravating factors

107. I consider the Agents conduct falls short of the standard expected of a registered migration agent.
108. The Agent has not been candid with either the Authority or the Department in responding to the allegations put to him, and repeatedly provided conflicting statements. He had attempted to conceal his involvement in the matters raised in the complaints considered by not responding properly to the Authority's requests for information and documents. He has also attempted to avoid accountability for his actions by diverting blame onto others, including his clients, other registered migration agents, and the [church].
109. The Agent has failed to acknowledge or take responsibility for his conduct, and has not demonstrated awareness of the shortcomings in his practice, which speak to his knowledge and integrity.

Mitigating Factors

110. The Agent, in summary, advised that he had not been the subject of a disciplinary decision, had a high approval rate on the applications he prepared and lodged, and operated to a high standard. He also advised that he regularly assisted disadvantaged visa applicants free of charge, as he was not driven by monetary gain and was financially well off. Further, the Agent made reference to [removed] he was facing during the Authority's investigation as a result of the stress caused by the allegations against him. He, however, failed to provide any evidence in support of these mitigating factors.
111. I have considered that the Agent has not previously been subject to a sanction or disciplinary action by the Authority. I have also considered his claims regarding his performance as a migration agent. However, I am of the view, due to the serious nature of the findings against the Agent, that these alone do not mitigate his conduct.
112. I have also taken into account that a disciplinary decision would affect the Agent's financial earning capacity and livelihood. The Agent has advised that he is financially stable, and does not need to earn income due to his wife's employment. He also stated that he had considered leaving the migration advice profession during the course of the Authority's investigation as a result of the allegations against him. The Agent, however, has continued to apply for repeat registration despite this statement. In light of the statements made by the Agent, I am not convinced that hardship would inevitably follow from a decision taken by the Authority to sanction the Agent from working within the profession for a period of time. Even if a disciplinary decision were to have an impact on the Agent's livelihood, I am of the view that this is significantly outweighed by the public interest, given his conduct, which is the subject of this decision.

Consumer Protection

113. 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.
114. The behaviour demonstrated by the Agent falls short of the reasonably expected standards of a registered migration agent. I am satisfied that if the Agent were to continue to practice as a registered migration agent, he would not be able to demonstrate the requisite skills expected of a registered migration agent, and would pose an ongoing risk to consumers. I consider that a disciplinary decision with conditions for further education and training is warranted to address the conduct, which is the subject of this decision, and in the interests of consumer protection.

DECISION

115. I have turned my mind to the appropriate sanction to impose on the Agent, in light of the findings I have made in relation to the Agent's integrity, propriety and fitness, and understanding of, and compliance with his professional obligations. I am of the view that the Agent's demonstrated dishonesty, negligence and non-compliance with his obligations warrant a period of separation from the profession to reflect on this conduct. I also consider that the Agent's systematic professional shortcomings require remedial action and learning.
116. Following consideration of the information before me, I have decided to suspend the Agent from being registered as a migration agent from the date of this decision for a period of 12 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 passed the Capstone assessment offered by The College of Law (Limited) to demonstrate his ability to meet the Occupational Competency Standards for Registered Migration Agents; and
 - b. 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.

Professional Standards Officer
Professional Standards and Integrity Section
Office of the Migration Agents Registration Authority
Department of Home Affairs
Date of Decision: 22 June 2020