



## DECISION RECORD

<b>AGENT</b>	Mr Rajiv Luthra
<b>COMPLAINT NUMBER/S</b>	CMP-38823, CMP- 42462, CMP- 43708, CMP- 47741 & CMP- 49873
<b>DECISION</b>	Cancellation
<b>DATE OF DECISION</b>	22 April 2021
<b>MARN</b>	0959019

### Terms used for reference

1. The following abbreviations are used in this decision:

ABN	Australian Business Number
AAT	The Administrative Appeals Tribunal
MARN	Migration Agent Registration Number
PIC	Public Interest Criteria
Section 308 notice	Notice issued by the Authority under section 308 of the Act
Section 309 notice	Notice issued by the Authority under section 309 of the Act
The Act	The Migration Act 1958
The Regulations	The Migration Regulations 1994
The Agent	Mr Rajiv Luthra
The Authority	The Office of the Migration Agents Registration Authority
The Code	The Migration Agents Code of Conduct prescribed under Regulation 8 and Schedule 2 to the Agents Regulations
The Department	The Department of Home Affairs
The Register	Register of migration agents kept under section 287 of the Act
The Agents Regulations	Migration Agents Regulations 1998
ASIC	Australian Securities and Investments Commission
VAC	Visa application charge

## STATEMENT OF REASONS

### Background

2. The Agent was first registered as a migration agent on 17 August 2009 and was allocated the MARN 0959019. The Agent's registration had been renewed annually from that date until 2017. The Agent's registration applications lodged on 14 August 2018 and 29 August 2019 were granted on 17 June 2019 and 17 June 2020 respectively, pursuant to section 300(5) of the Act. The agent made an application to renew his registration on 17 August 2020. It remains under consideration, pending the finalisation of the five complaints which are the subject of this decision.
3. The Register lists the Agent's current business relationship with Visa Junction Pty Ltd with the ABN 31 632 577 532. The Agent has declared that he is a consultant for Visa Junction and uses the email address rajiv@visajunction.com.au. The Agent was previously the sole director and sole shareholder of Australian Migration Specialists with the ABN 39 159 165 394 which was deregistered by ASIC from 19 November 2017.

### Prior Disciplinary action

4. No prior disciplinary action has been taken against the Agent.

### Complaint/s

5. The Authority received a total of five complaints in regards to the Agent's conduct as a registered migration agent:

Complaint number	Complainant	Date complaint received
CMP - 38823	Mr K	14 August 2018
CMP - 42462	Mr LS	21 February 2019
CMP – 43708	Mr S	12 April 2019
CMP - 47741	Dr. B	21 November 2019
CMP - 49873	Mr PS	24 February 2020

**CMP-38823 – Mr K**

6. On 14 August 2018, the Authority received a complaint from Mr K alleging the following:
- a) The Agent provided Mr K with a service agreement dated 04 January 2017<sup>1</sup>, for his application for a subclass 189/190 visa. The Agent agreed with Mr K that for \$10,000 he would lodge visa applications for him, his wife and their child. Mr K agreed to pay this sum in addition to any further costs incurred during the application process.
  - b) In June 2017 Mr K received his English language test results. Then on 14 June 2017 the Agent lodged Mr K's skills assessment application with the Australian Computer Society (ACS) under the role of Software Engineer. The agent's fee for submitting the assessment application was \$500.
  - c) On 03 October 2017, Mr K's skills assessment was assessed by the ACS as unsuitable for migration under this role (Software Engineer).
  - d) On 29 November 2017 the Agent applied for a review of this assessment, the fee for which was \$395. The application for the skills assessment was resubmitted under the role of Chief Information Officer. On 13 Dec 2017, the Agent received a positive outcome for Mr K. ACS assessed his skills as suitable for migration under this role.
  - e) From 13 December 2017 until May 2018 Mr K continually chased the Agent via both telephone and email about the Expression of Interest (EOI) the Agent was to lodge for him through Skill Select however he did not receive a satisfactory answer.
  - f) On 01 May 2018, the Agent advised Mr K that the EOI couldn't be submitted as 'The client's nominated occupation is not on the relevant occupation list for this subclass.' The Agent gave Mr K his login details and told him to try to submit the application himself.
  - g) Mr K did his own research and learned that the role of Chief Information Officer had been removed from the occupation list on 18 March 2018 and that was the reason his EOI could not be submitted.
  - h) Mr K had paid \$5,000 (50% of the agreed payment) to the Agent in two instalments. Mr K did not receive receipts for these payments. Out of this \$5,000 fee the Agent had submitted ACS skills assessments twice on behalf of Mr K.
  - i) The Agent did not provide Mr K with an explanation as to why he had not submitted the EOI in the five months after the positive skills assessment was issued. The Agent did not lodge the visa application or complete the services for which he received payment. Mr K asked for a refund of his money on 01 May 2018.
  - j) Mr K had to leave Australia and lost his opportunity to apply for permanent residency in Australia.

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<sup>1</sup> Under Australian Migration Specialists – A.B.N. 39 159 165 394

- k) Mr K provided the following evidence with his complaint:
- i. A copy of the Representation Agreement dated 04 January 2017
  - ii. E-mail correspondence between Mr K and the Agent on various dates between 21 December 2017 and 09 July 2018
  - iii. Copies of funds transfers to Australian Migration Specialists, totalling \$5,000

**CMP-42462 – Mr LS**

7. On 21 February 2019, the Authority received a complaint from Mr LS alleging the following:
- a) The Agent represented Mr LS and his partner Ms D for an offshore Partner visa application in September 2012.
  - b) The Agent lodged a Sponsored Family Visitor visa application on behalf of Ms D in February 2013. Ms D arrived in Australia on 21 March 2013.
  - c) Mr LS took ill towards the end of Ms D's 12 week stay and the Agent advised him to 'go to the doctor, make out your really sick and let [Ms D] look after you so she can stay longer.'
  - d) Ms D departed Australia on 07 August 2013.
  - e) Mr LS visited Ms D in the Philippines in October 2014, during his visit they attended the Australian Embassy in Manila to find out the progress of their pending offshore partner visa application. They learned the Agent had not responded to an email request from the Post which had been sent to him six months prior.
  - f) On 11 December 2014 the Agent lodged an onshore Combined Partner visa application on behalf of Ms D. Mr LS was listed as the sponsor.
  - g) Mr LS contacted the Agent in October 2015 for assistance with the preparation and lodgement of visitor visas for Ms D's two youngest children. The fee for this service was \$15,000. The Agent issued Mr LS an invoice for \$15,000 on 19 October 2015. Mr LS paid \$15,050 into an account in the Agent's name on the same date. The Agent told Mr LS that the process would take four weeks.
  - h) Mr LS had no further communications with the Agent since that time except to discuss the cost of lodging an application to the Administrative Appeals Tribunal (AAT) for review of the refusal of Ms D's onshore Partner visa application, which the Department refused on 02 January 2019.
  - i) The Agent told Mr LS it would cost \$5,000 to lodge the appeal to the AAT. Mr LS went to the AAT website himself and learned that it would cost \$1,764 to lodge an appeal. He decided to lodge the application himself.
  - j) Mr LS paid the Agent over \$21,000 over a period of eight years to bring his Ms D to Australia and has only had refusal outcomes from the Department.
  - k) Mr LS provided the following evidence with his complaint:
    - i. A payment receipt for \$4,125 dated 31 October 2014 paid into account name 'Aust. Migration Specialists'

