



## DECISION RECORD

<b>AGENT</b>	Narendra Singh
<b>COMPLAINT NUMBER/S</b>	CMP-37361, CMP-43567, CMP-43559, CMP-44798
<b>DECISION</b>	<b>Cancellation</b>
<b>DATE OF DECISION</b>	12 August 2021

## 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>BIR</i>	Business Intelligence Report. The report lists all applications lodged by the Agent in a specified period and is issued by the Department.
<i>BVA/B/E</i>	Bridging Visa A, B or E
<i>FOI requests</i>	Requests under the <i>Freedom of Information Act 1982</i>
<i>MARN</i>	Migration Agent Registration Number
<i>PIC</i>	Public Interest Criteria
<i>Section 308 notice</i>	Notice issued by the Authority under section 308 of the Act
<i>Section 309 notice</i>	Notice issued by the Authority under section 309 of the Act
<i>The Act</i>	<i>The Migration Act 1958</i>
<i>The Regulations</i>	<i>The Migration Regulations 1994</i>
<b><i>The Agent</i></b>	<b>Narendra Singh</b>
<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

## **STATEMENT OF REASONS**

### **Background**

2. The Agent was first registered as a migration agent on 15 August 2011 and was allocated the MARN 1172616. The Agent's registration had been renewed annually to date, with the most recent registration commencing on 17 August 2020.
3. The Register lists the Agent's business name as Saab & Associates Immigration Consultants with the ABN 18136650907.

### **Prior Disciplinary action**

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

### **Complaint/s**

5. The Authority received four complaints about the Agent's conduct as a registered migration agent, as follows:
  - a. CMP-37361 received on 5 November 2018 from Mr AS (**Mr AS**).
  - b. CMP-43567 received on 7 April 2019 from Mr BK (**Mr BK**).
  - c. CMP-43559 received on 7 April 2019 from Mr MF (**Mr MF**).
  - d. CMP-44798 received on 6 June 2019 from Ms YL (**Ms YL**).

### **Complaint summary - CMP-37361 (Mr AS)**

6. On 5 November 2018 the Authority received a complaint about the Agent's conduct as a registered migration agent from Mr AS.
7. The complainant, Mr AS, alleged the following:
  - a. He engaged the Agent's services in 2014 for the lodgement of a subclass 457 visa.
  - b. He engaged Agent's services again three years later for the lodgement of a subclass 186 visa.
  - c. He paid Agent over \$50,000 for these services.
  - d. On 4 May 2018 the subclass 186 visa application was refused. Agent did not inform him of the refusal until 27 May 2018.
  - e. At the time, Mr AS believed it was too late to lodge an application for a review of the refusal decision with the Administrative Appeals Tribunal (**AAT**). He attempted to repeatedly contact the Agent via telephone, text messages and emails without success.
8. In support of the allegation Mr AS provided:
  - a. Evidence of payments made to Agent between 2015 and 2017, totalling \$45,665.00
  - b. Contract of employment, addressed to Mr AS, offering a position of Graduate Accountant with FS Pty Ltd, dated 15 February 2014.

- c. A *Notification of grant of a Temporary Business Entry (class UC) Temporary Work(Skilled) (subclass 457) visa*, dated 27 February 2014. This notification indicates the sponsor is FS Pty Ltd.
- d. An *Invitation to comment on information for a Employer Nomination (subclass 186) visa*, dated 04 May 2018.

### **Departmental Records - CMP-37361 (Mr AS)**

- 9. Records held by the Department of Home Affairs (and its former manifestations) indicate that:
  - a. On 7 February 2014 a Nomination (Business Sponsorship) application (**457 nomination**) was lodged on behalf of FS Pty Ltd. Mr AS was the nominee in this application. There was no representing registered migration agent listed on the application, however the Department's acknowledgement was sent to the Agent's email address, being narendra@saabmigrations.com.au. This application was approved on 27 February 2014.
  - b. Also on 7 February 2014 the Agent lodged a related Temporary Work (Skilled) (UC 457) visa application (**subclass 457 visa**) on behalf of Mr AS. This visa was granted on 27 February 2014.
  - c. On 30 June 2017 the Agent lodged an Employer Nomination Scheme nomination application (**ENS nomination**) on behalf of FS Pty Ltd. Mr AS was the nominee in this application. No documents were submitted in support of this application. This application was refused on 11 August 2017.
  - d. Also on 30 June 2017 the Agent lodged an Employer Nomination Scheme (EN 186) visa application (**subclass 186 visa**) on behalf of Mr AS. On 4 May 2018 an *Invitation to comment on information for an Employer Nomination (subclass 186) visa* (Invitation to Comment), was sent to the Agent, advising that due to the refusal of the nomination the visa application could not succeed.
  - e. On 30 May 2018, the Department received an email from Mr AS advising that he only found out about the invitation to comment on 26 May 2018 when he checked his ImmiAccount and that he had not been advised by the Agent of this request. He also requested that the Agent be removed as the nominated agent in relation to his visa application.
  - f. On 31 May 2018, the Department received a letter from Mr AS's employer confirming that neither the employer nor Mr AS had received its invitation to comment from the Agent dated 4 May 2018. The employer stated to the Department that they had not been properly advised by the Agent.
  - g. On 2 July 2018 the subclass 186 visa application was refused.

### *Notice under section 308 of the Act ("the first section 308 notice")*

- 10. On 5 November 2018 the Authority published the complaint to the Agent, in the form of a section 308 notice (**the first section 308 notice**). The notice advised the Agent that it raised concerns regarding the Agent's compliance with clauses 2.1(b), 2.3, 2.4, 2.8, 2.18, 2.19, 2.21, 3.4, 5.1, 5.2 and 5.5 of the Code.
- 11. The Agent was asked to address the allegations in the form of a statutory declaration, answer specific questions and provide evidence to support his response by 3 December 2018.
- 12. As no response was received by the due date, on 14 December 2018 the Authority followed up on the Agent's intentions to respond to the section 308 notice, allowing until 17 December 2018 for the Agent to respond.

13. On 16 December 2018 the Agent sought an extension to provide a response. An extension was granted until 21 January 2019. A response to the section 308 notice was not received by the extended due date.

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

14. On 31 January 2019 the Authority published a notice under subsection 309(2) of the *Migration Act 1958* (**first section 309 notice**) to the Agent, in respect of this complaint. This notice advised that due to the Agent’s failure to respond to the section 308 notice, it was open to the Authority to find that the Agent is not a person of integrity and/or otherwise not a fit and proper person to give immigration assistance.
15. On 3 February 2019 the Authority received information from the complainant that the Agent was threatening him and his family, and demanding that Mr AS withdraws the complaint. This information was attached to the second section 309 notice (discussed below) for the Agent’s reference.

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

16. On 5 February 2019 the Agent emailed the Authority and advised the following (of relevance):
  - a. The Agent had been trying to contact Mr AS in regards to the complaint, but Mr AS did not respond to the Agent.
  - b. On 31 January 2019 the Agent “managed to get in touch with Mr AS and spoke to him about the complaint he made and he agreed that he exaggerated the claims.” The Agent also claimed Mr AS agreed to withdraw the complaint.
  - c. Mr AS’s complaint is exaggerated and not correct.
  - d. The Agent conceded that he did lodge a subclass 457 and a subclass 186 visa on behalf of Mr AS.
  - e. The Agent stated he was instructed to lodge the ENS nomination application without complete supporting documents, as these would be provided to the Agent as soon as possible. These documents were not provided to the Agent by the employer or Mr AS, and as such the Agent was unable to provide them to the Department.
  - f. Mr AS’s employer refused to provide the Agent with any supporting documents, and Mr AS was aware of this fact.
  - g. The Agent advised Mr AS’s employer and Mr AS of the refusal of the application. The employer did not want to appeal this decision.
  - h. The Agent advised Mr AS that the employer refused to support the application, and there was nothing further that the Agent could do in respect of this issue.
  - i. The Agent did not respond to Mr AS’s phone calls and messages as the Agent had already explained the issues to him, and there was nothing further the Agent could do.
  - j. Mr AS “decided to blame” the Agent for the refusal, but the Agent advised him that his employer did not want to support the subclass 186 application.
17. On 6 February 2019, the Authority responded to the Agent’s email, confirming that at that stage the Authority had not received the Agent’s response to the section 308 notice. The Authority also advised the Agent that his response to the section 309 notice was due on 28 February 2019.
18. On 28 February 2019 the Agent provided a statutory declaration in response to this complaint, dated 27 February 2019. The Agent’s statutory declaration re-iterated the points made in the

Agent's email dated 5 February 2019, as discussed above. In addition, the Agent's statutory declaration advised:

- a. On 21 February 2019 the Agent spoke to Mr DC, Mr AS's employer. Mr DC advised the Agent that "not long after the lodgement of the nomination and visa application, Mr AS resigned from the company and started his employment with some other business." Mr DC informed the Agent that he notified the Department of this, and refused to provide any documents in support of the application for this reason.
  - b. The Agent asked Mr DC to provide a copy of the resignation letter, but he has not provided this to the Agent.
19. The Agent's response did not address the specific questions posed in the section 308 notice, and the Agent did not provide any evidence in support of his response.

### **Complaint summary - CMP-43567 (Mr BK)**

20. The complainant, Mr BK, alleged the following:
- a. He was employed by the Agent for a period of two years on a subclass 457 visa.
  - b. He paid the Agent \$12,000 for the lodgement of a subclass 186 visa.
  - c. The Agent lodged the visa application in March 2017, but did not lodge any supporting documents, resulting in a refusal of the application.
  - d. When Mr BK sought a refund of the money he paid to the Agent, the Agent threatened him and refused to give him a refund.
21. In support of the complaint Mr BK provided evidence of payments made, provided to the Agent by the Authority in support of the second section 308 notice (discussed below).

### **Departmental Records**

22. Records held by the Department of Home Affairs (and its former manifestations) indicate the following (of relevance):
- a. On 11 October 2014 a Nomination (Business Sponsorship) application (**457 nomination**) was lodged on behalf of RC Pty Ltd, nominating Mr BK for the position of a Chef. This application was approved on 24 October 2014. The Agent was the authorised contact for this application.
  - b. On 27 October 2014 a related Temporary Work (Skilled) Class UC subclass 457 visa application (**subclass 457 visa**) was lodged on behalf of Mr BK. This visa was granted on 19 December 2014 for a period of 12 months. The Agent was the authorised contact for this application.
  - c. On 3 December 2015 a second 457 nomination was lodged on behalf of RC Pty Ltd, nominating Mr BK for the position of a Chef. This application was approved on 22 February 2016. The Agent was the authorised contact for this application.
  - d. Also on 3 December 2015 a second related subclass 457 visa was lodged on behalf of Mr BK. This visa was granted on 22 February 2016 for a period of four years. The Agent was the authorised contact for this application.
  - e. On 22 March 2017 an Employer Nomination Scheme nomination application (**ENS nomination**) was lodged on behalf of RC Pty Ltd, nominating Mr BK for a position of a Chef. No documents were provided in support of this application. The nomination application was refused on 25 August 2017. The Agent was the authorised contact for this application.

- f. Also on 22 March 2017 a related Employer Nomination Scheme Class EN subclass 186 visa application (**subclass 186 visa**) was lodged on behalf of Mr BK. On 25 August 2017 an *Invitation to comment on information for Employer Nomination (subclass 186) visa* was sent to the Agent as the authorised contact, advising that as the nomination application had been refused, Mr BK had the option to either withdraw his visa application or await the Department's decision to refuse the visa application as it could not satisfy the required criteria. On 22 September 2017 the application was withdrawn.
23. The Department's records indicate that the Agent was the authorised contact in respect of each of the above six applications, but did not declare his assistance as a registered migration agent.
24. The Authority's Register indicates that the Agent has been registered as a migration agent since 15 August 2011.
25. Information before the Authority indicates that the Agent was the sole director of RC Pty Ltd from 14 April 2014 until 7 July 2019, when the company was deregistered.

