

Instructions to Candidates

Time allowed: 3 hours and 30 minutes

This written assessment is worth 100 points. To pass this written assessment, a candidate must score at least 65 points overall.

This written assessment is divided into three sections as follows:

- **Part A (total 10 points) – 5 multiple-choice questions (worth 2 points each). Choose 1 answer for each multiple-choice question.**
- **Part B (total 20 points) – 4 short answer questions (worth 5 points each). Answers to each short answer question should be concise and candidates may use bullet points if appropriate.**
- **Part C (total 70 points) – 2 practical writing exercises:**
 - **Question 1 requires the candidate to draft a written advice to the client. As a general guide, the advice should be between 1,000 and 1,500 words in length. Candidates should observe proper grammar and use plain English, proper sentences and a reader-friendly layout when drafting their advice. This question is worth 35 points (Content: 30 points; Structure: 2 points; Expression: 3 points).**
 - **Question 2 requires the candidate to draft a submission to the Department of Home Affairs. As a general guide, the submission should be between 1,000 and 1,500 words in length. Candidates should observe proper grammar and use plain English, proper sentences and a reader-friendly layout when drafting their submission. This question is worth 35 points (Content: 30 points; Structure: 2 points; Expression: 3 points).**

The written assessment is open book. Candidates may access and refer to any online resources, books, notes or other written material during the written assessment.

Questions must be answered in the space provided in the space provided in the online Canvas learning management system.

Answers to this written assessment will be based on the law, policy and procedures applicable as at the date when the written assessment is conducted.

Part A (10 points) – 5 multiple-choice questions (worth 2 points each)

Consider the following case scenario and then answer questions 1 - 3

Mark is a migration agent in his first year of practice. He has been approached by Andrew, an Australian citizen, to assist with the preparation and lodgement of the required partner visa application(s) for his wife Anna, a Greek citizen. During the initial consultation, Andrew and Anna tell Mark that Anna has sole custody of Aphrodite, her eleven year old daughter from a previous marriage. Andrew and Anna want Aphrodite to migrate to Australia with Anna. Anna and Aphrodite will be in Greece at the time any relevant application is lodged with the Department. Mark decides to take on the case and enters into an *Agreement for Services and Fees* with Andrew. Andrew will be liable for paying Mark's fees and all other costs and disbursements, including visa application charges. Mark obtains relevant information and documents to prepare the application(s) and he ensures lodgement occurs. One month after lodgement, Mark notices that he has forgotten to include anything about Aphrodite in the application(s).

Question 1

For the purposes of providing immigration assistance, who is / are Mark's clients?

- A. Andrew, Anna and Aphrodite
- B. Andrew and Anna
- C. Anna and Aphrodite
- D. Andrew

Question 2

In terms of visa subclass, what application(s) has Anna made?

- A. Subclass 309
- B. Subclass 309 and subclass 100
- C. Subclass 820
- D. Subclass 820 and subclass 801

Question 3

Upon realising his oversight in relation to Aphrodite, Mark should:

- A. notify his client(s) of his oversight and explain what impact that will have upon his client(s) how the situation could be rectified and, presuming they still want to retain his services, who will bear the costs of rectifying the situation
- B. terminate his engagement with Andrew and refer his client(s) to another registered migration agent who can try and fix the situation

- C. in addition to B, refund any moneys paid to him by Andrew
- D. contact the Office of the Migration Agents Registration Authority to seek guidance in relation to what he should do next

Question 4

All registered migration agents must comply with their obligations in relation to the management of client money under Part 7 of the Code of Conduct. Client money is:

- A. any money coming into the agent's control which is the property of a client to which the agent has no current entitlement
- B. any money the agent receives from a client before the agent has provided the client with a Statement of Services or an invoice
- C. any refunds the agent receives on behalf of a client, for example a partial refund of Tribunal application fees previously paid by the client
- D. all of the above

Question 5

Mary is entering her first year of practice as a registered migration agent and she plans to get some business cards printed in English so she can hand them out to potential clients. Her business cards:

- A. can specify that she guarantees the success of all visa applications that she will lodge
- B. must include the words "Migration Agents Registration Number" or "MARN", followed by her individual registration number
- C. can include the Commonwealth Coat of Arms logo (which appears on the Department's website) on her card because she is a registered migration agent
- D. must specify the Office of the Migration Agents Registration Authority's website address (URL) where the Code of Conduct can be found

Part B (20 points) – 4 short answer questions (worth 5 points each)**Question 1**

Registered migration agents are often required to give advice in relation to the operation of bridging visas. When advising a client, a registered migration agent may need to give a case scenario example in order to illustrate what type of bridging visa will be granted to that client based upon their circumstances and intentions. For example, when explaining to a client how a subclass 010 Bridging A visa might be granted and take effect, a registered migration agent might outline a typical case scenario as follows:

Claire holds a subclass 482 visa and applies for a subclass 186 visa while she is in Australia, but not in immigration clearance. On lodgement of a valid subclass 186 visa application, a subclass 010 Bridging A visa (BVA) is granted to Claire. Claire's BVA will come into effect when her subclass 482 visa ceases.