- ii. Copy of a funds transfer in the amount of \$15,050, to the account for Australian Migration Specialists, on 19 October 2015

#### Departmental records

8. The Department's records indicate the following:
  - a) The Agent represented Ms D for her Partner visa application lodged offshore in September 2012. Mr LS was her sponsor and Ms D's three children were listed as non-migrating family members.
  - b) There were a number of issues with the medical check outcome for the daughter of Ms D; [GM], for the offshore application. The respective case officer sought further information from the Agent between January 2013 and May 2014.
  - c) The Agent lodged a Sponsored family visitor visa application on behalf of Ms D in February 2013 with Mr LS listed as the sponsor. This visa was granted on 20 February 2013 and Ms D arrived in Australia the following month.
  - d) The Agent lodged a Tourist visa application on behalf of Ms D in June 2013. On the same date the Agent requested to have condition 8503 (No further stay) waived on her current visitor visa. Ms D was granted a Bridging Visa 'E' whilst awaiting the outcome of the visa application.
  - e) In July 2013 the request to have condition 8503 waived was refused and the Agent was advised accordingly.
  - f) On 23 July 2013 the Agent lodged a Tourist visa application on behalf of Ms D. This was subsequently deemed to be invalid. Condition 8503<sup>2</sup> had been imposed on Ms D's previous visa, as such she could not be granted another visa whilst she was in Australia. Ms D departed Australia in August 2013.
  - g) On 19 August 2014 the Agent lodged an additional Tourist visa application on behalf of Ms D, whilst she was offshore. The visa was granted on 17 October 2014. She arrived back in Australia two weeks later and has remained onshore since that time.
  - h) On 11 December 2014 the Agent lodged an onshore Combined Partner visa application on behalf of Ms D. Mr LS was listed as the sponsor. She was granted a Bridging Visa 'A' in association with the partner visa application.
  - i) The Agent lodged two visitor visa applications on 06 November 2015 for the two youngest children of Ms D: <<removed for privacy>>. Both applications were refused on 07 December 2015.
  - j) On 11 April 2016 the Agent advised the case officer that [GM] wished to be removed from the visa application, however Ms D's other two children were to be added on as dependents.
  - k) On 13 April 2016 the Agent was sent an email from the Australian Consulate General in Hong Kong suggesting that Ms D withdraw one of the pending Partner visa applications before the Department. It was also put to the Agent that as Ms D

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<sup>2</sup> No Further Stay

now wanted to add her children onto the application that she would have to provide evidence that they were dependent on Ms D, given that they were now over the age of 18. In addition the Agent was advised that if [GM] wished to be removed from the application that he would need to formally withdraw her application.

- l) On 17 May 2016, the Agent made an enquiry with the Department regarding the withdrawal of one of the Partner visa applications. The Department advised the Agent to formally withdraw one of them. Further, the Agent was reminded that he had to formally request for the additional children to be added to the application and for [GM] to formally request removal from the application.
- m) Ms D's eldest child [GM] was never actually included as a dependent on her mother's Partner visa application lodged offshore: she was in fact listed as a non-migrating family member.
- n) On 31 May 2016 the Agent advised the Department that he would withdraw the onshore application and send Ms D offshore but requested policy guidelines surrounding why she had to withdraw the onshore application to enable her to pursue the offshore one.
- o) The onshore Partner visa application was refused on 02 January 2019 as it did not satisfy Public Interest Criteria (PIC) 4020, due to the provision of false information in regards to Ms D's marital status<sup>3</sup>. The refusal decision is currently pending review at the AAT.
- p) The offshore application, lodged on 21 September 2012, was refused on 11 February 2019 as it did not satisfy PIC 4020, due to the provision of false information in regards to Ms D's marital status.

#### **CMP-43708 – Mr S**

- 9. On 12 April 2019, the Authority received a complaint from Mr S, a co-director of <<*business name removed for privacy*>> alleging the following:
  - a) He engaged the Agent's services in March 2018 to assist with the nomination and visa applications for two of his employees; Mr C and Mr N, under the Regional Sponsored Migration Scheme (RSMS) Temporary Residence Transition (TRT) stream.
  - b) Mr S paid the Agent \$14,233 at this time for his professional fees and visa application charges.
  - c) Mr S requested a refund from the Agent in December 2018. He had been unable to contact the Agent via telephone or email despite numerous attempts.
  - d) The Agent sent draft applications to Mr S for review in February 2019. The Agent stated that they would be lodged straight away, however neither the visa applications nor the nomination applications were ever lodged with the Department.
  - e) After many months of waiting, the Agent had not lodged the applications despite his agreement with Mr S that he would do so. Mr N's subclass 457 visa was due to expire in September 2019, nearly 18 months after Mr S paid the Agent for his

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<sup>3</sup> She stated she had never been married and failed to declare her previous marriage to [NVG] to the Department.

services. However the Agent made no attempt to lodge the visa application prior to this date. The Agent told Mr S that due to the delay in lodging the applications the fees had increased. Mr S was reluctant to pay the Agent any additional monies without evidence that the applications had been lodged. He had paid the Agent over \$14,000, yet no applications had been submitted to the Department. Mr S had to engage another migration agent to assist with the applications at additional expense to him.

- f) Mr S provided the following evidence with his complaint:
- i. A copy of an invoice dated 15 March 2018 for \$14,233.40
  - ii. A copy of email and SMS correspondence between the complainant and the Agent

**Notices under section 308 of the Act (“the section 308 notices”)**

10. The Authority published the complaints, in relation to Mr K, Mr LS and Mr S, to the Agent as below:

<b>Complaint reference number:</b>	<b>Date complaint published:</b>	<b>Date response due:</b>
CMP – 38823	13 Mar 2019	15 Apr 2019
CMP – 42462	10 May 2019	10 June 2019
CMP – 43708	16 Apr 2019	13 May 2019

11. Pursuant to section 308 of the Act, the Authority requested the Agent to provide the following information:
- a written response to specific questions asked by the Authority; and
  - evidence from the client file(s) for Mr K, Mr S/<<business name removed for privacy>> and Mr LS/Ms D.
12. The notices also informed the Agent that the complaints raised concerns with the Agent’s compliance with clauses 2.1, 2.3, 2.3A, 2.4, 2.8, 2.18, 5.1, 5.2, 5.5, 7.1, 7.2 and 10.1 of the Code of Conduct for registered migration agents.

**The Agent’s responses to the Authority’s section 308 notices**

13. On 05 September 2019, the Agent’s legal representative; provided responses to all three complaints on the Agent’s behalf. Whilst they were presented as Statutory

Declarations none of them were signed. Signed statutory declarations were subsequently submitted, for all three responses on 10 September 2019. The Agent's responses to the three complaints are set out below.