### **CMP-43559 (Mr MF/Ms LC)**

#### **Complaint summary**

26. The complainant, Mr MF, alleged the following:
  - a. His fiancé, Ms LC (**Ms LC**), applied for a subclass 457 visa.
  - b. Ms LC did not receive advice that her subclass 457 visa application may be refused until 21 July 2018. Due to her relationship with Mr MF, Ms LC decided not to pursue the 457 visa application, and to apply for a partner visa instead.
  - c. On 3 August 2018 Ms LC entered into an Agreement for Services and Fees with the Agent in respect of a partner visa. The agreement was for "Preparing and Lodging the Partner Visa Application," at a cost of \$7150 for professional fees and a further \$7160 for the visa application charge. Ms LC alleged she paid the amount owing to the Agent before the visa she held at the time expired.
  - d. The Agent advised Ms LC that he would "write to immigration to request that Ms LC be able to lodge a partner visa onshore." When Mr MF followed up on this, the Agent advised that "everything will be fine to lodge."
  - e. Mr MF followed up with the Agent again on the progress of the application, but was advised that due to the Christmas holiday period the Agent was unable to provide any updates. The Agent assured Mr MF that "everything was fine."
  - f. The Agent did not lodge the partner visa application until 6 March 2019. At this point Ms LC learnt that she was unlawful and could not lodge an application onshore.
  - g. Ms LC terminated the Agent's services, and sought a refund of the fees she paid to the Agent in respect of the partner visa application.
  - h. The Agent has not provided a refund.
27. In support of the complaint, Mr MF provided:
  - a. An *Agreement for Services and Fees* issued 3 August 2018 in respect of the partner visa application.
  - b. A Tax Invoice, dated 3 August 2018, issued for "partner visa application preparation and lodgement."
28. These documents were attached to the second section 308 notice (discussed below) for the Agent's consideration.

## Departmental Records

29. Records held by the Department of Home Affairs (and its former manifestations) indicate the following (of relevance):
- a. On 28 September 2017 the Agent lodged the following applications:
    - i. A Standard Business Sponsorship application (**SBS application**) on behalf of FYB Pty Ltd, seeking for the business to be approved as a sponsor. On 22 January 2018 a *Request for More Information* was sent, seeking evidence that the business was actively operating. On 23 May 2018 the application was refused on the basis that the delegate was not “satisfied that there is sufficient evidence demonstrating that the applicant’s business is lawfully operating inside of Australia.” The Agent was the registered migration agent declared on this application.
    - ii. A related 457 nomination application on behalf of FYB Pty Ltd, nominating Ms LC for the position of a Hairdresser. As the related SBS application was refused, the nomination was unable to be approved. It was administratively finalised and a refund issued in respect of the application fee paid. The Agent was the registered migration agent declared on this application.
    - iii. A related subclass 457 visa on behalf of Ms LC. On 23 May 2018 an *Invitation to comment on information for a Temporary Work (Skilled) (subclass 457) visa* was sent to the Agent as the appointed agent, advising that as there is no approved nomination, Ms LC’s 457 visa application could not be approved. The Agent was advised that Ms LC can withdraw the application, or provide comment, and allowed 28 days to respond. No response was received, and on 27 September 2018 the application was refused.
  - b. At the time of refusal, Ms LC was the holder of a Bridging Visa B, valid until 1 November 2018.
  - c. On 6 March 2019 the Agent lodged a Partner (UK820/BS801) visa on behalf of Ms LC. Mr MF was the sponsor on this application. The application was deemed invalid as Ms LC was barred from applying for a visa in Australia by operation of section 48 of the *Migration Act 1958* (**s48 bar**).
  - d. On 6 March 2019 Ms LC, who had been unlawful since 2 November 2018, was granted a Bridging Visa E to regularise her status and allow her to depart Australia.
  - e. On 12 March 2019 Ms LC departed Australia.

## CMP-44798 (Ms YL)

### Complaint summary

30. The complainant, Ms YL, alleged the following:
- a. She engaged the Agent’s services in respect of a 457 visa.
  - b. The Agent issued her an invoice in respect of this service on 13 December 2017 for a total of \$15,415, comprising of:
    - i. \$5500 profession fees
    - ii. \$335 nomination application charges
    - iii. \$2180 visa application charges for Ms YL and her partner
    - iv. \$1400 subsequent temporary application charge
    - v. \$6000 administration charges

- c. The Agent failed to explain the obligations of the business sponsor to her, and made her pay all fees in relation to the business nomination.
  - d. The Agent failed to submit sufficient documents to support her application, and he did not adequately explain to her the reason for the refusal of her visa application.
  - e. She engaged the Agent's services in respect of lodging an appeal application with the Administrative Appeals Tribunal (**AAT**).
  - f. The Agent issued her an invoice in respect of this service on 13 November 2018 for a total of \$6164, comprising of \$4400 professional fee and \$1764 AAT Application Fee.
  - g. The Agent did not provide her with an acknowledgement receipt from the AAT.
31. In support of the complaint, Ms YL provided:
- a. Tax Invoice, dated 13 December 2017, in respect of the "subclass 457 business sponsorship application"
  - b. Tax Invoice, dated 13 November 2018, in respect of the "refusal of the business sponsorship subclass 457 visa application"
32. These documents were attached to the second section 308 notice (discussed below) for the Agent's consideration.

### Departmental Records

33. Records held by the Department of Home Affairs (and its former manifestations) indicate the following:
- a. On 28 February 2018 the Agent lodged the following applications:
    - i. A 457 nomination application on behalf of JB Pty Ltd, nominating Ms YL for the position of Chef. On 5 November 2018 the 457 nomination application was approved. The Agent was the registered migration agent appointed in respect of this application.
    - ii. A related subclass 457 visa application on behalf of Ms YL. The Agent was the registered migration agent appointed in respect of this application. On 25 July 2017 the Department sent a *Request for More Information*, seeking additional information including evidence of Ms YL's English language ability and skills, police clearance certificates, health examinations and a copy of her passport. On 23 August 2018 the Agent submitted various documents in support of the application, including (of relevance) evidence that Ms YL holds a Certificate III in Commercial Cookery.
  - b. The application was refused on 9 November 2018 as the delegate found that there "was *insufficient information to demonstrate that the applicant met the requirements of paragraph 457.223(4)(da)*." The specific clause requires that "*the applicant has the skills, qualifications and employment background that the Minister considers necessary to perform the tasks of the nominated occupation*" The skill level required for the nominated occupation was an AQF Associate Degree, Advanced Diploma or Diploma. The delegate found that although Ms YL's application stated that she "completed Bachelor of International Trade, Diploma in Hospitality, a Management Diploma of Business, and a Certificate 4 in Commercial Cookery, the applicant did not provide any evidence of the claimed qualifications."
  - c. On 23 November 2018 an application to review the refusal decision was lodged with the AAT.
  - d. On 5 June 2019 Ms YL advised that she had appointed a new registered migration agent to represent her in respect of this application.



Notice under section 308 of the Act ("the second section 308 notice") - Complaints CMP-43567, CMP-43559 and CMP-44798

34. On 15 April 2021 the Authority published complaints CMP-43567, CMP-43559 and CMP-44798 to the Agent in the form of a section 308 notice (**second section 308 notice**). The notice advised that Agent that the three complaints raised concerns regarding the Agent's compliance with clauses 2.1, 2.1A, 2.1B, 2.3, 2.4, 2.5, 2.6, 2.8, 2.18, 2.19, 2.23, 5.2, 5.3, and 5.5 of the Code.
35. Pursuant to section 308 of the Act, the Authority requested the Agent to provide the following information:
  - a. Address the allegations raised in the second section 308 notice in the form of a statutory declaration;
  - b. Answer specific questions;
  - c. Provide a complete client file in respect of Mr BK, RC Pty Ltd, Ms LC, FYB Pty Ltd, Ms YL and JB Pty Ltd;
  - d. Provide a copy of the Agent's "client" bank account showing payments made Mr BK, RC Pty Ltd, Ms LC, FYB Pty Ltd, Ms YL and JB Pty Ltd;
36. The Agent's response was due by 30 April 2021.

The Agent's response to the second section 308 notice

37. The Authority received the Agent's response to the second section 308 notice on 29 April 2021.
38. In respect of Mr BK (CMP-43567) the Agent stated, in summary:
  - a. Mr BK was employed by RC Pty Ltd for a period of 2 years as a chef.
  - b. RC Pty Ltd operated from August 2014 to December 2017, and the Agent was the director and operational manager of the business.
  - c. Mr BK was fully aware that the Agent is also a migration agent, and asked the Agent to represent him as he did not "have enough money to hire services of another migration agent."
  - d. The 457 visa applications were lodged in the Agent's capacity as an employer, and Mr BK was not charged any service fees for this application.
  - e. Although the Agent was not sure whether the business was able to support Mr BK's ENS application, the Agent agreed to proceed with the application "under emotional circumstances" as Mr BK advised the Agent he would have to leave the country if he did not obtain permanent residency.
  - f. The Agent's accountant informed the Agent that the business was not performing well, and that the financial documents would not support Mr BK's ENS application. The Agent decided not to proceed and advised Mr BK of the same. At this point Mr BK threatened the Agent and forced the Agent to "go ahead and produce the documents in support of the application."
  - g. Mr BK paid the Agent \$12,000. The Agent refunded him the balance after deducting the visa application charge (VAC). Mr BK insisted on being paid in cash, and demanded that the Agent also refund the VAC.
  - h. After the nomination application was refused, the visa application was withdrawn and the business closed its operations in December 2017.
  - i. Mr KS was the only other employee sponsored for a 457 visa by this business.

39. In support of the Agent's response in respect of Mr BK the provided:
- a. Current & Historical Company Extract from ASIC in respect of RC Pty Ltd, extracted 10 June 2014, showing the Agent was the director and sole shareholder of this company.
  - b. Record of Registration of Business Name, dated 22 October 2013, for Saab & Associates Immigration Consultants.
40. In respect of Mr MF, and his partner Ms LC (CMP-43559) the Agent stated, in summary:
- a. Ms LC was an employee of FYB Pty Ltd. The Agent was engaged by the director of the business to assist with the business sponsorship, nomination and visa applications.
  - b. The Agent requested a variety of documents from the business and was instructed to liaise with the accountant in respect of these. Upon receiving the financial documents from the accountant, the Agent advised the business owner that the application would likely not be successful.
  - c. During this time the employer had a falling out with Ms LC, and was no longer concerned with the successful outcome of the application.
  - d. Once the sponsorship application was refused, the Agent advised Ms LC of the impact on her application. She instructed the Agent to continue with the application to allow her to remain in the country while she organised the documents related to a partner visa application.
  - e. The Agent informed Ms LC that as she did not hold a substantive visa, she may not be able to apply for a partner visa onshore. She advised the Agent that she did not want to leave Australia as she had a job and was in a relationship. The Agent suggested that she may be able to lodge an onshore partner application "citing schedule 3, compassionate and compelling circumstances," but "it is very unlikely to be successful."
  - f. When, on 23 May 2018, the Agent received an *Invitation to comment* in respect of the 457 visa application, the Agent informed both the employer and Ms LC. The employer refused to comment as Ms LC was no longer employer there.
  - g. The Agent informed Ms LC that refusal to comment will result in the refusal of the application, and the alternative of withdrawing the application would result in her having to depart Australia within 28 days.
  - h. Ms LC instructed the Agent not to withdraw the application as she did not want to be forced to leave within 28 days. As a result, the application was refused. Ms LC "decided to overstay and continue with her partner visa application."
  - i. The Agent lodged the partner visa application, and it was invalid.
  - j. Shortly after, the Agent received a refund of the application charges from the Department.
  - k. The Agent stated "*I regrettably admit that due to the financial circumstances and due to <<removed for privacy>>, I was unable to refund the money as it went to <,removed for privacy>>. <<removed for privacy>>, due to the financial and family circumstances I was unable to make an arrangement with Ms LC to refund the money. There is not a day I regret this, I would whole heartedly like to pay back Ms LC as per your instructions. I would finally like to plead the officer that I had no intention to do as I did but the non payment was circumstantial.*"
  - l. The Agent asked the Authority to consider his record, as he has had no instance of any similar incident for almost 10 years. The Agent advised that has a family and two children, and his licence is the Agent's only means to earn an income.
41. In support of his response in respect of Ms LC, the Agent provided:
- a. Email from LP, "Reg Agent and Accountant" to the Agent, dated 26 September 2017, providing the Agent with documents in support of the FYB Pty Ltd application. The attachments were not provided to the Authority.

