



DECISION RECORD

AGENT	Jing LI
COMPLAINT NUM BER/S	CAS-04936-D7H1
DECISION	CANCELLATION
DATE OF DECISION	19 January 2022

Terms used for reference

1. The following abbreviations may have been 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</i>	The department administering 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 Regulations</i>	<i>The Migration Regulations 1994</i>
<i>The Act</i>	<i>The Migration Act 1958</i>
<i>The Agent</i>	Jing LI
<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 17 July 2017 and was allocated MARN 1795162. The Agent's registration had been renewed annually to date, with the most recent registration period commencing on 16 July 2021.
3. The Register of Migration Agents (the **Register**) lists the Agent as a Sole Trader. Prior to this, the Register reflected the Agent as a Director of Melbourne Consultant Pty Ltd with ABN 19 630 662 190. The Agent was also declared as an employee of STG International Service Group Pty Ltd with ABN 48 156 372 986 from 10 June 2017 until 12 February 2019 and an independent contractor from 10 July 2019 until 14 Oct 2020.

Prior Disciplinary action

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

Summary of complaints

5. The Authority has considered one matter relating to the Agent's conduct as a registered migration agent and employee and contractor of STG International Service Group Pty Ltd (**STG**). The complaint matter is outlined below.

CAS-04936-D7H1 – The Authority's investigation

Background

6. The records held by the Authority indicate the Agent was first registered as a migration agent on 17 July 2017. He was employed by from 10 June 2017 until 12 February 2019 then as an independent contractor from 10 July 2019 until 14 Oct 2020, for STG International Service Group Pty Ltd (STG) of which Mr Teng Zhao (Mr Zhao) is the company Director.
7. Following the investigation into Mr Zhao's conduct, and the applications submitted to the Department of Home Affairs¹ which were associated with STG, the Authority instigated an investigation into the Agent's conduct while in the company employ, during his consultancy with STG, as well as the period following his declared separation from STG. Information from the Australian Securities and Investments Commission (**ASIC**) confirmed that Mr Zhao remained the sole Director of STG and maintained 100 percent of the company shares as at 22 November 2021.
8. According to the records, following the Agent's employment with STG, he declared Melbourne Consultant Pty Ltd (**Melbourne Consultant**) as his primary migration business, of which he was the sole Director before changing his details to a Sole Trader on 26 September 2021. For the purpose of his registration with the Authority, he had recorded eric@stgservice.com.au (the **Eric email** address) as his primary and secondary email address until it was changed to ericlimelbourne@gmail.com (**Gmail address**). The Eric email address was recorded against his details on the Register and was publicly available on the Authority's website, until it was changed on 18 August 2021.

¹ And its former manifestations

The Authority's investigation

9. The Authority undertook a review of visa applications submitted to the Department which were associated with a number of email addresses, ImmiAccounts, credit cards and Internet Protocol (IP) numbers which established a link to the Agent and/or STG in some form.
10. The review commenced with visa applications found to be associated with the Agent's Migration Agent Registration Number (**MARN**) as at 24 August 2021. There were 592 applications which were submitted to the Department between 31 March 2015 and 20 August 2021. While nine (9) of the cases were submitted to the Department before the Agent was registered, the Agent was added to the applications as the representative migration agent after the applications were lodged. A list of these applications is made available at **Annexure A**.
11. The investigation then focused on visa applications lodged from email addresses and ImmiAccounts which were either recorded against the Agent's MARN, or connected through his personal particulars and his business associations. Consequently, the conduct associated with the respective visa applications is discussed in further detail within this decision, to the extent where the conduct was attributed to the Agent

Email addresses

12. In light of the very recent change to the Agent's email address, a review of departmental records for visa applications where either the Eric email address or the Gmail address was provided for communication with the Department was undertaken. The review extended to incorporate a third email address with which the Agent had an association.
13. The email addresses initially comprised the following:
 - eric@stgservice.com.au (the Eric email address)²
 - ericlimelbourne@gmail.com (the Gmail address)
 - summer@stgservice.com.au (the **Summer email** address).
14. An analysis of the 592 applications where the Agent was the declared representative migration agent, revealed a significant number of additional email addresses which were provided for the purpose of receiving correspondence from the Department. More specifically, in addition to the above three addresses, a further twenty seven (27) email addresses were identified in association with these visa applications. The additional email addresses are highlighted within this decision, some of which are discussed in more detail.

² This address appears in over 200 RIDs in the 3 years before the Agent was registered (Apr 14-Jul 17)

ImmiAccounts

15. ImmiAccounts which appear to be linked to the Agent were also given consideration during the investigation process. Visa applications submitted to the Department, connected to the Agent through his MARN, credit card, or personal particulars, were considered further. These included, but were not limited to, the below listed:

- DH@stgservice.com.au (the **DH ImmiAccount**)
- stgadmin (the **STGadmin ImmiAccount**)
- zarina@ stgservice.com.au (the Zarina ImmiAccount)
- wang@gmail.com
- kl@gmail.com
- wang2@gmail.com

Failure to declare immigration assistance

16. In consideration of the number of ImmiAccounts and email addresses identified, an analysis was undertaken of visa applications associated with either the email addresses or the ImmiAccounts which establish a link to the Agent and/or STG and Melbourne Consultant. A review of the applications where the Agent was declared as the representative migration agent, and where an *Appointment of a registered migration agent, legal practitioner or exempt person* (Form 956) was submitted, reflected contact email addresses which were also provided in applications lodged with the Department where no registered migration agent was declared.

17. The Summer email address was provided with applications where the Agent was declared as providing immigration assistance and was also used with numerous applications where no migration agent was declared. This was likewise the case with the c.lu@stgservice.com.au and sabrinama@stgservice.com.au email addresses (**CLu** and **Sabrinama email** addresses).

Genuine temporary entrant requirement

18. A comparative analysis was undertaken on student visa applications where no migration agent was declared against applications where the Agent was the representative migration agent on record. The analysis included the four batches highlighted below where no migration agent was declared to be associated with the applications:

- 10 applications lodged in January or February 2017 (the **CLu 2017** cases)
- 10 applications lodged between April and July 2018 (the **CLu 2018** cases)
- 10 applications lodged in July or August 2018 (the **Sabrinama cases**)
- 10 applications lodged between August and November 2018 (**vkservice** cases)

19. A comparison was also undertaken on student visa applications where Mr Zhao was the declared migration agent on record and applications where the Agent was the declared representative migration agent:
- 8 applications lodged between August 2016 and July 2017 (**Zhao cases**)
20. An examination of the statements addressing the genuine temporary entrant requirement (the **GTE statements**) revealed that applicants within cohorts where no registered migration agent was declared made one or more comments which were identical or nearly identical to applicants where the Agent was the declared agent. The same was identified with GTE statements where Mr Zhao was declared as the nominated agent and those where the Agent was the declared agent on record.
21. A list of the applications from the five batches and the cases where the Agent was listed as representing the applicant are outlined in **Annexure B**. The identities of the visa applicants where no registered agent was declared, or where Mr Zhao was the declared agent on the application, have been anonymised.

Credit Card

22. A review of departmental records was undertaken in association with the payment of visa application fees. The review highlighted applications where the Agent's credit card details were provided for the payment of visa applications, yet where no registered migration agent (**RMA**) was declared as assisting with the application. In summary, 339 applications were paid for by a credit card payment using a credit card for which the Agent was the listed card holder. Departmental records apply a truncated version of the credit card number as ending in numbers 5730.
23. Of the 339 applications, 35 cases were scrutinised in more detail and are discussed further in this decision. Notably, and consistent with other aspects which were considered as part of this analysis, the applications were submitted through thirteen (13) different ImmiAccounts and utilised no less than 10 different email addresses provided for communicating with the Department.

Conduct of concern

24. In light of the investigation undertaken on visa applications submitted to the Department, which were cross referenced to the Agent's details, including email addresses where he was listed as the representative agent, ImmiAccounts, IP addresses and credit card transactions, the Authority raised issues of conduct on the part of the Agent. These issues are listed below.
- Declaring a cessation of association with STG from 15 October 2020, however maintaining an active and ongoing working relationship with STG and providing immigration assistance to STG clients.
 - Undertaking proactive measures to conceal his ongoing association with STG from the Department and the Authority.

- Providing immigration assistance to visa applicants but failing to disclose his assistance in the visa applications.
 - Acting in contravention of section 312A of the Act, by failing to declare that he had provided immigration assistance in association with those applications.
 - Preparing GTE statements for visa applications which were not an accurate representation of the applicant's circumstances and were thereby misleading.
 - Knowingly submitting applications to the Department which he knew were misleading and inaccurate.
 - Facilitating non-genuine visa applications which served to undermine the integrity of the visa programs.
 - Acting in breach of the Code of Conduct for registered migration agents in association with this conduct.
25. Furthermore, on the basis of the information the Agent had provided to the Department and the Authority, related to either visa applications and/or his business circumstances and associations, the Authority asserted that the actions:
- were designed to deceive and mislead the Authority and the Department on the true circumstances of the matters
 - created a situation where a conflict of interest could arise and did so
 - were unbecoming of a registered migration agent and in contravention of the law and the Code of Conduct for registered migration agents
 - were inconsistent with a person of integrity and fitness and propriety.

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

26. On 22 September 2021, the Authority sent to the Agent a notice pursuant to section 309(2) of the Act (the **Notice**), advising the Agent that it was considering cautioning, or suspending or cancelling the Agent's registration under section 303(1) of the Act.
27. 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:
- a. had engaged in conduct that breached the Agent's obligations under clauses 2.1, 2.1A, 2.1B, 2.9, 2.9A and 2.23 of the Code;³ and
 - b. was related by employment to person who is not a person of integrity;⁴ and
 - c. was not a person of integrity or otherwise not a fit and proper person to provide immigration assistance.⁵

³ Paragraph 303(1)(h) of the Act

⁴ Paragraph 303(1)(g) of the Act

⁵ Paragraph 303(1)(f) of the Act

28. Pursuant to section 309(2) of the Act, the Authority invited the Agent to provide written submissions on the matters contained within the notice by 22 October 2021.

The Agent's response to the section 309 notice

29. On 22 October 2021, the Authority received the Agent's response by way of a submission (**Annexure C**). The response also included an attachment checklist (**Annexure D**) and thirty eight (38) attachments through five emails. The five emails comprised the following documents:

Email ONE

- a 20 page submission⁶
- a supporting document checklist for the 38 attachments⁷

Email TWO comprised of attachments

- 1, 2.1, 2.2A, 2.2B, 2.2C, 2.2D, 2.3A, 2.3B and 2.3C

Email THREE comprised of attachments

- 2.3D, 3 and 4

Email FOUR comprised of attachments

- 5, 6, 7, 8, 9, 10, 11, 12, 13.1, 13.2A, 13.2B, 13.3, 14, 15, 16, 17, 18, 19, 20, 21 and 22

Email FIVE comprised of attachments

- 23, 24, 25, 26 and 27

30. On 24 October 2021, the Agent was informed that the Authority had received his response to the Notice, inclusive of the submission, document checklist, and thirty eight attachments.
31. A summary of the Agent's submission is outlined below. For completeness, I note that the Agent has repeated many of the arguments within different sections of his submission.

Submission

Applications in general

32. The Agent was employed by STG around April 2014. It was his first employment in Australia after concluding his study and the first time he engaged in the education and migration industry. He commenced as a junior employee and subsequently completed the education agent training course and obtained certification as an Education Agent Counsellor from Professional International Education Resources (PIER) on 22 December 2014 (refer to Attachment 1). His duties consisted of assisting students with their enrolments and senior employees with clerical work, such as filing, checking documentation and receiving and summarising correspondence from the Department. Two applications and Attachment 22 were referenced to support the statement.⁸

⁶ See Annex ure C

⁷ See Annex ure D

⁸ RID 45559454576 and TRN EGOA1QZKVJ where former RMA Zhao was the representative RMA

33. In late 2018, Mr Zhao established a second company, Melbourne Consultant, and the Agent was asked to hold shares on Mr Zhao's behalf. Since that time, STG and Melbourne Consultant have operated as a single company (refer to Attachment 2.1). The two companies are under the 'de facto control' of Mr Zhao, including the same 'working pattern' and the same employees. STG and Melbourne Consultant, as a whole, employ registered migration agents (**RMAs**), education agents, and support staff who assist with organizing, filing, document checking, pre-filing of forms and receiving documentation from education providers and the Department. The Agent has now terminated his employment relationship with Mr Zhao and works as a sole trader (refer to Attachment 3).
34. The Agent registered as a migration agent on 10 June 2017, and has declared his representation in visa applications submitted on behalf of his clients, of which there were four main types:
1. Client approached him for the initial service
 2. Application submitted by others, or the client, prior to approaching him
 3. Application submitted by other RMAs within STG before he was engaged
 4. Initial/previous stage of a visa application submitted by others, or the client, prior to approaching him.
35. Some clients engaged the Agent's services after the visa was submitted impacting the dates. The visa lodgment date and the date the Agent was reflected on the application would differ in these applications. [the Agent went on to discuss a number of cases listed in Attachment A of the section 309 Notice where the application lodgement date did not match the date the Agent was attached to the application]

Email addresses

36. The Agent's only working email address while in the employ of STG and Melbourne Consultant was eric@stgservice.com.au (Eric email address). Prior to his registration the email address was also used with applications where he provided assistance and support.⁹
37. The Agent's personal email address is ericlimelbourne@gmail.com (Gmail address), updated on the Authority's website on 18 August 2021. Due to the cancellation of Mr Zhao's registration he decided to terminate his employment with STG and Melbourne Consultant. He has been in the China since 13 June 2021, due to the passing of his father and his mother's ill health,¹⁰ making it difficult to deal with work related matters other than assisting his clients and protecting their legitimate interests (refer to Attachment 4). After a conversation with Mr Zhao, he changed his email address and commenced the resignation process. However, given his personal commitments, he only commenced the formal handover on the morning of 22 September 2021 (refer to Attachment 5). He had not attempted to deliberately mislead the Authority as he was of the view that the email address recorded with the Authority was for the purpose of communicating with the Authority in relation his registration as opposed to visa applications.

⁹ Including: filing and checking documents; pre-filing documents; receiving and summarising correspondence from the Department

¹⁰ See paragraph 9 of the Agent's submission

38. The Agent now has another email address, gan1011@outlook.com, related to his registration and has created a corresponding ImmiAccount (the Ganten email address and ImmiAccount) when he started his client handover on 22 September 2021. He planned to use the email address for receiving information 'from case officers'. His client [GK] was the first client that agreed to continue with his service. Aside from updating the new agent information in respect of Mr [GK]'s application, he also changed the client's personal email address to the Ganten email, with the client's consent. He had done this because he had *'encountered several instances where correspondence kept being sent to the email address of previous agent.'* However, after he received the Notice in the evening on the same day, he *'realise[d] that it was inappropriate to use different email address for receiving correspondence and registration with the Authority. Therefore [he] changed the email address to Gmail for the client Mr [GK] on 27 September.'* Refer to Attachment 5.
39. The other email addresses the Agent used as the agent contact email for his clients in their visa applications belong to support staff who serviced both STG and Melbourne Consultant. The streamlined working process within STG and Melbourne Consultant involved work of the support staff. The support staff assist education agents and RMAs to file documents received from clients, check documents, pre-fill all kinds of forms and receive correspondence from education providers and the Department. As he had a large customer base, and in order to increase his work efficiency and to reply to clients quickly, he sought the help of support staff. Their email addresses were used in his clients' applications and when support staff received correspondence from the Department, they would summarise the content, file the document and forward it to him (refer to Attachments commencing with 2.2). He has not helped others to sign the agent declaration form or concealed his involvement in such misconduct. The use of support staff was not for misleading the Department or impeding the work of the Department.
40. The Agent now he knows that the company operating procedure, in providing staff email addresses was inappropriate. He has learnt and realised that the email address for receiving correspondence from the Department should be the same as that recorded with the Authority. In future practice, he will keep the email address consistent and updated with the Authority in a timely manner. He will not use any other email, such as from support staff, for communicating with the Department and even if he involves support staff in the future, he will follow the proper process in receiving the correspondence himself.

ImmiAccounts

41. The Agent is currently using his personal ImmiAccount,¹¹ created on 22 September 2021.
42. The ImmiAccounts the Agent used when he was with STG and Melbourne Consultant were:
- DH@stgservice.com.au
 - stgadm
 - zarina@stgservice.com.au

¹¹ Ganten ImmiAccount _____

43. The above ImmiAccounts were created and owned by STG and Melbourne Consultant and could be accessed by anyone in the company. All the visa applications for clients of STG and Melbourne Consultant could be lodged through these ImmiAccounts.
44. Some of the Agent's clients insisted on using their own ImmiAccounts to submit their applications because they wanted to check the progress of their visa applications at any time. For example:
- ImmiAccount botongtong84 was used for a client who had submitted a subclass 309 visa and later engaged his service for the subclass 100 visa application;
 - ImmiAccount wuli196801 was used for client who had submitted a subclass 309 visa application and also engaged him for the subclass 100.

The sole purpose for using the above ImmiAccounts was to ease the concerns of the clients and were never intended to mislead or deceive the Authority directly or indirectly.

45. The Agent has no knowledge of the other ImmiAccounts mentioned in the Notice.

Failure to declare immigration assistance

46. Whether the Agent used the ImmiAccount of STG, Melbourne Consultant, or his own, he has always declared himself as the representative migration agent within the application for his clients. In paragraph 13 and 21 of the Notice, it states that the Agent's MARN, credit card, or his personal particulars were connected to many different ImmiAccounts and it is inferred that he was related to many visa applications without declaring his involvement. However, the Agent is unaware of the ImmiAccounts mentioned in the Notice and he used email addresses of support staff for receiving correspondence from the Department. These support staff provided support to all the RMAs and education agents in the company. The credit card ending with 4730 was a card that could be accessed by anyone in the company.
47. The credit card mentioned in the Notice actually ended with the numbers 4730 instead of 5730 as stated in the Notice. The card belonged to Melbourne Consultant and the Agent was the listed card holder because he was the nominal Director (refer to Attachment 6). After the shares were transferred from the Agent, the card was yet to be changed. The Agent needed to travel to China urgently due to a family matter and the card was cancelled when he terminated his employment.
48. The Agent held the shares in Melbourne Consultant on behalf of Mr Zhao. As he was also the nominal Director of Melbourne Consultant, and became the listed company card holder. However the card was not managed by him.
49. There are two company cards. The STG card with Mr Zhao the listed card holder which could be accessed by anyone in the company (STG and Melbourne Consultant as a whole). The card under Melbourne Consultant ending with the numbers 4730 could also be accessed by anyone in the company (refer to Attachment 7).

50. Before Melbourne Consultant was established, the client fees and disbursements were paid with the card under STG. After Melbourne Consultant was established, the fees and disbursements of most of the Agent's clients were paid with the Melbourne Consultant card. The STG card was still occasionally used, as with visa applications EGOQLHNC60 and EGOQLHNC60 as it was dependent upon where the clients had paid their fees into.
51. Given the cards were owned and managed by STG and Melbourne Consultant, and could be accessed by anyone in the company, aside from his own cases, the Agent has no knowledge of the visa applications lodged with this card.

IP address

52. The IP address of the company should end with 164.118. However, the company has changed the internet providers (or just upgraded) and the Agent is unsure if this is the reason there was another 220 IP address.
53. Providing employees of STG and Melbourne Consultant, are connected to the company's network, even when working from home, the VPN was used to connect to the company's internet in order to access the documents. Therefore, as long as the visa applications were lodged while connected to the company's internet, the same IP address would be reflected.
54. After terminating his employment with STG and Melbourne Consultant, the Agent has been using his personal ImmiAccount. Given he has been in China since 13 June 2021, the IP address recorded should end in 14.169, being his home connection. However due to domestic policies in China, Gmail could not be logged into and accessing overseas websites is quite unstable. In order to ensure that his personal situation would not affect his clients' interest, the Agent purchased a VPN for connecting overseas websites, including logging into his personal ImmiAccount. Therefore besides 14.169, there might be other IP addresses.

Conduct of concern (In response to the paragraph 22 of the Notice)

55. STG and Melbourne Consultant have been running as the same company and are under de facto control of Mr Zhao. It was due to the Agent's misunderstanding of the business structure of this company, and the requirements of the Authority, that he has not updated his registration details promptly. However, he has never attempted to mislead the Authority or conceal his relationship with STG.
56. The operational procedures at STG and Melbourne Consultant might lead the Department to think that the Agent tried to conceal his ongoing association with STG. In future, the Agent will take steps to ensure he is clear with the Authority on his business relationships.
57. The Agent has disclosed his assistance in client visa applications when he provided immigration assistance. He has complied with section 312A of the *Migration Act 1958* (Cth) and has not failed to declare that he provided immigration assistance in association with applications submitted by him.
58. Guidelines, sample structures, as well as sample GTEs are available at the company to help students complete their GTE statement as some students had no idea what should be included in the statement.

59. The Agent denied that he knowingly submitted applications which he knew were misleading and inaccurate. He also asserted he did not facilitate non-genuine visa applications which served to undermine the integrity of visa programs in breach of the Code. However, he now understands that the company's operational procedures, in using email addresses of support staff for receiving correspondence from the Department, has many associated issues.