Mr K's complaint - CMP-38823

14. Mr K first approached the Agent for immigration assistance on 03 January 2017.
15. With regard to his eligibility for the 189/190 visa application, the Agent advised Mr K that the occupation of 'Software Engineer' was unlikely to get a positive skills assessment outcome. The Agent claims that due to Mr K's insistence he applied under this occupation. The outcome for this assessment was 'unsuitable'.
16. The Agent was subsequently advised by the assessing authority that the occupation of 'Chief Information Officer' was more closely related to Mr K's skills. The Agent advised Mr K accordingly, applied for the skills assessment under this occupation and received a positive outcome.
17. The Agent claimed he was not aware of any payments he received from Mr K, nor that he provided any invoices or receipts to Mr K : 'I assume the payments were received into the company's account' and 'the invoices were given to him on hand in one of the meeting with him.' [sic]
18. After receiving the positive skills assessment, the Agent attempted to submit the EOI on behalf of Mr K on a number of occasions but was unable to do so. The Agent assumed it was a system error on the part of the Department's system and informed Mr K of this issue several times by telephone.
19. The Agent did not provide any additional advice/information to Mr K after the unsuccessful attempts to submit the EOI, as Mr K was planning to depart Australia and go overseas. Mr K was also looking into other visa options such as a sponsorship pathway.
20. The Agent personally provided a refund to Mr K whilst the Agent was visiting India.
21. The Agent did not provide Mr K with a statement of services but attached a copy of the 'Representation Agreement'.
22. The following documentation was included with the Agent's response:
  - i. Payment receipt for \$1,800 paid into account name, Australian Migration Specialists with account details: <<removed for privacy>>, by Mr K on 04 January 2017
  - ii. Copy of 'Representation Agreement' signed and dated 04 January 2017 with a lump sum fee of \$2,750 to be paid to Australian Migration Specialists Pty Ltd with account details: <<removed for privacy>>.
  - iii. A copy of Receipt/ Tax Invoice number 0311626 from the ACS dated 29 November 2017 for \$395 paid by credit card.



23. The Agent did not provide any other documents from his client file for Mr K with his response.

Mr LS's complaint - CMP-42462

24. In regards to Ms D' offshore Partner visa application the Agent claims he advised her that a de-facto relationship could not be established as she and Mr LS had not spent more than 12 months together, as required. Therefore the de-facto application could not be lodged.
25. Ms D and Mr LS married in Hong Kong in July 2012. The offshore application was lodged in September 2012. Mr LS was desperate to have his wife in Australia so the Agent advised him that Ms D could lodge a tourist visa application whilst the Partner visa application was being assessed.
26. When it was time for Ms D to depart Australia Mr LS did not want her to leave and this was affecting his well-being, so an onshore application was lodged. The Agent claims he personally paid the application fee. The Agent claimed the dependent children could be added to the offshore application.
27. Given the number of issues regarding the health checks for Ms D's daughter [GM], Mr LS had concerns regarding the offshore application and he did not want Ms D to leave Australia. Therefore, the Agent advised them to lodge an onshore spouse application as the Agents 'understanding' was that they were married.
28. The Agent claimed Mr LS was 'stressing out' that he loved '[Ms D] too much' and could not live without her. On one occasion Mr LS mentioned having trouble with his sons and that 'they could harm him.' Therefore, the Agent lodged a concurrent partner visa application.
29. The Agent received a payment for \$15,050 which was for the lodgement of two spouse visa applications and two visitor visa applications. The Agent could not remember if the payments were paid into the clients' account as 'the business is now sold, I do not have any access to the account.'
30. The Agent states he kept Mr LS and Ms D advised of the progress of their case, usually by telephone.
31. After lodging the onshore application, the Department advised that the offshore application should be withdrawn, but Ms D' children were involved. She wanted to get her children into Australia, however they were included in the offshore application. So '[visa applicants] waited in pipeline when visa get granted.' The Agent advised that 'dependent kids can be put into application. One of the kids had a boyfriend.'
32. The Agent's understanding was that Ms D's daughter; [GM], was included in the [onshore] application but this could have been an error from his side. The Agent was also requested by [*the visa applicants*] to withdraw [GM]'s application as she had turned 18 years, had a boyfriend and a medical condition. The case officer from Hong Kong advised that because of her medical conditions, the visa application process was getting delayed.
33. The Agent did not provide a refund to Mr LS as all agreed services were provided and as such the Agent did not consider a refund was warranted. Furthermore, no refund was ever requested.

34. A statement of services was provided to Mr LS by hand on 2 or 3 occasions and the Agent's understanding is that one was sent by email too.
35. The following documentation was included with the response:
  - i. Visa Application Charge (VAC) payment receipt dated 11 December 2014 for \$4624.41 for BS 801 Partner Visa application (TRN: <<removed for privacy>>)
  - ii. Copy of email correspondence between the Agent and a departmental officer from the Hong Kong Post April 2013, April 2016, May 2016, June 2016, July 2016
  - iii. Email correspondence from 08 & 12 August 2016 between the Agent and the electorate officer for Dr David Gillespie MP.
36. The Agent did not provide any other documents from his clients' files with his response.

#### Mr S's complaint - CMP-43708

37. The Agent provided service agreements<sup>4</sup> in relation to the preparation and lodgement of the RSMS nomination and visa applications for Mr C and Mr N, who were employees of Mr S.
38. The Agent claimed Mr C and Mr N were discussing two options; RSMS and Employer Nomination Scheme (ENS) 186. The Agent advised Mr S that his employees were eligible for both options.
39. It was the Agent's understanding that payments, made by Mr S, were transferred into the company account. The Agent was a contractor for both 'Australian Migration Specialist' and 'Visa Advice Centre.' The Agent was unsure if the funds were entered into a 'client account' as he was only a consultant.
40. There was a delay in lodging the nomination and visa applications as the Agent was waiting on documentation from Mr S. When the Agent received the required documents from Mr S's accountant the immigration fees had increased. Mr S initially requested that the extra fees be paid from the Agent's account. Mr S then stated that he would pay the fees once the applications were lodged. The Agent claimed his director did not agree to this and consequently the applications were not lodged.
41. It was the Agent's understanding that no refunds have been provided to Mr S, however as Mr S was referred to the Agent by a friend he has entered into a payment plan and the Agent is paying \$1,000 per fortnight to Mr S from his personal account, as a gesture of good will.
42. The Agent has not officially terminated his services<sup>5</sup> with Mr S, however it is his intention to do so making it clear to 'the director of the company' that the Agent is withdrawing his services.
43. The following documentation was included with the response:

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<sup>4</sup> Under Australian Migration Specialists – A.B.N. 39 159 165 394

<sup>5</sup> At the time of writing the decision

- i. A copy of tax invoice number 1 dated 15 March 2018 issued to <<business name removed for privacy>> for \$14,233.40. Bank account details for payment: Australian Migration Specialists Pty Ltd BSB <<removed for privacy>>.
  - ii. Copy of the 'Representation Agreement' for Mr C signed and dated 08 March 2018 for a fee of \$2,750 to be paid to Australian Migration Specialists Pty Ltd with account details: BSB <<removed for privacy>>.
  - iii. Copy of 'Representation Agreement' for Mr N signed and dated 08 March 2018 for a fee of \$2750 to be paid to; Australian Migration Specialists Pty Ltd with account details: BSB <<removed for privacy>>.
44. The Agent did not provide any other documents from his clients' files.