- (a) **Briefly outline a case scenario example where a subclass 020 Bridging B visa (BVB) would be granted to a non-citizen and specify when that BVB will cease to be in effect. (worth 3 points)**

- (b) **Briefly outline a case scenario example where a subclass 030 Bridging C visa (BVC) would be granted to a non-citizen. (worth 2 points)**

Consider the following case scenario and then answer questions 2 – 3

You act for OzGen Pty Ltd and Clive. OzGen is an Australian biotechnology company based in Melbourne. 40% of OzGen's Australian workforce is made up of non-citizens holding either a subclass 500 Student visa or a subclass 417 Working Holiday visa. Clive is an American citizen holding a subclass 500 Student visa. OzGen does not hold standard business sponsorship status and seeks your assistance to sponsor Clive to fill the role of Biotechnologist that is currently available in its Melbourne office. The occupation of Biotechnologist (ANZSCO 234514) appears on the Medium Long-term Skills Shortage List (MLTSSL). You prepare and lodge the relevant sponsorship, nomination and subclass 482 visa applications.

Question 2

- (a) **What advice can you give OzGen and Clive about how long the Department will take to process each of the sponsorship, nomination and visa applications? Where would you obtain information to support your advice? (worth 3 points)**

- (b) **If OzGen's sponsorship application is approved, will the nomination and visa application be given processing priority? If so, why? If not, why not? In your answer, specify any applicable law, policy, Ministerial Direction or other guidance from the Department of Home Affairs. (worth 2 points)**

Question 3

While the sponsorship, nomination and subclass 482 visa applications are being processed by the Department, Clive telephones you and says that he has been approached by GrabTech, another

biotechnology company, with another job offer as a biotechnologist and that GrabTech is willing to pay him a much higher salary than OzGen. Clive then tells you that he is considering his options but seeks your advice in relation to assessing whether the role being offered by GrabTech is one that corresponds to an occupation listed on the Medium Long-term Skills Shortage List (MLTSSL). Clive also tells you that he will personally pay you for this additional advice and asks that you not tell OzGen about the job offer from GrabTech.

You look at your *Agreement for Services and Fees* and notice that only OzGen is a party to that agreement with you. You notice a clause in that agreement which requires you to “act in the best interests of OzGen at all times” and that this includes, among other things, “notifying OzGen of circumstances that may adversely affect OzGen’s reputation or business interests”.

In answering the questions below, you may wish to refer to the *Code of Conduct for registered migration agents* available on the OMARA website at - <https://www.mara.gov.au/becoming-an-agent/professional-standards-and-obligations/code-of-conduct/> - and the Ethics Toolkit for registered migration agents available on the OMARA website at <https://www.mara.gov.au/news-and-publications/publications/ethics-toolkit/>

(a) What is the conflict of duties between your duty to OzGen and your duty to Clive? In your answer, specify any relevant ethical obligation in the Code of Conduct / duty owed to each client that has given rise to this conflict. (worth 2 points)

(b) How will you handle this conflict? In your answer, outline whether you will:

- i. **continue acting for both parties. If so, specify your ethical basis for doing so; or**
- ii. **cease acting for Clive and continue acting for OzGen. If so, specify your ethical basis for doing so; or**
- iii. **cease acting for OzGen and continue acting for Clive. If so, specify your ethical basis for doing so; or**
- iv. **cease acting for both parties. If so, specify your ethical basis for doing so. (worth 3 points)**

Question 4

Your friend Max is establishing himself as a migration agent and about to enter into practice. Max is not a legal practitioner but plans to operate as a migration agent in his own business. He wants to specialise in student, partner and employer-sponsored visas. Max is planning to employ a former registered migration agent, Maria, who recently let her registration lapse but has over 10 years’ experience in working a registered migration agent. Maria was a competent agent with an unblemished record with the OMARA. She mostly specialised in employer-sponsored visa and partner visa applications. Maria has agreed to help Max with the setting up of his business, providing some administrative support and pointing him the right direction if he has a question from time to time. Max speaks German fluently and has extensive networks in the German business community in Australia. He has had 3 months of previous work experience working for Maria where he drafted online forms for lodgement with the Department under her guidance. He is yet to handle an entire visa application by himself. He has asked you to review the following marketing text for placement on the landing page of his new website.