Association with STG & shareholding in Melbourne Consultant

Employment

60. The Agent became an employee of STG in April 2014 and registered as a migration agent on 10 June 2017. At the end of 2018, Mr Zhao decided to establish Melbourne Consultant and the Agent was asked to hold the shares on his behalf. The two companies were small private companies, and unlike the shares he held in STG, the entrusted shares in Melbourne Consultant did not result in additional pressure on his performance. The Agent did not consider the shareholding entrustment in Melbourne Consultant as an issue. However by perusing the Notice, and given the unintentional confusion it caused the Authority, he realised that he should have been more cautious and prudent regarding this matter and will take every step to ensure that nothing similar occurs again.
61. The Agent stated that STG and Melbourne Consultant are under the de-facto control of Mr Zhao and that Melbourne Consultant and STG had traded as a single company. Employees were only nominally under separate companies, therefore the two legal entities could be '*seen as one company as a whole*'. According to the Agent, this could be evidenced by:
1. His use of the Eric email address, as well as the email addresses from support staff containing the STG domain name, to receive correspondence from the Department. The structure and staff arrangements are presented in the organisational chart (Attachment 2.1);
 2. Melbourne Consultant trading with STG as a single company using 'STG' for marketing and branding purposes;
 3. Mr Zhao's role as the 'de facto controller' of both companies in every aspect from financial to personnel arrangements. All employees refer to Mr Zhao as 'boss' and the Agent was his employee both at STG and Melbourne Consultant (refer to Attachment 8). The authenticity of the Agent's WeChat account can be evidenced by Attachment 19;
 4. Melbourne Consultant had been registered at 301/232 Latrobe Street, Melbourne VIC 3000 (refer to Attachment 9). This office was rented by STG and the rental payment was also made by STG. Refer to Attachment 10 for the lease agreements and samples of the rental invoice and payment;
 5. For the Agent's initial registration in 2017, and his re-registration from 2018 to 2020, he uploaded the subscription details reflecting the subscriber as STG. For his 2021 registration, LegendCom was purchased under Melbourne Consultant.

62. The Agent incorrectly thought it would be acceptable to reflect the information recorded with the Authority to match his personnel arrangement. Therefore, he initially updated his work relationship with STG. After Melbourne Consultant was established, his work relationship changed to Melbourne Consultant on 12 February 2019. However, when he applied for re-registration on 24 May 2019, and provided the LegendCom of STG to the Authority, he was advised by the Authority that he should record STG as his second business. Therefore, STG was again declared as one of his business relationships (refer to Attachment 11).
63. The Agent did not include STG as his second business after he completed his re-registration in 2020 because STG and Melbourne Consultant were actually operating, and being managed, as a single company. Therefore, he only retained Melbourne Consultant for the purpose of his registration.
64. The Agent did not consider STG and Melbourne Consultant as two different companies and has never intended to conceal the connection between STG and Melbourne Consultant. He had not deliberately attempted to distance himself from STG or conceal his ongoing involvement and association with STG, as he would not have recorded the Eric email address with the Authority and use support staff email addresses with the STG domain to receive correspondence from the Department.
65. The business structure of STG and Melbourne Consultant, the fact that the Agent held shares on behalf of Mr Zhao, and his misunderstanding on the requirements of the Authority were the reasons the Agent failed to promptly update the information on the registration application. The Notice has highlighted what he did was incorrect and he promises that the same mistake will not occur in the future.

Shareholding

66. The Agent only held shares in STG from 17 January 2018 to 19 May 2018 (refer to Attachment 12). The shares were transferred to him from Mr Zhao as incentive shares on condition that he met a target within three months. However, as he did not meet the target and was stressed at work, the shares were relinquished.
67. Melbourne Consultant was established on 18 December 2018 and the Agent held the shares on behalf of Mr Zhao from 18 December 2018 to 10 February 2021, which can be evidenced by:
 - The signed agreement with Mr Zhao on 05 December 2018 (refer to Attachment 13.1). The agreement was signed between them and executed until the shares were transferred;
 - Melbourne Consultant had only received capital contributions from STG and Mr Zhao (refer to Attachment 13.2A and Attachment 13.2B) - balance sheets of Melbourne Consultant and examples of capital injected to Melbourne Consultant;
 - The Agent has never contributed any funds to Melbourne Consultant nor received any form of return from Melbourne Consultant (refer to Attachment 13.3 – accountant's letter).

68. Mr Zhao is the owner, controller, and beneficiary of Melbourne Consultant. The Agent apologised for the confusion caused by the business structures of STG and Melbourne Consultant which were not intended to mislead the Authority. In the future, he will pay more attention to his employment relationship and for whom he works. He will try to keep his work relationship as simple and straight forward as possible and update any of his employment changes with the Authority in a timely manner.

Address

69. The Agent indicated the address changes of Melbourne Consultant recorded with ASIC (refer to Attachment 9) were that listed below:

- 7/899 Whitehorse Road, Box Hill, VIC 3128
- 5A/899 Whitehorse Road, Box Hill, VIC 3128
- Suite 301/232 La Trobe Street, Melbourne VIC 3000
- 5A/899 Whitehorse Road, Box Hill, VIC 3128
- Suite 1, Level 1/85 Elizabeth Street, Hobart, TAS 7000

70. The Agent's contends the registration details recorded with the Authority reflect the below:

- 5/899 Whitehorse Road, Box Hill, VIC 3128
- 7/899 Whitehorse Road, Box Hill, VIC 3128
- Suite 301/232 La Trobe Street, Melbourne VIC 3000
- 5A/899 Whitehorse Road, Box Hill, VIC 3128
- Suite 1, Level 1/85 Elizabeth Street, Hobart, TAS 7000
- 3A Mernda Avenue, Ashburton, VIC 3147

71. The Agent has realised where he needs to make improvements and he sincerely apologises for his belated updates and frequent changes on his registration details. He would like to explain the reasons for them in order to demonstrate that he had not deliberately attempted to distance himself from STG or conceal his ongoing involvement and association with STG:

1. STG and Melbourne Consultant had shared offices in Box Hill VIC 3128 before Mr Zhao decided to open a new office in Hobart and changed the registration of Melbourne Consultant to that office. He had not seen STG and Melbourne Consultant as two different companies therefore did not act in a timely manner to update his registration details with the change of the registration details of Melbourne Consultant each time. Given that he communicates with the Authority regarding his registration and the Department regarding his clients' visa applications, he thought a valid email address was more important. However, he now realises that he 'was wrong';
2. The reason he changed his personal email address in August this year was after his conversation with Mr Zhao. He was considering resigning at the time but had not commenced the process. As he had not formally terminated his employment he changed the details on his registration to the Hobart address to match the ASIC registration records for Melbourne Consultant.

72. As he did not have a correct and complete understanding of the Code and the requirements of the Authority, or on the business structure of STG and Melbourne Consultant, the Agent incorrectly thought that it would be acceptable to record his registration details as either of the two companies.

Email address

73. The Agent did not seek to mislead the Authority or conceal his connection with STG evident with the Eric email address reflected for communication with the Authority. STG and Melbourne Consultant operate as the same company and share staffing resources. The correspondence emails which belong to support staff used for receiving messages from the Department for his clients also reflected an STG domain.
74. Due to the cancellation of Mr Zhao's registration, the Agent decided to terminate his employment with STG and Melbourne Consultant, and changed his email address on 18 August 2021. He understands that he should have taken prompt action and terminated his employment relationship with Mr Zhao. However, the passing of his father and the health condition of his mother made it difficult to deal with work-related issues aside from assisting his clients (refer to Attachment 2.1). The handover did not formally start until 22 September 2021. Many clients had entered into agreements with him earlier and it would be detrimental to their maintaining their lawful status in Australia if he terminated their service suddenly and close to their visa expiry. On 22 September, he formally commenced the process of resignation and handover (refer to Attachment 5). This is the reason he continued to help his clients lodge visa applications with the STG email address, after he changed the email address to his personal one.
75. The Agent incorrectly thought the email address that was recorded with the Authority was merely for communicating with the Authority for matters such as registration and not case officers in terms of visa applications. He had not deliberately attempted to mislead the Authority.

Registration application

76. The first two of the four applications listed in paragraph 39 of the Notice reflected:
1. EGONIL69PD: application was lodged on 18 September 2019 listing the agent contact detail as 7/899 Whitehorse Road, Box Hill. On 16 June 2021, when the applicant needed to respond to a section 56 notice, the agent contact details were updated with a Form 956 and in ImmiAccount;
 2. EGONZIIZRB: application was lodged on 09 December 2019 with the agent contact detail reflecting 7/899 Whitehorse Road, Box Hill. On 30 June 2021, when assisting the client to send supporting documents to the Department, the agent contact details were updated with Form 956 and ImmiAccount;
 3. The incorrect details reflected in the postcode and state were likely caused by the pre-filling function in Google Chrome. However he did not check the details carefully and will try his best to avoid such mistakes in the future.

77. In terms of the contact number, both 0212 and 0262 are land lines attached to the Melbourne office and 8374 is the landline of the Hobart office. Given the Agent considered STG and Melbourne Consultant as one company, he did not think it was an issue to use either phone number. He now knows that he should maintain clarity over his contact details.
78. Changing his registration application and his failure to update his details promptly were on account of the Agent's misunderstanding on the requirements of the Authority as well as the business structure of STG and Melbourne Consultant. He has never attempted to mislead the Authority or conceal his relationship with STG or the connections between STG and Melbourne Consultant. The Agent now realises the issues that might arise and will take steps to comply with clause 2.22B of the Code in the future.

Conflict of Interest

Melbourne Consultant

79. The Agent held the shares on behalf of Mr Zhao. STG and Melbourne Consultant are under the de facto control of Mr Zhao and he was just an employee of Mr Zhao at STG and Melbourne Consultant.
80. The Agent has engaged in the education and migration industry for several years and has his own customer base. A registered migration agent can practice as a sole trader and it is not necessary for him to work with STG or Melbourne Consultant. Therefore, whether Mr Shuobang YANG (Mr Yang) continues to be the Director of Melbourne Consultant has no consequence on his career.
81. The Agent represented Mr Yang in April 2021, without charging a fee, and assisted him in applying for his student visa as they were colleagues. Mr Yang applied for his courses on his own and approached the Agent for assistance because he was unsure on the visa preparation, given he included his partner in the visa application. The Agent helped him sort the documents and lodge the visa (refer to Attachment 14).
82. Mr Yang¹² was an employee of Mr Zhao and applied for his previous student visa and his subclass 485 visa on his own through the company ImmiAccount. Mr Yang did not work on a full-time basis and stated that he used the correspondence email of a full-time staff member so that he did not miss any important messages from the Department (refer to Attachment 14).
83. In terms of the concerns raised on the Agent's relationship with Mr Yang, mentioned in paragraph 75 to 78 in the Notice, he did not discuss personal matters with Mr Yang, during their work together and he does not know anything about about Mr Yang's relationship with Ms [GH]. However, when he assisted Mr Yang with organising his documents and lodging his student visa application, he assessed the relationship with his then partner Ms Tan on the basis of their photos, joint bank account statement, joint lease agreement, pets, evidence of their address, as well as evidence of activities together. Based on the supporting documentation and the length of the relationship covered by these documents, he assessed that they were in a genuine relationship and lodged the application for Mr Yang.

¹² On the presumption that the Agent was referring to Mr Yang

84. The Agent contends that he was not involved in visa applications for Mr Yang without declaring himself as the representative agent and did not provide false or misleading information to procure a visa outcome. The Agent does not consider that his assistance in lodging a visa application for Mr Yang in April 2021, raised a conflict of interest situation. However, given that it was raised as a conflict consideration in the Notice, his withdrew his appointment from Mr Yang's application on 28 September 2021.

Corporate Holdings at MACI Group Pty Ltd

85. The Agent holds 17.5% shares in MACI Group Pty Ltd and indirectly holds 17.5% shares in Llewellyn Projects Pty Ltd ('LLE'). He made the investment on recommendation and considered the education industry quite promising. Although he is regarded as the direct beneficiary of the education provider, based on the shares he holds, he has never received any dividend from MACI Group, and has never allowed his own interests to affect his clients' legitimate and equitable interests (refer to Attachment 15).
86. Some of his clients who studied with MACI chose the education provider on recommendation of their friends without his help. Others chose this institute while he was providing them with assistance. However, he was aware that a conflict of interest might potentially arise and accordingly he informed students that he had some shareholdings in MACI during the consultation. He assists the students plan their study based on their needs, the convenience of travelling to study and whether the student support provided by MACI could help their study. He understands that it is absolutely essential for an RMA to fully communicate with clients whenever there is a potential conflict of interest situation.
87. He understands that as an RMA, he has a duty to avoid conflicts of interest and conflicts of duties, and must not accept a client in instances where any other interest of his would affect his clients' legitimate interest. The Agent has received no return from his investment in MACI Group. As he plans to stay in the profession long term, and given he is a diligent and professional migration agent, he has decided that he will no longer recommend MACI to any of his clients unless they chose the institute on their own prior to engaging his services or there is no better option for them. Where he does so, he will inform them (in writing) of his shareholding in MACI and obtain their consent in writing. He also plans to reconsider his investments and take steps to relinquish his shares.
88. The Agent was Director of MACI Group from 21 March 2017 to 10 October 2019 and a Director of LLE from 13 June 2017 to 10 October 2019 (refer to Attachment 16). At the time the Agent was a Director, so too was Mr Zheng Zhu (Mr Zhu). Mr Zhu was Director of MACI Group and LLE since 18 June 2018 (refer to Attachment 17).
89. The Agent was appointed as Mr Zhu's registered migration agent as Mr Zhu was more familiar with him. He assisted Mr Zhu prepare the visa application according to the visa requirements and the documents prescribed by policy as well as the document guide and checklist provided by the Australian Consulate-General Hong Kong.

90. The Agent did not think that representing Mr Zhu would cause a conflict of interest because he had followed migration legislation when assisting Mr Zhu with the preparation of his visa application. He thought that as long as he could provide immigration assistance to his client by setting aside his own interest, having an objective look at the client's eligibility and need, and ensuring that no actual conflict of interest arises, it would not be of concern. However, given that it was discussed in the Notice as raising a conflict consideration, the agent appointment was withdrawn on 11 October 2021.
91. According to the Agent, avoiding conflicts of interest can sometimes be complex, and the correct choice and actions are not always obvious. He has read through the Code carefully after receiving the Notice, especially clauses 2.1A, 2.1B, 2.1C, 2.1D and 2.2. In addition, he has re-studied the 'Ethic Bytes and the Ethics Toolkit' and attended an online workshop regarding ethics and professional practice on 09 October 2021 (refer to Attachment 18). Through this workshop, he has learnt that when a situation of conflict of interest was related to a financial benefit received from a service unrelated to migration, he should be frank and candid and inform the client in writing about this in order to fully comply with the Code. He has now gained a better understanding and will ensure that any conflicts of interests and conflicts of duties are avoided in the future.

Applications where [Agent] was the declared migration agent (MARN) 1795162

Applications submitted since registration

92. The Agent contends that he has declared himself as the RMA in applications he lodged on behalf of his clients. The overview of those applications as well as the differences between visa lodgement date and the agent effect date were explained in paragraphs 5-7.¹³

Applications associated with the Gmail address

93. The use of the Gmail address was explained in paragraphs 8-10.¹⁴ The Agent is still in the process of handing over his clients. Some of them have elected to retain his services. These visa applications will continue through his own ImmiAccount using the Gmail address for correspondence. After he explained what had happened, as prescribed by the Practice Guide – Registered migration agents and companies, some clients chose to terminate his services to look for new agents.
94. He would like to reiterate that he incorrectly thought the email address recorded in the Authority's system was merely for communicating with the Authority for matters such as registration instead of for communicating with the case officers in terms of visa applications. He had not deliberately attempted to mislead the Authority and he will prevent such issues from occurring again in the future.

¹³ Of the Agent's submission

¹⁴ Ibid

Applications associated with the Eric email address

95. Only a small number of applications used the Eric email address as the email to receive correspondence from the Department. Generally the Agent used email addresses of the support staff to increase work efficiency (referred to paragraphs 7 to 8¹⁵ – where this is explained in detail).

Applications submitted on or before 14 October 2020

Applications submitted on or after 15 October 2020

96. The working procedure at STG and Melbourne Consultant involved the work of support staff. Support staff help education agents and RMAs in the company to file documents received from the clients, checking documents, pre-filling of forms and receiving correspondence from the education providers or the Department. All other email addresses that the Agent used as the agent contact email for his clients in their visa applications belong to the support staff in the company, who were shared employees of STG and Melbourne Consultant. When support staff received the correspondence from the Department, they would summarise the content, file the document and forward it to the Agent. The involvement of the support staff in clerical work was with his clients' consent (refer to Attachments commencing with 2.2_x). He has not assisted others in signing the agent declaration form nor has he concealed his involvement. The use of support staff's email addresses was not done to mislead the Department or impede the work of the Department.
97. However, the Agent has learnt that it was not completely appropriate. In his future practice he will keep the email address consistent and updated with the Authority in a timely manner. He will not use any other emails, such as that of the support staff, for communicating with the Department. In the event that he needs to involve support staff for his work in the future, he will follow the proper process of receiving the correspondence himself.

Applications giving rise for concern

Applications associated with the Director and Shareholder of Melbourne Consultant

98. He has explained the visa applications attached to Mr Yang in paragraphs 51-56¹⁶ in detail. The Agent would like to reiterate that he did not know the details of the relationship between Mr Yang and Ms [GH]. Due to client's confidentiality, their information is not normally discussed in the office, according to the company policies. Given that Ms [GH]'s visa application was lodged with the help of another agent, and the relationship was personal and private, he was not aware of the history of the relationship until he received the Notice. However, he has assessed Mr Yang's relationship with his partner Ms [TLHF] based on their photos, joint bank account statement, joint lease agreement, joint pets, proof of their address, as well as evidence of activities together. Based on the supporting documents as well as the length of the relationship covered by these documents, he assessed that they were in a genuine relationship. He did not provide, or help to provide, any misleading or false information to the Department. However the agent appointment was withdrawn on 28 September 2021 to avoid further conflict considerations.

¹⁵ Ibid

¹⁶ Ibid

Applications and dependants

99. In general, the Agent helped the three clients lodge their visa applications based on their information and documents as well as their personal situation.

1. Ms Yang [ZBX] applied to study in Australia with the help of another agent in 2016. Mr Xu [LS], who was Ms Yang's de facto partner, lodged the subclass 485 visa on his own and declared Ms Yang as his de facto partner in the visa application. Later, Ms Yang approached the Agent to lodge the subclass 485 visa as the dependent applicant. He had assessed their relationship based on their photos, letters from friend and parents, evidence of activities together, joint bank account statement and joint rental contract, proof of address, and their own relationship statement. Based on the documents he assessed their relationship as genuine. He has no information on their relationship or the visa applications since that time.
2. Ms Zhang [Y] applied for a subclass 485 visa as the dependant applicant of Mr Xi [SJ] in 2017. Their relationship commenced in 2016. The Agent assessed their relationship based on letters from a friend and an employer, joint bank account statements, their photos and photos of the gifts they sent to each other, the certificate of a pet they kept together, proof of address, and the relationship statements. He considered their relationship was genuine. However he has no control over their relationship development after he completes the service for the client.
3. Mr Yang [YX] provided letters from parents, photos of his relationship, proof of address, evidence of activities together, as well as their relationship statement. After the Agent assessed the documents, he considered the relationship with Ms Wei [S] as genuine. Mr Yang returned to China in a hurry due to family issues in mid-May. It was an urgent situation given he left Australia without waiting for the Bridging visa B to be granted. When Mr Yang received the section 57 notice he was still in China. Given he needed to deal with family issues and considered it difficult to travel to Australia at the time, he decided to withdraw the visa application.

Concurrent applications

100. The protection visa application for Ms Koh [HS] was not lodged by the Agent. Ms Koh initially approached him for assistance in changing her education provider. When he reminded her on the visa expiry and the need to apply for a new visa, she told him that a friend of her sister had helped her to apply for a subclass 408. She was preparing to leave Australia and it was for that reason she wanted to withdraw from her course. When the Agent asked her to provide him her 'visa letter', he discovered that the visa she had applied for was a protection visa. After she realised she had been cheated, she requested that the Agent apply for the subclass 408 on her behalf (refer to Attachment 19).

101. According to the Agent, he has always acted according to the law and assessed his clients' eligibility fairly based on the information and documents provided to him. He has never been involved in any misconduct to help secure a visa outcome for applicants that would not ordinarily be entitled to the visa (refer to Attachment 24). However in future, he will also be more careful in fulfilling his responsibility of due diligence in order to eliminate any concerns on his client applications.

Provision of immigration assistance without declaring involvement

Applications associated with the Summer email address

Applications associated with CLu email address

Applications associated with Sabrinama email address

102. As stated in paragraphs 8-12,¹⁷ except for the Eric email address, Gmail email address, and gan1011@outlook.com, the other email addresses used for visa applications where the Agent's MARN was listed, belonged to the company support staff. Support staff at STG and Melbourne Consultant did not support one particular education or migration agent (refer to Attachments numbered starting with 2.3_x). They provided support to any education agent or migration agent based on their workload. This is the reason that numerous different email addresses are listed in Attachment A of the Notice.

103. The Agent has declared himself as the RMA in the applications he had lodged for his clients. However, he is not able to comment on the applications where no assistance was declared as other migration agents and education agents were provided support using the same email addresses. As the email addresses of support staff were used to communicate with the Department, and given he is not aware to whom the support staff were providing assistance with any application, he cannot comment further. Although the DH, stgadmin and zarina ImmiAccount were used by STG and Melbourne Consultant, it would not be reasonable for him to check the applications in ImmiAccount for the applications that were not lodged by him.

Credit Card

104. As stated in paragraphs 39-40,¹⁸ the Agent held the shares in Melbourne Consultant on behalf of Mr Zhao. The Agent's name was listed on the card because he was the entrusted and nominal Director of the company. The reason why the card has not yet been cancelled was explained in paragraph 19.¹⁹ Therefore, the Agent does not have control or management of this card.

105. As stated in paragraphs 19-23,²⁰ the card ending with the numbers 4730 could be accessed by anyone in the company. The Agent used both the STG card and the Melbourne Consultant card in association with the visa applications lodged for his clients.

106. In terms of the applications submitted with the payment made by the card ending with in numbers 4730, the Agent can provide limited comment as he neither knows nor has control over who used the card.