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

45. On 29 April 2020 the Authority sent to the Agent a notice pursuant to section 309(2) of the Act, advising the Agent that it was considering cautioning him, or suspending or cancelling the Agent's registration under section 303(1) of the Act.
46. The agent was notified at this time that the Authority had received two additional complaints about his conduct from Mr B on 21 October 2019 and from Mr PS on 24 February 2020. Mr PS was representing his sister-in-law; Ms P, as well as himself.

**CMP-47741 – Mr B**

47. On 21 October 2019, the Authority received a complaint from Mr B about the Agent's conduct.
- a) Mr B contacted the Agent via "WhatsApp", at the end of April 2019 for assistance with a Partner visa application whilst he was offshore. His spouse; <<removed for privacy>>, was to be listed as his sponsor on the application.
  - b) On the same day the Agent asked Mr B to pay him \$8,000, which included visa fees and marriage registration papers. He transferred this sum to the Agent in two separate instalments; \$5,000 and \$3,000<sup>6</sup>, later that day.
  - c) On 02 May 2019 the Agent emailed Mr B a number of documents relating to his Partner visa application, this included a Service Agreement<sup>7</sup> for assisting with a subclass 820 visa application. The Agent's professional fees are listed as an agreed lump sum of \$3,300<sup>8</sup>. The Agreement indicates it was signed by Mr B on 02 May 2019 and by the Agent on 03 May 2019.
  - d) Mr B arrived in Sydney on 04 May 2019 as the holder of a Tourist (subclass 600) visa. The Agent initially advised Mr B to apply for Bridging visa but later advised him to apply for a visa offshore, as he was scheduled to work in the UK for 12 months.

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<sup>6</sup> Both payments paid into account; Rajiv Luthra BSB <<removed for privacy>>

<sup>7</sup> Under Visa Advice Centre – A.B.N. 62 624 823 589

<sup>8</sup> To be paid into account; Visa Advice Centre Pty Ltd, BSB <<removed for privacy>>

- e) On 11 May 2019 the Agent requested Mr B to deposit the sum of \$2,750 into an account in the name Rajiv Luthra<sup>9</sup>. Mr B confirmed transferring \$1,750 to the Agent on the same day with the balance of \$1,000 transferred on 17 May 2019.
- f) On 17 May 2019 Mr B told the Agent his visa was due to expire on 25 May 2019<sup>10</sup> and he asked the Agent about obtaining a Bridging visa and when it would come in to effect. The Agent responded to him on the same day stating that he would let him know.
- g) Mr B believed the Agent had all the relevant documentation to enable him to lodge the Partner visa application by the middle of May 2019. Mr B attempted to contact the Agent on numerous occasions between 17 May 2019 and 31 July 2019 on which date the Agent responded to him, advising that he 'will lodge day after tomorrow' [sic].
- h) On 04 August 2019 the Agent advised Mr B that the application was 'all ready Tuesday I'll get acknowledged'. Mr B sought confirmation from the Agent that his visa application had been lodged via "WhatsApp" on a number of occasions. The Agent did not reply to him until 14 August 2019. The Agent advised Mr B that 'your application has been lodged. Due to technical issues haven't received acknowledgement yet I have spoken to DOHA The are fixing this and we should get it soon.'
- i) Mr B was again unable to make any contact with the Agent after 14 August 2019. On 18 October 2019 he informed the Agent that he would be contacting the Authority in regards to the Agent's conduct as a migration agent.
- j) The Agent contacted Mr B in late October 2019, to advise him that he had lodged his application. The Agent provided him with a reference number for the lodgement; "<<removed for privacy>>", however when Mr B contacted the Department to confirm the reference number, he was informed that there was no application lodged under his name.
- k) Mr B subsequently contacted the Agent and advised him to stop all the agreed work and to refund the monies he paid the Agent. The Agent agreed to this on 01 November 2019 and asked Mr B to allow him 7 -14 days to provide a refund to him.
- l) On 18 November 2019 the Agent provided Mr B a refund of \$1,000 however he has not received any further payments from the Agent since that date.
- m) Mr B provided the following evidence with his complaint.
  - i. Receipts for bank transfers in the amounts of \$5,000 and \$3,000 paid to 'Rajiv Luthra BSB <<removed for privacy>>
  - ii. A copy of an email the Agent sent to Mr B and his spouse on 02 May 2019, welcoming him to the 'Visa Advice Centre' confirming assistance with his spouse visa application and providing documentation for him to prepare or complete. The email was sent from info@migrationspecialist.com.au.
  - iii. A signed copy of a Service Agreement, dated 03 May 2019 for assistance with a subclass 820 visa application. The Agent's fees are listed as \$3,300 no other charges or fees are stated.

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<sup>9</sup> <<removed for privacy>>

<sup>10</sup> This was actually the date after which he could not arrive in Australia. His 3 month stay, as per the conditions of his visa, ended 04 August 2019.

- iv. A screen shot of a "WhatsApp" messages from 06/05/2019 to 11/05/2019 from mobile telephone number <<removed for privacy>> requesting payment of \$2,750, paid into account; 'Rajiv Luthra BSB <<removed for privacy>>'.
- v. A screen shot of a "WhatsApp" message dated 31 July 2019 from mobile telephone number <<removed for privacy>> stating that 'Will lodge [application] day after tomorrow'.
- vi. A screen shot of a "WhatsApp" message dated 04 August 2019 from mobile telephone number <<removed for privacy>>, in response to the question 'Have you filled in the application?' stated that 'All ready Tuesday I'll get acknowledged'.
- vii. A screen shot of a "WhatsApp" message dated 04 August 2019 from mobile telephone number <<removed for privacy>>, stating 'Dear friend Your application has been lodged Due to technical issues haven't received acknowledgment yet I have spoken to DOHA The are fixing this and we should get it soon'.