- b. Chain of emails between the Agent and Ms LC in July 2018, including Ms LC seeking the Agent's advice on whether she should withdraw her application to avoid a refusal, and apply for a "de facto visa" or wait and then apply.
  - c. Email from the Agent to Ms LC, dated 20 July 2018, providing a copy of "Ms LC's initial Bridging Visa A, Bridging Visa B and request from Home Affairs and Border Security Department to withdraw the application." The email informs that "the application can be finalised anytime since it does not have an approved business sponsorship and nomination which may affect the prospects of any further visa application." The attachments referred to in the email were not provided to the Authority.
42. In respect of Ms YL (CMP-44798) the Agent stated, in summary:
- a. The Agent were hired by JB Pty Ltd (Ms YL's employer) to provide immigration assistance to their employees, and Ms YL was one of the employees the Agent assisted in respect of a subclass 457 visa.
  - b. The Agent was instructed to "regularly update management of the application process" and "to send complete tax invoice to the applicants and the employer will reimburse any charges payable by the business to their employees."
  - c. The Agent explained to Mr YL the requirements and eligibility criteria for a subclass 457 visa and she agreed to proceed with the application.
  - d. Upon receiving the request for information from the Department, the Agent asked Ms YL to provide evidence of her Certificate IV, which he hadn't previously received from her. The Agent continued to request documents from her via email and telephone, but Ms YL advised that she had "already provided the documents" and that he must submit them. Accordingly, the Agent submitted the available documents in support of the application.
  - e. Ms YL and her employer were kept informed throughout the process.
  - f. When the Agent received the refusal notification in respect of the visa application, he informed the employer of this outcome and "cc'ed Ms YL" with an explanation as to why the visa application was refused and that an appeal can be made to the AAT.
  - g. The Agent offered to lodge the AAT appeal application free of charge, and upon receiving instructions he lodged the AAT appeal application.
  - h. The employer terminated the Agent's contract with the business and advised the Agent not to engage further with any of their employees. Accordingly, the Agent "handed over the existing matters to the employer including an acknowledgement of Ms YL's AAT appeal."
43. In support of the Agent's response in respect of Ms YL, he provided:
- a. Chain of e-mail correspondence between the Agent and Ms YL, which included:
    - i. Emails in February 2018 in regards to payment of fees;
    - ii. Email from Ms YL to the Agent dated 26 July 2018, following up on the progress of the application, stating "have been long time haven't heard from you..."
    - iii. Emails in July 2018 in respect of requested documents.
    - iv. Acknowledgement of Applications from the AAT, dated 26 November 2018, in respect of Ms YL's application.
  - b. Email from Ms YL's employer to Ms YL, dated 29 March 2019, where the Agent was carbon copied, advising Ms YL that she can either continue with the Agent's professional services or change to a different migration agent, the latter of which would incur additional professional fees.
  - c. Chain of e-mail correspondence between Ms YL's employer, Ms YL and the Agent in March 2019, discussing available options following the refusal of the visa application. Of relevance, the Agent's advice in respect of qualifications appears to be that Ms YL has the requisite experience to indicate she has the skills necessary to perform the

nomination occupation and that she also has a Diploma in Hospitality, obtained via a recognition of prior learning. On the basis of this, the Agent's advice in the email is that he "strongly believe that the case officer has made a wrong decision ignoring the provided Diploma in Hospitality."

Notice/s under section 309 of the Act ("the second section 309 notice")

44. On 17 June 2021 the Authority sent to the Agent a notice pursuant to section 309(2) of the Act, advising the Agent that it was considering cautioning him, or suspending or cancelling the Agent's registration under section 303(1) of the Act.
45. The Agent was notified that having regard to the information before the Authority, it was open to the delegate to be satisfied that the Agent had engaged in conduct that breached the Agent's obligations under clauses **2.1(a), 2.1(b), 2.1A, 2.1B, 2.3, 2.4, 2.8(c), 2.9, 2.9A, 2.15, 2.19, 2.23, 5.1, 6.1, 6.1A, 6.3, 9.1** and **9.3** of the Code.
46. Pursuant to section 309(2) of the Act, the Authority invited the Agent to provide written submissions on the matter by 16 July 2021.

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

47. On 17 July 2021 the Authority received the Agent's submissions in the form of an email. The Agent's email stated:

*"I have previously provided a statutory declaration in regards to the complaint made by (BK Mr AS, Ms YL and Ms LC).i.*

*In regards to AS please find attached a statutory declaration I provided to the OMARA in regards to his complaint in 2018.*

*The bank statements provided by AS are falsified as no such transactions were made to any of my accounts. Even though the transactions shows that the money was paid to Narendra Singh but it doesn't show the account number, please confirm the account number the amount was paid to and I will be more then happy to provide the bank statements of the account which AS claims to have paid the money to. After my declaration I didn't heard from the OMARA so I assumed that the matter was sorted and case was closed.*

*Should you have any questions or require further information please do not hesitate to contact."*

48. In support of this response, the Agent included a statutory declaration signed by the Agent on 27 February 2019. This is the same statutory declaration that was provided to the Authority on 28 February 2019 in response to the Authority's first section 309 notice, as discussed elsewhere in this decision.

Subsequent information

49. In light of the Agent's allegations that the "bank statements provided by AS are falsified" and request that the Authority provide the Agent with details of the bank account where the money was allegedly deposited so that he can provide evidence, the Authority sought this information from Mr AS on 21 July 2021.
50. Mr AS responded to the Authority on the same date and advised that he paid money into the following accounts:

- a. The Agent's account: <<account details removed for privacy>>
  - b. The Agent's wife account: <<account details removed for privacy>>
51. Mr AS has also alleged that he paid to the Agent nearly \$30,000 in cash, and a further \$20,000 to the Agent's brother, Mr PS, in India.
  52. This information was provided to the Agent via email on 21 July 2021. The Agent was advised that if he would like to provide any bank account statements in support of his allegation that Mr AS has falsified the bank transfer details provided to the Authority, or any other evidence in support of his response, the Agent is encouraged to do so by 4 August 2021.
  53. The Authority has not received a response from the Agent to date.

## **Jurisdiction**

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

## **Relevant legislation**

56. 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)).
57. 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)).
58. 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.
59. Before making a decision under subsection 303(1) of the Act, the Authority must give the agent written notice under subsection 309(2) informing the agent of that fact and the reasons for it, and inviting the agent to make a submission on the matter.

Migration Act 1958 (Cth)

Section 276 Immigration assistance

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

The Code of Conduct, under section 314 of the Act

1.10 The aims of the Code are:

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

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

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

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

##### *Complaints*

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

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

## **Evidence and other material**

60. In reaching the following findings of fact the Authority considered the following evidence:
- a. Documents contained in the Authority's complaint files (CMP-37361, CMP-43567, CMP-43559, CMP-44798);
  - b. Records held by the Department related to the complainants;
  - c. The Authority's registration details for the Agent.

## **DECISION AND REASONS**

### **Breaches of the Code**

61. 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.
62. Having regard to the findings I have made, I am satisfied that the Agent has engaged in conduct in breach of the Agents obligations under clauses **2.1(a), 2.1(b), 2.1A, 2.1B, 2.3, 2.4, 2.8(b), 2.8(c), 2.9, 2.9A, 2.15, 2.19, 2.23, 6.1, 6.1A, 6.3, 9.1** and **9.3** of the Code.

### *Failure to respond properly to a complaint*

63. A registered migration agent must respond properly to a complaint by a person about the work or services carried out by the agent or the agent's employee. Three people, being Mr MF on behalf of Ms LC, Mr BK and Ms YL complained about the work and services the Agent carried out. The three complaints were published to the Agent by the Authority on 15 April 2021 in the form of a second section 308 notice.
64. The second section 308 notice asked the Agent to:
- a. Address the allegations raised in the section 308 notice, in the form of a statutory declaration;
  - b. Answer specific questions;
  - c. Provide a complete client file in respect of Mr BK, RC Pty Ltd, Ms LC, FYB Pty Ltd, Ms YL and JB Pty Ltd; and
  - d. Provide a copy of the Agent's "client" bank account showing payments made Mr BK, RC Pty Ltd, Ms LC, FYB Pty Ltd, Ms YL and JB Pty Ltd.
65. On 29 April 2021 the Authority received the Agent's response. The response consisted of a statutory declaration. In addition, in support of his response in respect of Mr BK the Agent provided:
- a. Current & Historical Company Extract from ASIC in respect of RC Pty Ltd, extracted 10 June 2014, showing the Agent was the director and sole shareholder of this company.
  - b. Record of Registration of Business Name, dated 22 October 2013, for Saab & Associates Immigration Consultants.
66. In support of his response in respect of Ms LC, the Agent provided:
- a. Email from LP, "Reg Agent and Accountant" to the Agent, dated 26 September 2017, providing him with documents in support of the FYB Pty Ltd application. The attachments were not provided to the Authority.



- b. Chain of emails between the Agent and Ms LC in July 2018, including Ms LC seeking his advice on whether she should withdraw her application to avoid a refusal, and apply for a de facto visa or wait and then apply.
  - c. Email from the Agent to Ms LC, dated 20 July 2018, providing a copy of “Ms LC’s initial Bridging Visa A, Bridging Visa B and request from Home Affairs and Border Security Department to withdraw the application.” The email informs that “the application can be finalised anytime since it does not have an approved business sponsorship and nomination which may affect the prospects of any further visa application.” The attachments referred to in the email were not provided to the Authority.
67. In support of his response in respect of Ms YL, the Agent provided:
- a. Chain of e-mail correspondence between the Agent and Ms YL, which included:
    - i. Emails in February 2018 in regards to payment of fees;
    - ii. Email from Ms YL dated 26 July 2018, following up on the progress of the application, stating “have been long time haven’t heard from you...”
    - iii. Emails in July 2018 in respect of requested documents.
    - iv. Acknowledgement of Applications from the AAT, dated 26 November 2018, in respect of Ms YL’s application.
  - b. Email from Ms YL’s employer to Ms YL, dated 29 March 2019, where the Agent was carbon copied, advising Ms YL that she can either continue with the Agent’s professional services or change to a different migration agent, the latter of which would incur additional professional fees.
  - c. Chain of e-mail correspondence between Ms YL’s employer, Ms YL and the Agent in March 2019, discussing available options following the refusal of the visa application. Of relevance, the Agent’s advice in respect of qualifications appears to be that Ms YL has the requisite experience to indicate she has the skills necessary to perform the nomination occupation and that she also has a Diploma in Hospitality, obtained via a recognition of prior learning. On the basis of this, the Agent’s advice in the email is that he “strongly believe that the case officer has made a wrong decision ignoring the provided Diploma in Hospitality.”
68. The Agent’s response to the Authority did not address each specific question posed in the section 308 notice. Although the Agent’s statutory declaration alluded to some of the Authority’s questions, the Agent did not answer the following questions posed by the Authority:
- a. *What information did you provide to Ms LC about her visa status once the 457 visa application was refused?*
  - b. *What steps did you take to ascertain Ms LC’s visa status?*
  - c. *What is your understanding of a s48 bar?*
  - d. *What did you understand to be the level of skills required from Ms YL to be eligible for the 457 visa?*
  - e. *Did Ms YL provide you with evidence of her qualifications, including Bachelor of International Trade, Diploma in Hospitality, a Management Diploma of Business, and a Certificate 4 in Commercial Cookery? If so, why were these documents not submitted in support of her application?*
  - f. *In regards to the invoice issued to Ms YL, what is meant by “administration charges,” which total \$6000?*
69. Further, the Agent did not provide a complete client file in respect of Mr BK, RC Pty Ltd, Ms LC, FYB Pty Ltd, Ms YL and JB Pty Ltd.
70. The Agent also did not provide a copy of his “client” bank account showing payments made Mr BK, RC Pty Ltd, Ms LC, FYB Pty Ltd, Ms YL and JB Pty Ltd.

71. The Agent's response to the Authority did not explain why he did not provide the requested client files, copies of his "client" bank account statements or answers to all of the Authority's questions.
72. Similarly, in respect of Mr AS's complaint, the Authority's first section 308 notice contained a number of questions requiring a response from the Agent as well as evidence to support his response. The Agent did not respond to this notice, prompting the Authority to send the first section 309 notice. The Agent subsequently provided a response in the form of a statutory declaration. However, his statutory declaration did not provide responses to all the questions posed by the Authority and he failed to submit any evidence in support of the response which was provided, despite specifically being requested to do so.
73. The Authority's concerns in respect of the Agent's response to the Authority and his clients were again raised in the second section 309 notice. This provided the Agent with an opportunity to address the Authority's concerns. In response to the second section 309 notice, the Agent advised that he had "*previously provided a statutory declaration in regards to the complaint made by (BK, AS, YL and LC).*" The Agent did not provide any further information or evidence in support of his response to the second section 309 notice.
74. The complainants, namely Ms LC and Mr BK, alleged that they had attempted to resolve their dispute with the Agent, and in particular the issue of a refund. Ms LC and Mr BK alleged that the Agent did not respond properly to their complaints. The Agent has not provided evidence to dispute these allegations.
75. On the basis of the available evidence, and in the absence of evidence to the contrary, I am satisfied that the Agent has not responded properly to the Authority or the complainants in relation to the complaints raised by Mr MF on behalf of Ms LC, Mr BK, Ms YL and Mr AS about the work or services carried out by the Agent. Accordingly, I am satisfied that the Agent breached his obligations under clauses 9.1 and 9.3 of the Code.