¹⁷ Ibid

¹⁸ Ibid

¹⁹ Ibid

²⁰ Ibid

Genuine Temporary Entrant (GTE) statements

107. According to the Agent, many student visa applicants do not know how they should write a GTE statement. Most student visa applicants come from the same country or similar background. Therefore, STG and Melbourne Consultant would provide a structure of the GTE as well as templates of the GTE to students. The resources on how to write a GTE are available across the company and everyone can use them. In addition to the company's resources on how to write the GTE, the Agent prepared some web pages specifically for students from Hong Kong or Taiwan (refer to Attachment 20 where 15 links to the pages were provided).
108. The use of guides and templates mentioned above might be the reason there are similarities among the GTEs the Agent's clients have submitted as well as similarities between GTEs from his clients to persons that he has no knowledge of.
109. The Agent advised his clients that the resources provided to them could only be used as a reference and the webpages he prepared included a reminder that GTEs should be personalised. He should have improved his work by carefully checking the GTE statements written by his clients to ensure that the templates have not been used by them and that their GTE statement is more reflective of their personal situation.
110. The Agent has tried his best to maintain the integrity of the migration advice profession. He was never involved in any purported misconduct that facilitated false or misleading information or non-genuine visa applications. He has always been frank and candid and refused consultation or requests involving false or misleading documents in order to maintain the reputation and integrity of the migration advice profession (refer to Attachment 26).

Potential findings on employment relationship to a person who is not of integrity

Related by employment

111. The Agent's employment relationship and shareholding in STG and Melbourne Consultant were explained in detail in paragraphs 33-40.²¹ He has worked as an employee for Mr Zhao at STG and Melbourne Consultant until he resigned. Although he was appointed as a Director at Melbourne Consultant, the rights he was conferred were never more than that of an employee.²²
112. He should have considered and commenced the termination of his employment as soon as he discovered Mr Zhao's conduct and became aware of the decision to cancel his registration. However, he has been in China since 13 June 2021 as his father passed away on 29 May 2021. His mother's health condition was also consequently impacted. According to the Agent, it was difficult for him to pay any attention to what had happened in the company because, aside from taking care of his mother and dealing with numerous matters in China, he still had to spend time with his own clients, especially those clients who had come close to their visa expiry date and it was difficult to change agents.

²¹ Ibid

²² Ibid

113. After his conversation with Mr Zhao regarding his resignation, he changed the email address to his personal one on 18 August 2021 and started the handover of his clients on the morning of 22 September 2021. He has now terminated his employment with STG and Melbourne Consultant and works as a sole trader (refer to Attachment 3 and 21). Given he cannot leave his mother and return to Australia at the moment, it would be difficult to complete all the handover work within a short period. Therefore he has agreed with Mr Zhao that it could be done within a 2 month period or no later than the end of 2021.
114. The Agent wants to practice as a migration agent in the long term. If it is difficult to find an investor to transfer his shares to while he is still in China, when he returns to Melbourne he will start the process of relinquishing his shares in both MACI Group and Jets Education Pty Ltd. He will also be more cautious with his future investments. This is not only out of the consideration of avoiding any concerns of affecting clients' legitimate interests or conflict of interest, but also for maintaining the integrity of the migration advice profession.
115. By receiving the Notice and re-studying the Code and Practice Guides, he realises how important it is that he exercises due diligence and takes control of his work. He now knows that his relationships and considerations on their integrity will have a great impact on his professional interests and on his ability to fulfil his professional and ethical obligations under the Code.

Integrity, Fit and Proper are key considerations

116. The concept of integrity was further elaborated in *Lilienthal v Migration Agents Registration Authority* [2002], it was referred to a person's soundness of moral principle and character, uprightness and honesty. As mentioned at the beginning of this submission, he is also trying to honestly disclose everything to the Authority to his best knowledge. He truly considers himself a person of integrity.
117. The concept of a 'fit and proper' person is a fundamental one in the profession of legal industry as it encompasses a person's honesty, integrity and reputation in order to ensure that they are fit and proper for the role they are undertaking. In *General Council of the Bar of South Australia v Jiba and others* [2016] 4 All SA 443, it was stated that "*in determining whether a person was a 'fit and proper' for legal profession, such person should have integrity, dignity, the possession of knowledge and technical skills, a capacity of hard work, respect for legal order and a sense of equality of fairness.*" He has been working as a registered migration agent since July 2017 and has been contactable not only during business hours but also non-business hours, which can be evidenced by the Wechat history with his clients in Attachments 23-26. He believes that he does have the characteristics working in migration advice profession. He has provided some referral letters and statutory declarations from his clients (refer to Attachment 22).

118. He entered the education and migration industry through STG and Melbourne Consultant, which is also the only company with which he has had an employment relationship in Australia since completing his study. The development of his professional knowledge as well as the extent to which he could maintain his professional interest and fulfil his obligations were impacted by STG and Melbourne Consultant. Although he has a business relationship with Mr Zhao elsewhere, he is considering relinquishing his holdings. As an employee of Mr Zhao, in either STG or Melbourne Consultant, he was unaware of many matters or they were matters beyond his control. However, as he has already terminated his employment relationship with Mr Zhao most of the concerns raised by the Authority will not occur in future.
119. He has always fulfilled his financial duties as a migration agent in accordance with clause 2.3A, 5.1 and 5.5 of the Code. He has been very careful in financial dealings with his clients and he has not conducted himself in a manner which has caused his clients to suffer significant financial loss or receive any form of fees or gifts other than the agreed service fees (refer to Attachment 23).
120. He has always complied with clause 2.6 of the Code and been honest with his clients or potential clients about their chance of success. He has been diligent and fair when communicating with those who came to him for initial consultation. By assessing their personal situation against the visa requirements, he has been frank and candid on their eligibility to apply for a visa and has not encouraged anyone to apply for visas that had no hope of success (refer to Attachment 24).
121. He has always acted in accordance with the law and migration legislation. He will not provide any service to his clients or potential clients that is inconsistent with the law for the sake of building customer goodwill (refer to Attachment 25). He has never engaged in providing, helping to provide, or encouraged the provision of false or misleading information to the Department (refer to Attachment 26).
122. He has struggled with emotions, memories, and anxiety caused by events that he had not anticipated. Furthermore, when he discovered that the rules prescribed in the Code of Conduct for registered migration agents had been breached by STG and Melbourne Consultant, immediate actions were taken.
123. The Agent considers himself the person of integrity and a fit and proper person to provide immigration assistance as prescribed by section 303(1)(f) of the *Migration Act 1958* (Cth).

Mitigating Factors

124. The Agent asserts there is sufficient evidence to indicate that he is a person of integrity and a fit and proper person to give immigration assistance, which he covered in detail in paragraphs 92-94.²³
125. Given the feedback of 11 of his clients, in Attachment 22, he contends that he has delivered competent and satisfactory immigration service to his clients.

²³ Ibid

126. The global pandemic threatens economic activity and employment prospects. If the Agent is unable to practice, he will need change his career. It would be hard for him to seek employment in other fields as he has no experience in the non-migration industry. He also seeks the Department's consideration on the general unemployment rate in Victoria, which is relatively high. He will reduce his business in the future. While providing professional and ethical service to his clients, he will spend more time on improving his professionalism. He will also communicate with other migration agents in this industry and learn from them.

127. He has taken part in charitable activities from time to time and does what he can to help others. Examples include, taking part in the 2019 Run for Kids activity and donating money following the flood in Henan Province, China in July 2021 (refer to Attachment 27).

128. He has declared himself as the representative agent in applications lodged for his clients. He was not involved in any form of misconduct that facilitates false or misleading documents and non-genuine visa applications. He has never purportedly attempted to mislead the Authority by changing his registration information. He has not deliberately engaged in any conduct that resulted in actual conflict or impacted the legitimate interests of his clients. He has learnt that he needs improvement in many aspects and he has already taken steps to improve his professionalism in order to maintain the reputation and integrity of the migration advice profession and make every effort to prevent any conflict consideration in his future practice.

129. He sincerely expects that his submissions could be considered by the Authority and that he may be given a second chance to learn and develop in this industry.

JURISDICTION

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

131. 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

132. 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)).

133. 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)).

134. 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.

135. 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

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

- Departmental records for the persons and businesses discussed throughout this decision.
- Records held by the Authority for the persons and businesses discussed throughout this decision.
- The Agent's responses to the section 309 notice.
- Supporting documentation provided by the Agent in response to the section 309 notice.

DECISION AND REASONS

Breaches of the Code

137. 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. A copy of the relevant clauses of the Code are at **Annexure E**.

Standard and burden of proof

138. In response to the notice issued pursuant to section 309 of the Act, and more specifically on any aspects regarding potential knowledge and involvement in criminal conduct and breach of the law, on part of the Agent, the Agent cited a number of cases for the Authority to consider. The Agent referred to the concept of integrity in *Lilienthal v Migration Agents Registration Authority* [2002] and fitness and propriety as discussed in *General Council of the Bar of South Australia v Jiba and others* [2016] 4 All SA 443. However, it is important to distinguish administrative decisions to that of civil and criminal proceedings, where neither party carries an onus of proof as highlighted in *Kurt Kraues v Migration Agents Registration Authority* [2016] AATA 1086 at [59] when citing *Melbourne Consultant Donald v Director-General of Social Security* [1984] FCA 57; 1 FCR 354.

139. Nonetheless, I accept that the rules arising from the decisions provide relevant guidance material for decision makers and that administrative decision makers must act according to substantial justice and the merits of the case. While every effort is made to meet the standards established in the rules derived from the proceedings, an administrative decision is not, however, bound by technicalities, legal forms or rules of evidence.²⁴

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

FINDINGS ON MATERIAL QUESTIONS OF FACT

THE AUTHORITY'S INVESTIGATION (CAS-04936-D7H1)

Association with STG and Melbourne Consultant

STG

141. Historical records held by the Authority reveal that the Agent had declared two separate working arrangements which were entered into with STG from the time he was first registered as a migration agent (**Annexure F**). The first was an employee relationship declared from 10 June 2017 until 12 February 2019. Some five months later he declared a contractual arrangement with STG, in the capacity of an independent contractor, from 10 July 2019 until 14 October 2020. It follows, that according to the information that was declared to the Authority, there was no further association between the Agent and STG from the time he ceased his contractual engagement on 14 October 2020, which was put to Agent in the Notice.

142. According to the Agent, and confirmed by records from the Australian Securities and Investments Commission (**ASIC**), the Agent was allocated with a twenty per cent shareholding in STG on 17 January 2018,²⁵ before he relinquished the shares in favour of Mr Zhao effective 19 May 2018.²⁶ According to the Agent, the shares were transferred to him as an incentive. However, as the shares were attached to a target, which he failed to meet, they reverted to Mr Zhao. Mr Zhao was the sole Director of STG throughout the period the Agent held the STG shares.

143. In his response to the Notice, the Agent stated that he commenced his employment with STG around April 2014, following his study. He worked as a junior employee before becoming an education agent following his certification on 22 December 2014.²⁷ He assisted students with their enrolments and senior employees with clerical work, which included filing, checking documentation and summarising correspondence received from the Department. Two visa applications²⁸ and Attachment 22 were referenced to support the statement.

²⁴ Refer to section 311 of the Act

²⁵ ASIC Document 9E0 038 834

²⁶ ASIC Document 7EA A22 055

²⁷ Evidence of Agent's certification as an education agent provided at Attachment 1

²⁸ RID 45559454576 and RID 135586756

144. The two visa applications and the statement from Ms [ZYM] were reviewed by the Authority. According to the statement by Ms [ZYM],²⁹ signed and dated 15 October 2021, she was a client of Mr Zhao in 2015, for her subclass 574 student visa, at which time the Agent was his assistant. Departmental records for this student visa application indicate that Mr Zhao was listed as an authorised recipient with email address eric@stgservice. There was no RMA declared in association with this application and no mention of STG. Notably, email correspondence sent to the Department on 21 December 2015,³⁰ which indicated it was from 'Tim'³¹ also contained a signature block reflecting 'Eric Li, General Manager'.
145. The statement from Ms [ZYM] confirms that immigration assistance was provided to her to lodge her student visa, albeit, according to departmental records, no such declaration was made to the Department. Moreover, as the correspondence was received from the Eric email address (the Agent's primary STG address) it is reasonable to form the view that the correspondence was not from Mr Zhao, as was implied, but from the Agent purporting to be Mr Zhao. Notably, it appears the Agent had progressed from a junior employee in 2014 to that of a General Manager in 2015, thereby holding a senior position within the company with corporate responsibility and intimate knowledge on the operational strategies and practices applied at STG.

Melbourne Consultant

146. According to the Authority's records the Agent declared a business association with Melbourne Consultant from 12 February 2019, being the same date he ceased his employment with STG. ASIC records for Melbourne Consultant indicate that the company was registered on 18 December 2018 and the Agent held 100 per cent of the shares from the time it was registered until 10 February 2021,³² when he relinquished his officeholder positions³³ in addition to all his shareholding. According to ASIC records, 100 per cent of the shares and the directorship of Melbourne Consultant were transferred from the Agent to Ms JWC effective from 10 February 2021³⁴ and then subsequently to Mr SBY effective from 15 April 2021.³⁵
147. In his response to the Authority, the Agent stated that while in the employ of STG, and subsequent to his registration on 10 June 2017, Mr Zhao established Melbourne Consultant in late 2018, and he was asked to hold the shares on Mr Zhao's behalf. The Agent argues that STG and Melbourne Consultant operate as a single company under the 'de facto control' of Mr Zhao. This includes identical working patterns and the same employees, which he presented through an organisational chart.³⁶ Further, that STG and Melbourne Consultant, as a whole, employ RMAs and education agents, which are supported by staff who assist them with organising, filing, document checking, pre-filing of forms and receiving documentation from education providers and the Department.

²⁹ Page 5 of Attachment 22

³⁰ CLD2015/23954023

³¹ Mr Teng Zhao is known as 'Tim'

³² See ASIC documents: 0EF N69 407 and 5EC Z54 111

³³ Director and Company Secretary

³⁴ See ASIC document 5EC Z54 111

³⁵ See ASIC document 5ED M99 994

³⁶ Attachment 2.1 to the Agent's response

148. According to the Agent, the two companies are small private companies and, unlike the shares he held in STG, the shares in Melbourne Consultant were not attached to his performance so he did not consider *'the shareholding entrustment of MC serious'*.³⁷ The Agent stated that in light of the Notice, and the unintended confusion it caused the Authority, he realised that he should have been more cautious and prudent regarding this matter and will take every step to ensure that nothing similar occurs again. Furthermore, that he has terminated his employment relationship with Mr Zhao and now works as a sole trader,³⁸ which was referenced to an email exchange he had with Mr Zhao tendering his resignation,³⁹ effective 1 October 2021.⁴⁰
149. ASIC records indicate that all the shares in Melbourne Consultant were beneficially held by the Agent. In light of the Agent's contention on the arrangements he entered into with Mr Zhao, in respect of Melbourne Consultant, the Agent does not appear to give any weight to the implications and consequences of being party to the arrangement. If accurate, the arrangement primarily served to deceive and misrepresent the true circumstances of the company. Significantly, any person who lodges a document with ASIC that is false or misleading maybe guilty of a criminal offence pursuant to section 1308(3) of the *Corporations Act 2001* (Cth).
150. The Agent submitted a current and historical company extract⁴¹ for Melbourne Consultant with his response,⁴² which contained identical information to that put to the Agent in the Notice sent by the Authority. As the Agent was the sole Director and Secretary of Melbourne Consultant from December 2018 until February 2021, it appears reasonable to conclude that he would have been the only person in a position of authority to amend and lodge documentation which was submitted to ASIC. Intentional deceit and misrepresentation to a government body, forming part of government records, cannot be explained away as unintentionally confusing the Authority. There is nothing confusing about the records held by ASIC, and the significance of the information in reflection of the company officeholders and shareholders.
151. Moreover, the Agent was not new to corporations as he was appointed Director to MACI Group P/L⁴³ in March 2017. He was also appointed Director to Llewellyn Projects P/L⁴⁴ in June 2017 and was a 17.5 per cent shareholder in the company through his shareholding in MACI Group P/L. Consequently, he would have been well versed on the requirements and obligations of officer holders and shareholders some 20 months before entering into the arrangement with Mr Zhao in respect of Melbourne Consultant.

³⁷ Paragraph 33 of the Agent's submission

³⁸ Attachment 21 to the Agent's response

³⁹ Attachment 3 to the Agent's response

⁴⁰ Eight days after the Notice was sent to the Agent

⁴¹ Dated 11 October 2021

⁴² Attachment 9 to the Agent's response

⁴³ ACN 618 102 364

⁴⁴ ACN 150 741 272

152. To support his statement on the ownership arrangement in relation to Melbourne Consultant, the Agent submitted a document titled 'Entrusted Shareholding Agreement' (ESA).⁴⁵ The ESA presented to the Authority was a PDF copy of what appeared to be an agreement entered into by Mr Zhao (Party A - de-facto capital contributor and shareholder) and the Agent (Party B – nominal shareholder) on 5 December 2018 in respect of Melbourne Consultant.
153. The ESA specifies that Mr Zhao would establish the company and the Agent would hold the shares on his behalf and exercise his shareholder's right according to Mr Zhao's instructions and that the effective control of the entity rested entirely with Mr Zhao. The Agent submitted evidence⁴⁶ of capital contribution from STG and Mr Zhao and a letter from the Director of accounting firm [WCP],⁴⁷ dated 11 October 2021, that he had not made any personal contribution to the company⁴⁸ since it was established and has not received any dividends throughout the period he held the shares.
154. ASIC records show that Melbourne Consultant was registered some 13 days later, on 18 December 2018, and that all 100 per cent of the shares were beneficially held⁴⁹ by the Agent for the entire period of his shareholding and that he was appointed sole Director and Secretary. Therefore, the two documents appear in conflict. That is, what was reported to ASIC did not appear to reflect the true arrangement related to the entity. Relevantly, this 'entrustment' transpired some six months after, what the Agent described as, having to relinquish his shares in STG for failing to meet the target set. Consequently, despite the Agent's arguments that the rights he was conferred were never more than that of an employee,⁵⁰ I am of the view that the Agent enjoyed a close position of trust with Mr Zhao and a senior and prominent role in both business entities.
155. The Agent asserts that when he discovered that the rules prescribed in the Code *'had been breached by STG and MC, immediate actions were taken'*⁵¹ and that he has now terminated his employment relationship with Mr Zhao. It remains unclear as to what 'immediate actions' the Agent was referring. If it relates to the purported severing of his relationship with Mr Zhao and the entities, I note that the Agent did not appear to take any action after Mr Zhao had his registration cancelled on 30 June 2021. The Agent's resignation email is dated 30 September 2021, three months after the Authority cancelled Mr Zhao's registration and eight days after the Authority sent the Agent a Notice it was considering disciplinary action against him. Consequently, any action on part of the Agent, genuine or otherwise, appears to have been undertaken in response to the Notice, rather than the Agent's concern about the conduct that was identified with the agents attached to the entities. Notably, the Agent appears to imply that the Code had been breached by STG and Melbourne Consultant, corporate entities, as opposed to the RMA's who engaged in the conduct and to whom the Code actually applies.

⁴⁵ Attachment 13.1 to the Agent's response

⁴⁶ Attachments 13.2A and 13.2B to the Agent's response

⁴⁷ Attachment 13.3 to the Agent's response

⁴⁸ Melbourne Consultant

⁴⁹ See ASIC document 0EFN69407

⁵⁰ Paragraph 83 of the Agent's submission

⁵¹ Paragraph 95 of the Agent's submission

156. Moreover, it is not apparent why the Agent would contemplate that any weight would be given to his contention as to the true state of the relationship, in light of his statement about the deceit to which he has been a party. More specifically, on the structure which was portrayed in respect of Melbourne Consultant, which was misleading and did not reflect the true circumstances. Even if I were to accept the Agent's contention that Mr Zhao was the silent and true owner of Melbourne Consultant, and was the person who directed the company operations, the Agent was nevertheless a willing and active participant in the deceit. Being party to a scheme for which the primary purpose was to mislead and deceive, is a reflection on the Agent as much as it is on Mr Zhao. Each party to such a scheme has been dishonest in their actions, which includes misleading the public and government officials.

157. Moreover, despite the Agent's claims, and irrespective of whether this were the case, the Agent was considered the lawful owner and Director of Melbourne Consultant from when it was first registered in December 2018 until he relinquished his 100 per cent shareholding and directorship effective 10 February 2021.

Resignation

158. The Agent submitted his email correspondence⁵² with Mr Zhao, for the period 30 September to 2 October 2021, in association with his resignation, which, according to the exchange, transpired after a telephone conversation between them. According to the email, the Agent was officially terminating his *'employment relationship with STG and MC.'* Of note however, the employment from which the Agent was resigning, was not disclosed or reflected on the Agent's records with the Authority. The Agent's registration did not reflect an association with STG and while he was declared as the Director of Melbourne Consultant, according to the ASIC records it had no link to STG. The Agent cited *'personal career planning and some realistic factors'* as the reasons for his resignation and extended his heartfelt appreciation to Mr Zhao for the guidance, development, and opportunities provided to him. The Agent also makes mention of his shock on the *'OMARA's references to various matters in the company'* following the *'situation'* with Mr Zhao and Ms Huang and on his need to learn and improve in order to maintain his professional integrity.

159. Mr Zhao thanks the Agent for his *'hard work and fruitful results in the company for so many years'* indicative that the relationship remained a strong and amicable one. Significantly, the correspondence highlighted that the Agent was to undertake a handover of his client caseload at a time after his resignation, due to family matters. I find it unlikely that any business would permit an employee to retain carriage of a significant client caseload for a time after they had resigned from their employment. Consequently, and in light of credibility concerns surrounding Mr Zhao and the Agent discussed earlier, the more likely explanation is that the relationship remains ongoing and the purported resignation was merely designed to portray that their connection is severed when this was not in fact the case. This would be consistent with the arrangement the parties had in place with the ownership of Melbourne Consultant where the official documentation did not reflect what the Agent had put forward in his response.

⁵² Attachment 3 to the Agent's response

Address

162. According to the Authority's records⁵³ (**Annexure G**), the business address for Melbourne Consultant was 5A/899 Whitehorse Road, Box Hill VIC 3128 (**Box Hill address**), until it was changed to Suite 1, L1/85 Elizabeth St, Hobart TAS 7000 (**Hobart address**), on 18 August 2021. The former Box Hill address is in the immediate proximity, and likely shared office space, with the STG business premises, located at 5/899 Whitehorse Road Box Hill, VIC. Given the Agent's statements that he considered STG and Melbourne Consultant as one business, it is probable that the two business entities operated out of the same premises, even though different corporate entities. Consequently, I am satisfied that the Agent shared the same business premises with STG from the time he declared Melbourne Consultant as his primary migration business to the Authority.