Do you want professional immigration assistance from a migration agent who is Australian government registered? Then come and meet with me!

Our team has extensive experience in preparing and lodging employer-sponsored visa and partner visa applications. Collectively, we have more than 10 years’ experience in providing immigration assistance and I can guarantee you a visa in the shortest amount of time possible!

Call me now to book your first free consultation.

What feedback would you give Max about placing this text on his website? In particular, your feedback to Max should:

- **indicate whether Max might breach the Code of Conduct or contravene any other law if he places the text on his website (worth 1 point);**
- **specify which clause(s) of the Code of Conduct you think he might breach if he places the text on his website, assuming you think Max might be in breach of the Code of Conduct (worth 2 points);**
- **if necessary, re-draft Max's proposed text so that he mitigates any risk of failing to comply with his legal obligations and ensures that he markets his business in accordance with ethical principles (worth 2 points).**

Part C (70 points) – 2 practical writing tasks (question 1 is worth 35 points; question 2 is worth 35 points)

Consider the following case scenario

Kei is a Japanese national. He is 27 years old. He was born in Tokyo, Japan on 1 April 1992.

Kei is a fan of Walt Disney animation films like “Pinocchio” and “Finding Dory”. He has always wanted to work in the animation film-making industry. However, his parents always disapproved of this career choice. Under pressure from his parents, Kei completed high school and enrolled in a Bachelor degree in Economics at The University of Tokyo in 2015. After successfully completing this qualification, he began working in April 2017 as a Statistician in the Japanese Government’s Ministry of Finance.

Kei’s parents were tragically killed in a car accident in January 2018. Kei inherited the entire family fortune which included a home in suburban Tokyo and a bank deposit of AUD 500,000. Without any real family ties left in Japan (Kei has no siblings and is not close to his extended family), Kei began to re-evaluate his life and decided that he would leave his job and travel to Australia.

On 5 March 2018, Kei lodged a subclass 417 Working Holiday visa (“subclass 417 visa”) application. His visa application was approved and his visa was granted on 15 April 2018. As soon as his visa was granted, Kei resigned from his job. He departed Tokyo on 5 June 2018 and arrived in Australia as the holder of a subclass 417 visa on 6 June 2018.

Kei has travelled extensively throughout Australia, attending various film festivals. In October 2018, Kei attended the Byron Bay Film Festival in northern New South Wales. He fell in love with the beach culture in Byron Bay and decided to remain there. Kei has joined the Byron Bay Film Appreciation Society and has made many friends there. On 15 January 2019, Kei began working as an usher at the local independent cinema “The Pighthouse Cinema”. Barry, the cinema owner, sometimes allows Kei to help him in the projection room.

In February 2019, Kei started volunteering at the Byron Bay Surf Lifesaving Club. Every week he spends 3 hours at the club with a team of local volunteers. These volunteers are not paid for their time and they help the lifesavers by organising child water safety classes. In March 2019, he met Jenny, an Australian citizen, while volunteering at the club. They started dating and fell in love. On 15 April 2019, Kei moved into Jenny’s apartment.

Kei wants to stay in Byron Bay and pursue his dream of becoming an animation film-maker. On Barry’s advice, he plans to enrol in a Diploma of Film course offered by the SAE Creative Media Institute Pty Ltd (“SAE”) in Byron Bay. David, the SAE course advisor, has told Kei that:

- the course duration is 52 weeks
- the tuition fee is AUD 24,592
- the next course intake commences on 17 June 2019

Kei is not worried about the money or time involved in doing the course. He is eager to start studying as soon as possible. On 16 April 2019, Kei undertook an IELTS test and obtained an overall band score of 6 (scoring 6 in each of the 4 test components of reading, writing, listening and speaking). Kei is attracted to the course because, unlike film schools in Japan, SAE proudly boasts that many of its graduates have been successful in securing high-profile film-making jobs in the movie industry in Hollywood. At the end of his proposed studies at SAE, Kei intends to move to Los Angeles to pursue further studies at the Los Angeles Film School and hopefully get a job at the Walt Disney Animation Studios (“WDAS”). Barry knows the Director of the Animation Team at WDAS and has told Kei that he will help him get a job at WDAS in the future.

Kei has complied with the conditions attached to his subclass 417 visa thus far and wants to lodge a student visa application before his subclass 417 visa expires.

Barry has also promised to give Kei more work in the cinema's projection room while he undertakes his studies at SAE.