### Record Keeping

76. A registered migration agent must maintain proper records that can be made available for inspection on request by the Authority. These records must be kept for a period of 7 years after the date of the last action on the file for that client.
77. The Authority requested the Agent, in the second section 308 notice, to provide a complete client file in respect of Mr BK, RC Pty Ltd, Ms LC, FYB Pty Ltd, Ms YL and JB Pty Ltd. The Authority also asked the Agent to provide a copy of his "client" bank account showing payments made by these clients. Similarly, in respect of Mr AS's complaint, within the first section 308 notice the Agent was asked to provide evidence to support his response.
78. The Agent did not initially respond to the first section 308 notice and only provided a response when prompted by the first section 309 notice. However, the Agent did not provide any evidence to support his response, and did not address the questions posed by the Authority.
79. In response to the second section 308 notice the Agent provided some documents in respect of each client, as described elsewhere in this decision. However, his response did not include documents that would be expected on a client file, including copies of each client's application, copies of each written communication as relevant to the client, file notes of every substantive or material oral communication between the Agent and parties relevant to each application. The Agent did not explain to the Authority why he did not provide the complete client files as requested.
80. Further, Mr BK alleged that he paid the Agent \$12,000 for his services in respect of the subclass 186 visa application. The Agent confirmed this amount in his statutory declaration, and claimed that he "*refunded Mr BK the balance after deducting the visa application charges.*" While the Agent has not stated how much the refund was, Departmental records indicate that the visa application charge for Mr BK's subclass 186 visa was \$5400. The Agent's response

therefore suggests that he refunded \$6,600 to Mr BK. The Agent stated that Mr BK wanted the refund in cash, and the Agent paid it from the cash sales from the restaurant business.

81. The Agent has not provided any evidence to support the claim that he refunded Mr BK money. Mr BK has stated that he has not received a refund. The second section 308 notice asked the Agent to provide a complete client file in respect of Mr BK and RC Pty Ltd, as well as a copy of his "client" bank account showing payments made by Mr BK. The Agent has not provided the requested information, and has not explained why this information has not been provided.
82. Further, the second section 309 notice alerted the Agent to the Authority's concerns in respect of the Agent's record keeping. This provided the Agent with an opportunity to address the Authority's concerns. In response to the second section 309 notice, the Agent advised that he had "*previously provided a statutory declaration in regards to the complaint made by (BK, AS, YL and LC.)*" The Agent did not provide any further information or evidence in support of his response to the second section 309 notice.
83. On the basis that the Agent failed to provide the requested information, I am satisfied that the Agent has failed to maintain proper records that could be made available for inspection on request by the Authority. As the Agent has engaged with Mr AS, Mr BK, RC Pty Ltd, Ms LC, FYB Pty Ltd, Ms YL and JB Pty Ltd between 2017 and 2018, which is less than 7 years ago, I am satisfied that the Agent has not kept proper records for the requisite period for 7 years after the date of the last action on the client's files. While the Agent was provided a reasonable timeframe within which to submit his response, to the section 308 and section 309 notices, he has not provided the requested information to the Authority within the specified timeframe. On the basis of the available evidence, and in the absence of evidence to the contrary, I am satisfied that the Agent has breached clauses 6.1, 6.1A and 6.3 of the Code.

#### *Lodging an application without supporting evidence*

84. Subject to a client's instructions, a registered migration agent has a duty to provide sufficient relevant information to the Department to allow a full assessment of all the facts against the relevant criteria.
85. It does not appear to be in dispute that on 30 June 2017 the Agent lodged an ENS nomination application on behalf of FS Pty Ltd, nominating Mr AS for a position within the company. No supporting documents were lodged in support of this application. On the basis of a lack of supporting evidence, the Department refused the application.
86. In an email dated 3 April 2019 Mr AS advised the Authority, that the Agent had informed him that he lodged the applications and all supporting documents. Mr AS realised that this was not the case when the ENS nomination application was refused. This suggests that Mr AS was under the impression that the required evidence was made available to the Agent. In his response to the Authority the Agent advised that he was instructed to lodge the application without supporting evidence as the employer would provide these "ASAP." The Agent did not subsequently receive the supporting evidence from the employer. The Agent did not provide any evidence of the employer's instructions to him, or to support his claims, and as such I place no weight on the Agent's claims that he was instructed to lodge the application without supporting evidence.
87. It is unclear why the Agent proceeded to lodge the ENS nomination application without any supporting evidence. At the time, Mr AS had a valid visa, which allowed him to remain lawfully in Australia until February 2018. As such, there was no urgency requiring the Agent to lodge the application.
88. Similarly, Ms YL alleged that the Agent failed to submit sufficient and adequate documents to support her 457 visa application.
89. Departmental records indicate that part of the reason for the refusal of the 457 visa application included that although Ms YL's application stated she had completed a Bachelor of International Trade, Diploma in Hospitality, a Management Diploma in Business and a

Certificate IV in Commercial Cookery, no evidence of these qualifications was provided in support of the application. Accordingly, the delegate was not satisfied that Ms YL held a suitable qualification relevant to her nominated occupation.

90. In his response to the Authority's section 308 notice the Agent stated that on 25 July 2017 he received a request for further documents from the Department, and contacted Ms YL to provide the documents including a Certificate IV, which he had not received from her. The Agent further stated that he continued to request the documents via email and by telephone, but Ms YL's reply was that she already provided the documents and the Agent must submit them. Accordingly, the Agent submitted the documents he had on hand.
91. In support of his response the Agent provided a chain of emails between himself and Ms YL on 27 July 2018, which included:
  - a. An email from the Agent to Ms YL, forwarding the Department's request for further information.
  - b. A response from Ms YL to the Agent, stating "I double checked the check list, so I just wanna double confirm that we need only for medical check now? Because we already provided other documents." (sic)
  - c. A response to Ms YL's email from the Agent, stating "Can you please resend the document so that way we will submit right away. Thanks."
92. No further evidence has been provided in support of this allegation, and as such it is unclear whether Ms YL re-sent the documents as per the Agent's request.
93. However, the available evidence indicates that Ms YL was under the impression that she had provided the requested documents to the Agent, as indicated by both her email to the Agent in which she states she's already provided the documents, and in his response to her in which he asks her to "resend" the documents. Further, the Department's request for information simply states "Evidence of your skills," and does not stipulate the type of evidence this may be. There is no evidence available to indicate that the Agent clarified to Ms YL exactly what was required of her. It is reasonable to expect that a competent and diligent agent would explain requirements to a client, and not merely forward on correspondence from the Department without explanation.
94. The consequences of not providing the relevant information were significant for both Mr AS and Ms YL. The nomination application relevant to Ms AS was refused, leading to a refusal of his subclass 186 visa application. Similarly, Ms YL's 457 visa application was also refused.
95. This issue was raised in the Authority's second section 309 notice, allowing the Agent an opportunity to address the Authority's concerns. The Agent did not provide any further information or evidence in support of his response to the second section 309 notice.
96. On the basis of available evidence, and in the absence of evidence from the Agent to the contrary, I am satisfied that the Agent did not provide sufficient relevant information to the Department to allow a full assessment of all the acts against the criteria relevant to:
  - a. The ENS nomination application relevant to Mr AS;
  - b. The 457 visa application lodged in respect of Ms YL.
97. There is no evidence available to indicate that the Agent was instructed by either client not to submit the evidence. Accordingly, I am satisfied that the Agent has breached his obligations under clause 2.19 of the Code.
98. Additionally, I am satisfied that the Agent has not dealt with Ms YL in competent, diligent and fair manner by failing to adequately explain to her the requirements of the outstanding information. As such, I am satisfied that the Agent breached his obligations under clause 2.1(b) of the Code.

## **CMP-37361 – Mr AS**

### *Failure to keep client informed*

99. A registered migration agent is expected to keep their client fully informed in writing of the progress of their application.
100. Departmental records indicate that on 30 June 2017 the Agent lodged an ENS nomination on behalf of FS Pty Ltd. Mr AS was the nominee in this application. The application was lodged without any supporting documents. On the same date the Agent also lodged a subclass 186 visa on behalf of Mr AS.
101. The nomination application was refused on 11 August 2017. Subsequently, on 4 May 2018, an Invitation to Comment was sent to the Agent, advising him that due to the refusal of the ENS nomination application, the visa application could not succeed. The letter advised that Mr AS had the option to withdraw his visa application, or await an unfavourable outcome. On 2 July 2018 the 186 visa application was refused.
102. Mr AS alleged that he did not become aware of the invitation to comment until 27 May 2018. He also alleged that his employer was not aware of the refusal of the ENS nomination application.
103. In his email response to the Authority on 5 February 2019, the Agent advised that:
  - a. He was instructed to lodge the ENS nomination application without supporting documents as these would be provided to him as soon as possible. The documents were not provided to the Agent, in spite of the fact that the Agent allegedly followed up with both Mr AS and his employer. The employer refused to provide any documents, and Mr AS was aware of this.
  - b. The Agent informed the employer, FS Pty Ltd, of the refusal of the application, and the employer did not want to appeal the decision.
  - c. The Agent informed Mr AS that the employer did not want to support the application, and that there was nothing further the Agent could do.
  - d. The Agent subsequently did not respond to Mr AS's phone calls and messages as he had already explained the issues to Mr AS.
104. The first section 308 notice invited the Agent to provide evidence in support of his response. The Agent did not provide any evidence with his response or subsequently.
105. In his statutory declaration, dated 27 February 2019, provided in response to the first section 309 notice, the Agent reiterated the statements he made on 5 February 2019 and added that:
  - a. On 21 February 2019 the Agent spoke to Mr DC, Mr AS's employer. Mr DC advised the Agent that "not long after the lodgement of the nomination and visa application, Mr AS resigned from the company and started his employment with some other business." Mr DC informed the Agent that he notified the Department of this, and refused to provide any documents in support of the application for this reason.
  - b. The Agent asked Mr DC to provide a copy of the resignation letter, but Mr DC has not provided this to him.
106. The Agent did not provide any documents or evidence in support of the statutory declaration response. Further, these concerns were raised again in the Authority's second section 309 notice, allowing the Agent further opportunity to address the allegation and provide evidence. The Agent has not addressed the allegation, instead referring the Authority to the statutory declaration he previously provided.
107. Departmental records indicate that on 31 May 2018, the Department received an email from Mr AS's employer, Mr DC, advising that neither the employer nor Mr AS received information

from the Agent in regards to the Invitation to Comment. Mr DC sought an extension to provide additional information.

108. I have considered the conflicting claims made by Mr AS and the Agent in respect of whether the Agent advised Mr AS of the Invitation to Comment. The Agent stated that he did advise Mr AS, but did not provide evidence to support this statement. Further, the Agent advised that the employer refused to provide documents in support of the application and did not want to appeal the ENS nomination refusal decision.
109. Contrarily, available evidence in the form of Departmental records indicates that Mr AS's employer contacted the Department a few weeks after the Invitation to Comment was issued, to advise that both the employer and Mr AS were not aware of the correspondence from the Department. A copy of this correspondence was attached to the second section 309 notice for the Agent's reference. On the basis of this evidence I accept that the Agent did not advise Mr AS of the progress of his application in a timely manner. I am therefore satisfied that the Agent has breached clause 2.8(c) of the Code. On the basis of this evidence, I find that the Agent attempted to mislead the Authority through his response to the first section 308 notice, in breach of clause 2.9A of the Code.
110. Additionally, I have considered Mr AS's allegation that the Agent did not respond to his telephone calls, text messages and emails. In his statutory declaration to the Authority, dated 27 February 2019, the Agent stated "I agree that I did not responded (sic) to his calls and messages because I already explained the issue and until his employer agree to support his subclass 186 visa application there is nothing I could do." Mr AS depended on the Agent's knowledge and experience to enable him to remain in Australia lawfully, and to resolve his visa circumstances. Although a subclass 186 visa does specifically require support from a nominating employer, in light of the Agent's claim that the employer did not support the application, it would not have been unreasonable for the Agent to engage with Mr AS and explore other options for a suitable fee. The Authority's concern in respect of the Agent's alleged lack of response to Mr AS's telephone calls, text messages and emails was raised with the Agent in the second section 309 notice, providing the Agent an opportunity to explain his actions or contradict the allegation. In response to this notice, the Agent referred the Authority to a previously provided statutory declaration, and did not provide any further comment or explanation in respect of his actions.
111. On the basis of the available evidence and lack of evidence to the contrary, I am satisfied that by refusing to respond to Mr AS's telephone calls, messages and emails the Agent failed to have due regard to Mr AS's dependence on the Agent's knowledge and experience to assist with his visa circumstances. As such I am satisfied that the Agent has breached his obligations under clause 2.4 of the Code.