160. As discussed, the historical company extract from ASIC for Melbourne Consultant, reveals the Agent was the former Secretary and Director of the entity and held 100 per cent of the shares from 18 December 2018 until 10 February 2021,⁵⁴ when he relinquished his officeholder positions⁵⁵ and all his shareholding. However, the Agent did not advise the Authority on the change to his declared migration business for the purpose of his registration and the Register. Significantly, the extract also reveals the registered office and principal place of business for Melbourne Consultant was changed to the Hobart address in March 2021, some five months before the Agent changed the address on his registration record.⁵⁶ Given the delay in the Agent's disclosure on the changes surrounding the business entities with which he had declared an association, and in consideration of the timing of the amendments, I am of the view that they were prompted by factors other than a genuine change to the business circumstances at the time and the Agent's requirement to declare such to the Authority.

161. In his response to the Authority, the Agent stated STG and Melbourne Consultant shared offices in Box Hill VIC 3128, before Mr Zhao decided to open a new office in Hobart and changed the company registration⁵⁷ to that office. According to the Agent, he did not consider STG and Melbourne Consultant as two different companies and it is for this reason that he failed to act in a timely manner in updating his registration details. Moreover, as he communicates with the Authority and the Department by email, he was of the view that a valid email address was more important, but now realises he 'was wrong'.⁵⁸ If, as maintained, the Agent did not change the details on the Register as he considered the two companies as one, then it stands to reason that he would not have seen the need to make the changes at all. However the changes to the Agent's records were made, albeit five months later, and only two days after the Authority issued a Notice to a second RMA attached to STG about its consideration to take disciplinary action.

⁵³ From 12 February 2019, when Melbourne Consultant was first declared

⁵⁴ Documents: 0EF N69 407 and 5EC Z54 111

⁵⁵ Director and Company Secretary

⁵⁶ Document: 7EB F65 521

⁵⁷ Paragraph 43 (1) of the Agent's submission

⁵⁸ Ibid

162. The Agent contends that he did not have a complete understanding of the Code and the requirements of the Authority, or the business structure of STG and Melbourne Consultant, and thought it would be acceptable to record his registration details as either of the two companies. However, the Notice highlighted what he did was incorrect and inappropriate and he promises that the same mistake will not occur in the future.⁵⁹ The Agent went on to indicate that the reason he changed his personal email address in August 2021 was following his conversation with Mr Zhao when he first considered resigning from his employment. However, as he had not formally terminated his employment, he changed the contact details to reflect the Hobart address to align with the ASIC registration details of Melbourne Consultant.

163. The Agent's assertions are not credible. There is no evidence that the Agent made any effort to sever his ties with Mr Zhao, or the businesses, at the time. To the contrary, the evidence supports the proposition that the changes were made in order to conceal the link between the two companies as Mr Zhao's registration was already cancelled, while a second RMA at STG received her Notice two days before the changes were made. Consequently, while the Agent apportions blame on the changes he made to his details onto Mr Zhao, and on his misunderstanding on his obligations to maintain his records, I am of the view that the changes were made as a deliberate strategy to mislead the Authority.

Email address

164. The Agent was registered as a migration agent on 17 July 2017 and was in the employ of STG at the relevant time. On 12 February 2019, he declared Melbourne Consultant his primary migration business,⁶⁰ of which he was the sole Director when the association was declared.⁶¹ For the purpose of his registration with the Authority, he listed eric@stgservice.com.au as his primary and secondary email address from the time he was first registered in July 2017, until it was changed to the Gmail address on 18 August 2021.⁶²

165. As the primary email address associated with his registration as a migration agent, this email address was the one which was publically listed on the Register and made available on the Authority's website enabling consumers to identify and contact the Agent for services. Given the Agent's declaration that he no longer had an association with STG (or persons associated with STG) it is implausible that the Agent would fail to change the primary contact point which connected him to the very entity with which, according to the Authority's records, he purportedly no longer had an association, unless the connection remained ongoing. Particularly when he continued to actively submit and progress applications with the Department using that same address.

166. With electronic communication being the preferred mode of communication, the email address attached to the Agent's record on the Register continued to display the Eric email address (containing the STG domain) from the time he was initially registered in July 2017 until 18 August 2021. That is, he continued to use and advertise the email address established with STG for some 30 months after he purportedly ceased being an employee with the company.

⁵⁹ Paragraph 44 of the Agent's submission

⁶⁰ See Annexure F

⁶¹ ASIC Document: OEF N69 407

⁶² See Annexure G

167. More specifically, the Agent made the changes to his contact records two days after a Notice was issued to a second RMA attached to STG on the Authority's consideration to cancel her registration, following the decision to cancel the registration of the Principal of STG six weeks earlier. Failing to make any changes to the primary contact point, which was publically available to consumers of immigration assistance, is more in keeping with a person that remained firmly attached and connected to the business and the clients that were serviced and engaged by the business.
168. When this was put to the Agent, he argued that it was never his intention to mislead the Authority or conceal his connection with STG, evident with his use of the Eric email address. According to the Agent, the Eric email was his only working email address while in the employ of STG and Melbourne Consultant, irrespective of the roles he held. The Gmail address is his personal email address. The Agent maintained that he was of the view that the email address recorded with the Authority was for the purpose of communicating with the Authority in relation his registration as opposed to visa applications. This is not in contention. The matters put to the Agent by the Authority, as related to misleading information, were far broader than what the Agent had addressed in his response. At no time did the Authority indicate that the address recorded with the Authority had to be used in association with visa applications. What was highlighted however, was the volume of some 30 email addresses, which were recorded against the Agent and the visa applications, appeared to be designed to deceive and mislead the Department. Moreover, that it likely facilitated the provision of immigration assistance by people who were not registered migration agents, in contravention of the Act.
169. According to the Agent, he had decided to terminate his employment with STG and Melbourne Consultant, on account of the cancellation of Mr Zhao's registration, prompting the change to his email address on 18 August 2021 to the Gmail address. He understands that he should have taken immediate action to terminate his employment relationship with Mr Zhao. However as he has been in China since 13 June 2021, the passing of his father⁶³ and his mother's ill health had made it difficult to deal with work-related issues aside from continuing to assist his clients.
170. Accepting the Agent was navigating through a difficult period on a personal front, I nevertheless note that he was able to continue providing immigration assistance throughout this time but was not able to resign from his position, until after he too had received a Notice from the Authority. According to the Agent, the handover of his clients did not formally commence until 22 September 2021, which was the same day the Authority sent him the Notice, and eight days before he purportedly resigned on 30 September 2021.⁶⁴
171. In his response, the Agent advised that since 22 September 2021 he had another email address, gan1011@outlook.com, attached to his registration and has created a corresponding personal ImmiAccount (the **Ganten email** address and **ImmiAccount**).⁶⁵ He planned to use the email address for receiving information 'from case officers'. The Agent stated that his client [GK] was the first to agree to retain his service following the change. Furthermore, that aside from updating the new agent information in respect of Mr [GK]'s application, he also changed the client's personal email address to the Ganten email, with the client's consent.

⁶³ Attachment 4 to the Agent's response

⁶⁴ The Agent's resignation email is dated 30 September 2021

⁶⁵ Attachment 5 to the Agent's response

172. According to the Agent, he had done this because he had encountered several instances where correspondence was sent to the email address of the previous agent.⁶⁶ However, after he received the Notice he realised it was inappropriate to use different email addresses for receiving correspondence. Therefore, he subsequently changed the Ganten email address to the Gmail address for the application on 27 September.⁶⁷

173. I have already addressed the matter of the email address and its use. However, even if I were to accept that the Agent was under the impression that his email address had to correspond with that registered with the Authority, I reject the argument put forward. According to the Agent, and departmental records, he made changes to the agent details in the application in respect of his client Mr [GK]. However, the Agent also changed the client's personal email address to his Ganten email address. The Agent contends that the reason he did so was on account of his experience that former agents would, on occasion, continue to receive correspondence after changes were made to the Agent's details in ImmiAccount. It is unclear how changing a client's personal email address would impact correspondence that his agent receives, be it a current or former agent. This record should only ever reflect the applicant's email address, as indicated in the application form and the change of email address form [Form 929] which the Agent submitted to the Department on 22 September 2021.⁶⁸ The Agent's statement would necessarily imply that the personal contact details recorded against his client was only ever that of the Agent and not the applicant.

174. Furthermore, according to the Agent, after he received the Notice from the Authority, he proceeded to change the Ganten email address recorded against his Agent details for this application to his Eric email address (through Form 956). However, no change appears to have been made to the personal email address for this client.⁶⁹ Consequently, this does not support the Agent's contention that the only reason he changed the email address on the client's personal record, was out of his concern that correspondence could be sent to a former agent. Form 929 is also clear how the email address would be used. That is, the Department would not send correspondence to the personal email address if the applicant had authorised another person to receive documents on their behalf. The correspondence the Department sent to the Agent in respect of this client on 16 November 2021, to his Gmail address, confirms this to be the case.

175. Consequently, I reject the Agent's argument on the reasons he had recorded his new email address to reflect the client's personal email address. The more likely explanation was that the Agent had knowingly and deliberately created a new email address and ImmiAccount, with no obvious prior connection to STG, which would enable him to continue servicing STG clients in much the same way he was already doing. However, upon review of the Notice, received the very same day, the Agent became acutely aware that his conduct, and the associated visa applications, were under scrutiny. This would have prompted the Agent to make the subsequent change to the email address associated with his Agent details on 27 September 2021. Moreover, the Agent has not furnished an explanation as to why he would elect to register a personal ImmiAccount for progressing client applications, rather than an organisational one, as would be expected of an RMA in like circumstances.

⁶⁶ Paragraph 10 of the Agent's submission

⁶⁷ Ibid

⁶⁸ CLD2021/26437544

⁶⁹ See Annexure H

176. Furthermore, the Agent asserted that many clients had entered into agreements with him at an earlier time and it would have been detrimental to their maintaining their lawful status if he had terminated his services. The Agent contends that the reason he continued to assist his clients in submitting applications, containing the STG email address, at a time after he changed the email address to his personal one, was for the benefit of his clients and in ensuring there was no detriment to them. As the visa applicants were already clients of the Agent, and given his migration registration remained ongoing, I see no adverse impact on the clients with the Agent continuing to provide his services by using his new email address in preference to the STG email address. The Agent was not required to terminate his service with his clients, who had the option to retain his services, even if he resigned from STG. It follows, that any decision taken by the Agent on his employment relationships, should have no consequential or detrimental impact on his clients or their applications. Given such, I reject the Agent's argument that he only submitted applications through STG on account of his concern for his clients.

Registration application

177. In consideration of the changes the Agent had made to the details on his migration agent registration records on 18 August 2021, a review was undertaken on his most recent repeat registration application. According to the records held by the Authority, his 2021 registration application for renewal was submitted on 5 June 2021 and finalised on 2 July 2021, providing twelve months registration from 16 July 2021.⁷⁰ ASIC records reveal that the changes to the registered office and principal place of business for Melbourne Consultant were made in March 2021.

178. Consequently, while the address change from Victoria to Tasmania purportedly took place in March 2021, at the time the Agent submitted his renewal application (some three months later) these seemingly significant changes to the place of business for the migration agency were not reflected in his application. Moreover, the evidence of a fully paid LegendCom subscription, valid until 4 June 2022, submitted in support of the application, stated the subscriber as 'Melbourne Consultant' with the subscriber's address listed as 5A/899 Whitehorse Road, Box Hill VIC 3147. Further, the National Police Certificate issued to the Agent on 4 June 2021, likewise submitted with his application, also listed the Box Hill address.

179. Records before the Authority indicate that the office telephone number was changed on the Agent's registration record on 18 August 2021 (at the same time as the address) to 61 3 9899 0262 instead of the former number 61 3 9899 0212. However, the slight change did not appear to support the proposition that the number was a Hobart office number, which generally contains 6000's (such as '6224') as opposed to '9899'. In reviewing a number of forms attached to the Agent and Melbourne Consultant, submitted between June and September 2021, the postal address, phone number and email address appear to contain inconsistencies which indicated his ongoing connection to STG, rather than a separation as portrayed by the documents and records.

⁷⁰ Commencing from the expiry date

180. The 956 forms reviewed by the Authority were submitted in association with two applications lodged with the Department in 2019 and two in 2021. The inconsistencies and connections are highlighted below in respect of the four applications. Notably, the two visa applications submitted in 2019 were for applicants who reside offshore, while the applicants in the two remaining applications (which were submitted in August and September 2021) appear to reside in Victoria, not Tasmania.

Street Address	Suburb	State	P/C	Phone	Email ⁷¹	Form Submitted
Suite 1, L1/85 Elizabeth St	Hobart	VIC	3128	0398990212	sa.brinama@STG	16/6/21 ⁷²
Suite 1, L1/85 Elizabeth St	Hobart	VIC	7000	0398990212	sabrinama@STG	30/6/21 ⁷³
Suite 1, L1/85 Elizabeth St	Hobart	TAS	7000	0398990212	claire@STG	24/8/21 ⁷⁴
Suite 1, L1/85 Elizabeth St	Hobart	TAS	7000	0362348374	xl@STG	12/9/21 ⁷⁵

181. The above table reveals that while attempts were made to apply changes to the Agent's details, or seek to amend the details, the forms appear to be completed in haste and contain incorrect references to either a postcode or state which does not correspond with the street address. More significantly, all the email addresses are STG email addresses. While the 956 form submitted on 12 September 2021, contained a new Hobart number, the applications submitted in August and September 2021, were nonetheless submitted through the STG admin ImmiAccount. It follows, that on the basis of the information before the Authority, and the sequence of events, the Agent had not physically moved or severed his ties to the Box Hill address or STG, as implied by the records held by the Authority. Rather, I am of the view that the changes were made in response to the action taken by the Authority and were aimed at concealing the Agent's ongoing engagement and relationship with STG and the Box Hill address, and not on account of an actual separation and move to Tasmania.

182. In his response to the Authority, the Agent stated that the first two of the four applications listed in the table (at paragraph 180), were submitted in September and December 2019 with the Victorian Box Hill address. When subsequent correspondence was sent to the Department, on 16 and 30 June 2021, the new agent contact details were updated. The incorrect postcodes were put down to the pre-filling function of the web browser, mistakes which he will endeavour to avoid in the future. The information on the applications provided by the Agent in his response, replicate the details which formed part of the Notice. The only new detail was the pre-filling aspect of the forms and the Agent's intention to exercise more care with future applications. However, the point highlighted in paragraph 39 of the Notice was in relation to the Authority's contention that, while attempts were made to portray that the Agent's business, Melbourne Consultant, was managed and operated from Hobart Tasmania, this was unlikely to be the case. Rather, the Authority was of the view that the business had not physically moved to Tasmania nor that the Agent's ties to the Box Hill address were severed, as would be implied from the information recorded.

⁷¹ All the email addresses end in @stgservice.com.au

⁷² Reference EGONIL69PD – CLD2021/17068068 (appl submitted 18 Sept 2019)

⁷³ Reference EGONZIIZR – CLD2021/18519872 (appl submitted 9 Dec 2019)

⁷⁴ Reference EGORH30EXS – CLD2021/23704250 (appl submitted 24 Aug 2021)

⁷⁵ Reference EGORJOVYP4 – CLD2021/25517964 (appl submitted 12 Sep 2021)

183. In terms of the contact telephone numbers submitted with the applications, the Agent indicated that 0212 and 0262 are landlines for the Melbourne office while 8374 was the Hobart office landline. The Agent reiterated that his failure to promptly update his details were on account of his incorrect understanding of the requirements, and the business structure attached to STG and Melbourne Consultant which he considered one and the same. The Agent maintained that he had not attempted to mislead the Authority or conceal his relationship with STG, or the connection between STG and Melbourne Consultant, consequently confusing the Authority. Now that he is aware where the problems arose, he will make *'every step to comply with clause 2.22B of the Code in the future.'*⁷⁶
184. While the Agent relies on what he describes as his, incorrect and inappropriate understanding of the requirements of the Authority as well as the business structure of STG and MC, to explain away his deficiencies, the considerations put forward by the Authority were far broader than any lack of understanding on part of the Agent. The discussion on the businesses, their structures, and the associated details reflected in the documentation and records on file (such as addresses and phone numbers) served to highlight that irrespective of the details contained in these records, Melbourne Consultant did not appear to operate from Tasmania.
185. It is apparent that the Agent remains intrinsically associated with STG and has been so since he was first employed by them, irrespective of what was recorded, disclosed, or portrayed.
186. In light of my above discussion, and despite the Agent's arguments to the contrary, I am satisfied that the actions of the Agent were consistent with a deliberate attempt to distance himself from STG (and Mr Zhao) in order to conceal his ongoing involvement and association with the company and its associates with whom he continues to engage in ongoing business activities. It follows that I am satisfied that the Agent had engaged in conduct serving to mislead and deceive the Authority, in contravention of clause 2.9A of the Code, in addition to his failure in complying with clause 2.22B.

Conflict of Interest

Melbourne Consultant

187. The Authority has considered information available in ASIC records on the changes that were made to the migration business with which the Agent had declared an association, namely Melbourne Consultant. That is, the business declared as the Agent's primary migration business in relation to the provision of immigration assistance. It was changed after the Authority sent the Notice to the Agent. In is not in dispute that the Agent held 100 per cent of the shares from 18 December 2018 until 10 February 2021,⁷⁷ when he relinquished his officeholder positions⁷⁸ in addition to all his shareholding.

⁷⁶ Paragraph 50 of the Agent's submission

⁷⁷ See ASIC documents: 0EF N69 407 and 5EC Z54 111

⁷⁸ Director and Company Secretary

188. According to ASIC records, 100 per cent of the shares and the directorship of Melbourne Consultant were transferred from the Agent to Ms Chong effective from 10 February 2021⁷⁹ and then transferred to Mr Shuobang YANG (Mr Yang) effective from 16 April 2021.⁸⁰ At that time, the owner and Director of Melbourne Consultant, Mr Yang, was the Agent's client. The Agent provided immigration assistance to Mr Yang in relation to his visa application⁸¹ and the visa was granted on 29 September 2021. The Form 956, signed 31 March 2021, appointing the Agent as the nominated registered migration agent in respect of Mr Yang's student visa application is at **Annexure I**. His email contact details for the purpose of this application was the Sabrinama email address.
189. Effective from 16 April 2021, Mr Yang was the sole Director and shareholder of a business engaged in providing immigration assistance. The Agent was the registered migration agent on record associated with the business.⁸² The business was established by the Agent when it was first registered on 18 December 2018. The corporate entity which was formerly owned and controlled by the Agent, and through which he provided immigration assistance to was then owned and directed by the Agent's client on 16 April 2021.
190. Australian residency requirements⁸³ aside, representing a client who also appears to employ the Agent, raises questions about conflicts of interests. The Agent removed himself from representation of Mr Yang's application on 28 September 2021,⁸⁴ after the issue was highlighted in the Notice sent to the Agent on 22 September 2021. Mr Yang's most recent application remains under consideration and has no registered migration agent declared as assisting with the visa application.
191. Where a conflict of interest has a potential to arise, a migration agent would need to exercise extreme diligence and apply strategies which would serve to mitigate the potential for such arising. According to the Agent, he was just an employee with STG and Melbourne Consultant. He contends that as an RMA he can practice as a sole trader and has his own customer base. Therefore whether or not Mr Yang continued to be the Director of Melbourne Consultant had no impact upon him. The Agent stated that he represented Mr Yang in April 2021 as they were colleagues, without charging a fee, and where most of the work was undertaken by Mr Yang, who was likewise a former employee of STG. Mr Yang corroborated aspects of this contention in his Statutory Declaration signed on 13 October 2021, which was submitted with the Agent's response. The Statutory Declaration contained an STG email address reflecting Lucas@STG.⁸⁵
192. It is not in dispute that an RMA can practice as a sole trader, and this option was open to the Agent. Particularly when, as stated by the Agent, he had his own customer base. I note however, that this statement appears to contradict the Agent's argument that he only continued to submit applications with the STG email address for the benefit of his clients. If, as claimed, it is not necessary for him to work with STG or Melbourne Consultant on account of his own customer base, there would be no need to him to submit applications with the STG email address.

⁷⁹ See ASIC document 5EC Z54 111

⁸⁰ See ASIC document 5ED M99 994

⁸¹ RID 1185643518 – (appl submitted 1 Apr 2021)

⁸² ASIC records show this remained the case at 11 October 2021

⁸³ Provided by section 201A of the *Corporations Act 2001* (Cth)

⁸⁴ See CLD2021/26923615

⁸⁵ Attachment 14 to the Agent's response

183. Moreover, the Agent did not appear to operate in that capacity and continued to work with, and for, STG and Melbourne Consultant at a time when Mr Yang was appointed the sole Director and only shareholder of Melbourne Consultant. Specifically, the Agent was the representative agent for Mr Yang's student visa application at the time he declared Melbourne Consultant as the primary business through which he provided immigration assistance.⁸⁶ Whether or not a fee was attached to the assistance provided does not alter this fact.

192. The Code provides that an agent must not accept a client in instances where an interest of the agent would affect the legitimate interest of the client. Where such arises the agent must inform the client of the conflict and cease their representation. A situation where a migration agent works for a client, whom he simultaneously represents before the Department with an immigration matter, is a situation where a conflict between the Agent's interest and that of his client is highly likely. Particularly, where any outcome of Mr Yang's visa application, who was also the Agent's employer at the time, is likely to have a consequential impact on the Agent's employment with Melbourne Consultant.

193. Immigration assistance is defined in section 276 of the Act as using or purporting to use, knowledge of, or experience in, migration procedure to assist a visa applicant or cancellation review applicant with preparing, helping to prepare, or providing advice in relation to a visa application. Consequently, whether or not a fee was charged or received is irrelevant. Despite the Agent's contention that no conflict of interest arose when he assisted Mr Yang to lodge his student visa application in April 2021, I am satisfied that it had. Any outcome on the visa application submitted in respect of Mr Yang, had a direct consequence on the Agent given his employment with Melbourne Consultant, which was owned and directed by Mr Yang at the time. The Agent's subsequent removal from the application, after it was raised by the Authority, does not alter the fact that the circumstances in April 2021 gave rise to a conflict of interest which was neither identified nor acted upon by the Agent in breach of clauses 2.1A and 2.1B of the Code.