**CMP-49873 – Mr PS**

48. On 24 February 2020, the Authority received a complaint from Mr PS about the Agent's conduct.
- a) Mr PS contacted the Authority to advise that \$7,254.51 had been deducted from his credit card account on 11 February 2019 by the Department for a visa application fee. However, Mr PS does not know what this payment was for as he was not aware of any visa applications being lodged at this time for himself or his family members. Moreover he did not give authorisation to anyone to debit his credit card on this date.
  - b) Mr PS advised that he had paid the VAC fee, on 03 January 2019, for a Visitor visa, for his sister-in law; Ms P which the Agent lodged on her behalf. Mr PS states that he shared his credit card details with the Agent at this time in his capacity as the appointed agent.
  - c) Mr PS/Ms P engaged the Agent's services to assist in lodging both a Visitor visa and Partner visa application on behalf of Ms P. (Ms P is the wife of Mr PS's brother.)
  - d) On 08 October 2018 the Agent sent Mr PS an email, in which he attached two checklists specifying the supporting documentation required to lodge a Visitor visa application and a Partner visa application.
  - e) The Agent did not provide a service agreement to Mr PS or Ms P in his dealings with them, however Mr PS paid the Agent a total of \$10,343 for his services. This payment was made in the following instalments:
    - 31 Oct 2018 Amount: \$7,196
    - 31 Oct 2018 Amount: \$147
    - 07 Dec 2018 Amount: \$2,000
    - 31 Dec 2018 Amount: \$800
    - 04 Jan 2019 Amount: \$200

- f) On 11 February 2019 the Agent sent Mr PS an email including a draft copy of Ms P's Partner visa application. The Agent asked him to check the draft and ensure the details were all correct.
- g) The Agent told Mr PS the Partner visa application had been lodged for his sister-in-law.
- h) Mr PS sent the Agent an email on 12 April 2019 stating that he had been unable to get in touch with him for over one month. Mr PS was requesting confirmation of Ms P's visa status.
- i) In the email he referred to a conversation he had with the Agent in February [2019] in which the Agent advised him that due to the refusal of Ms P's Visitor visa, he would lodge another application which would likely receive an outcome in March [2019].
- j) The Agent advised his clients that both applications had been lodged, however he failed to keep his clients advised of the progress of the applications in a timely manner and they were unable to contact him.
- k) Mr PS sent a follow up email to the Agent on 10 May 2019, however Mr PS never received a response from the Agent. Mr PS remained unaware of the progress, or otherwise, of Ms P's applications.
- l) Through their own enquiries with the Department, Mr PS and Ms P learned that no Partner visa application had been submitted to the Department on behalf of Ms P despite the Agent assuring them that it had been lodged.
- m) Mr PS requested a refund, from the Agent, of the VAC for the Partner visa application which the Agent had not lodged on behalf of Ms P.
- n) Mr PS provided the following evidence with his complaint:
  - i. Bank Statements highlighting a number payments made to Visa Advice Centre Pty Ltd on 31 October 2018, 07 December 2018, 31 December 2018 and 04 January 2019.
  - ii. Checklists for Spouse and Visitor visa applications sent via e-mail by the Agent on 08 October 2018. Both checklists were on letterhead for Australian Migration Specialists.
  - iii. A copy of a draft partner visa application for Ms P sent via email from the Agent on 11 February 2019.
  - iv. Email correspondence from Mr PS to the Agent dated 12 April 2019.
  - v. A follow up email sent to the Agent by Mr PS on 10 May 2019 requesting confirmation of Ms P's visa status

### Departmental Records

49. Departmental records indicate the following:

Ms P

50. The Agent is the registered migration agent on record for Ms P for her Visitor visa application lodged on 03 January 2019. This application was refused on 24 January 2019.
51. There is no record that the Agent lodged a second Visitor visa application nor any Partner visa application on behalf of Ms P.

Mr TS

52. Records held by the Department about the receipt of a credit card payment from Mr PS's credit card show that it was used to pay the VAC for a partner visa application for Mr TS.
53. There does not appear to be any link between Mr TS and Mr PS or Ms P.
54. The payment of \$7,254.51 made on 11 February 2019, using Mr PS's credit card details, was used to pay the VAC for a Combined Partner visa application lodged on the same date on behalf of a Mr TS and his sponsor; <<removed for privacy>>. The Agent is the registered migration agent on record for this application.
55. The Agent provided the VAC payment to the Department on 11 February 2019 for the first stage of the partner visa process. The receipt number for the payment of \$7,254.51, is <<removed for privacy>><sup>11</sup>
56. The card holder name on the payment was Mr PS, using card number 535316\*\*\*\*\*884.
57. This included a credit card surcharge fee of \$94.51 which was charged to the Agent as the payer.<sup>12</sup>

### **The section 309 notice**

58. Pursuant to section 309(2) of the Act, the Authority invited the Agent to provide written submissions on the matters raised by the five complaints by 01 June 2020.
59. The Agent was also requested, pursuant to section 305C of the Act, to provide evidence of any correspondence and/or communication between himself and his clients, to provide proper records and/or client files, copies of client ledgers, client account documents and any other financial documents which related to moneys paid or owed by Mr K, Mr LS, Mr S, Mr B and Mr PS/Ms P.
60. The Agent was notified that having regard to the information before the Authority, it was open to the delegate to be satisfied that the Agent had engaged in conduct that

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<sup>11</sup> << removed for privacy>>

<sup>12</sup> << removed for privacy>>

breached the Agent's obligations under clauses 2.1, 2.3, 2.3A, 2.4, 2.8, 2.9A, 2.17, 2.18, 2.20, 2.23, 5.2, 5.5, 6.1, 6.1A, 7.2, 7.4, 7.5, 9.1 and 9.3 of the Code.

61. The Authority put to the Agent that there were possible findings to be made regarding the Agents conduct in respect of:
- i. Lack of details in agreements for services and fees
  - ii. Not entering into any agreements for services and fees with some clients
  - iii. The provision of inaccurate and/or incorrect advice
  - iv. Not recording his advice to clients and their instructions to him
  - v. Not lodging any applications for some clients
  - vi. Not keeping clients informed of progress of their applications
  - vii. Not keeping proper client records
  - viii. Claiming he had no control over client monies which should have been held in the clients' account
  - ix. Retaining substantial client funds without completing the agreed services
  - x. Attempting to mislead the Authority
  - xi. Using his clients' personal financial information without authorisation to do so.

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

62. On 01 June 2020 the Authority received the Agent's submissions in the form of an email.
63. He provided a document purporting to evidence the sale of Australian Migration Specialists Pty Ltd to Mr HMP. The Agent stated that he was the director and registered migration agent for Australian Migration Specialists Pty Ltd from 25 June 2012 until 31 December 2016.
64. Mr K, Mr LS and Mr S were clients of Australian Migration Specialists Pty Ltd for which the Agent was the director and migration agent from 25 June 2012 until 31 December 2016. Thereafter the company was taken over by Mr HMP. The Agent was working as a consultant for Australian Migration Specialists Pty Ltd.
65. Mr B and Mr PS were clients of Visa Advice Centre Pty Ltd for whom the Agent also worked as a consultant. He was not the director of this business.

#### **Client files**

66. After their cases were finalised the Agent handed over all documentation relating to Mr K and Mr LS to the new owner of Australian Migration Specialists.
67. With respect to Mr S's application, there were other administration staff and migration agents who communicated with Mr S. The Agent offered to attempt to obtain all email communications with Mr S.
68. The Agent acknowledged that Mr S paid the fees into the Director's account but as Mr S was slow in providing documents and his accountant took a long time, the applications could not be lodged.