#### *Intimidating the Client*

112. Mr AS alleged that after he lodged his complaint in respect of the Agent's services with the Authority, the Agent started to threaten him and his family. In support of this allegation, Mr AS provided screen shots of text messages allegedly received from the Agent. The content of these messages includes:
  - a. Five messages asking whether Mr AS has withdrawn his complaint, dated between 1 February 2019 and 3 February 2019;
  - b. One message stating "I have to report the facts without consulting you and this may affect you severely and the chances are that you and your family may be detained as you do not have any legal status." (dated 3 February 2019)
  - c. One message stating "I have to advise the Department that you are not contactable and deny to assist so I have to send my account and that may be very unfavourable for you." (dated 3 February 2019)

113. In the statutory declaration the Agent provided to the Authority, dated 27 February 2019, he stated:
- “On 31 January 2019 I managed to get in touch with Mr AS and spoke to him about the complaint he made and he agreed that he exaggerated the claims... He told me that he will withdraw his complaint and we will meet up to discuss the issue and sort it out if there was any mistake or issue from my side. Since then I have been unable to contact Mr AS and he is not responding to my calls or messages... I do apologise if the case officer think (sic) that I try to force Mr AS to withdraw the complaint that was not my intention. My intention where (sic) to clarify the matter and provide you with the information.”
114. The Agent’s statutory declaration implies that he contacted Mr AS on multiple occasions and through various means in relation to the complaint he lodged. The Agent stated that his intention was to “clarify the matter and provide you with the information.” The Agent has not disputed that he sent the messages. On the basis of the content of the text messages, and the Agent’s statutory declaration I am satisfied that the text messages provided by Mr AS were sent by the Agent to Mr AS.
115. The first section 308 notice issued to the Agent informed him of the details of the complaint before the Authority, and sought answers to questions which related specifically to the advice that the Agent provided to Mr AS, including, for example:
- a. What initial advice you provided to Mr AS?
  - b. Was an Agreement for Services and Fees signed with Mr AS?
  - c. Were invoices, receipts and final statement of service provided to Mr AS?
116. These questions required the Agent’s response, and provided him with an opportunity to provide his response to the allegation generally. The Agent’s response to the first section 308, and the subsequent (first) section 309 notice, should not have required Mr AS’s input.
117. The first section 309 notice was issued to the Agent on 31 January 2019. On 3 February 2019, 3 days later, Mr AS advised the Authority that he felt threatened by the Agent’s behaviour.
118. I have considered that the Agent advised the Authority that it was not his intention to force Mr AS to withdraw the complaint. However, the evidence provided by Mr AS, which the Agent has not disputed, indicates that the Agent has:
- a. Repeatedly messaged Mr AS about the withdrawal of his complaint;
  - b. Informed Mr AS that his lack of response to the Agent may result in his family being detained;
  - c. Informed Mr AS that his lack of response to the Agent may be unfavourable before the Department.
119. The Authority again raised its concerns about the Agent’s conduct in respect of Mr AS in the second section 309 notice. In response, the Agent provided the same statutory declaration, dated 27 February 2019, and did not provide any additional information or evidence to address this concern.
120. On the basis of the available evidence and due to a lack of evidence to the contrary I am satisfied that the Agent’s messages to Mr AS were of an intimidating and threatening nature, and that the Agent attempted to exert undue pressure on Mr AS to withdraw his complaint. Accordingly, I am satisfied that the Agent has breached his obligations under clause 2.15 of the Code.

### *Misleading the Department*

121. Pursuant to clause 2.9 of the Code, a migration agent must not make statements in support of an application under the Migration Act or Migration Regulations or encourage the making of statements which he or she knows or believes to be misleading or inaccurate.

122. In the Agent's response to the first section 309 notice the Agent stated that he was instructed to lodge the ENS nomination application without supporting documents. The Agent stated that:
  - a. After the ENS nomination was lodged, the employer refused to provide documents in support of the application.
  - b. He advised Mr DC of the refusal of the ENS nomination, but Mr DC did not want to appeal this decision.
  - c. He spoke to Mr DC on 21 February 2019, and Mr DC advised the Agent that "not long after the lodgement of the nomination and visa application Mr AS resigned from the company and started his employment with some other business." The Agent asked Mr DC for a copy of the resignation letter, but this was not provided.
  - d. The Agent further stated "As I mentioned previously that Mr DC refused to provide any documents to me for the same reason."
123. The Agent has not provided any evidence to support his statements.
124. The Authority verified the Agent's claims in respect of Mr AS's resignation with Mr AS. Mr AS advised, in an email to the Authority dated 13 March 2019, that he ceased employment with FS Pty Ltd on 09 December 2015. Further, he advised that the Agent, as the registered migration agent, was aware of this. In spite of this knowledge the Agent proceeded to lodge the ENS nomination and related subclass 186 visa application in June 2017. Departmental records indicate that Mr AS emailed the Department on 30 May 2018, in which he stated:
  - a. The Agent assisted him with the 457 visa application in 2014.
  - b. The Agent informed him that he can "work with other employer too," and in 2015 he resigned from FS Pty Ltd and started working for another company.
  - c. He informed the Agent of this and asked the Agent to inform the Department. The Agent told Mr AS that the Agent had already informed the Department.
125. Further, in an unrelated application that Mr AS lodged with the Department, he did not list employment with FS Pty Ltd. The employment that Mr AS declared in this unrelated application is consistent with the employment he stated on the Resume, which the Agent submitted to the Department in support of Mr AS's subclass 457 visa application. This suggests that Mr AS did not undertake employment with FS Pty Ltd.
126. The available evidence is unclear on whether Mr AS was actually employed by FS Pty Ltd. Neither the Agent nor Mr AS provided evidence to clarify this point. I note that Mr AS's conduct in this respect is not the subject of the Authority's investigation and decision. However, the evidence the Agent has provided to the Authority appears to indicate that he was aware of Mr AS's employment status with FS Pty Ltd, irrespective of whether Mr AS was never employed or only employed there for a short period of time. There is no evidence before the Authority that the Agent notified the Department of this. This concern was raised with the Agent in the second section 309 notice, allowing the Agent an opportunity to address this allegation. In response, the Agent has not provided any new information or documents, and has referred the Authority to the previously provided statutory declaration.
127. As such, I am satisfied that in spite of being aware that Mr AS did not satisfy the requirements of the application, the Agent did not notify the Department of this. Further, on 30 June 2017, the Agent proceeded to lodge an ENS nomination application on behalf of the business, where Mr AS was a nominee. The application was lodged under the Temporary Residence Transition (TRT) stream, the key requirement of which is that the nominee has worked for the employer in the nominated position for a period of two years prior to the lodgement of the application.
128. On the basis of the available evidence I am satisfied that by lodging the ENS nomination application in spite of knowing that Mr AS did not satisfy the requirements of the application, the Agent attempted to mislead the Department. Accordingly, I am satisfied that the Agent breached his obligations under clause 2.9 of the Code.
129. For completeness, it is acknowledged that following the refusal of the ENS nomination application, the employer contacted the Department to advise that he had not been informed



of the outcome. The employer's conduct suggests that he was aware of the application and complicit in the lodgement of the ENS nomination application, and the attempt to mislead the Department. However, the employer's conduct is not the subject of the Authority's investigation.

*Acting contrary to the law*

130. Mr AS alleged that he paid the Agent \$50,000. In support of this allegation, Mr AS has provided screen shots of bank transfers on various dates between 2015 and 2017, each with a description "PYMT Narendra," as follows:
- a. Payment of \$5000 on 15 June 2015
  - b. Payment of \$1720 on 2 September 2015
  - c. Payment of \$1300 on 10 September 2015
  - d. Payment of \$750 on 24 September 2015
  - e. Payment of \$2150 on 11 November 2015
  - f. Payment of \$350 on 12 November 2015
  - g. Payment of \$150 on 19 November 2015
  - h. Payment of \$660 on 23 December 2015
  - i. Payment of \$7000 on 17 November 2016
  - j. Payment of \$9000 on 1 December 2016
  - k. Payment of \$4000 on 30 December 2016
  - l. Payment of \$5500 on 13 June 2017
  - m. Payment of \$3000 on 26 June 2017
  - n. Payment of \$2500 on 22 July 2017
  - o. Payment of \$1085 on 16 August 2017
  - p. Payment of \$800 on 28 August 2017
  - q. Payment of \$700 on 20 September 2017
131. These payments total \$45,665. The evidence provided by Mr AS was attached to the second section 309 notice for the Agent's reference.
132. I have considered the potential purpose of the significant payments made by Mr AS to the Agent. The Authority's concerns were raised with the Agent in the second section 309 notice. In response to the second section 309 notice the Agent stated:
- "The bank statements provided by AS are falsified as no such transactions were made to any of my accounts. Even though the transactions shows that the money was paid to Narendra Singh but it doesn't show the account number, please confirm the account number the amount was paid to and I will be more than happy to provide the bank statements of the account which AS claims to have paid the money to. After my declaration I didn't heard from the OMARA so I assumed that the matter was sorted and case was closed."*
133. The Authority requested this information from Mr AS, who subsequently advised that he paid money into the following accounts:
- a. The Agent's account: <<account details removed for privacy>>
  - b. The Agent's wife account: <<account details removed for privacy>>

134. When providing the account details, Mr AS also alleged that he had paid the Agent nearly \$30,000 in cash, and a further \$20,000 to the Agent's brother, Mr PS, in India.
135. The account details and the additional allegation surrounding the cash payment of \$30,000 to the Agent and a further \$20,000 to his brother were put to the Agent on 21 July 2021, by way of email, for his response. The Agent was invited to provide the account statements he had flagged in his response in order to support his assertion that Mr AS had falsified the bank transfer details provided to the Authority. The Agent was provided until 4 August 2021 to submit further evidence in support of the statements he made to the Authority and to respond to the allegation of the additional \$50,000 payment said to be paid to him, either directly or through a family member. The Authority is yet to receive a response to this invitation.
136. In considering the Agent's allegation that the evidence provided by Mr AS was falsified, the Agent was afforded an opportunity to provide supporting evidence to counter Mr AS's claim that the payments were transferred into either the Agent's account or that of his wife. To date no such evidence has been forthcoming from the Agent nor has the Authority received any response to the allegation of the significant payments that were allegedly made over and above those transferred into the two bank accounts.
137. In consideration that there is no evidence before me to indicate that the evidence provided to support the assertion that the bank transfers were falsified, and in light of the additional details provided by Mr AS in the form of bank account details, I give weight to the documentation. On the basis of the available evidence, and without evidence to the contrary, I accept that Mr AS paid \$45,665 to the Agent between June 2015 and September 2017.
138. I have considered the potential purpose of the significant payments Mr AS made to the Agent. In respect of the Agent's dealings with Mr AS, departmental records indicate that on 7 February 2014 the Agent lodged a subclass 457 visa application on behalf of Mr AS, and the related 457 nomination application on behalf of his employer, FS Pty Ltd. Then on 6 October 2015, the Agent lodged an application for Mr AS's partner to be added to the 457 visa. He subsequently lodged an ENS nomination application and the related subclass 186 visa application on 30 June 2017.
139. As has been discussed elsewhere in this decision, the Authority is satisfied that the Agent has attempted to mislead the Department by lodging an ENS nomination despite knowing that Mr AS was not employed in the position for which he was nominated. It has also been acknowledged that the employer's conduct suggests that he was aware of the application and complicit in the lodgement of the ENS nomination application, and the attempt to mislead the Department.
140. According to Mr AS, he resigned from his position with FS Pty Ltd on 9 December 2015. Despite his resignation, and the fact that the Agent did not lodge any other applications on his behalf until 30 June 2017, it appears that Mr AS continued to transfer significant payments to the Agent. More significantly, the largest payments, totalling close to \$30,000, appear to transpire between the time Mr AS had resigned from his employment to when the ENS application was submitted.
141. On the basis of the evidence available, as discussed in this decision, I am satisfied that:
  - a. Mr AS was employed by FS Pty Ltd as a holder of a subclass 457 visa.
  - b. Mr AS subsequently resigned from this employment, on a date likely to be 9 December 2015.
  - c. The Agent and the employer were aware of the resignation.
  - d. Mr AS continued to pay significant sums of money to the Agent, between June 2015 and September 2017.
  - e. On 30 June 2017 the Agent lodged an ENS nomination application and related subclass 186 visa on behalf of Mr AS and his employer. The application was made under the TRT stream, the key requirement of which is that the nominee had worked with the employer for at least two years prior to the lodgement of the application.