Corporate Holdings

194. During an analysis of the visa applications the Agent lodged on behalf of his clients, a number of student visa applications were submitted on the basis of their intended study with the Melbourne Advanced Commerce Institute (MACI). Some of these visa applications are listed below:

MARN	E-mail address	Lodgement	Request ID (RID)
1795162	kathy@stgservice.com.au	15-Jan-19	1720622799
1795162	claire@stgservice.com.au	23-Jan-19	235622533
1795162	yuki@stgservice.com.au	24-Jan-19	560622515
1795162	jessie@stgservice.com.au	7-Feb-19	1505621612
1795162	claire@stgservice.com.au	5-Oct-20	1540642292
1795162	claire@stgservice.com.au	9-Oct-20	1545642319
1795162	claire@stgservice.com.au	12-Oct-20	705640702

⁸⁶ See Annexure F _____

195. An ASIC review of the Agent's corporate holdings,⁸⁷ excluding Melbourne Consultant, revealed that the Agent:

- i. Held 100 per cent of the shares in Jing & Jing Nominees Pty Ltd⁸⁸
- ii. Held a 15 per cent share in Jets Education Pty Ltd⁸⁹ - from 14 July 2016
- iii. Held a 17.5 per cent share in MACI Group Pty Ltd⁹⁰ - from 21 March 2017 (subsequently held through Jing & Jing Nominees) and was a Director of MACI from 21 March 2017 to 10 October 2019
- iv. Held a 17.5 per cent share in Llewellyn Projects Pty Ltd⁹¹ - from 13 June 2017 through his shareholding in MACI Group and was a Director of Llewellyn Projects from 13 June 2017 to 10 October 2019

196. The above corporate holdings indicate that the Agent had business interests in providers of education services. More importantly, a number of the Agent's clients obtained student visas to study at the education providers of which the Agent was director and owner. Consequently, as with his representation of Mr Yang, he appears to have derived a benefit from the students proposing to attend MACI through his corporate shareholdings. These students were also represented by the Agent before the Department in relation to their visa applications. This too is a situation where a conflict of interest has potentially arisen.

197. The Agent confirmed his direct and indirect ownership in MACI and Llewellyn Projects. He argued that he did not receive any dividends from MACI and had not allowed his own interests to affect his clients' legitimate interests. The Agent provided a letter from an accountant⁹² stating that that Llewellyn Projects had not issued any dividends from 1 July 2017. The Agent failed to mention that more lucrative benefits arise from the growth and value of a business, extending to its shares and intangible assets including goodwill, from which the Agent would stand to benefit.

198. According to the Agent, only some clients selected the education providers on his recommendation and they were informed of his shareholdings during the consultation.⁹³ The Agent contends that he understands his duty to avoid conflicts and has decided that in future he will no longer recommend MACI to any of his clients unless they chose the institute on their own prior to engaging his services or there is no better option for them. Where he does so, he will inform them (in writing) of his shareholding in MACI and obtain their consent in writing. He also plans to reconsider his investments and take steps to relinquish his shares.⁹⁴ In light of the credibility concerns surrounding the Agent, I am not convinced that the Agent made his shareholding known to his clients nor that he would do so in the future. Even if I were to accept that the Agent would change his practice moving forward, this does not alter the fact that the Agent stands to benefit from the growth of his investments, to which he directed his clients.

⁸⁷ As at 15 July 2021

⁸⁸ ACN 620 460 147

⁸⁹ ACN 613 673 591

⁹⁰ ACN 618 102 364

⁹¹ ACN 150 741 272

⁹² Attachment 15 to the Agent's response

⁹³ Paragraph 58 of the Agent's submission

⁹⁴ Paragraph 59 of the Agent's submission

199. Furthermore, the current co-Director of Llewellyn Projects and MACI Group, Mr Zhu, was represented by the Agent for his subclass 188 visa application, submitted to the Department on 3 June 2021.⁹⁵ It was withdrawn on 11 October 2021 after the Agent was sent the Notice. The Agent maintained that no conflict arose as he had followed migration legislation when assisting with the application. The Agent claimed that he had set aside his own interest by considering the client's eligibility objectively, but given the concerns raised by the Authority he has now withdrawn his appointment. I note however that both the postal address and the email address, which were attached to STG from the time the application was submitted, remain unchanged.⁹⁶
200. The Agent stated that avoiding conflicts can be complex where the correct course of action is not always obvious. According to the Agent, he has read the Code, re-studied the Ethics Toolkit and Ethics Bytes and attended an online workshop on ethics and professional practice.⁹⁷ Following which, he now knows that when a conflict of interest relates to a financial benefit, he should be frank and candid and inform the client in writing about the matter in order to fully comply with the Code.
201. While the Agent contends that conflicts are not always obvious and he has now gained a better understanding to ensure they are avoided in the future, I am of the opinion that recommending a provider in which you have a direct interest is a conflict situation which should have been obvious to the Agent. I acknowledge that the Agent has taken steps to better inform himself on the obligations with which he should comply. However, it would have been prudent to undertake the educative sessions earlier and to consider and understand his obligations regarding conflicts, as well as a significant number of other obligations, before they arose and became a feature of his practice. It should not require an investigation and Notice from the Authority, for an Agent to seek to understand and comply with his obligations as an RMA.
202. While the Agent has argued that he had advised his clients of his ownership interest in the providers he was recommending, there is no evidence before the Authority that any action was taken to avoid or mitigate the significant and actual conflict of interest. It follows, that I am satisfied that the Agent had engaged in conduct where significant conflicts of interest arose, and had eventuated, in breach of clauses 2.1A and 2.1B of the Code.

Applications where the Agent was declared - (MARN) 1795162

Applications submitted since registration

203. From the time of the Agent's initial registration, departmental records reveal that he was the declared migration agent in relation to 592 applications submitted between 31 March 2015 and 20 August 2021.⁹⁸ From the total applications, nine (9) were submitted before the Agent was registered and he was subsequently added to these applications. In a further 23 applications, while the Agent was registered at the time they were submitted, he was added to the applications at a time after they were lodged with the Department.

⁹⁵ RID 2080644340 – submitted through stgadmin [IP 118] – sonia@STG email – BCC2021/1190418

⁹⁶ CLD2021/16021277

⁹⁷ Attachment 18 to the Agent's response

⁹⁸ Annexure A - Report extracted on 24 August 2021

204. In his response to the Authority, the Agent stated that following his registration on 10 June 2017, he has declared his representation in visa applications submitted on behalf of his clients. Furthermore, that the applications could broadly fall into four main categories:

1. Client approached him for the initial service
2. Application submitted by others, or the client, prior to approaching him
3. Application submitted by other RMAs within STG before he was engaged
4. Initial/previous stage of a visa application submitted by others, or the client, prior to approaching him.

205. The Agent addressed the point made in relation to the applications to which he was added after they were submitted, confirming he was engaged post lodgement and went on to discuss a number of specific cases. While the Authority mentioned the date discrepancies for some applications, it was only done so for completeness and accuracy, and was not a matter where conduct issues were raised. The Authority accepts that RMAs can be added to an application at any point throughout the processing period.

206. During the investigation, the 592 applications were reviewed and considered as two distinct cohorts. The first group comprised 246 applications that were submitted on or before 14 October 2020, when the Agent declared the cessation of his relationship with STG on the Authority's records. The second cohort totalled 346 applications that were submitted to the Department after the time the Agent purportedly ceased his relationship with STG, that is, those submitted on or after 15 October 2020. These 346 applications are discussed in further detail later in this decision.

Applications associated with the Gmail address

207. Of the 592 applications forming part of the analysis where the Agent was declared as representing the applicants, extracted on 24 August 2021, no applications contained the Gmail address for the purpose of communicating with the Department. Given that the Agent only changed his contact email to the Gmail address six days before the report was generated, this is consistent with expectations.

208. Consequently, a report was generated on 15 September 2021 and an enquiry undertaken on applications submitted after 24 August 2021. According to departmental records, a total of 47 applications were submitted between 23 August and 13 September 2021, where the Agent was the declared migration agent on file. A random sample of ten applications was analysed, which are presented in the table below. While none of the ten sampled applications reflected the Gmail address, all were lodged through the same ImmiAccount and IP address, attached to STG.

MARN	Visa S/C	Request ID	Lodgement	Email for Communication	ImmiAccount	IP
1795162	408	120646576	23/08/2021	lily@stgservice.com.au	stgadmin	203.54.164.118
1795162	408	1890647260	23/08/2021	xl@stgservice.com.au	stgadmin	203.54.164.118
1795162	801	2055645356	24/08/2021	claire@stgservice.com.au	stgadmin	203.54.164.118
1795162	408	1570646571	27/08/2021	sara@stgservice.com.au	stgadmin	203.54.164.118
1795162	500	405645031	31/08/2021	sara@stgservice.com.au	stgadmin	203.54.164.118
1795162	408	725646065	3/09/2021	xl@stgservice.com.au	stgadmin	203.54.164.118
1795162	500	1400644742	7/09/2021	sara@stgservice.com.au	stgadmin	203.54.164.118
1795162	500	2055645596	10/09/2021	claire@stgservice.com.au	stgadmin	203.54.164.118
1795162	408	385646178	12/09/2021	xl@stgservice.com.au	stgadmin	203.54.164.118
1795162	408	2010645914	13/09/2021	claire@stgservice.com.au	stgadmin	203.54.164.118

209. The above results from the random sampling of the 10 applications, submitted after the time the Agent had changed his contact details, would not support an argument that he had severed his ties to STG and no longer had a business relationship. On the contrary, the analysis supported a view that the Agent continued to submit applications through an ImmiAccount which was attached to STG and utilised an identical IP address to that used by a number of agents connected to STG. Furthermore, the Agent continued to provide different email addresses, all associated with STG, for his communication with the Department about the applications and clients he represented, as was the case when he was employed at STG.

210. When this was put to the Agent in the Notice, he argued that he did not change his details with the Authority in an attempt to deceive the Authority on his relationship with STG. The Agent confined his response on what he perceived to be the principal argument put forward by the Authority, which he assumed to be the need in only using the email address held by the Authority as his primary email address for corresponding with the Department.⁹⁹ The Agent stated that he will prevent such issues from occurring in the future. However, the arguments of the Authority were much broader and highlighted measures which were applied by the Agent, and others attached to STG, in order to conceal their involvement in the applications before the Department. More specifically, the enabling of immigration assistance by persons not authorised to provide it.

⁹⁹ Paragraphs 65-66 of the Agent's submission

211. In light of the evidence before the Authority, and the Agent's statements, I am satisfied that his business arrangements, associations, and connection to STG remained unchanged even though he amended his details. This reinforces the inference that the Agent's intention when making the changes to his contact details, and registration records, was to deceive and mislead the Authority, and the Department, on the true circumstances and arrangements that were in place in relation to the immigration assistance he provided. It follows, that I find the conduct unbecoming of a registered migration agent, which speaks to the Agent's integrity, and is in contravention of clauses 2.9, 2.9A and 2.23 of the Code.

Applications associated with the Eric email address

212. While the Agent's primary and secondary email address provided to the Authority was eric@stgservice.com.au for most of his registration period, this was not the email address the Agent used when submitting visa applications. Departmental records indicate that of the 592 applications submitted between 31 March 2015 and 20 August 2021, where the Agent was declared as representing the clients, only twenty five (25) applications were attached to this email address during the Agent's declared association with STG.

213. A further 12 applications provided the Eric email address after the time the Agent declared the cessation of his association with STG. In summary, 37 of the 592 applications listed the Eric email address for the purpose of communications with the Department. The below table is a visual representation of some, but not all, data associated with the Eric email address.

Lodgement date range	ImmiAccount	Internet Protocol (IP)	Total
STG - 6 Jul 15 – 28 Aug 20	DH (6/10 sampled)	203.54.164.118 110.142.98.220	25
POST STG - 23 Nov 20 – 7 Jun 21	STGadmin (5/5 sampled)	203.54.164.118	12

214. Of the identified 37 applications, most were submitted through an IP address ending in 118 (the **118 IP** address) or 220 (the **220 IP** address). Furthermore, of the ten sampled cases¹⁰⁰ during the STG period, six were submitted from the DH ImmiAccount.¹⁰¹ While five sampled applications¹⁰² submitted after the time the Agent removed his association with STG, were submitted through the STGadmin ImmiAccount and the 118 IP address.¹⁰³

215. According to the Agent, the company IP ended with 118, however as there was a change/upgrade in internet providers, it may have resulted in the second 220 address. Moreover, provided employees of STG and Melbourne Consultant were connected to the company's network, even when working from home, the VPN was used to connect to the corporate internet to access documentation.

¹⁰⁰ The 10 cases are highlighted in yellow in Annexure A

¹⁰¹ See eg's: RID 1710641127 and 800637124

¹⁰² The 5 cases are also highlighted in yellow in Annexure A

¹⁰³ See eg's: RID 1965642741 and 335643214

216. The Authority accepts that the 118 and 220 IP addresses were attached to STG and made available to the employees. Given the Agent's statement, this does not appear to be in dispute. Moreover, the Agent stated that IP address 14.169 was likewise used, being his home connection, and other addresses are likely as he has purchased a VPN for connecting to overseas websites, including logging into his personal ImmiAccount.
217. Given a number of applications were submitted through the DH ImmiAccount, I am satisfied that the Agent actively used and had access to that ImmiAccount, the 118 and 220 IP addresses, and the STGadmin ImmiAccount. Significantly, the DH ImmiAccount was the account through which the Crystal Lu 2017, Crystal Lu 2018, and the Sabrinama cases were submitted, where no registered migration agent was declared in association with the applications. The ImmiAccounts and IP addresses were used throughout the Agent's registration period, irrespective of whether he had declared an association with STG at the relevant period.
218. In his response to the Authority the Agent stated that he only used the Eric email address in a small number of applications, as he generally used email addresses of the support staff in order to increase his work efficiency. In light of the Agent's statements, and given he was registered for over four years with only 37 visa applications reflecting the Eric email address, I am satisfied that this was the case. That is, that the Agent used email addresses over and above the Eric email and Gmail address in association with the immigration assistance he provided and the visa applications he submitted to the Department.

Applications submitted on or before 14 October 2020

219. During the period the Agent declared an association with STG, 246 applications were submitted on or before 14 October 2020, where he was the declared migration agent. In addition to the 25 applications submitted where the Eric email address was provided, a further 24 email addresses were recorded against the applications forming part of the remaining 221 applications.¹⁰⁴ Of the total 25 email addresses, 21 (including the Eric address) were attached to STG. Aside from the Eric email address, the 20 additional email addresses containing the STG domain name are listed below.

- claire@stgservice.com.au
- claudia@stgservice.com.au
- info2@stgservice.com.cn
- kathy@stgservice.com.au
- nicole@stgservice.com.au
- sabrinama@stgservice.com.au
- sara@stgservice.com.au
- sonia@stgservice.com.au
- summer@stgservice.com.au
- tanya@stgservice.com.au
- xl@stgservice.com.au
- ying@stgservice.com.au
- clu@stgservice.com.au
- fay@stgservice.com.au
- jacob@stgservice.com.au
- jessie@stgservice.com.au
- nina@stgservice.com.au
- sunmer@stgservice.com.au
- susan@stgservice.com.au
- yuki@stgservice.com.au

¹⁰⁴ Refer to line entries 1-246 in Annexure A

220. I accept that, on occasion, an appointed representative agent may have cause to change their email address for the purpose of communicating with the Department in relation to their clients, over the course of their registration period. However, the extent to which this occurred with the applications where the Agent was declared the representative migration agent, is inconsistent with any reasonable necessity. Rather, it appears to reflect a systemic and regular practice which was exercised by the Agent and those employed at STG.
221. Personal and sensitive client information, including but not limited to; health and character details; requests for information; notice of adverse information; and the status and progress of a visa application, are disclosed to a client's appointed registered migration agent. This forms the privileged status of agents who register with the Authority, from which certain obligations towards clients, the Department, and the Authority arise.
222. It follows, that only the person who is lawfully permitted to provide immigration assistance, and who has been appointed by the client to act on their behalf, can discuss the client's case with the Department and represent the client in relation to the applications. Consequently, the Department will only communicate with the appointed representative migration agent, and does so on the understanding that the communication address nominated by the appointed representative is that which belongs to, and is accessed by, the lawfully appointed representative.
223. However, the use of 25 different email addresses in association with 246 applications,¹⁰⁵ is indicative that persons other than the Agent were providing immigration assistance to visa applicants even though the Agent was the declared representative migration agent on record. Given the Agent was aware of the inner workings of STG, and where most, if not all, of the applications would require either a declaration in respect of the nominated agent or a Form 956, including the Agent's signature, I am satisfied that the Agent was a willing and active participant in this activity.
224. In his response, the Agent argued that the procedures applied at STG and Melbourne Consultant involved the work of support staff, which would enable education agents and RMAs to achieve greater efficiency and productivity. According to the Agent, the email addresses he used for his clients in relation to their visa applications belonged to the support staff assisting him. This would imply that the Agent himself was using emails of support staff when communicating with the Department, which was highlighted several times in paragraphs six and seven of his submission.¹⁰⁶ The Agent went on to state that he has learnt that this was not completely appropriate, and will refrain from using other emails, such as that of support staff, when communicating with the Department and will follow the proper process of receiving the correspondence himself.¹⁰⁷ This would imply that the Agent did not receive the correspondence himself. The inconsistencies in the Agent's statements are indicative that information the Agent has put to the Authority is not credible.

¹⁰⁵ 21 of which were an STG email address

¹⁰⁶ Eg at paragraph 6(4) – *'I used the support staff's email sabrinama@'*

¹⁰⁷ Paragraphs 11-12 of the Agent's submission

225. Similarly, in paragraph 11 the Agent stated that he sought help from support staff and their email addresses were used in his clients' visa applications. When support staff received the correspondence from the Department, they would summarise the content, file the document and forward to him. It follows that the alternate email addresses could have been used either by the Agent or the support staff which would make them difficult to differentiate. A review of Attachment 2.2C revealed several instances where a section 56 request was sent from the Department to support staff emails. The requirements were subsequently summarised by the support staff before sending the summary through to the Agent. The same was identified in excerpts forming part of the 54 page Attachment labelled 2.2D.

226. I reject the notion that it is reasonable or appropriate to rely on support staff, who are not registered migration agents, to assess the progress of an application, summarise it, and provide an update to the Agent. An agent is fully responsible for the cases to which he or she is appointed. However, for the Agent, this does not appear to be the case. Aside from being inappropriate, it provides ample opportunity for errors to occur. For persons not registered as migration agents to undertake a review of migration cases and decide what is required, is contrary to the objectives of the regulatory scheme. It is for this reason that there exists the requirement that every registered migration agent have a sound working knowledge of migration law and procedure.

227. The process discussed above was identical with other RMAs attached to STG. A cross check of supporting documentation submitted by a former RMA from STG¹⁰⁸ revealed that the support staff also purported to be the Agent when communicating with the Department. **Annexure J** reveals correspondence sent to the Department on 14 and 29 March 2019 from Summer Wu, stating *'My name is Jing Li'*. The Agent's version shows the Eric email address was blind copied into the email, not visible on departmental records,¹⁰⁹ and demonstrates that the Agent did not send the correspondence. Another example is evident in correspondence sent to the Department on 19 February 2021. The email contained the Summer Wu signature block, while the text stated *'This is Eric, writing on behalf of my client.'*¹¹⁰ The exchange highlights the deception which is easily perpetrated with the use of different email addresses when corresponding with the Department.

228. According to the Agent, in future he will keep his email address consistent and will update the Authority in a timely manner. While this was not the central issue raised with the Agent, in light of his statement on his future intentions I note he is yet to record the Ganten email with the Authority. According to his submission, he now has another email address, gan1011@outlook.com, related to his registration.¹¹¹ I presume that 'registration' relates to his registration as an RMA. Consequently, I place little weight on the Agent's assurances that he will implement a change to his procedure and on the likelihood that this will not occur in the future.

¹⁰⁸ Page 37 of attachment C2 submitted by former RMA (MARN 1801056)

¹⁰⁹ RID 1600599412 – CLD2019/16031853 and CLD2019/20329763

¹¹⁰ CLD2021/540091 8

¹¹¹ Paragraph 10 of the Agent's submission

229. Given the significant number of email addresses provided to the Department for the purpose of communicating with the representative migration agent, I consider that the purpose was to impede the work of the Department. The use of different addresses was a deliberate strategy applied to conceal the identity of those providing immigration assistance and obstruct any comparative or investigative analysis of the corresponding applications.

230. Consequently, I am of the opinion that the Agent was a primary facilitator, and active participant, in misleading, deceitful, and unlawful conduct. It follows, that I find the Agent has acted in contravention of the law and in breach of his obligations as a registered migration agent in respect of this conduct. I am satisfied that the Agent had acted in breach of clauses 2.1, 2.9 and 2.23 of the Code.

Applications submitted on or after 15 October 2020¹¹²

231. After the Agent removed his association with STG from the records of the Authority, on 15 October 2020, 346 applications were submitted to the Department where he was the declared migration agent for the applications. Notably, the same approach and issues with the applications which were submitted prior to the Agent removing himself from STG continued with the applications that were submitted following the changes made to his registration details.

232. That is, in addition to the 12 applications submitted where the Eric email address was provided for the purpose of the applications, a further sixteen (16) email addresses were identified in the applications which formed part of the remaining 334 applications.¹¹³ Of the total 17 email addresses, 16 (including the Eric address) contained the STG domain name. Aside from the Eric email address, the 15 additional email addresses are listed below.

- claire@stgservice.com.au
- claudia@stgservice.com.au
- info2@stgservice.com.cn
- kathy@stgservice.com.au
- nicole@stgservice.com.au
- xl@stgservice.com.au
- ying@stgservice.com.au
- lily@stgservice.com.au
- sabrinama@stgservice.com.au
- sara@stgservice.com.au
- sonia@stgservice.com.au
- summer@stgservice.com.au
- tanya@stgservice.com.au
- amber@stgservice.com.au
- kelvin@stgservice.com.au

233. The information revealed that the 346 applications continued to utilise a significant number of email addresses for the purpose of communicating with the Department and evidenced the Agent's ongoing involvement with STG for the purpose of providing immigration assistance and submitting applications. It follows, that in addition to the 246 applications, where the 25 different email addresses were used, the conduct extended to incorporate a further 346 applications attached to 17 different email addresses.