69. The Agent claimed that the directors of both businesses he worked for were not easy to communicate with. Over time the Agent became frustrated which affected his work life and might have impacted his clients.
70. In respect of Mr PS, due to the lack of communication with the Director of the company who did not provide the Agent with payment, the application was not lodged.
71. All documents and files are with the Directors of Australian Migration Specialists Pty Ltd and Visa Advice Centre Pty Ltd with whom the Agent has not 'been able to communicate as I understand they are overseas and under lockdown.'

#### Client Ledgers/ Financial Documents

72. Attached with the Agent's response was a 'Change to company details' form, denoting that Mr HMP had taken over as the director of Australian Migration Specialists Pty Ltd; ACN 159 165 394 on 01 January 2017.
73. The Agent claimed that as he was not the director of the companies, he had no access to client ledgers or client account documents. However he is aware of the monies owed to Mr K, Mr PS, Mr B and Mr S.
74. The Agent took responsibility and made contact with Mr K and Mr S because he was sorry and felt responsible therefore he paid some money out his "own pocket".
75. The Agent claimed that he had paid Mr S in a couple of instalments but stopped when Mr S started to threaten him. Mr S sent him messages such as "I will hunt u down."
76. The Agent feels that the work he conducted on behalf of Mr LS was undertaken in a timely manner and the amount he was paid included two sets of application fees<sup>13</sup>.
77. In respect of Mr PS the Agent claimed that he takes full responsibility and has contacted Mr PS and advised him that he will be paying him from his "own pocket".
78. The Agent undertook to provide the authority from Mr PS to permit his credit card to be used to pay the VAC for Mr Tanjot Singh.
79. The Agent did not provide any other evidence to support the claims he made in his response to the section 309 notice.
80. The Agent did not provide any documents from client files or financial documents as requested under section 305C.

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<sup>13</sup> It is not clear which applications the two sets of fees relate to.

### **Extension to the section 309 notice**

81. On 07 January 2021 the Agent was sent an extension to the Authority's section 309 notice, via email. This was to inform the agent of further possible findings in relation to Mr LS's complaint.
82. It was put to the Agent that it was open for the Authority to find that the Agent had lodged two Partner visa applications on behalf of Ms D which he knew would not succeed because Ms D was still legally married to another person.
83. The Agent provided a response on 26 January 2021. As relevant, the Agent conceded he did not have a copy of the contract Ms D signed. He stated he acted on good faith in regards to the marriage of Mr LS and Ms D and had no idea that Ms D was previously married.

### **Jurisdiction**

84. The Authority performs the functions prescribed under section 316 of the Act.
85. 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**

86. 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)).
87. 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)).
88. 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.

89. 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)**

90. 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**

91. In reaching the following findings of fact the Authority considered the following evidence:
- Documentation contained in the Authority's complaint files for CMP-38823, CMP-42462, CMP- 43708, CMP- 47741 & CMP- 49873;
  - Information held on departmental records in relation to the matters raised in the complaint; and
  - Information held by the Authority in relation to the Agent.

## **DECISION AND REASONS**

### **Finding on material questions of fact**

92. 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.
93. Having regard to the findings I have made, I am satisfied that the Agent has engaged in conduct in breach of the Agents obligations under clauses 2.1, 2.3, 2.4, 2.8, 2.9, 2.9A, 2.17, 2.18, 3.2, 5.2, 5.5, 6.1, 6.1A, 7.2, 7.4 and 7.5 of the Code<sup>14</sup>.
94. I am satisfied that these breaches are of a serious nature and warrant a disciplinary decision. My findings and full reasons for the decision are set out below.

### **Client Agent Relationship**

95. The Agent, in his responses to the section 308 and 309 notices to the Authority, acknowledged that he provided immigration assistance to each of the complainants.
96. Departmental records show that the Agent was listed as the representative migration agent in respect of Mr LS/Ms D's Partner visa applications and Ms P's Visitor visa application.
97. I am satisfied the Agent was engaged to provide his clients with immigration assistance and had established a client agent relationship with the visa applicants and the sponsor <<business name removed for privacy>> /(Mr S) and therefore owed them obligations as specified under the Code.

### **Business and employment status of agent**

98. In his responses to the section 308 and 309 notices, the Agent claimed that he was a consultant for both Australian Migration Specialists and Visa Advice Centre. Therefore, as he was no longer the director of either company, he had no access to

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<sup>14</sup> The relevant clauses of the Code are listed in Attachment C – << attachment removed for publication>>

his client files<sup>15</sup> as they were in the possession of either the director of Australian Migration specialists and/ or the director of Visa Advice Centre.

99. Information from the Register of migration agents lists the Agent as having links to the following business entities:

Information marked with an asterisk\* is derived from ASIC<sup>16</sup> records.

<b>Business Entity</b>	<b>Agent's role</b>	<b>*Status of entity</b>
Australian Migration Specialists Pty Ltd	*Director from 25 June 2012 to 19 November 2017	Deregistered 19 November 2017
Migration Specialist (India)	Consultant from 26 August 2015 to 11 July 2017	N/A
Australian Migration Specialist – NZ Branch	*Director from 15 August 2016	N/A
Visa Advice Centre Pty Ltd	Consultant from 29 March 2018	Deregistered 26 July 2020
Visa Junction Pty Ltd	Consultant from 06 July 2019	Registered

100. The Agent stated that Mr K, Mr LS and Mr S were clients of Australian Migration Specialists Pty Ltd. The Agent claimed that he was the director of the company from 25 June 2012 until 31 December 2016 when the company Mr HMP became the sole director.
101. The Agent provided a document purporting to evidence the sale of Australian Migration Specialists Pty Ltd to Mr HMP. The Agent did not provide evidence that this document was lodged with ASIC. There is no evidence in ASIC records that a sale or transfer or change of office holder occurred. ASIC records indicate that the Agent was the only director of the company from 25 June 2012 until the company was de-registered on 19 November 2017.
102. The Agent claimed that Mr B and Mr PS were clients of Visa Advice Centre Pty Ltd for whom the Agent worked as a consultant. He was not the director of this business. ASIC records list Mr JRM, of <<removed for privacy>>, as the sole director and shareholder of Visa Advice Centre Pty Ltd which was first registered on 06 March 2018.
103. Mr JRM is also listed in ASIC records as the director of Visa Junction Australia Pty Ltd which was registered on 28 March 2019. The Agent informed the Authority that he was a consultant for Visa Junction Pty Ltd. The Register of migration agents states that the Agent has a business relationship with this company.

<sup>15</sup> This will be discussed in detail under Maintaining Proper Records – from Paragraph 249

<sup>16</sup> Australian Securities Investment Commission

104. The Agent has not disputed that he had a client agent relationship with any of the complainants therefore it was the Agent who was appointed and paid to provide immigration assistance to the clients. In particular, Mr B made deposits directly into a Commonwealth Bank account in the name of Rajiv Luthra, not Visa Junction. Accordingly it is the Agent's responsibility to ensure he complied with his obligations under the Code with respect to his clients.