142. It is an offence under sections 245AR and 245AS of the Act to ask for, receive, offer to provide, or provide a benefit in return for the occurrence of a sponsorship related event. Given the significance of this provision, registered migration agents would be expected to be aware of, and in compliance with, such a requirement on account of the migration work they undertake.
143. Notwithstanding Mr AS's conduct, in conceding that he paid significant sums of money to the Agent in what is suggestive of payment for procuring his visa outcome, the Authority's focus with this decision is on the conduct of the Agent. Mr AS has alleged that he had made significant additional payments either directly to the Agent in cash form, else through a third party including the Agent's wife and brother. While Mr AS would be unable to evidence a significant cash payment, I have turned my mind to the statements made by him in relation to the other aspects of his complaint. In this regard, I accept that he was able to substantiate the claims that he had put forward, and that some such claims were corroborated through departmental records. Further, I note that Mr AS does not stand to gain from making such a claim as he too would be party to the arrangement, which is contrary to the law and thereby detrimental to him personally. In light of this consideration, and in the absence of any response from the Agent, I give weight to this claim.
144. The conduct of the Agent, Mr AS and FS Pty Ltd, as discussed in this decision, suggests that Mr AS was making payments to assure a pathway to permanent residency through sponsorship that he was not entitled to. Such conduct is in breach of section 245AR and section 245AS of the *Migration Act 1958*.
145. Section 245AR of the Act states:
- (1) A person (the first person) contravenes this subsection if:**
- (a) the first person asks for, or receives, a benefit from another person; and*
  - (b) the first person asks for, or receives, the benefit in return for the occurrence of a sponsorship related event.*
- (2) To avoid doubt, the first person contravenes subsection (1) even if the sponsorship related event does not occur.**
- (3) Subsection (1) does not apply if the benefit is a payment of a reasonable amount for a professional service that has been provided, or is to be provided, by the first person or a third person.**
146. Section 245AS of the Act states:
- (1) A person (the first person) contravenes this subsection if:**
- (a) the first person offers to provide, or provides, a benefit to another person (the second person); and*
  - (b) the first person offers to provide, or provides, the benefit in return for the occurrence of a sponsorship related event.*
- Civil penalty: 240 penalty units.*
- (2) To avoid doubt, the first person contravenes subsection (1) even if the sponsorship related event does not occur.**
- (3) Subsection (1) does not apply if the benefit is a payment of a reasonable amount for a professional service that has been provided, or is to be provided, by the second person or a third person.**
- (4) A person who wishes to rely on subsection (3) in proceedings for a civil penalty order bears an evidential burden in relation to the matter in that subsection.**
147. This legislation came into effect on 14 December 2015, and was therefore in effect during the time Mr AS made payments to the Agent. I acknowledge that both Mr AS and his employer were likely complicit in this conduct, albeit their actions are not the subject this decision.

148. Consequently, I am of the view that the Agent knowingly acted in contravention of the law by facilitating, or otherwise being complicit in, the obtaining of a financial gain for the procurement of a migration outcome. On the basis of the available evidence, I am satisfied that the Agent has acted contrary to the law and in breach of clause 2.1(a) of the Code.

### **CMP-43567 – Mr BK**

#### *Conflict of Interest – dual role of migration agent and employer*

149. A registered migration agent must not accept a person as a client if there are any interests of the agent that would affect the legitimate interests of the client, pursuant to clause 2.1A(d) of the Code. If it becomes apparent that an agent has a conflict of interest mentioned in clause 2.1A of the Code, the agent must, as soon as practicable taking into consideration the needs of the client, but in any case within 14 days, inform the client of the conflict, advise the client that under the Code the agent can no longer act for the client and cease to deal with the client in the agent's capacity as a registered migration agent.
150. In his response to the section 308 notice the Agent confirmed that he was the director and operational manager of RC Pty Ltd, and that he employed Mr BK in the position of a chef. Departmental records confirm that the business sponsored Mr BK for a subclass 457 visa, and subsequently lodged an ENS nomination application on his behalf.
151. The Authority considered whether the Agent's interest as director and operational manager of a business could affect Mr BK's legitimate interest, and therefore gives rise to a potential conflict of interest.
152. The subclass 457 application is a three stage process, involving the lodgment of a Standard Business Sponsorship Agreement and a Nomination application by the potential employer, as well as the lodgment of a visa application by the potential employee. The subclass 186 visa application is a two stage process, involving the lodgment of a nomination application by the employer, and the lodgment of a visa application by the nominated employee. It is not possible to be granted a visa without the approval of the sponsorship and/or nomination stages of the respective visa subclasses, thus the role of the sponsor is integral to the visa decision making process.
153. A migration agent's client generally seeks a positive visa outcome. In these circumstances, the visa outcome was achieved through employment sponsorship, placing the Agent, as a Director and employer, in a position of control and influence over the employee, who was potentially vulnerable to exploitation.
154. The role of a migration agent, pursuant to clause 2.1 of the Code, is to act in the legitimate interests of his or her client. The fact that the Agent was the sponsoring employer, whose interest was related to the profitable running of the business, potentially prevented him from providing the client with advice that was in their legitimate interests. The two roles have very different obligations, giving rise to a potential conflict of interest.
155. I have considered the Agent's relationship with Mr BK. In his response to the second section 308 notice the Agent asserted that he lodged the 457 business sponsorship, nomination application and Mr BK's 457 visa application in his capacity as an employer, and he did not charge Mr BK service fees. In respect of the subclass 186 visa application process, the Agent charged Mr BK \$12,000, which he indicated included both the visa application charge and his professional services.
156. The Agent stated in his response to the second section 308 notice that Mr BK "insisted that his future will be ruined" if the Agent, as an employer, did not support his ENS application. Further, the Agent stated that Mr BK "threatened" him and "forced" him to go ahead with the application and documents in support. Conversely, Mr BK has claimed that the Agent "promised" that he would lodge supporting documents on time. Mr BK stated that following the

refusal of the application, he sought a refund from the Agent and the Agent “refused to give anything.”

157. The Authority’s concerns in respect of a potential conflict of interest were presented to the Agent in the second section 309 notice. In response, the Agent referred the Authority to his response to the second section 308 notice, and did not provide any additional information or evidence.
158. On the basis of statements from the Agent and Mr BK it is apparent that both the Agent and Mr BK perceived the situation differently. It is apparent from both statements that Mr BK perceived that the Agent was in a position of control and influence over his prospects of remaining in Australia permanently. This is evident from the Agent’s statement that Mr BK “insisted his future will be ruined” if the Agent did not support his ENS application. The Agent’s dual role of employer and migration agent meant that Mr BK did not receive impartial advice, and instead relied on the Agent and, as the Agent stated “blamed” the Agent for the outcome. Had the Agent encouraged Mr BK to seek independent immigration advice, he may have been in a better position to understand his prospects of success. I acknowledge the Agent’s response that Mr BK did not “have enough money to hire services of another migration agent.” However, considering that the Agent did not dispute that Mr BK paid him \$12,000 for the services in respect of the 186 visa application, I do not accept that had Mr BK been encouraged to seek independent immigration advice, he could not have identified another registered migration agent for a similar fee. As such, I place no weight on the Agent’s response that Mr BK engaged the Agent’s services purely because he could not afford the services of another migration agent.
159. In spite of being invited in the second section 309 notice to do so, the Agent has not provided any evidence to indicate that he had ceased to deal with the Mr BK in his capacity as a registered migration agent as soon as practicable, or within 14 days of it becoming apparent that he had a conflict of interest such as mentioned in clause 2.1A of the Code. Conversely, Departmental records indicate that the Agent represented Mr BK in respect of the subclass 186 visa application, from the time of lodgement to the time of decision. The Authority’s concerns have been presented to the Agent, providing him with opportunity to provide information or evidence contrary to the Authority’s concerns in respect of this matter. The Agent has elected to not provide any additional information and evidence.
160. On the basis of the available evidence and lack of evidence to the contrary, I am satisfied that the Agent has breached his obligations under the Code by agreeing to, and continuing to represent Mr BK in an instance where he had a pecuniary and/or business interest, in breach of clauses 2.1A and 2.1B of the Code. The Agent’s breach of his obligations is particularly concerning as he was in a position of authority and control over Mr BK’s livelihood as his employer, and visa prospects as his migration agent. As such, the Agent’s breach represents an exploitation of Mr BK’s vulnerability, and an abuse of the Agent’s position.

### **CMP-43559 (Mr MF/Ms LC)**

#### *Acting in accordance with instructions and knowledge*

161. A registered migration agent must act in accordance with the client’s instructions and keep their client fully informed of the progress of the client’s application. Further, 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.
162. Ms LC alleged that she engaged the Agent’s services in respect of a 457 visa application and a subsequent partner visa application. Departmental records, as discussed below, indicate that the Agent lodged a subclass 457 and a partner visa application on behalf of Ms LC. She

has provided a Costs Disclosure Agreement, dated 3 August 2018, from the Agent, indicating that the work the Agent was engaged for was "Preparing and Lodging the Partner Visa Application." In his response to the Authority's section 308 notice the Agent referred to his involvement in the 457 process and stated that he lodged a partner visa application on behalf of Ms LC. As such, it does not appear to be in dispute that the Agent provided Ms LC with immigration assistance in respect of a subclass 457 visa and a partner visa application.

163. Ms LC alleged that the Agent did not keep her informed of the progress of her 457 visa application, and provided her with incorrect advice in respect of the lodgement of her partner visa application.
164. Departmental records indicate that:
  - a. On 28 September 2017 the Agent lodged an SBS application and related 457 nomination application on behalf of FYB Pty Ltd, nominating Ms LC for the position of a Hairdresser. The SBS application was refused on 23 May 2018, and as a result the nomination application could not be approved.
  - b. Also on 28 September 2017 the Agent lodged a subclass 457 visa application on behalf of Ms LC. On 23 May 2018 an *Invitation to comment on information for a Temporary Work (Skilled) (subclass 457) visa* (Invitation to Comment) was sent to the Agent as the appointed agent, advising that as there is no approved nomination, Ms LC's 457 visa application could not be approved. The letter stated Ms LC can withdraw the application, or provide comment, and allowed 28 days to respond.
165. On the basis of the fact that that the Agent lodged the subclass 457 visa application on behalf of Ms LC, I am satisfied that a client-agent relationship arose in respect of this application.
166. Ms LC alleged that the Agent informed her of the Invitation to Comment on 21 July 2018. On the contrary, the Agent's statutory declaration to the Authority states that "on 23 May 2018 when I received an invitation to comment on information for the subclass 457 visa, I advised the employer as well as (Ms LC) of the invitation." However, the Agent has not provided evidence to support his statement that he informed Ms LC of the Invitation to Comment on the date he received it. The Agent was provided the opportunity to provide such evidence in response to both the second section 308 notice and in response to the second section 309 notice.
167. The Agent's statutory declaration to the Authority stated that he advised Ms LC that "refusal to comment will result in the refusal of the visa application and the withdrawal of the visa application will result in her to leave the country within 28 day" (sic). The Agent further stated that as Ms LC did not want to be forced to depart within 28 days, she advised him not to withdraw the application. As a result, the visa was refused and Ms LC "decided to overstay."
168. On the contrary, Ms LC stated that she "withdrew from the 457 to avoid getting a refusal onshore." She alleged that she wrote to the Agent on 23 July 2018 to ask him to withdraw the application. In support of her statement, she has provided a copy of an email she sent to the Agent on 23 July 2018, in which she stated "I am writing to ask you to withdraw my visa application immediately." The Agent has not disputed this email.
169. Further, Ms LC alleged that upon learning that her 457 visa application may be refused, she engaged the Agent's services in respect of a partner visa application.
170. Ms LC alleged that the Agent informed her that he "had to write to immigration to request that (she) be able to lodge a partner visa onshore..." Ms LC alleged that she repeatedly checked with the Agent in respect of the progress of his alleged enquiry with the Department about lodging the partner visa application onshore, and the Agent reassured her that "everything will

be fine.” In support of this allegation she has provided emails sent to the Agent on 4 November 2018 and 8 January 2019 in which she enquired about her visa status, and asked “if everything is fine.”