¹¹² Until 24 August 2021

¹¹³ Refer to line entries 247-592 in Annexure A

234. Of the 17 email addresses attached to the applications submitted after 14 October 2020, 13 addresses were identical to those used in applications before that time.¹¹⁴ Significantly, the applications were submitted through the same IP addresses irrespective of whether they were submitted when the Agent declared an association with STG or a time thereafter. While the Agent declared to the Authority that his relationship with STG had ceased on 14 October 2020¹¹⁵ the applications submitted after this time demonstrate that the relationship remained ongoing. In response to the Notice, the Agent confirmed that the relationship with STG had not ceased, however he argued that the changes he made were not intended to mislead or conceal this fact. I reject this assertion. The changes the Agent made to his records were meant to portray his separation from STG, as already discussed in this decision. The only reason the Agent conceded that the relationship remained ongoing was due to the information put to him in the Notice.

235. As was the case with former RMA Huan Huang, there appears no discernible reason why applications represented by the Agent would have different email addresses, unless the immigration assistance was provided, and managed, by persons other than the Agent. While the Agent maintained that the addresses used to submit the applications were designed to increase work efficiency, how the use of one email address, over that of another, could possibly serve to increase work efficiency remains unclear. Particularly, as any involvement of a third party would require an additional step. If the assistance extended beyond administrative tasks however, this may explain how efficiencies with a large client cohort could be achieved.

236. The number of different email addresses used, and the absence of clear definers and restrictions on what persons not registered as migration agents could engage in, provided an environment where unlawful immigration assistance could progress unimpeded. It follows, that I am satisfied the Agent had actively facilitated the provision of immigration assistance by persons who were not able to lawfully provide the assistance. The conduct extended to deceiving and misleading the Department in relation to the applications.

237. Given the points above, I am of the view that the declarations made and information provided to the Authority, and the Department, were deliberately misleading and designed to conceal the Agent's ongoing engagement with STG and his facilitation of unlawful immigration assistance. Consequently, I am satisfied the Agent acted in breach of his obligations as a registered migration agent with respect to honesty and integrity and acted in contravention of the law.

Applications giving rise for concern

Applications associated with the Director and Shareholder of Melbourne Consultant

238. The Agent's representation of Mr Yang, Director and owner of Melbourne Consultant, was raised in relation to a conflict of interest arising. The Agent's representation of Mr Yang, in relation to his subclass 500 visa application submitted on 1 April 2021, included Ms Tan¹¹⁶ as his dependent applicant spouse.

¹¹⁴ Refer to Annexure A

¹¹⁵ Refer to Annexure F

¹¹⁶ Ms [TLHF]

239. A review of Mr Yang's visa history revealed an earlier application submitted in July 2018 (with no dependant) where no migration agent was declared even though the application was submitted through the DH ImmiAccount and an IP address regularly used in association with the Agent's applications.¹¹⁷ The Sabrinama STG email address provided was also used in association with other of the Agent's applications.¹¹⁸
240. During December 2018, a subsequent visa application was submitted for Mr Yang (no dependant) where no registered migration agent was declared as assisting with the application. The application was, however, submitted through the same IP address (IP 110.142.98.220) as the July application. In October 2020, an application represented by an STG RMA was submitted through the STGadmin ImmiAccount, the [118] IP address,¹¹⁹ using the Kathy email address¹²⁰ in respect of Ms [GH] where Mr Yang was declared as a spouse.¹²¹ However, the application the Agent submitted on 1 April 2021, through the same ImmiAccount and IP address, only six months later, declared Ms Tan, a different dependant applicant spouse.
241. These matters were highlighted with the Agent. Two different individuals were declared as the spouse of his client, in under a six month period. The Authority was of the view that this should have prompted a diligent migration agent to question the circumstances and the visa applicant in order to ensure that potentially deceptive and misleading information and documentation was not submitted to the Department.
242. In response to these issues, the Agent stated that he had no knowledge of the relationship between Mr Yang and Ms [GH] on account of client confidentiality policies applied in the office, where such information is not normally discussed. Further, given that Ms [GH]'s visa application was lodged with the help of another agent, and the relationship was personal and private, he was unaware of it until he received the Notice. According to the Agent, he assessed Mr Yang's relationship with his partner Ms Tan on the basis of the documentation available and length of relationship. The Agent contends that as he assessed that they were in a genuine relationship, he did not provide, or help to provide, any misleading or false information to the Department. According to the Agent, even though Mr Yang also worked for STG they did not discuss personal matters during their work together.¹²²
243. The Agent submitted a Statutory Declaration signed by Mr Yang on 13 October 2021. According to Mr Yang,¹²³ he applied for his 2018 applications (in July and December) himself through the STG ImmiAccount. He used an email address of another staff member for receiving correspondence as he only worked part-time. Mr Yang concurred that his relationship with Ms [GH] was a personal matter which was not discussed with the Agent during his employ with STG and that it was of short duration. In light of the statements made by Mr Yang in his Statutory Declaration a closer examination of the applications submitted in July and December 2018 was undertaken.

¹¹⁷ IP 110.142.98.220

¹¹⁸ Sabrinama@stgservice.com.au

¹¹⁹ IP 203.54.164.118

¹²⁰ Kathy@ stgservice.com.au

¹²¹ Unaccompanied FM Spouse

¹²² Paragraph 55 of the Agent's Submission

¹²³ Attachment 14 to the Agent's response – Statutory Declaration by Mr Yang

244. Mr Yang stated that he lodged both applications himself while in the employ of STG and it was for this reason he used the STG ImmiAccount. Mr Yang also indicated that he declared an email address of a full-time employee so that he would not miss any important correspondence from the Department on account of his part-time employment status. According to departmental records, Mr Yang's subclass 500 visa application submitted through the DH ImmiAccount on 30 July 2018¹²⁴ listed the Sabrinama email address for corresponding with the Department. However, the employment status on page 8 of the application was listed as 'unemployed'¹²⁵ and outlined an intention to seek employment after graduation. Departmental forms make it overtly clear that employment includes all paid employment, self-employment, family business employment, work experience, internships, unpaid employment and volunteer work. Consequently, if Mr Yang was employed with STG at the time he submitted the July application, he failed to disclose such in his visa application form.

245. Furthermore, the subclass 485 visa application submitted on 27 December 2018¹²⁶ provided a Gmail address¹²⁷ for corresponding with the Department, not an STG email address. More significantly, the form 80 submitted with this application likewise made no disclosure of Mr Yang's employment with STG. The only employment entry was related to a student coordinator role with Deakin University from June 2016 to January 2018.¹²⁸ Given the inconsistencies, it appears the information submitted by Mr Yang is misleading – either the Statutory Declaration submitted to the Authority or the form 80 and visa applications submitted to the Department. Given the information provided by Mr Yang does not appear to be credible, I afford no weight to his statements.

246. Consequently, I find it reasonable to conclude that the Agent was aware of the detail forming part of the applications submitted either by, or on behalf of, Mr Yang, including details of his listed dependants. Consideration and review of former applications, to which the Agent would have been privy, would form a necessary and logical historical perspective on his client's circumstances. It follows, that I am of the view the Agent not only knew the applications were likely misleading, but that he was an active participant in progressing applications that he knew were deceptive and designed to mislead the Department, so as to procure a visa outcome for Mr Yang.

Applications and dependants

247. Consistent with the issues already discussed in relation to Mr Yang, a further three (3) applications were identified where the relationships with dependant applicants warrant concern and where the Agent was declared as representing the applications. All three applications relate to dependants for a subclass 485 visa, two of which were granted and one was withdrawn.

¹²⁴ RID 1910615903

¹²⁵ CLD2018/37959375

¹²⁶ RID 1215622072

¹²⁷ b173656@gmail.com

¹²⁸ CLD2018/703028 07

- a. Ms [YZBX] applied for a visa on 30 October 2017¹²⁹ and was granted a visa as the dependant applicant on 11 January 2018. However, STG progressed a subsequent visa application for Ms [YZBX] where there was no mention of the primary applicant on whom she was originally dependant.
- b. Ms [ZY] applied for a visa on 15 December 2017¹³⁰ and was granted a visa as the dependant applicant on 10 February 2018. Ms [ZY] has not made further applications in association with the primary applicant on whom she was originally dependant.
- c. Mr [YYX] applied for a visa on 27 April 2018¹³¹ and the visa application was withdrawn 14 June 2018 after adverse information was put to the applicant by the Department on the genuineness of the relationship.

248. In his response to the Authority, the Agent argued that he assisted the three clients lodge their visa applications based on '*genuine information and documents*'¹³² he was provided as well as their personal situation. In all three matters he assessed their relationship as genuine on the basis of the documentation provided at the time and argued that he had no control over the development of their relationship. In respect of Mr [YYX], the Agent added that his client needed to travel back to China urgently on account of family issues and was still in China when the section 57 notice was received. As the client had to attend to family issues and could not return for a while he elected to withdraw the application. The Agent made no mention of the adverse information on the genuineness of the relationship which formed the basis of the application, where Mr [YYX] was listed as a dependant applicant. The application for Mr [YYX] was submitted as a subsequent entrant application, after the primary applicant was already granted her subclass 485 visa. She had listed another person as her spouse on her application.

249. I accept that relationships can, and often do, breakdown. However, there appears a pattern of applications submitted to the Department, where the Agent is the declared agent on record, where the dependant applicants are granted a visa (often after the primary applicant), and where they have separate visa applications thereafter. As the Agent, and STG in general, appear to be the primary link between these applicants and the visa applications, it appears reasonable to conclude that this practice is deliberately orchestrated with a view to secure visa outcomes for applicants that would not ordinarily be entitled to the visa by exploiting the provisions enacted for genuine dependant applicants.

Concurrent applications

250. The Agent was the declared representative agent for a subclass 408 visa application submitted on 12 September 2021 on behalf of Ms [KHS] and her dependant applicant Mr [PSW]. The signed 956 form in respect of this application is at **Annexure K**. While both visa applicants have held valid temporary visas for over a five year period, a diligent migration agent should have been aware that the applicants already had an application before the Department, submitted less than one month earlier, with Mr [PSW] as the primary applicant for that application. More significantly, where the grounds for submitting the one application for temporary stay may prove to be in conflict with the application for protection.

¹²⁹ RID 1270606016

¹³⁰ RID 1775607488

¹³¹ RID 515613816

¹³² Paragraph 71 of the Agent's Submission

251. A principal and overarching obligation of an RMA is to work in the legitimate interests of their clients and to deal with them competently, diligently and fairly. In order to be in a position to meet this obligation, at a minimum, every agent would need to, and be expected to, ascertain their client's visa status, immigration history and whether they have any applications before the Department, to provide the appropriate immigration advice. According to the Agent, Ms [KHS] approached him to change her education provider. When he prompted her on her visa expiry she advised him that a friend of her sister helped her to apply for a subclass 408 visa and she was preparing to leave Australia and wanted to withdraw from her course.
252. The Agent contends that he discovered she had applied for a protection visa when she provided him her 'visa letter'.¹³³ The Agent maintains that when Ms [KHS] realised she *'had been cheated'* she requested he apply for the subclass 408 visa on her behalf. A Statutory Declaration, signed by Ms [KHS] on 14 October 2021 was submitted to the Authority¹³⁴ in support of the contention. The Agent also referred to Attachment 24, which was submitted to evidence his compliance with the law and the fairness he applies in his assessment on a client's eligibility for a visa.
253. While the Agent and Ms [KHS] discuss her protection visa application, neither make any mention of her spouse, Mr [PSW], who was the primary applicant for the protection visa on which Ms [KHS] was the dependant applicant. Moreover, departmental records indicate that both applicants have been in Australia since October 2015, some six years before the protection visa application was submitted. The acknowledgement letter from the Department makes it abundantly clear that the application was for a subclass 866 Protection visa. Consequently, I reject the notion that Ms [KHS], after spending 6 years in Australia, was either confused or cheated on in regard to the type of visa application that was submitted to the Department.
254. I also note that a statement submitted by Ms [KHS] with the subclass 408 visa application on 12 September 2021,¹³⁵ stated that she had consulted an agency and they suggested she *'submit a refugee application'* and as she was unaware of the special visa available for those stranded by the pandemic, she *'agreed'*. Moreover, after submitting the application, she realised that she *'should not apply for a refugee visa'*. Therefore, contrary to Ms [KHS]'s contention that she was not aware of the visa applied for, she appears to not only have been aware of it, but was agreeable to it. It follows, that the statements made by Ms [KHS] in her Statutory Declaration are not credible and have not been afforded any weight.
255. Attachment 24 submitted by the Agent was reviewed. It consists of 14 pages of what appears to be informal advice the Agent provided in response to enquiries put to him in respect of visa applications, eligibility requirements, and associated costs. The select range of responses were dated between September 2017 and September 2021. The Agent advises applicants that they are ineligible to apply for a visa on the basis of the circumstances outlined. However, as this is a selection of extracts of the Agent's choosing, and as concerns with the Agent's credibility have already been discussed, the Authority cannot be confident that there was not further correspondence which may have provided options to address or overcome the difficulties meeting the eligibility criteria for an associated fee.

¹³³ Paragraph 72 of the Agent's Submission

¹³⁴ Attachment 19 to the Agent's response

¹³⁵ CLD2021/25517967

256. Given the above discussed, and the credibility concerns regarding both the Agent and Ms [KHS], I am satisfied that the Agent and the clients were aware of the Protection visa application before the Department, at the time the subclass 408 visa application was submitted. Given the applications were submitted within a month of each other, it may be that the Agent was not only aware, but was potentially involved in the submission of the earlier application which he failed to disclose to the Department, as has occurred with other applications.

Provision of immigration assistance without declaring involvement

Applications associated with the Summer email address

257. An analysis of the visa applications submitted to the Department where the Agent was declared to be the representative migration agent, and where his MARN was listed, have included visa applications where the Agent provided the Summer email address as his contact email. From the 592 applications recorded against his MARN, 15 applications submitted before the 15 October 2020 declared the Summer email address. A further seven applications were identified with the Summer email address, after the time the Agent amended his registration records, implying a cessation with STG. The email addresses covering both periods are listed in Annexure A.

258. It follows, that I am satisfied the Agent had used this email address from at least 11 July 2018 through to 11 June 2021, as he declared the address in applications submitted to the Department in association with his MARN. The 22 applications are highlighted in blue in Annexure A. As such, I am satisfied that during the course of his registration with the Authority, the Agent had access to, and actively used, the Summer email address for corresponding with the Department in no less than 22 applications.

259. An analysis of applications submitted to the Department from the time the Agent was first registered revealed a substantial number of applications were submitted where the Summer email address was provided for communicating with the Department. However, no declaration of any migration agent providing immigration assistance was made in most of the applications. Excluding the period before the Agent was registered, lodgements submitted from the 17 July 2017 until 9 February 2018¹³⁶ identified an additional eighty (80) applications containing the Summer email address, where no migration agent was declared. A list of the 80 applications for this period, and the date they were lodged, is provided at **Annexure L**.

260. The Authority reviewed a random number of applications forming part of the 80 matters within the first timeline cohort (highlighted in Annexure L) where no registered migration agent was declared. From the applications analysed, all were lodged through the 220 IP address and the DH ImmiAccount. As already discussed elsewhere in this decision, the Agent had access to the ImmiAccount and the IP address and had submitted applications with the Summer email address. The cases examined and lodgement details are provided below.

¹³⁶ When another employee of STG was first registered

Email address	Lodgement	ImmiAccount and IP
summer@stgservice.com.au	18-Jul-17	DH@stgservice.com.au [220]
summer@stgservice.com.au	7-Aug-17	DH@stgservice.com.au [220]
summer@stgservice.com.au	18-Aug-17	DH@stgservice.com.au [220]
summer@stgservice.com.au	5-Sep-17	DH@stgservice.com.au [220]
summer@stgservice.com.au	14-Sep-17	DH@stgservice.com.au [220]
summer@stgservice.com.au	12-Oct-17	DH@stgservice.com.au [220]
summer@stgservice.com.au	10-Nov-17	DH@stgservice.com.au [220]
summer@stgservice.com.au	24-Nov-17	DH@stgservice.com.au [220]
summer@stgservice.com.au	6-Dec-17	DH@stgservice.com.au [220]
summer@stgservice.com.au	20-Dec-17	DH@stgservice.com.au [220]
summer@stgservice.com.au	25-Jan-18	DH@stgservice.com.au [220]
summer@stgservice.com.au	12-Feb-18	DH@stgservice.com.au [220]

261. The analysis highlighted a second period, from 9 February 2018 until 11 March 2021, when a further 80 applications were submitted which provided the Summer email for correspondence, and no migration agent was declared as having provided immigration assistance. The relevant dates from when the Summer email address was effective, in respect of the 80 applications during this second timeline, are provided at **Annexure M**.

262. As with applications from the first timeline, the Authority reviewed a random number of applications from the 80 matters forming part of the second timeline cohort (highlighted in Annexure M) where no registered migration agent was declared. Of the applications analysed, the majority were lodged through the 220 IP address, and the 118 IP address was likewise evident within this cohort. While the ImmiAccount that was primarily utilised for these lodgements was the DH ImmiAccount, STGAdmin was also used. As already mentioned, the Agent had access to both ImmiAccounts and the two IP addresses associated with these applications. The cases examined and lodgement details are listed below.

Email address	Lodgement	ImmiAccount and IP
summer@stgservice.com.au	2-Mar-18	DH@stgservice.com.au [220]
summer@stgservice.com.au	7-Mar-18	DH@stgservice.com.au [220]
summer@stgservice.com.au	17-Apr-18	DH@stgservice.com.au [220]
summer@stgservice.com.au	4-May-18	DH@stgservice.com.au [220]
summer@stgservice.com.au	1-Jun-18	DH@stgservice.com.au [220]
summer@stgservice.com.au	25-Jun-18	DH@stgservice.com.au [220]
summer@stgservice.com.au	3-Aug-18	DH@stgservice.com.au [220]

summer@stgservice.com.au	6-Aug-18	DH@stgservice.com.au [220]
summer@stgservice.com.au	7-Aug-18	DH@stgservice.com.au [220]
summer@stgservice.com.au	13-Aug-18	DH@stgservice.com.au [220]
summer@stgservice.com.au	15-Aug-18	DH@stgservice.com.au [220]
summer@stgservice.com.au	11-Mar-21	stgadmin – [118]

263. A comparative analysis revealed that the Agent was the declared representative migration agent for an application submitted on 10 March 2021¹³⁷ and for one submitted on 12 March 2021,¹³⁸ both of which contained the Summer email address, as recorded in Annexure A. However, a visa application was submitted to the Department on 11 March 2021, in between the two dates where the Agent's assistance was declared, yet no representative migration agent was disclosed. This is despite the fact that the application submitted on March 11 also contained the Summer email address for correspondence with the Department and was submitted from the same 118 IP address as the applications which were submitted on the 10 and 12 March 2021. Consequently, it is reasonable to conclude that the Agent had also provided immigration assistance with the application submitted on March 11.

264. A cross analysis of the documentation submitted by former RMA HH supports this proposition. Ms HH's Attachment C2 (**Annexure N**) was submitted to the Authority to evidence the assistance support staff provided to other employee's at STG, where the Summer email was used. Pages 38-47 specifically related to the Agent. Correspondence on pages 40-42 contained exchanges in respect of visa applicant Mr [LJS]¹³⁹ for whom a section 56 request for information was sent by the Department to the Summer email address at 8:37 AM on 20 July 2018. The correspondence was subsequently forwarded to the Agent's Eric email address at 9:35 AM the same day, with a notation that the two applicants require medical examinations which were due by 17 August. In response, the Agent replies at 14:50 on 26 July 2018 advising the medical examinations were completed. Significantly however, no registered agent was declared as assisting with this visa application, evident from page 7 of the visa application at **Annexure O**.¹⁴⁰

265. Given the above discussion, it appears reasonable for the Authority to be satisfied that the Agent was not only the representative agent for the 22 cases where he had declared his immigration assistance, in association with the Summer email address, but that he provided immigration assistance to numerous other applicants where the assistance was not declared. Consequently, I am satisfied that the Agent had provided immigration assistance to visa applicants and submitted applications to the Department, without declaring his involvement, in contravention of section 312A of the Act and in breach of his obligations in respect of clauses 2.1 and 2.9 of the Code. Moreover, that the conduct not only applied to the cases identified, but potentially extended to all the applications submitted to the Department where the Summer email address was provided for communication, irrespective of when they were submitted.

¹³⁷ RID 520644807

¹³⁸ RID 1280643765

¹³⁹ Application ID 90613726 – TRN EGOIHJGTY7

¹⁴⁰ CLD2018/281974 10 of departmental records

Applications associated with Crystal Lu email address

The Crystal Lu email address was also provided to the Department for correspondence for applications where no registered migration agent was declared. This was evident with the cases reviewed by the Authority for the periods spanning from January-February 2017 and then from April-July 2018, listed in Annexure B. However, the months in between the two periods revealed a number of applications where the Agent was the declared agent for the applications. The Agent was declared in six (6) applications submitted from 8 September to 22 December 2017 where the Crystal Lu email address was listed, outlined in the below table. All the applications were submitted through an ImmiAccount¹⁴¹ and IP address¹⁴² regularly used in association with the Agent's applications.

MARN	E-mail address	Lodgement	Request ID (RID)
1795162	clu@stgservice.com.au	8-Sep-17	720604195
1795162	clu@stgservice.com.au	28-Sep-17	1655605141
1795162	clu@stgservice.com.au	3-Nov-17	2100605170
1795162	clu@stgservice.com.au	8-Nov-17	455606553
1795162	clu@stgservice.com.au	14-Nov-17	10606006
1795162	clu@stgservice.com.au	22-Dec-17	605607512

266. In his response to the Authority, the Agent asserted that he had always declared his assistance with the applications he lodged for his clients and could not comment on applications where no agent was disclosed as numerous RMAs and education agents were assisted by the support staff. The Agent accepted that the DH, Stgadmin and Zarina ImmiAccount were used by the agency but argued it would be unreasonable for him to check applications not lodged by him. Despite the Agent's contention, I note that he held a senior position in the business, was employed by STG since 2014, and enjoyed the trust of the founder and Director of STG in light of the arrangement they had entered into. Consequently, and in light of the evidence and discussion throughout this decision, I am satisfied that the Agent was aware of the processes applied by STG, including by the employees of the agency, and was likely pivotal in ensuring the arrangements applied were executed as directed.