CMP - 38823 – Mr K

Agreement for Services and Fees and handling of client monies

105. In his response to the section 308 notice the Agent submitted a signed copy of the Representation Agreement for Mr K dated 04 January 2017. The agreement stated that a lump sum of \$2,750 for the Agent's professional fees was payable. There were no other fees or charges listed in the agreement, not even the VAC. There was no list of the actual services the Agent was to provide to Mr K listed on the agreement.
106. The Agent did not provide Mr K with a statement of services, however the Agent claimed that the 'Representation Agreement' was a statement of services. This is not satisfactory. The Code at clause 5.2 sets out what is required in an Agreement for Services and Fees. It should set out the services the Agent will provide and the fees and charges for those services. Once the services are performed a registered migration agent can present an itemised invoice or account to a client for payment: a statement of services. Mr K paid the Agent in advance, therefore, the Agent was required to provide an invoice to Mr K setting out the work completed before he could withdraw payment from his clients' account. There is no evidence that the Agent ever provided an invoice to Mr K.
107. In the Agent's response to the section 308 notice the Agent stated that he was not aware of any payments received from Mr K.
- "I assume the payments were received into the company's account' and 'the invoices were given to him on hand in one of the meeting with him".
108. The Agent provided a copy of a lodgement receipt<sup>17</sup> dated 04 January 2017 for the amount of \$1,800 paid by Mr K to Australian Migration Specialists; BSB <<removed for privacy>>. This is the same as the account number stated on the Representation Agreement for payment. The Agent's statement in his response is contradicted by the receipt the Agent provided.
109. Mr K provided evidence of another funds transfer to Australian Migration Specialists bank account for an amount of \$3,200 on 05 June 2017.
110. Mr K paid in a total of \$5,000 to the Australian Migration Specialists bank account. It is not clear what the \$5,000 was used for other than the skills assessment applications to ACS, for which the Agent has provided receipts totalling \$895, as the Agent has not provided any list of completed services or a statement of services.
111. The Agent claimed to be uncertain about payments his client deposited into the company account<sup>18</sup> and that he had no oversight of the clients' account. However

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<sup>17</sup> ANZ Banking Group - Lodgement number 1283587584, Receipt number 578878

<sup>18</sup> Bank account details as per the signed agreement - Australian Migration Specialist - C/W BSB <<removed for privacy>>

ASIC records list the Agent as the sole director and shareholder of Australian Migration Specialists at the time the payments from Mr K were received. The service agreement stipulated that fees were to be paid into the company account and both the Agent and Mr K have provided evidence that funds were paid into this account. I consider the Agent's claim to have no oversight of the account is untrue and an attempt to avoid his obligations under the Code with respect to the handling of client monies paid to him for his professional fees, visa application charges and other disbursements. It is unacceptable that the Agent claimed that he had no knowledge of or control over the company's accounts and client monies despite being the only director of the business and the only registered migration agent. He has attempted to mislead the Authority and sought to avoid accountability for the client's funds.

112. The Agent stated, in his response to the section 308 notice, that he 'personally' provided a refund to Mr K whilst the Agent was in India. When the Agent provided his response to the notice on 05 September 2019 he requested additional time in which to provide the Authority with evidence of the payment of the claimed refund. Despite more time being given to the Agent to produce this evidence and further requests made for that evidence, the Agent has not provided any confirmation to demonstrate that the claimed refund has been made. Mr K confirmed he received a part refund and the remainder of the agreed amount is still outstanding.
113. In his response to the section 309 notice the Agent claimed that he had accepted personal responsibility for Mr K's situation and because he felt sorry and responsible he claimed to have paid money "out of his own pocket." The Agent has failed to provide any evidence that he made any further refund to Mr K. I am satisfied that the Agent's statement regarding the refund was an attempt to mislead the Authority into believing that the Agent had reached a settlement with his client.
114. The Agent did not provide any further submissions about Mr K's complaint in his response to the section 309 notice.
115. I am satisfied that the Agent breached clauses 5.2 and 5.5 of the Code.

Poor advice regarding a suitable occupation for skills assessment.

116. Mr K claimed that he provided all his documentation to the Agent at the time that he signed the contract, in January 2017, but the Agent did not lodge the application for the skills assessment until 14 June 2017. I note that Mr K's English Test results did not come through until June 2017, however these were not required for the skills assessment.
117. The Agent claimed in his response to the section 308 notice that Mr K insisted that the Agent lodge his application for his skills assessment under the occupation of Software Engineer, despite the Agent's advice to the contrary. However the Agent has not provided any record of the instructions Mr K gave the Agent with respect to his skills assessment. The Agent has not provided any evidence that he advised Mr K of his opinion that his qualifications and experience would not be assessed as suitable under the role of Software Engineer. Moreover the Agent has not provided any information as to which ANZSCO<sup>19</sup> occupation the Agent considered would have best reflected Mr K's qualifications and work experience.

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<sup>19</sup> Australia and New Zealand Standard Classification of Occupations



118. The Agent has not provided any explanation as to why he lodged the skills assessment application for Software Engineer even though he considered that it would not be successful. He has not provided any evidence of a written authorisation from Mr K in relation to submitting the initial skills assessment application despite the Agent's advice that it would be unsuccessful. If such a discussion involving a conflict of opinions occurred it would be reasonable to expect the Agent to seek confirmation that his client did not want to follow his advice.
119. The Agent did not provide an explanation as to why he lodged an application to review the initial unsuccessful outcome from the ACS for the position of 'Software Engineer' particularly given his claim that his initial advice to Mr K about the unsuitability of the role for Mr K's skills and qualifications appeared to have been proved correct.
120. In his response to the section 308 notice the Agent stated that he was subsequently advised, by the assessing authority, that the occupation of 'Chief Information Officer' was more closely related to Mr K's skills. The Agent claimed that he advised Mr K accordingly, and consequently applied for the skills assessment under this occupation. However the Agent did not provide any correspondence or notes of a conversation with ACS with his response to the notice to support this assertion. It is unclear when the Agent obtained this advice and whether it was prior to the Agent lodging an application for review or afterwards.
121. As the Agent has not provided any evidence as to the instructions he received from Mr K in relation to the occupation for the skills assessment, I cannot be satisfied the Agent acted on Mr K's instructions to seek a skills assessment under the occupation of Software Engineer. Further as it was the Agent who sought review of the unsuccessful outcome it is likely that the occupation of Software Engineer was the recommendation of the Agent rather than Mr K's preferred choice.
122. I find that the Agent failed to lodge Mr K's skills assessment in a timely manner, despite having the requisite information to do so. The Agent delayed the process by requesting Mr K to sit an English language test and wait for the results prior to submitting the skills assessment application despite there being no requirement for these results for the assessment. I find that the Agent has demonstrated a disregard for Mr K's legitimate interests.
123. I am satisfied the Agent's conduct in relation to the assistance he provided Mr K is in breach of clauses 2.1

#### Failure to act on client instructions and lodge Mr K's EOI

124. In his response to the section 308 notice the Agent stated that after receiving the positive outcome for the skills assessment he attempted to submit the EOI on behalf of Mr K on a number of occasions without success. The Agent assumed that it was a system error. The Agent claimed he informed Mr K of this issue several times by telephone. In addition the Agent stated he provided no further advice/information to Mr K after the unsuccessful attempts to submit the EOI, as Mr K was planning to 'depart Australia and go overseas.' The Agent has not provided evidence of the conversations the Agent claimed he had with Mr K advising him of the issues, nor of any advice which the Agent provided him on how to proceed, or Mr K's subsequent instructions to the Agent.