171. Departmental records indicate that no response was received to the Invitation to Comment, and on 27 September 2018 the 457 visa application was refused. At the time of 457 visa application refusal, Ms LC was the holder of a Bridging Visa B, valid until 1 November 2018.
172. Departmental records further indicate that on 5 March 2019 the Agent lodged a Partner (UK820/BS801) visa on behalf of Ms LC. Mr MF was the sponsor on this application. The application was deemed invalid as Ms LC was barred from applying for a visa in Australia by operation of section 48 of the *Migration Act 1958*.
173. Ms LC further alleged that she only learnt of her unlawful visa status on 6 March 2021. On this date, she enquired with the Agent about going on a family holiday, booked for 12 March 2019. The Agent informed her that to go on a holiday she would need to apply for a Bridging Visa B. Following the Agent’s instructions, at this point Ms LC learnt from the Department that she had been unlawful since November and was unable to lodge any visa application in Australia, and would be subject to a three year ban.
174. Further, evidence provided by Ms LC indicates that the Agent notified Ms LC of the invalid partner visa application on 5 April 2019, in spite of the Department’s notification being sent to him a month prior on 6 March 2019.
175. Ms LC’s allegations were published to the Agent in the second section 308 notice. The Agent provided a statutory declaration in response to this notice. The Authority considered the Agent’s response and evidence provided against the allegations and evidence provided by Ms LC. The Authority presented its further concerns to the Agent in the second section 309 notice, inviting the Agent to provide submissions and evidence. In response to the second section 309 notice, the Agent referred the Authority to the previously-provided response to the second section 308 notice, and the Agent did not provide any additional information or evidence in respect of this allegation.
176. On the basis of the available evidence I am satisfied that the Agent failed to act in accordance with the client’s instructions by failing to withdraw the 457 visa application as instructed by Ms LC. Ms LC has provided evidence of her instructions to the Agent, and the Agent has been provided with opportunity to refute the allegation. As such, I am satisfied that the Agent has breached his obligations under clause 2.8(b) of the Code.
177. As the application was not withdrawn, the Department refused the application. Ms LC was the holder of a bridging visa at the time, thus this resulted in a section 48 bar being imposed on Ms LC. The consequences of the section 48 bar were that she had to fulfil additional requirements to enable her to lodge a partner visa application onshore, and it prevented her from lodging most other applications while in Australia. This is a significant consequence for Ms LC, which affected her ability to remain in Australia.
178. Further, I am satisfied that the Agent did not inform Ms LC of the outcome of the subclass 457 application nor the impact of that outcome, nor the progress and outcome of the partner visa application. Ms LC has provided evidence that she enquired with the Agent about the progress of her applications. The Agent was presented this evidence and invited to provide submissions or evidence in response. The Agent has not provided any submissions or evidence to refute Ms LC’s allegation and I am satisfied that he has breached clause 2.8(c) of the Code.
179. I have also considered the information the Agent provided to Ms LC in respect of her options regarding the 457 visa. In his statutory declaration to the Authority, the Agent stated that he advised her of the two options in respect of the 457 visa, being to either withdraw or await an unfavourable decision from the Department. The Agent further stated that “I suggested that I

may request the Department to allow to lodge an application onshore citing schedule 3, compassionate and compelling circumstances, but that's again is very unlikely to be successful." (sic). On the basis of the available evidence I am satisfied that the Agent did not advise Ms LC in regards to the consequences of a section 48 bar. As a person to whom section 48 applied, Ms LC was required to, in addition to her visa application form, simultaneously lodge a Form 40SP and two statutory declarations that satisfied the requirements. The Agent lodged only a partner visa application on 5 March 2019, and no other required supporting documents. This indicates that the Agent was not aware of the bar and its impact on the lodgement of a partner visa application. Further, the *Notification of Invalid Application* issued by the Department to the Agent in respect of this application specified what requirements the application failed to satisfy, and provided instructions on how to re-lodge the application correctly. The Agent failed to take any steps to rectify this situation, in spite of being provided with instructions on how to do so.

180. The second section 308 notice specifically asked the Agent what his understanding of a section 48 bar is. In response to the Authority the Agent did not address this question. The Agent also did not respond to the Authority's question of what steps he took to ascertain Ms LC's visa status. The Agent was invited to address this concern in response to the second section 309 notice, but did not provide any additional information or evidence.
181. The Agent's conduct had a significant, detrimental impact on Ms LC. The Agent's failure to act on her instructions to withdraw the subclass 457 visa application, and to inform Ms LC of the outcome of that application resulted in her becoming an unlawful non-citizen, and subject to detention and removal. Ms LC regularly engaged with the Agent, which should have prompted him to take necessary action in respect of her application. Conversely, the Agent appears to have largely ignored Ms LC's enquiries and deliberately withheld information from her. It would have been prudent of the Agent to be proactive in ascertaining Ms LC's visa status, however the Department's *Notification of Invalid Application* alerted the Agent to the issues, and how to rectify them. The Agent took no action to rectify Ms LC's situation, and did not notify her that the partner visa was invalid until 5 April 2019, by which stage she had already departed Australia. Ms LC's departure would have likely resulted in both significant financial costs and emotional distress for both Ms LC and her partner.
182. On the basis of the information before me, I am satisfied that the Agent does not have sound working knowledge of the Migration Act and Migration Regulations, and other legislation relating to migration procedure. This has significantly affected his capacity to provide Ms LC with accurate advice and resulted in a significant cost and inconvenience to the client who had to depart Australia to be able to apply for a visa. I am satisfied that the Agent has breached his obligations under clause 2.3 of the Code.

*Acting contrary to the law and without integrity*

183. A registered migration agent must always act in accordance with the law, and take all reasonable steps to maintain the reputation and integrity of the migration advice profession.
184. As discussed elsewhere in this decision, Ms LC engaged the Agent's services in respect of a partner visa application. She alleged she paid \$7160 to the Agent on 13 September 2018 and \$7150 on 31 October 2018. In support of her allegation, she provided a Costs Agreement dated 3 August 2018, which states that the Agent's professional fees would be \$6500 plus GST, in addition to the Visa Application Charge. Ms LC also provided a *Tax Invoice for Partner Visa Application Preparation and Lodgement*, issued by the Agent on 3 August 2018, stating



professional costs of \$7150 and a Visa Application Charge (VAC) of \$7160, with a total of \$14,310 due.

185. Departmental records indicate that the Agent lodged the partner visa application on 5 March 2019, and paid a \$7160 VAC. However, as the application was found invalid, the payment the Agent made was reversed by the Department on the following day, being 6 March 2019.
186. Ms LC has provided evidence of emails dated 9 March, 1 April 2019, and 5 April 2019 where she followed up with the Agent in regards to receiving a refund of the VAC and any unused professional fees. At the time of the complaint to the Authority, Ms LC had not received the refund.
187. In his response to the Authority's second section 308 notice the Agent conceded that he received the refund "soon after the invalid application." Further, he stated  
*"I will regrettably admit that due to the financial circumstances and due to <<removed for privacy>>, I was unable to refund the money as it went <<removed for privacy>>. <<Removed for privacy>>, due to the financial and family circumstances I was unable to make an arrangement with (Ms LC) to refund the money."*
188. The Agent's statutory declaration further states that he "would whole heartedly like to pay back (Ms LC)." The Agent has not clarified why he has not contacted Ms LC to date to arrange for a refund of the amount owing to her.
189. The Authority's concern in respect of this money was put to the Agent in the second section 309 notice. This notice gave the Agent an opportunity to address the allegation and take steps to refund the money owing to Ms LC. In response to the notice, the Agent referred the Authority to the statutory declaration he provided in response to the section 308 notice, and has not provided evidence to indicate that he has made any attempt to refund the money owing to Ms LC.
190. The Agent's statutory declaration indicates that he retained money that he was not entitled to, being the VAC refunded by the Department. Further, the Agent has failed to indicate that he has taken any steps to remedy this situation, in spite of the fact that a period of more than two years has passed since he retained this money and the issue was raised with him twice by the Authority, being through the section 308 and section 309 notices.
191. Ms LC paid this money to the Agent in good faith, for it to be utilised towards the VAC for her visa. She trusted the Agent as a professional to be honest and act with integrity in respect of the significant funds that she paid him.
192. On the basis of the available information I am satisfied that the Agent has acted contrary to the law by retaining money that he is not entitled to. The Agent's action, and his failure to make any attempts to remedy the situation indicate that he is dishonest. As such, I am satisfied that the Agent has failed to maintain the reputation and integrity of the migration advice profession through his conduct. I am satisfied that the Agent has breached clauses 2.1(a) and 2.23 of the Code.

### **CMP-44798 (Ms YL)**

#### *Acting contrary to the law*

193. A registered migration agent must always act in accordance with the law and with regard for the client's dependence on the agent's knowledge and experience.

194. Ms YL alleged that she engaged the Agent's services in respect of a subclass 457 visa application. She alleged that as part of the process, the Agent asked her to pay for the related 457 nomination application that was lodged by her employer. In support of the allegation she has provided a *Tax Invoice* issued by the Agent on 13 December 2017, to Ms YL, for a total of \$15,415, comprising of:
- v. \$5500 profession fees
  - vi. \$335 nomination application charges
  - vii. \$2180 visa application charges for Ms YL and her partner
  - viii. \$1400 subsequent temporary application charge
  - ix. \$6000 administration charges
195. Regulation 2.87, as in force at the time the Agent lodged Ms YL's application on 28 February 2018, referred to the obligations of an approved sponsor to "not recover, transfer or take action that would result in another person paying for certain costs." The costs referred to in the regulations include costs related to sponsorship, migration agent costs and costs that relate to the recruitment of the applicant.
196. In the Agent's response to the second section 308 notice he stated that he was hired by Ms YL's employer, JB Pty Ltd, to provide immigration assistance to their employees on a contract basis. The Agent further stated that he was "instructed to send the complete tax invoice to the applicants and the employer will reimburse any charges payable by the business to their employees." The Agent has not provided any evidence with either his response to the second section 308 or second section 309 notice, to indicate that he informed the employer of their obligations, or that the employer intended to repay these costs to Ms YL.
197. The Agent has not disputed that Ms YL paid the costs in respect of the nomination application. He in fact stated that the employer allegedly would reimburse Ms YL for these costs, supporting the premise that she paid the costs in the first place. As such, I am satisfied that Ms YL paid the costs in respect of the nomination application, being the \$335 nomination application fee she was invoiced for.
198. Further, the invoice Ms YL provided indicates that she paid \$6000 "administration charges" on top the relevant application charges payable to the Department and in addition to \$5500 professional fees. The Authority's second section 308 notice asked the Agent "What is meant by "administration charges," which total \$6000?" in respect of the invoice issued to Ms YL. The Agent did not respond to this question. In light of the fact that the invoice issued to Ms YL already specifies the Agent's professional fees and the nomination application and visa application fees, there is no reasonable explanation for what a \$6000 administration charge could relate to. The Authority's section 309 notice raised with the Agent that the \$6000 fee appeared to indicate that Ms YL bore the employer's migration agent costs and potentially costs that related to her recruitment. In his response to the section 309 notice the Agent did not address this concern, or provide any additional information or evidence to the Authority.
199. On the basis of the available information, and lack of evidence or explanation from the Agent to the contrary, I am satisfied that the \$6000 "administration charges" fee paid by Ms YL to the Agent indicates that Ms YL bore the employer's migration agents costs and potentially costs that related to her recruitment. As such, I am satisfied that by allowing the employer to impose these costs on Ms YL, the Agent did not adequately advise the employer in respect of Regulation 2.87. On the basis of this, I am satisfied that the Agent failed to prevent the employer acting contrary to the law. Ms YL and her employer who was also the Agent's client depended on the Agent's knowledge and experience to inform them of relevant information about who should bear what costs. As such I am satisfied that the Agent has breached his obligations under clauses 2.1(a) and 2.4 of the Code.