Applications associated with Sabrina email address

267. Matters identified and raised during the course on the investigation into the conduct of Mr Zhao, where the Sabrina email address was provided for communicating with the Department, are also a consideration in respect of the Agent's conduct. Specifically, where the email address was used for communication about applications, however no registered migration agent was declared to be associated with the visa applications. A sample of ten (10) applications where the Sabrina email address was listed but where no nominated registered agent was declared are provided in Annexure B. The ten listed cases were submitted to the Department between 17 July 2018 and 9 August of 2018.

¹⁴¹ DH ImmiAccount

¹⁴² IP address: 110.142.98.220

268. A review of applications submitted in the second half of 2018 identified additional applications where the Sabrinama email address was listed which were lodged through the DH ImmiAccount.¹⁴³ Relevantly, the Agent was declared in some of the applications. One application was submitted on behalf of Ms [YS] on 1 October 2018¹⁴⁴ and one on 24 October 2018 on behalf of Ms [LWS].¹⁴⁵ The Department corresponded with the Agent in respect of Ms [LWS] through the Sabrinama email address until at least September 2020. The Department put adverse information regarding the application to the Agent through the Sabrinama email address on 26 August 2020. The Agent requested the application be withdrawn after receipt of the adverse information via the Sabrinama email address.
269. Furthermore, The Agent continued to use the email address until recently: an application was submitted to the Department on 17 August 2021,¹⁴⁶ where he was declared as the agent on record and where sabrinama@stgservice.com.au was listed as the agent contact email. Records before the Authority indicate that the Agent regularly submitted applications through the DH ImmiAccount, most notably during the period¹⁴⁷ the Sabrinama applications were submitted, where no agent was declared. Moreover, he submitted applications both before¹⁴⁸ and after¹⁴⁹ the time the Sabrinama applications were lodged, where no agent was declared.
270. A further application provided insight into the operations within STG and those of the Agent. An application submitted to the Department on 22 January 2019,¹⁵⁰ more than 18 months after the Agent was registered, stated the Agent was as authorised recipient for the application.¹⁵¹ The application was submitted through the DH ImmiAccount and the 220 IP and listed the Sabrinama email address for correspondence. A typed 956A form was submitted with the application, and no person was declared as providing immigration assistance. The process was identical to that when the Agent is appointed and declared for a visa application. Even the typed 956A¹⁵² form closely resembled the 956 forms completed by STG RMAs – inclusive of support staff email addresses and the STG business address.
271. In light of the above, and with no evidence to the contrary, I am of the view that the Agent was involved in, or was a significant party to, providing immigration assistance in a number of visa applications without declaring the assistance and that it was done with a view to conceal his involvement with the applications from the Department.

¹⁴³ The DH@stgservice.com.au ImmiAccount

¹⁴⁴ RID 1500616678

¹⁴⁵ RID 470618893

¹⁴⁶ RID 750644497

¹⁴⁷ See RID 2085615865 lodged 9 August 2018

¹⁴⁸ See RID 820615147 lodged 11 July 2018

¹⁴⁹ See RID 1285616604 lodged 31 August 2018

¹⁵⁰ RID 1160622051

¹⁵¹ CLD2019/484045 0

¹⁵² Annexure P

Credit Card

272. Consistent with the general analysis, a more detailed examination of departmental records was undertaken of the payment of visa application fees. The review revealed a significant number of applications where the Agent's credit card details were provided for the payment of visa applications, yet no RMA was declared as assisting with the application. The list of applications, which have been anonymised, are at **Annexure Q**. In summary, the 339 applications were paid for by credit card payment using a credit card for which the Agent was the listed card holder. Truncated departmental records identify the card as ending in 5730.

273. The comparative analysis revealed the below:

- A total of 339 applications were paid for by a credit card for which the Agent was the listed card holder.
- The applications were submitted during the period between 11 October 2019 and 18 December 2020.
- The applications were submitted through thirteen (13) ImmiAccounts, with the greatest number lodged through the DH ImmiAccount.

Note: The Agent submitted applications where he was the declared agent on record utilising at least three (3) identical ImmiAccounts to that used with the 339 cases where no registered agent was declared:

- v. DH@stgservice.com.au¹⁵³
 - vi. Zarina@stgservice.com.au¹⁵⁴
 - vii. Stgadmin¹⁵⁵
- Fifteen different payers were recorded across the caseload, with DH reflected against 291 of the cases.
 - From the 35 sample cases that were scrutinised in greater detail, fourteen (14) email addresses were provided for communication with the Department.

Note: The Agent submitted applications where he was the declared agent on record utilising six (6) identical email addresses to that used with the 339 cases:

- i. sonia@stgservice.com.au (the Sonia email address)
 - ii. ying@stgservice.com.au (the Ying email address)
 - iii. kathy@stgservice.com.au (the Kathy email address)
 - iv. sara@stgservice.com.au (the Sara email address)
 - v. nicole@stgservice.com.au (the Nicole email address)
 - vi. xl@stgservice.com.au (the XI email address)
- All 339 applications were submitted through the 118 IP address.

Of note: The Agent submitted applications where he was the declared agent on record and where the 118 IP was regularly used.

¹⁵³ See eg's: RID 1710641127 and 800637124

¹⁵⁴ See eg RID 1235638887

¹⁵⁵ See eg's: RID 1965642741 and 335643214

274. In his response, the Agent asserted that his name was only listed on the card as he was the entrusted and nominal Director of the company, although Mr Zhao was the actual '*owner, controller and beneficiary*' of Melbourne Consultant.¹⁵⁶ The card ended in 4730 and could be accessed by anyone in the company evident with the internal communication exchanges provided.¹⁵⁷ The Authority accepts that the actual card number ends in 4730 as noted by the Agent. The truncated card number referenced only served to identifying the card in question, without disclosing the entire number so as to distinguish it from other cards used in association with applications submitted where an STG link was established.

275. According to the Agent, he had no control of the card and following the termination of his employment the card was cancelled. I note that there would be no reason to cancel the card if, as claimed by the Agent, he had no control over the card. Even if I were to accept the Agent's claim that it was a corporate card used and accessed by all the staff, the Agent would also have had access to the card. More importantly, despite his arguments to the contrary, as with Melbourne Consultant, the Agent was the person to whom the card was issued and consequently the person legally accountable and responsible for its use.

276. As a result of the analysis of the 339 visa applications submitted to the Department which were paid for by a credit card attributed to the Agent; cross referenced to email addresses declared as the Agent's contact email addresses; and where the ImmiAccounts and IP addresses were used by the Agent, I am be satisfied that the Agent:

- Provided immigration assistance and was actively involved with hundreds of visa applications where he failed to disclose, or deliberately withheld, his assistance in the visa applications from the Department;
- Acted in contravention of section 312A of the Act, by failing to declare that he had provided immigration assistance in association with those applications; and
- The action by the Agent in respect of this conduct:
 - was designed to deceive and mislead the Department on the true circumstances of the matters;
 - is unbecoming of a registered migration agent;
 - is in contravention of the law and the Code.

Genuine Temporary Entrant (GTE) statements

277. All student visa applicants are required to satisfy the Genuine Temporary Entrant requirement which is considered against the statement (**GTE statement**) they provide in support of their application. Where it is established that an applicant's intentions are not genuine, the application will be refused. Consequently, the GTE statement is a critical component of the student visa application process and the statement should reflect the unique and personal circumstances of each student.

¹⁵⁶ Paragraph 40 of the Agent's submission

¹⁵⁷ See Attachments 6 and 7 to the Agent's response

278. An analysis was undertaken of the GTE statements submitted in support of a number of subclass 500 visa applications forming part of the Agent's caseload as well as those within the vkservice, Crystal Lu, and Sabrinama cohorts¹⁵⁸ – where no registered migration agent was declared. A comparison of the Agent's applications was also made against a number of applications that were submitted where Mr Zhao was the nominated agent.¹⁵⁹ The comparison of the GTE statements identified noticeable similarities, including identical sentences and paragraphs, from statements that were submitted where no agent was declared (or where Mr Zhao was declared) to statements made in applications where the Agent was the declared agent on file.

Mr [ORYT]¹⁶⁰ – represented by the Agent and Mr [ZZ] from the vkservice cohort¹⁶¹

279. As mentioned earlier in this decision, GTE statements from the vkservice cohort were compared to a GTE statement from a visa application which forms part of the Agent's caseload. That is, the Agent had represented the student visa applicant in respect of the application submitted to the Department. The comparison revealed identical or near identical sentences and paragraphs which are replicated below. The visa applicant for whom the Agent was the representative agent is identified as Mr [ORYT] while the applicant forming part of the vkservice cohort is identified as Mr [ZZ]. As this was not an exhaustive exercise, there may be further commonalities between statements and applicants which form part of the Agent's current and former caseload.

Mr [ZZ] and Mr [ORYT] statements both contained the identical sentence below.

'That's why I believe MACI is higher qualified and very suitable for me.'

AND

...real cases simulated in classes of MACI with guidance from the company real managers, which is a precious opportunity for me to gain the practical comprehensive business skills. [ZZ]

...real cases simulated in classes with guidance from the real senior management roles, which is a precious opportunity for me to obtain the practical comprehensive business skills. [OYTR]

AND

...provide the students with the specialised knowledge as well as some innovative ideas of business [ZZ]

Provide me with the specialised knowledge as well as some innovative ideas of business [OYTR]

¹⁵⁸ Refer to Attachment B

¹⁵⁹ Ibid

¹⁶⁰ RID 1720622799 [ORYT] BCC2018/6179284

¹⁶¹ Entry 10 in the Vkservice cases at Annexure B

AND

The reason why I choose to study business course is because its widespread applicability rather than a narrow-specialized area and better combined my previous working experience in order to upgrade myself. By undertaking the Diploma of Business, I could develop a broad understanding of fundamental business operations including contemporary digital and innovative work environment skills which contribute to a company's vision and success. I will refine my skills in areas such as human resources, mediation, industrial relations, professional development, workforce planning, risk management etc. Also, I will learn how to work independently and think critically and make analytical decisions. This course is suited to me with some prior levels of business experience who would like to further develop my careers and employment opportunities in a management capacity. [ZZ]

The reason why I choose to study business course is because its widespread applicability rather than a narrow-specialized area and better combined my previous working experience in order to upgrade myself. By undertaking the Diploma of Business, I could develop a broad understanding of fundamental business operations including contemporary digital and innovative work environment skills which contribute to a company's vision and success. I will refine my skills in areas such as human resources, mediation, industrial relations, professional development, workforce planning, risk management etc. Also, I will learn how to work independently and think critically and make analytical decisions. This course is suited to me with some prior levels of business experience who would like to further develop my careers and employment opportunities in a management capacity. [OYTR]

AND

In addition, the curriculum of the in MACI will not only provide students with knowledge from textbooks, but also skills across a wide range of business functions. The school provides many interesting and up-to-date subjects. [ZZ]

In addition, the curriculum of the in MACI will not only provide students with knowledge from textbooks, but also skills across a wide range of business functions. The school provides many interesting and up-to-date subjects... [OYTR]

280.A number of the similarities contained within the GTE statements which were identified in the analysis of the Crystal Lu 2017 cohort, those where Mr Zhao was the nominated agent on file, and an applicant the Agent had represented are set out below with the identity of the applicants anonymised.

Mr [HK]¹⁶² represented by the Agent; Crystal Lu 2017; cases represented by Mr Zhao

281. In relation to where they would prefer to study, six of the ten applicants comprising the Crystal Lu 2017 cohort where no registered migration agent was declared stated:

*I prefer to study in Australia rather than in my home country because Australia has high level of teaching and education background. And also there are different people from various countries, the university in Australia can help me build up the **sprite** of cooperation and learn different cultures. [Crystal Lu 2017: CQ, HTK, HYC, LCM, SYS, TWC]*

282. Seven applicants where Mr Zhao was declared as the representative agent expressed exactly the same view in their statements.

*I prefer to study in Australia rather than in my home country because Australia has high level of teaching and education background. And also there are different people from various countries, the institutes in Australia can help me to build up the **sprite** of cooperation and learn different cultures. [CY, LYH, HKL, LRJ, LJT, TPL, XDF]*

283. Mr [HK]'s statement, who was represented by the Agent, reflected the same paragraph, inclusive of the word 'sprite' rather than 'spirit' of cooperation:

*I prefer to study in Australia rather than in my home country because Australia has high level of teaching and education background. And also there are different people from various countries, the university in Australia can help me to build up the **sprite** of cooperation and learn different cultures.*

284. In relation to their living arrangements five members of the Crystal Lu 2017 batch and five applicants Mr Zhao represented stated, with very minor or no variation, that:

Talking about the planned living arrangements in Australia, my [friend or spouse] and I are renting a place together. I plan to stay until I graduate and I will go back to [home country] ... I find it is value to rent a room because it is easier for me to go back to my hometown when I finish my study and also I don't want to put too much pressure on my parents. [Crystal Lu 2017: HXT, HYC, TWC, SYS, HTK] and [Mr Zhao's clients: CY, GB, HKL with minor variations for LRJ and XDF]

285. Mr [HK]'s statement reflected the below paragraph:

Talking about the planned living arrangements in Australia, I will rent a student studio ... I plan to stay until I graduate and I will go back to China and start my career. I think it is value to rent a student studio because it is ... and easier for me to go back to my hometown when I finish my study and also I don't want to put too much pressure on my parents.

286. In relation to their limited English language ability two applicants from the Crystal Lu 2017 cohort stated:

... agent asked me to improve my English first. Because all the courses are taught in English in Australia, so if my English is not good, I can't study any other course. [HTK, LCM]

287. Mr [HK] stated:

... agent asked me to improve my English first. Because all the courses are taught in English in Australia, so if my English is not good, it will be hard for me to understand course.

288. The above comparisons in relation to sentences and paragraphs contained within the GTE statements, where the Agent was the declared migration agent and those in the Crystal Lu 2017 cohort and the application forming part of the vkservice cohort, are so closely aligned that it would appear highly unlikely, if not impossible, that they were prepared and drafted independently by the individual student visa applicants. The same can be said for the comparison between the visa applicant where the Agent was the declared registered migration agent and the applications where Mr Zhao was declared as the nominated agent.

289. In the Agent's response to the Notice, he argued that many student visa applicants did not know how to draft a GTE statement and most applicants were from the same country or similar background. Therefore, STG and Melbourne Consultant would provide students with templates and inform them on the structure of the GTE statement. Resources on drafting GTE statements are available across the company for use. In addition, he had also prepared some web pages containing guidance specifically for students from Hong Kong or Taiwan, the links for which were presented in Attachment 20.

290. According to the Agent, the guides and templates to which he referred, might have been the reason for the similarities with the GTE statements. The Agent contends that he advised his clients that the resources could only be used as a reference and had included a reminder on the webpages that the GTEs statements should be personalised. The Agent went to state that he should have checked the GTE statements written by his clients more carefully to ensure they reflected their personal situation. I would have thought that such a practice should already have been in place in consideration of the number of student visa applications that were submitted through STG.

291. I accept that guidance on structure and relevant content inclusion can be beneficial. However, providing guidance and templates on what should form part of a GTE statement, and what the Department takes into account when considering them, are different to GTE's which contain identical content. The essential part of any GTE statement is that they are, or should be, reflective of the individual circumstances of each applicant. Consequently, while it is reasonable to consider guidance on layout, structure, and relevant content which should form part of a GTE statement, the information and particulars should be applicant specific. If this were the case, it is highly unlikely that complete sentences and paragraphs would be identical across a significant number of applications which have links to STG, and specifically, the Agent.

292. Consequently, and in consideration of the matters already discussed within this decision, I am satisfied that all the GTE statements were prepared and drafted in an orchestrated fashion by a person, with or without support and assistance from others, who had the access and knowledge to draft and cross utilise the information. In light of the connections which were highlighted earlier, including but not limited to, ImmiAccounts, e-mail addresses, credit facilities, IP addresses, visa applications, GTE statements and the Agent's employment and association with STG, I am satisfied that the conduct can be attributed to the Agent.

293. Moreover, the detail contained within the statements is replicated across a substantial number of applications, and across different cohorts, where a registered migration agent is declared in some instances and not declared in significantly more. Given the identical detail contained in the GTE statements submitted in support of the visa applications, they could not present an accurate representation of the applicant's individual circumstances and can thereby be considered to be misleading. It follows, that I am satisfied that the Agent knowingly submitted applications to the Department which he knew were misleading and inaccurate and consequently facilitated non-genuine visa applications which served to undermine the integrity of the visa program. In doing so, the Agent acted in contravention of the Act and contrary to the purpose of the regulatory framework, in breach of clauses 2.1 and 2.9 of the Code.

294. Further, on the basis of the available evidence, and my discussion throughout this decision, I am satisfied that the Agent repeatedly attempted to avoid accountability and liability for a significant number of visa applications submitted to the Department, by deliberately concealing his involvement and failing to declare the immigration assistance provided.

Breaches of the Code

295. Having regard to the findings I have made, I am satisfied that the Agent has engaged in conduct in breach of the Agent's obligations under clauses 2.1, 2.1A, 2.1B, 2.22B, 2.9, 2.9A and 2.23 of the Code.

Employment relationship to a person who is not of integrity

296. Section 303(1)(g) of the Act provides that the Authority may take disciplinary action if it becomes satisfied that an individual related by employment to the Agent is not a person of integrity. This provision has two aspects – whether an individual is related by employment to an agent, and whether or not that individual is a person of integrity.

297. This requires an assessment of whether the Agent is 'related by employment' to an individual, in this case being Mr Zhao, and whether or not Mr Zhao is a person of integrity.

Related by employment

298. The term “related by employment” is defined in section 278 of the Act.

Section 278 Relation by employment

- (1) *For the purposes of this Part, an individual is related by employment to another individual if:*
- (a) one individual is an employee of the other; or*
 - (b) they are executive officers of the same corporation; or*
 - (c) they are members of the same partnership; or*
 - (d) one individual is an employee of a corporation and the other is:*
 - (i) an employee of the corporation; or*
 - (ii) an executive officer of the corporation; or*
 - (e) one individual is an employee of a partnership and the other is:*
 - (i) an employee of the partnership; or*
 - (ii) a member of the partnership.*
- (2) *For the purposes of this Part, an individual is also related by employment to another individual in any other [prescribed circumstance](#).*

Expanded meaning of employee

- (3) *In this section:*

employee includes a person engaged as a consultant or as an independent contractor.

299. Regulation 3U in Agents Regulations provides further clarification on relevant factors to be taken into account when considering a finding as to whether a person is ‘related by employment’ to another individual.

Regulation 3U Relation by employment

- (1) *For subsection [278\(2\)](#) of the Act, an individual is related by employment to another individual if both of them are employed by a third individual.*
- (2) *For subsection [278\(2\)](#) of the Act, an individual is related by employment to another individual if:*
- (a) one of the individuals holds 25% or more of the shares issued by a corporation that provides immigration assistance, or services including immigration assistance; and*
 - (b) the other individual is employed by the corporation.*
- (3) *For subsection [278\(2\)](#) of the Act, an individual is related by employment to another individual if:*
- (a) one of the individuals holds a charge (whether fixed or floating) or a mortgage or any other form of security over some or all of the assets of a business or corporation that provides immigration assistance, or services including immigration assistance; and*
 - (b) the other individual is employed by the business or corporation.*

300. Pursuant to section 278(1)(a) of the Act, an individual is related by employment to another individual if one individual is an employee of the other.

301. Evidence before the Authority indicates that the Agent was employed by, and in a contractual relationship with, STG which is owned and directed by Mr Zhao. Furthermore, he was a 20 per cent shareholder in STG for a four month period and had retained his Eric STG email address as his primary email address for a considerable period after he claimed he had ceased his relationship with both STG and Mr Zhao.
302. According to the ASIC historical company extract for STG, as at 22 November 2021:
- a. Mr Zhao was appointed Director of STG on 20 March 2012, and has held this role since that date.
 - b. Mr Zhao holds all the shares in the company.
303. While the Agent reported an end to his association with STG from 14 October 2020, as part of his registration records, his credit card continued to be used for the payment of application fees for visa applications submitted through the STGadmin ImmiAccount. Moreover, visa applications submitted where he was the declared migration agent on record, demonstrated that his connection and association with STG, and its provision of migration services, continued much the same as it did before he declared his cessation. The inference to be drawn is that the arrangements which were in place with STG and Mr Zhao for an extended period, remained ongoing.
304. The ongoing association was put to the Agent in the Notice. In his response, the Agent concurred that he remained closely connected and engaged with the entities and Mr Zhao. However, he contends that he did not seek to mislead or deceive the Authority on the business arrangements or the relationship, and that his use of the Eric email and STG domain support this contention. Given the efforts expended to portray a separation, I reject this proposition.
305. In his response to the Authority, the Agent stated that STG and Melbourne Consultant had always effectively operated as one business, under Mr Zhao's control. Moreover, that the *'employees are only under separate company nominally therefore these two legal entities could be seen as one company as a whole.'*¹⁶³ The Agent went on to state that he did not consider *'STG and MC as two different companies and [he has] never purportedly intended to conceal the connection between STG and MC'* nor deliberately attempted to distance himself or his ongoing involvement with STG.¹⁶⁴ According to the Agent, the two entities shared staffing resources, marketing, branding, as well as rental¹⁶⁵ and other payments all of which were undertaken through, and by, STG. This included the LegendCom subscription for his registration renewals for the 2018-2020 period. Accepting this were true, there would appear to be no logical reason to establish the second entity, Melbourne Consultant, other than to portray the two as separate when this was not in fact the case.