Consider the following resource material:

Migration Regulations 1994 (Cth) Sch 2 Pt 500 cl 500.212:

500.212

The applicant is a genuine applicant for entry and stay as a student because:

(a) the applicant intends genuinely to stay in Australia temporarily, having regard to:

(i) the applicant's circumstances; and

(ii) the applicant's immigration history; and

(iii) if the applicant is a minor—the intentions of a parent, legal guardian or spouse of the applicant; and

(iv) any other relevant matter; and

(b) the applicant intends to comply with any conditions subject to which the visa is granted, having regard to:

(i) the applicant's record of compliance with any condition of a visa previously held by the applicant (if any); and

(ii) the applicant's stated intention to comply with any conditions to which the visa may be subject; and

(c) of any other relevant matter.

Direction No.69 – Assessing the Genuine Temporary Entrant Criterion for Student Visa and Student Guardian Visa Applications: <https://immi.homeaffairs.gov.au/visa-subsite/files/direction-no-69.pdf>

Extract from the Department's Procedures Advice Manuals – Procedural Instruction – [Sch2Visa500] Visa 500 - Student: click [HERE](#) (see Document A attached)

General information on the Department's website:

<https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/student-500/genuine-temporary-entrant>

Question 1

Taking into account Kei's circumstances, draft an email to Kei advising him about how he should prepare and lodge his student visa application. Kei has already read the information available to him on the Department of Home Affairs' website and is specifically seeking your advice in relation to the following matters:

- by what date should he lodge his visa application and how long it will take the Department to process his visa application (4 points)
- the exact amount of the visa application charge payable to the Department in relation to the visa application (2 points)
- what information and documents he should include in his application in order to specifically address the Genuine Temporary Entrant ("GTE") requirement (13 points)
- what other supporting documents he should include with his application in order to address other key visa requirements (4 points)
- an explanation of the current and future visa conditions that would restrict his ability to continue working at the cinema and volunteering at the surf lifesaving club (7 points)

Please note that the 35 points allocated to this question will be awarded as follows:

- 30 points: Content (Quality of the advice – points allocated as specified above)
- 2 points: Structure (Composition of the advice – points allocated for the candidate's use of a reader-friendly layout i.e. appropriately addressed to reader, proper use of sub-headings, logical order etc.)
- 3 points: Expression (Clarity of the advice – points allocated for the candidate's use of language appropriate to the task, plain English, proper grammar and syntax)

Question 2

Kei is granted a student visa on 25 May 2019. He commences his course at SAE on 17 June 2019. On 16 August 2019, Kei receives a letter from a Departmental delegate notifying him of the delegate's intention to consider cancelling Kei's student visa under section 116(1)(b) of the *Migration Act 1958*.

The letter:

- specifies that there appear to be grounds for cancelling Kei's student visa for his alleged failure to comply with condition 8105 attached to that visa
- specifies the following information which has led the delegate to believe that grounds for cancelling his visa appear to exist:
 - payslips from Barry's cinema (copies attached) show that Kei worked for 45 hours at the cinema in each of three consecutive fortnights (Monday 17 – Sunday 30 June 2019; Monday 1 – Sunday 14 July 2019; Monday 15 – Sunday 28 July 2019)
 - PRISMS information indicates that Kei's course was in session during each of these 3 fortnights
- invites Kei to respond in writing and show that:
 - those grounds for visa cancellation do not exist; or
 - there are reasons why his visa should not be cancelled.

The letter also states that the delegate will consider all of Kei's circumstances before deciding whether to cancel his visa. The letter specifically provides that the *"factors the delegate may take into consideration in making a decision whether to cancel your visa include (but are not limited to) the following:*

- *the purpose of your travel to and stay in Australia*
- *extent of compliance with conditions on your visa*
- *the degree of hardship which may be caused to you or your family (Note: As per the Convention on the Rights of the Child, the best interests of any child in Australia under 18 years of age will be considered)*
- *the circumstances in which the ground for cancellation arose*
- *your behaviour in relation to the department, now and on previous occasions*
- *whether there are persons in Australia whose visas would, or may, be cancelled under section 140 of the Migration Act 1958*
- *whether there are mandatory legal consequences to a cancellation decision."*

Kei forwards the letter to you and tells you that he would like you to respond to this letter on his behalf. He provides you with the following additional information:

- He did perform that work at Barry's cinema as alleged by the Departmental delegate.
- He worked the additional 5 hours in each of the first two fortnights because Barry asked him to do it because the cinema was short-staffed. He did not perform the work because he needed the money. He performed the work because he felt pressured to help Barry out because Barry is a good boss. He also wants to nurture his relationship with Barry because he hopes Barry will advance his career prospects by introducing him to important people at WDAS in Los Angeles.
- In relation to the 45 hours of work at the cinema that was performed during the third fortnight, 15 hours of this involved working in the projection room under the supervision of Barry and a SAE lecturer as part of an approved work placement. This work-based training placement is a course component which all SAE Diploma of Film students must complete in order to gain their qualification. Kei has also provided you with a letter from David, his SAE course advisor, confirming this.
- His relationship with Jenny is getting stronger by the day and she relies upon him to provide financial and emotional support. Jenny recently lost her job so Kei is helping out by paying all of the rent. They will be devastated if his visa is cancelled.
- He has just qualified as a surf lifesaver and is planning to become more involved in beach patrols targeting foreigners who are not good swimmers. According to figures compiled by the Australian Royal Life Saving Society, 291 people drowned in Australian waterways last year. Of these, 20 were overseas visitors and eight were students. Eight of the tourists who died were from Asia.

Taking into account this further information, draft a response to the Department's letter.

To assist you in drafting a response to the Department's letter, you may wish to review and refer to the following extract from the Department's **Procedures Advice Manuals (PAM) – General visa cancellation powers (s109, s116, s128, 134B and s140)**:

Matters that should be considered

It is policy that delegates take into account the following nine matters, if relevant, when deciding whether to cancel a visa; they should consider each of these nine matters, even if not specifically raised by the visa holder. The matters that should be considered evolved from a body of case law relevant to visa cancellations and are designed to afford fairness to a visa holder. The weight applied to each of the matters is at the discretion of the delegate, and each matter must be apportioned a weighting. Generally, matters must be weighed in favour of the visa holder, not against the visa holder:

- The purpose of the visa holder's travel to and stay in Australia: delegates should assess whether the visa holder has a compelling need to travel to or remain in Australia.
- The extent of compliance with visa conditions: delegates should assess whether the visa holder has otherwise complied with visa conditions now and on previous occasions.
- The degree of hardship that may be caused to the visa holder and any family members: delegates should assess whether the visa holder is, or any family members are, likely to face financial, psychological, emotional or any other hardship as a result of a cancellation decision.
- The circumstances in which the ground for cancellation arose: delegates should consider whether there were any extenuating circumstances beyond the visa holder's control that led to the grounds existing. **If cancellation is being considered because of a relationship breakdown, delegates should consider whether the relationship has broken down as a result of family violence.** As a general rule, a visa should not be cancelled where the circumstances in which the ground for cancellation arose were beyond the control of the visa holder.
- The visa holder's past and present behaviour towards the department (for example, whether they have been truthful and cooperative in their dealings with the department).
- Whether there are persons in Australia whose visas would, or may, be cancelled under s140.
- Whether there are mandatory legal consequences to a cancellation decision – as three examples:
 - whether indefinite detention is a possible consequence of the cancellation decision, if a person cannot be removed from Australia consistently with Australia's non-refoulement obligations
 - whether there are provisions in the Act which prevent the person from making a valid application for a visa without the Minister personally intervening (for example, s46A, s46B, s48, s48A, s91E, s91K and s91P of the Act) and
 - whether, upon cancellation, the person would become an unlawful non-citizen (unless the person holds another visa that is in effect) and liable to be detained under s189, and liable for removal under s198.
- Whether Australia has obligations under relevant international agreements that would be breached as a result of the visa cancellation, – as two examples:
 - If there are children in Australia whose interests could be affected by the cancellation, or who would themselves be affected by consequential cancellation, delegates are obliged to treat as a primary consideration the best interests of the children - for more information, refer to:
 - Australia's international obligations and
 - PAM3: Act - Compliance and Case Resolution - Case resolution - Guiding principles - Treatment of children.
 - Whether the cancellation would lead to removal in breach of Australia's non-refoulement obligations. It is important to note that a cancellation delegate is not required to undertake a full analysis of whether a person is owed protection, as a cancellation decision is not, in and of itself, a decision to remove a person from Australia.
- Any other relevant matters.

Please note that the 35 points allocated to this question will be awarded as follows:

- **30 points: Content (Quality of the letter – points allocated on the basis of the candidate's ability to apply the law and policy to the facts of the case, where required, in order to present coherent and persuasive submissions in support of the client's case)**
- **2 points: Structure (Composition of the letter – points allocated for the candidate's use of a reader-friendly layout i.e. appropriately addressed to reader, proper use of sub-headings, logical order etc.)**

- **3 points: Expression (Clarity of the letter – points allocated for the candidate’s use of language appropriate to the task, plain English, proper grammar and syntax)**