## Integrity, fitness and propriety

200. 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.

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

*'Integrity' means 'soundness of moral principle and character, uprightness and honesty'.<sup>1</sup>*

202. 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.

203. At common law, the basic test to determine whether a person is “fit and proper” is known as the “Allinson test”. A person is not fit and proper person if his or her conduct “would be reasonably regarded as disgraceful or dishonourable by his professional colleagues of good repute and competency”.<sup>2</sup>

204. 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.*

205. The formula 'fit and proper' (and 'person of integrity') must be construed in light of the particular legislative context at the registration scheme underpinning the migration advice profession.<sup>3</sup>

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

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

207. 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.

---

<sup>1</sup> See *Re Peng and Department of Immigration and Multicultural Affairs* [1998] AATA 12 at paragraph [26].

<sup>2</sup> See *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750

<sup>3</sup> See *Cunliffe v Commonwealth* (1994) 182 CLR 272

208. 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.
209. Having regard to the body of case law cited above, a consideration of whether the Agent is a fit and proper person or a person of integrity to provide immigration assistance can legitimately include the following:
- that the Agent's past conduct can be an indicator of the likelihood of the improper conduct occurring in the future;
  - the Agent's honesty and competency towards clients, the Department and the Authority;
  - a consideration of the context in which the agent works, i.e. the provision of immigration assistance to migration clients;
  - the Agent's knowledge and competency in immigration law and practice;
  - the reputation of the Agent as a result of their conduct and the public perception of that conduct; and
  - the perception of the conduct by the Agent's "professional colleagues of good repute and competency"<sup>4</sup>.
210. 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'.
211. Based on the evidence before me, I am satisfied that the Agent has:
- a. Acted in contravention of the law;
  - b. Provided misleading information to the Department, thereby undermining the visa program;
  - c. Lodged applications without sufficient supporting evidence, leading to a negative outcome for the clients involved;
  - d. Failed to maintain proper client records;
  - e. Failed to keep his clients informed about key developments in their respective applications;
  - f. Placed his own interests above that of his clients, and failed to act in accordance with client instructions;
  - g. Shown disregard of the Code by agreeing to and continuing to represent clients in instances where he had a business interest that may have affected the legitimate interests of the clients;
  - h. Behaved in an intimidating and threatening manner towards a client.
212. The position of a migration agent is a position of trust that requires a willingness and ability to comply with relevant laws. In this respect, individuals carrying out the occupation of a migration agent require a level of honesty and moral character such that a client can place trust and confidence in their agent to follow their instructions and to act with integrity and diligence on their behalf.
213. Information before the Authority indicates that the Agent has attempted to mislead the Department by lodging an application for a permanent employer sponsored nomination and visa in spite of knowing that the visa applicant had ceased employment and therefore did not

---

<sup>4</sup> *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750

satisfy the relevant criteria. I am satisfied that the Agent knowingly made inaccurate or misleading statements to the Department, and has been dishonest in his dealings.

214. Further, the Agent has acted contrary to the law by retaining Ms LC's money, to which he was not entitled. The Agent acknowledged that he retained money owing to Ms LC, and has taken no steps to remedy the situation in the two years that have passed since the incident, and in spite of the Authority raising a concern in respect of this issue through both the section 308 and section 309 notices. In doing so, the Agent breached the trust and confidence that Ms LC placed in him.
215. Further, the Authority is satisfied that the Agent knowingly engaged in conduct in contravention of the law in consideration of sections 245AR and 245AS of the *Migration Act 1958*. In this regard, the Agent has shown a willingness to contravene the law for the purpose of procuring visa outcomes that his clients are not entitled to, and likely for his financial gain. Such conduct by a registered migration agent brings the profession into disrepute and undermines the integrity of Australia's migration program.
216. Additionally, the Authority issued the Agent with a notice in accordance with section 308 of the Act on 15 April 2021. This notice required the Agent to answer questions by way of statutory declaration, and to provide complete client files as well as the Agent's client bank account statements evidencing payments made by the clients. The Agent responded to the Authority's notice on 29 April 2021, and provided a statutory declaration and some documents. However, the Agent's statutory declaration did not address all of the Authority's concerns, and the Agent did not provide the complete client files or bank account statements requested. Similarly, the Agent did not respond to the first section 308 notice, issued 5 November 2018, and failed to address the Authority's concerns raised in the first section 309 notice.
217. Clients of migration agents can be among the most vulnerable individuals in society. As such, the position of a migration agent is one of significant trust and therefore requires a high level of moral character. The prevention of abuse of that trust is an important and relevant concerns of the Authority in considering an agent's fitness to effectively discharge his or her obligations as a migration agent in accordance with the Code.
218. Section 308 (1) of the Act gives the Authority the power to require a registered migration agent to:
  - Make a statutory declaration in answer to questions in writing by the Authority;
  - Appear before an individual or individuals specified by the Authority and to answer questions;
  - Provide the Authority with specified documents or records relevant to an agent's continued registration.
219. A registered migration agent is required by the Code to adhere to certain professional standards, which include to:
  - Maintain a sound working knowledge of migration law and procedure;
  - Follow clients' instructions and inform clients of the progress in their cases;
  - Make and keep records relating to the client's immigration and financial matters;
  - Make records available to the Authority for inspection on request.
220. The obligation of an agent to keep records in accordance with the Code, and the power of the Authority under section 308 of the Act to access those records, is fundamental to the exercise of the Authority's regulatory and consumer protection functions. Having access to records held by registered migration agents is prevalent to the Authority's consideration of a complaint as it allows an assessment of whether an agent has complied with their obligations under the Code.
221. By failing to comply in full with a section 308 notice, a registered migration agent not only acts contrary to the Code and Australian law, but undermines the purpose and intent of the migration agents' regulatory scheme and demonstrates contempt for its consumer protection

function. Such behaviour is incompatible with the honesty, integrity and moral character required of a registered migration agent.

222. I am satisfied that the Agent's failure to comply in full with two section 308 notices that were issued to him:
- Is inconsistent with the qualities of honesty, morality and good character which, as discussed above, are characterised as elements of a person who is a person of integrity and fit and proper to give immigration assistance;
  - Demonstrates an indifference to, and disregard of, Australian law;
  - Demonstrates an attempt part of the Agent to avoid responsibility for his conduct in respect of the complainants immigration matters.
223. I am satisfied that the conduct discussed in this decision exhibits a blatant disregard for the Authority; and falls short of the standard expected of a registered migration agent. The allegations referred to in this decision are suggestive of behaviours that are dishonest and fraudulent. I am satisfied that the Agent's actions, as discussed above cause detriment to the reputation and integrity of the migration advice profession.
224. Honesty and integrity are key attributes expected of a migration advice professional, and actions such as the provision of inaccurate or misleading information may bring the profession into disrepute.
225. On the basis of the information and evidence before me, I am satisfied that the Agent is not a person of integrity and/or otherwise not a fit and proper person to give immigration assistance.

### **Consideration of Appropriate Disciplinary Action**

226. 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

227. 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.
228. 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 conduct, involving matters of fraud and dishonesty, demonstrates a blatant disregard for, or a significant degree of indifference, to the law, the Authority, Departmental visa processing officers and the best interests of his clients;
  - (b) The Agent's conduct has, or is likely to have an adverse impact on or undermine the reputation of the migration advice profession;
  - (c) The Agent's failure to demonstrate accountability or remorse for his conduct indicates that he is unlikely to rectify the behaviour, which is the subject of the Authority's findings, resulting in a real likelihood of repeated misconduct; and
  - (d) The Agent's conduct demonstrates that he is not a person of integrity or is not a fit and proper person to give immigration assistance.

Aggravating factors

229. I consider the Agents conduct falls short of the standard expected of a registered migration agent. The conduct that is the subject of this decision relates to four separate complaints, indicating a persistent pattern of Code breaches by the Agent.
230. A migration agent holds a position of trust that requires a willingness and ability to comply with relevant laws. The Agent made no attempt to rectify the issues Ms LC raised with him about money that the Agent has wrongfully retained. The Agent allowed Ms YL to pay fees related to her nomination, in breach of Regulation 2.87. The Agent has also attempted to undermine the integrity of Australia's migration program acting in contravention of the law in respect of sections 245AR and 245AS of the Act. The Agent's actions were for his own financial gain, as indicated by the significant funds he received from Mr AS, and to procure a visa outcome to which his client was not entitled. The Agent's conduct was dishonest, and demonstrated his disregard for the law and his obligations as a member of the migration advice profession.
231. The Agent has not made a meaningful attempt to explain or rectify his conduct. The Agent did not respond to the first section 308 notice, and failed to provide a complete response to the second section 308 notice. The Agent did not address any of the Authority's concerns raised in the second notice issued under section 309 of the Act, which advised him that Authority was considering disciplinary action against him and the possible reasons for that action. Such conduct is contrary to the Agent's obligations as a registered migration agent and shows a complete disregard for the Authority's role as the regulator of the migration advice profession.
232. The Agent has failed to meet his obligations under numerous clauses of the Code. The Agent's conduct has had serious consequences for the complainants, including financial loss, inability to remain in Australia and likely significant emotional stress.
233. The evidence discussed in this decision indicates that the Agent knowingly misled the Authority through his response, and knowingly misled the Department by lodging an application which sought to attain a visa outcome to which the client was not entitled. The

Agent has not demonstrated any remorse for his action. This demonstrates that the Agent lacks honesty and integrity.

234. The Agent has not taken responsibility for his actions nor shown an understanding of the seriousness of his conduct. The Agent has not demonstrated any remorse for his actions, and the impact that these have had on the reputation of the migration advice profession in general. In view of this, it is highly likely that the Agent would repeat this conduct in the future.
235. The Agent has demonstrated behaviour of a serious nature by acting in a manner that demonstrates an indifference towards the law and his obligations as a member of the migration advice profession. I am not satisfied that the Agent has given due consideration to the entirety of his conduct, which is the subject of this decision, or comprehended that such conduct is contrary to his obligations as a registered migration agent.

### Mitigating Factors

236. The Agent requested that in making its decision, the Authority consider his record, as he has had no instance of any similar incident for almost 10 years. The Agent advised that he has a family and two children, and his licence is the Agent's only means to earn an income.
237. I have considered the Agent's statement. I have considered that the Agent has been registered since 15 August 2011, and no previous disciplinary action has been taken against him. However, the matters raised in this decision relate to four separate complaints from clients who have been significantly affected by the Agent's conduct.
238. I have also taken into account that a disciplinary decision would affect the Agent's financial earning capacity and livelihood. The Agent has stated that being a registered migration agent is his only means to earn an income. I accept that should the Agent's registration be cancelled or suspended for a prolonged period of time, he may incur some financial hardship. However, I am of the view that this consideration is significantly outweighed by the seriousness of his conduct.

### Consumer Protection

239. 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.
240. The behaviour demonstrated by the Agent falls short of the reasonably expected standards of a registered migration agent. I consider that the Agent poses a serious risk to consumers. I am satisfied that if the Agent were to continue to practice as a registered migration agent, the Agent would not demonstrate the requisite skills expected of a registered migration agent. I consider that a disciplinary decision is warranted to address the conduct the subject of this decision, and in the interests of consumer protection.

### **DECISION**

241. In all of the circumstances, and in the interests of consumer protection, I consider that it is appropriate to cancel the Agent's registration.
242. Based on the facts and evidence before me, and my findings as discussed in the decision, I have decided to cancel the Agent's registration as a migration agent under subparagraph 303(1)(a) of the Act. I am satisfied for the purposes of subparagraphs 303(1)(f) and (h) that:
- the Agent is not a person of integrity, or is otherwise not a fit and proper person to give immigration assistance; and
  - the Agent has not complied with clauses of the Code.



243. In accordance with section 292 of the Act, an agent who has had their registration cancelled must not be registered within 5 years of the cancellation.
244. Accordingly, this cancellation will be in effect for a period of 5 years from the date of this decision.

Professional Standards and Integrity Section  
Office of the Migration Agents Registration Authority  
Department of Home Affairs

Date of Decision: 12 August 2021