¹⁶³ Paragraph 34 of the Agent's submission

¹⁶⁴ Paragraph 37 of the Agent's submission

¹⁶⁵ Attachment 10 to the Agent's response

306. The Agent asserted that Mr Zhao was the '*de-facto controller of the two companies in every aspect from financial to personnel arrangement[s]*'.¹⁶⁶ To support his contention, the Agent highlighted indicators¹⁶⁷ to support his argument, including his use of staff email addresses, the Eric email address and the STG domain. It remains unclear how the Agent's use of the STG email and domain supports his contention that two legally separate entities could be '*seen as one company as a whole*'. Moreover, given the efforts expended to portray a separation of the Agent from STG, I reject this proposition. I am of the view that the more likely reason the Agent continued to use the STG email address and domain was to minimise any disruption to an established business practice, and impact on a significant caseload, rather than any other reason.
307. The Agent submitted 38 pages of communication,¹⁶⁸ to evidence Mr Zhao's effective control of the business operations, which primarily related to approving Business Activity Statements and staffing discussions on payroll and recruitment. The selected exchanges covered a date range from 16 May 2016 through to 22 July 2021. Relevantly, the staffing discussions were held with the Agent, indicative of his senior role and influence in the business operations and his close relationship with Mr Zhao. The Agent maintained that it was his '*incomplete understanding*' on the Authority's requirements in terms of the information required with his registration that contributed to the errors on his records.¹⁶⁹ According to the Agent, following the establishment of Melbourne Consultant, in February 2019, he changed his records with the Authority. However, as he had submitted STG's LegendCom subscription with his 2019 registration application, he was advised by the Authority to include STG on his records, which the Agent described as '*kind of the contractor of STG*'.¹⁷⁰
308. The Agent submitted a copy of email correspondence¹⁷¹ he sent to the Authority on 10 July 2019, where he confirmed he had added the secondary business to his records following a telephone discussion that morning. Therefore, even if I were to accept the Agent's argument on his '*incomplete understanding*' where he did not think it necessary to reflect both Melbourne Consultant and STG on his records, as he considered them one and the same, the Agent was advised by the Authority of the need to accurately reflect all the businesses through which he provides immigration assistance. This should have clarified any confusion the Agent may have had on the matter.
309. Despite this advice however, for his subsequent registration in 2020, the Agent only included Melbourne Consultant on his records, for a second time. The Agent contends that this was on account of the fact that '*STG and MC are actually running and being managed as a single company*'.¹⁷² Given the Agent was advised of the need to accurately report all the businesses through which he provides immigration assistance one year earlier, I reject any assertion that the Agent thought it unnecessary to include STG on his records.

¹⁶⁶ Paragraph 34 (3) of the Agent's submission

¹⁶⁷ See Paragraph 34 of the Agent's submission (points 1-5)

¹⁶⁸ Attachment 8 to the Agent's response (communication 16 May 16 – 22 July 21)

¹⁶⁹ Paragraph 38 of the Agent's submission

¹⁷⁰ Paragraph 35 of the Agent's submission

¹⁷¹ Attachment 11 to the Agent's response

¹⁷² Paragraph 36 of the Agent's submission

310. Instead, I find that the Agent had removed STG from his registration records in a deliberate attempt to conceal his ongoing involvement with the entity. This would also be supported by the changes which were made to the LegendCom subscription. While the Agent initially argued the STG LegendCom subscription was an indicator that the companies were operating as one, the subscription for his 2021 registration (submitted on 15 June 2021) was held by Melbourne Consultant.

311. The Agent has also advanced arguments that he currently practices as a sole trader, with a new personal ImmiAccount created, following his resignation and separation from Melbourne Consultant, STG, and Mr Zhao. According to the documentation submitted to the Authority, since the Notice was issued to the Agent and his purported separation in late September 2021, the LegendCom subscription and the Professional Indemnity Insurance were changed.¹⁷³ While both were formerly in the name of Melbourne Consultant, they are now held in the Agent's name.¹⁷⁴ As aspects of the Agent's resignation were specifically addressed in this decision, inclusive of findings, they have not been repeated here. In summary, in consideration of the concerns surrounding the Agent's credibility, I have not afforded significant weight the Agent's contention that he has severed his relationship with Mr Zhao or the entities through which he has established a clientele base over a seven year period.

312. A review of ASIC records on the Agent's corporate holdings,¹⁷⁵ serves to evidence a long standing business relationship with Mr Zhao. The records reveal his ties through various office holder positions and his shareholding, in a number of entities which are set out below.

STG International Services Group Pty Ltd

- i. The Agent held 20 per cent of the shares in STG, from 17 January 2018 until he transferred them to Mr Zhao effective 19 May 2018¹⁷⁶
- ii. While Mr Zhao now holds 100 per cent of the shares, the Agent was a joint shareholder in STG and the only person other than Mr Zhao to have held shares in this entity
- iii. Mr Zhao was, and continues to be, the sole Director of the entity.¹⁷⁷

MACI Group Pty Ltd

- i. The Agent holds a 17.5 per cent share in MACI Group Pty Ltd¹⁷⁸ since its incorporation on 21 March 2017¹⁷⁹
- ii. The shares were in the Agent's name until 12 April 2018 when his ownership was held through Jing & Jing Nominees Pty Ltd¹⁸⁰
- iii. Mr Zhao held a 38 per cent share in MACI Group P/L until he relinquished them at the same time the Agent changed his ownership holdings to Jing & Jing Nominees (12 April 18)

¹⁷³ Between 28-30 September 2021

¹⁷⁴ Attachment 21 to the Agent's response

¹⁷⁵ As at 15 July 2021

¹⁷⁶ ASIC Document 9E0 038 834

¹⁷⁷ ASIC Document 030 663 089

¹⁷⁸ ACN 618 102 364

¹⁷⁹ ASIC Document 3E1 014 295

¹⁸⁰ ASIC Document 8E0 080 156

- iv. The Agent was a Director of MACI Group P/L from 21 Mar 17 to 10 Oct 2019
- v. The current co-Director is Mr Zhu Zheng, for whom the Agent was the nominated migration agent in relation to his ongoing subclass 188 visa application, submitted to the Department on 3 June 2021,¹⁸¹ before ending his appointment on 11 October 2021, after it was highlighted with the Agent in the Notice on 22 September 2021.

Llewellyn Projects Pty Ltd

- i. MACI Group P/L has been the 100 per cent shareholder in this entity since 5 July 2017
- ii. The Agent is a 17.5 per cent shareholder in Llewellyn Projects Pty Ltd¹⁸² in all three class of shares¹⁸³ – through his shareholding in MACI Group P/L
- iii. The Agent was a Director of Llewellyn Projects from 13 Jun 2017 to 10 Oct 2019 (the Agent appears to have ceased his Directorship of Llewellyn and MACI on the same date)
- iv. As with MACI, the current co-Director is Mr Zhu Zheng (Mr Zheng).

Jets Education Pty Ltd

- i. The Agent holds a 15 per cent share in Jets Education Pty Ltd¹⁸⁴ and has done so since its incorporation on 14 July 2016
- ii. Mr Zhao holds a 35 percent share, likewise since incorporation¹⁸⁵

313. Notably, Jets Education, MACI Group, and Llewellyn Projects all appear to share the same principal place of business - Level 2, 259 Collins Street, Melbourne and are thereby also connected by business location and business operations. Furthermore, they all appear to engage in the provision of education services, and extend these offerings to a significant number of student visa clients which are represented by the Agent.

314. In his response to the Authority the Agent indicated that should he find it difficult to locate an investor to transfer his shares while he remains in China, upon his return to Melbourne he will commence relinquishing his shares in both MACI Group and Jets Education and be more cautious with future investments. According to the Agent, his intention to relinquish the shareholdings is not only in consideration of his concern for his clients' legitimate interests, and any conflict arising, but also for maintaining the integrity of the migration advice profession.¹⁸⁶ The Agent asserts that after receiving the Notice, and re-studying the Code and Practice Guide, he realised the importance of exercising due diligence and the impact his associations and their integrity would have on his professional interests and his ability to comply with his professional and ethical obligations.¹⁸⁷

¹⁸¹ RID 2080644340 – submitted through stgadmin [IP 118] – sonia@STG email – BCC2021/1190418

¹⁸² ACN 150 741 272

¹⁸³ ASIC Document 7E9 225 036

¹⁸⁴ ACN 613 673 591

¹⁸⁵ ASIC Document 2E4 196 106

¹⁸⁶ Paragraph 87 of the Agent's submission

¹⁸⁷ Paragraph 88 of the Agent's submission

315. In light of the Agent's statements on the agreement entered into in association with Melbourne Consultant, and his active participation in concealing the true circumstances of these arrangements, I do not consider his statements to the Authority to be any more credible than the information he had provided to ASIC. Consequently, I do not afford the Agent's statements in his response to the Authority, in respect of his cessation of his business or personal relationship with Mr Zhao,¹⁸⁸ or for that matter other relevant contentions, any considerable weight.
316. On the basis of the available evidence, some of which the Agent corroborated, and the discussion throughout this decision, I am satisfied that the Agent was, and continues to be, related by employment to Mr Zhao. Despite his statements to the contrary, I am of the view that given his current and former association with a number of business entities, his shareholdings in Jets Education, and his ongoing involvement with the corresponding visa applications, the relationship with Mr Zhao remains a strong and ongoing one.

Individual not a person of integrity

317. Although 'person of integrity' is not defined in section 303, subsection 290(3) of the Act identifies matters that the Authority must consider relevant to the question whether an individual is not a person of integrity, as outlined below

Section 290 (3)

In considering whether it is satisfied that an individual to whom the applicant is related by employment is not a person of integrity, the Migration Agents Registration Authority must take into account each of the following matters, so far as the Authority considers it relevant to the question whether the individual is not a person of integrity:

- (a) any conviction of the individual of a criminal offence (except a conviction that is spent under Part VIIC of the Crimes Act 1914);*
- (b) any criminal proceedings that the individual is the subject of;*
- (c) any inquiry or investigation that the individual is or has been the subject of;*
- (d) any disciplinary action that is being taken, or has been taken, against the individual;*
- (e) any bankruptcy (present or past) of the individual.*

318. Accordingly, pursuant to section 290(3)(d) of the Act, the disciplinary action taken in respect of Mr Zhao, must be taken into account by the Authority when considering whether it is satisfied that the Agent is related by employment to an individual who is not a person of integrity.
319. On 30 June 2021, the Authority made a decision to cancel the registration of Mr Zhao, which included a finding that he was not a person of integrity and not a fit and proper person to give immigration assistance. It follows that the Authority was satisfied that Mr Zhao is not a person of integrity.

¹⁸⁸ Including his future intentions with respect to his shareholdings

Finding

320. In light of the discussion above, I am satisfied that the Agent was, and continues to be, related by employment activity to Mr Zhao, despite proactive endeavours on his part to conceal the relationship and that Mr Zhao was found not to be a person of integrity.

321. On the basis of his relationship to Mr Zhao, and in light of the disciplinary action taken against Mr Zhao by the Authority, I am satisfied that the Agent is related by employment to an individual who is not a person of integrity. Consequently, it gives rise for the Authority to take disciplinary action pursuant to section 303(1)(g) of the Act on the basis of this relationship.

Integrity, fitness and propriety

322. 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.

323. 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'.¹⁸⁹

324. 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.

325. 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*".¹⁹⁰

326. 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.

327. 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.¹⁹¹

¹⁸⁹ See *Re Peng and Department of Immigration and Multicultural Affairs* [1998] AATA 12 at para [26]

¹⁹⁰ See *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750

¹⁹¹ See *Cunliffe v Commonwealth* (1994) 182 CLR 272

328. 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.

329. 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.

330. 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.

331. 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".¹⁹²

332. According to the Agent, there is '*sufficient evidences ... indicating that [he is] a person of integrity and fit and proper person to give immigration assistance*'¹⁹³ as detailed in his submission and supporting documentation, specifically Attachments 22-26. Citing the concept of integrity in *Lilienthal v Migration Agents Registration Authority*,¹⁹⁴ on a person's soundness of moral principle and character, uprightness and honesty, the Agent argued he was '*trying to honestly disclose everything to the Authority to [his] best knowledge. [He] truly consider[s] [himself] a person of integrity.*' However, while the Agent might consider himself a person of integrity, the evidence and discussion on aspects of his conduct within this decision indicate otherwise. A person of integrity is unlikely to have entered into an arrangement which served to mislead and deceive a government authority.

¹⁹² *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750

¹⁹³ Paragraph 97 of the Agent's submission

¹⁹⁴ [2002] FCA 93

333. The Agent also addressed aspects of fitness and propriety. The Agent stated that the concept of a 'fit and proper' person is a fundamental one as it encompasses a person's honesty, integrity and reputation in order to ensure that they are fit and proper for the role they are undertaking. The Authority is in agreement with this statement and has given it due consideration in this decision. Further, the Agent cited *General Council of the Bar of South Australia v Jiba and others* [2016] 4 All SA 443, where it noted that "*in determining whether a person was a 'fit and proper' for legal profession, such person should have integrity, dignity, the possession of knowledge and technical skills, a capacity of hard work, respect for legal order and a sense of equality of fairness.*" According to the Agent, he has worked as a registered migration agent since July 2017 and was contactable at all hours, not only during business hours, evidenced by the WeChat history with his clients. He is of the view that he has the characteristics to work in the migration advice profession and has provided referral letters and statutory declarations from his clients to support this contention.¹⁹⁵

334. I note that in his response, the Agent has directed attention to some aspects of integrity and fitness, albeit less so on others which appear more significant to the consideration. While hard work is a noble trait and client satisfaction an important consideration, in isolation, neither inform a finding that a person is fit and proper or that they have acted with integrity. Even if working long hours, engaging in conduct which is inconsistent with the law and involves deceit and misrepresentation (which would have been known to the Agent at the time) is not indicative that he is a person of integrity or fit and proper to provide immigration assistance.

335. The Agent contends that he has delivered competent and satisfactory immigration services to his clients, evidenced by the statements and declarations his clients have provided. The statements were submitted with the Agent's supporting documents and reviewed by the Authority. I have already addressed some of the statements and the issues surrounding credibility of the authors elsewhere in this decision. However, even if I were to accept that the Agent's clients were satisfied with his service, this does not necessarily mean that the Agent had acted in compliance with the law. Moreover, declarations from the Agent's clients, professing to his professionalism and knowledge do not evidence that he is a fit and proper person to provide immigration assistance.

336. According to the Agent, he still has a business relationship with Mr Zhao, which he is re-considering and may relinquish his shareholding in the future. The Agent stated that the fact that he had been an employee of Mr Zhao, at STG and Melbourne Consultant, many matters were beyond his control and were undertaken without his awareness.¹⁹⁶ The Agent has diverted much of the responsibility for the issues raised in the Notice onto his employment arrangements, arguing that he was not in position to either know of the arrangements or influence them. I have already discussed the Agent's position relative to the business, and his corporate holdings, and cannot be satisfied that his argument that he was an innocent party to the arrangements was substantiated.

¹⁹⁵ Attachment 22 to the Agent's response

¹⁹⁶ Paragraph 91 of the Agent's submission

337. While the Agent argued that he has always fulfilled his financial duties as a migration agent in accordance clause 2.3A, 5.1 and 5.5 of the Code and has complied with clause 2.6, the Authority had not raised issues in respect of the Agent's financial obligations or the Code clauses highlighted by the Agent. Moreover, the Agent contends that he has always acted in accordance with the law¹⁹⁷ and that he would not breach the law for the sake of building customer goodwill. I have considered Attachments 23-26 all of which comprised of WeChat correspondence with persons unknown. All were a select compilation of exchanges, parts of which were suppressed. The aspects that were visible were those where the Agent provides responses which align with expectations on his obligations. However, these exchanges cannot be considered as standalone points or considered out of context. The Authority has not been provided other exchanges in respect of the same matters. Consequently, while the Agent argued that he had not acted in contravention of law merely for '*building customer goodwill*' this is not to say that he has not breached the law, particularly where there is evidence to the contrary.

338. The Code sets out the duties of a registered migration agent towards clients, the Commonwealth and its agencies. I am of the opinion that the Agent's conduct discussed within this decision indicates a clear divergence from the duties and obligations he was entrusted to perform to the extent where he actively sought to undermine the integrity of the programs the Department expressly seeks to uphold.

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

- i. Acted with a blatant disregard for, or a significant degree of indifference to, the law and the visa programs in general;
- ii. Demonstrated serious dishonest and reckless behaviour;
- iii. Attempted to conceal his involvement in a significant number of visa applications with a view to misleading the Department and avoiding responsibility;
- iv. Acted without regard for the adverse impact the conduct would have on the reputation of the migration advice profession;
- v. Sought to jeopardise the integrity of the temporary and permanent visa programs by facilitating non-genuine and fraudulent visa applications; and
- vi. Acted in a manner not consistent with the principles of integrity or of a person who is fit and proper to provide immigration assistance.

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

¹⁹⁷ Paragraph 94 of the Agent's submission

Consideration of Appropriate Disciplinary Action

341. 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

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

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

343. Having regard to the matters before me, I consider that the Agent's conduct falls within the Major classification because:

- i. The conduct involves a blatant disregard for, or a significant degree of indifference, to the law and the visa programs in general;
- ii. There is evidence that the Agent has attempted to conceal his culpability, and mislead the Authority during the investigation;
- iii. Continued registration of the Agent is not in the public interest;

- iv. The conduct demonstrates serious repeated breaches of the Code of Conduct, and dishonest or reckless behavior;
- v. The Agent acted without any concern as to whether his conduct would adversely impact on or undermine the reputation of the migration advice profession, particularly conduct which had the potential to jeopardise the integrity of the temporary and permanent visa programs; and
- vi. I have found that the Agent is not a person of integrity, or a fit and proper person to provide immigration assistance.

Aggravating factors

344. I consider the Agent's conduct falls short of the standard expected of a registered migration agent.

345. The Agent has consistently attempted to distance himself from his personal responsibilities as a registered migration agent and the obligations under the Code by diverting and apportioning blame onto others, with a view to avoiding potential disciplinary action.

346. Despite acknowledging that there is room for improvement, and undertaking some professional development sessions, I consider the Agent remains unwilling to accept direct responsibility for the fraudulent documentation and the associated breaches of his obligations under the Code. As a result, I am satisfied that the Agent would not rectify his conduct and therefore there remains a real likelihood that he will continue engage in similar conduct in the future.

347. I consider the Agent's failure to take reasonable steps in ensuring that the applications submitted to the Department were not false or misleading to be extremely serious. Such conduct has a direct and profound impact upon the integrity of Australia's visa and migration programs.

Mitigating Factors

348. The Agent has put forward a submission that a decision by the Authority to suspend or cancel his registration would have a detrimental impact on his livelihood given the economic activity and unemployment rates in Victoria on account of the pandemic. Accepting the pandemic has impacted economic and employment activity, it is one that has extended globally, not just Victoria. I also note that the Agent has been in China for some time now, during which unemployment rates have decreased.

349. The Agent also indicated that if he is unable to practice, he will be required to change his career as he has no experience in fields other than the migration industry. According to the Agent, he intends to reduce his business in the future, while providing professional and ethical service to his clients and devoting more time in improving his professionalism including consulting with other agents. Given some of the statements made in the Agent's response to the Authority, I agree that improving his knowledge on migration law and more significantly his obligations, would benefit the Agent. A separation from the migration advice industry may assist the Agent to direct greater focus on these endeavours and on his professional development.

350. I acknowledge that the Agent has accepted that changes in his conduct and to his practices are warranted, given multiple statements that he will exercise greater care and diligence in order to maintain the reputation and integrity of the migration advice profession. However, I have considered these statements against the risk posed in allowing the Agent's registration to continue, which I consider to be very high.
351. I have also given due consideration to the totality of the Agent's response, much of which was directed at professing his innocence. The Agent contends that he did not partake in any adverse conduct, or have any knowledge of it, and was a person of integrity and a fit and proper person to provide immigration assistance. I note however, that many of the considerations put forward by the Agent in order to improve his compliance with the Code, and raise his knowledge and awareness, are already existing and ongoing obligations with which he should have been familiar.
352. Finally, while I accept that the disciplinary decision will have an impact on the Agent's future livelihood, I note that he was employed prior to his registration with the Authority and is therefore in a position to support himself irrespective of the decision taken by the Authority. More significantly, I am of the view that any loss in earnings from the provision of immigration assistance is significantly outweighed by the public interest given the seriousness of the Agent's conduct in relation to the applications and the information submitted to the Department. I consider that the serious nature of the conduct reflects adversely on the Agent's integrity and on the Agent's fitness to remain in the migration advice industry.

Consumer Protection

353. 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.
354. 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 not only to consumers but to the integrity of the Department's visa programs that are made available to visa product consumers. I am satisfied that if the Agent were to continue to practice as 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 serious conduct the subject of this decision, in the interests of consumer protection, and in maintaining confidence on the integrity of the Australian migration program.
355. I expect that a decision to sanction the Agent would more likely than not deter other registered migration agents from engaging in a similar practice and ensure that public confidence in the migration agent industry is maintained.

DECISION

356. I have turned my mind to the appropriate sanction action to impose on the Agent, and whether a caution or suspension with conditions imposed on the Agent would maintain the interests of consumer protection and the migration program in general.

357. However, the findings made relating to the Agent's facilitation of extensive fraudulent conduct and its impact upon the integrity of Australia's Skilled Migration Program speak to the Agent's integrity, judgement, and diligence. In light of the severity and extent of the Agent's conduct, which occurred over a period of four years and involved a significant caseload, I am of the view that the Agent requires a significant period of separation from the migration advice industry. I therefore consider that a decision to caution or suspend the Agent would not adequately address the seriousness of the misconduct made out in this decision.

358. In all of the circumstances, and in the interests of consumer protection and the integrity of the Department's visa programs, I consider that it is appropriate to cancel the Agent's registration.

359. 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), (g) 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
- is related by employment to a person who is not a person of integrity; and
- the Agent has not complied with clauses of the Code.

360. 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.

361. Accordingly, this cancellation will be in effect for a period of 5 years from the date of this decision.



Marianne Bregovic
Professional Standards Officer
Professional Standards and Integrity Section
Office of the Migration Agents Registration Authority
Department of Home Affairs
Date of Decision: 19 January 2022