125. Whether the Agent experienced systems issues or not, there was a period of approximately five months between the receipt of the positive skills assessment for Mr K and the removal of the occupation of Chief Information Officer from the Medium and Long-term Strategic Skills List (MLTSSL). The Agent has not provided any evidence from his client's file of his attempts to submit the EOI or that he informed Mr K of the situation during this period of time. It is not acceptable that, if the Agent was experiencing numerous issues in lodging the application as claimed, he made no attempt to contact SkillSelect<sup>20</sup> about those issues. The Agent has not declared that he took any steps to ascertain the reason for his claimed difficulty in submitting the EOI. I consider that it would be reasonable, if the Agent believed there to be a systems error, for him to contact the Department to clarify the issue and obtain advice or assistance. He owed it to his client to do so.
126. It remains unclear why, when the Agent apparently had all the relevant documentation, the Agent did not attempt to submit the EOI as soon as possible. The Agent contacted Mr K on 01 May 2018, forwarding information provided by the Department, that his nominated occupation was no longer on the relevant occupation list. The Agent then provided Mr K with the log in details and asked him to submit the EOI himself.
127. Mr K undertook his own research to find out why his EOI could not be submitted and discovered his occupation had been removed from the MLTSSL on 18 March 2018. I consider that the Agent only made an attempt to lodge Mr K's EOI after 18 March 2018 and had not taken account of the many changes to the suitable occupations lists which occurred at that time.
128. I find that the Agent was not diligent in the assistance he provided to Mr K. Over the period of approximately 18 months that Mr K was his client, Mr K:
- i. paid the Agent several thousand dollars;
  - ii. obtained a successful skills assessment for an occupation that was subsequently not required in Australia;
  - iii. missed out on an opportunity to lodge an expression of interest for a skilled visa;
  - iv. lost his opportunity to apply for permanent residence; and,
  - v. had to leave Australia.
129. I am satisfied that the Agent failed to act in the legitimate interests of his client and was neither diligent nor competent in his attempts to lodge Mr K's EOI. I am satisfied that the Agent did not attempt to lodge the EOI for some months. There is no evidence of any reason for the delay when he had all the information and documentation to lodge it prior to 18 March 2018 when the MLTSSL was changed. I am satisfied that the Agent has breached clauses 2.1 and 2.18 of the Code and caused a significant detriment to Mr K.

#### CMP – 42462 – Mr LS

130. The Agent lodged a Prospective Partner visa application (the offshore application) for Ms D, sponsored by Mr LS, on 21 September 2012. They were married on 27 July 2012 in Hong Kong. The application was processed by the Post in Hong Kong and was refused on 11 February 2019. In the intervening period the Agent lodged an onshore Partner Visa application (the onshore application) and visitor visas for Ms D and her children. Mr LS paid in excess of \$20,000 for these applications. Ms D was

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<sup>20</sup> Business area within the Department responsible for EOI applications.

granted a Visitor visa to come to Australia but none of the other applications were granted.

131. The Agent has not provided evidence of the advice he gave to Mr LS and Ms D in regards to Ms D's eligibility to lodge either Partner visa application. Nor has he provided any evidence with his responses to the notices as to how he satisfied himself that Mr LS and Ms D were eligible to lodge partner visa applications either on or offshore. Moreover the Agent has not explained the reasons why he put his clients to further significant expense and lodged concurrent Partner visa applications.

#### Agreement for services and fees

132. There is no evidence before the Authority that the Agent entered into an agreement for services and fees with his clients nor that he provided invoices or receipts for the payments he received. In his response to the extension to the section 309 notice the Agent stated that he does not have a copy of 'the contract' Ms D signed.
133. Mr LS submitted a copy of bank receipt for a funds transfer on October 2015 to the Agent's account of an amount of \$15,050 on which he had noted the following details:
- "Received \$15,000 a full payment  
Included all DIBP fee  
"Lodging Tourist visa x 2"  
"If 8503 imposed – apply waiver"  
"Lodging spouse visa application & adding 2 x dependent children above 18 years of age [illegible]  
as final settlement"
134. Mr LS also had a copy of a receipt from the bank for a deposit on 31 October 2014 of \$4,125 to Aus Migration Specialists account: <<removed for privacy>>.
135. The Agent has been paid at least \$20,000<sup>21</sup> for immigration assistance to Mr LS and Ms D. There is no indication that the Agent provided his clients with a breakdown of the actual services he would provide or details of the charge for each service and the relevant visa application charges.
136. There is no evidence that the Agent ever issued a statement of services to Mr LS detailing the services he had completed. In his response to the section 308 notice, the Agent claimed that a statement of services was provided to Mr LS "by hand 2-3 times/and my understanding is by email too." The Agent claimed he provided a statement of services to Mr LS on numerous but unspecified occasions and that he believed statement of services had been emailed to his clients. The Agent was suggesting that he had complied with the Code but did not provide any actual evidence of any statements of services provided to his clients.
137. These monies were all received by the Agent when he was the sole director and shareholder of Australian Migration Specialists Pty Ltd. The Agent was the person responsible for issuing the statement of services. Copies should have been in the Agent's client file for Mr LS. The Agent has not provided a copy of the statement, nor evidence that it was given to Mr LS, despite being given ample time to do so. Given that no evidence was presented from the Agent's clients' files I consider that no statement of services actually exists. Therefore there is no evidence that he was ever entitled to transfer monies, paid by Mr LS, out of the clients' account.

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<sup>21</sup> \$4,125 paid on 31 October 2014 + \$15,050 paid on 19 October 2015

138. In the Agent's response to the section 308 notice, he stated that he received payments totalling \$15,050, which included '2 DoHA fee and our services of subclass 309, 820 and two tourist visa.' The Agent further stated that receipts were provided by hand. In addition the Agent states that "the payments were received for a one off- purpose for all the assistance required for Mr LS." The Agent lodged two spouse applications and two visitor visa applications. The Agent asserts that "since it's been so long, I couldn't remember about the payments and as the business is now sold, I do not have any access to the account." The Agent's response is contradictory given he also stated exactly what the payment was for and the total of that payment.
139. Mr LS provided evidence of the payment of \$15,050 made to 'Rajiv Luthra' BSB 062 443 A/c 10805964 on 19 October 2015. He also provided evidence of a deposit for \$4,125 paid into the same account on 31 October 2014. This account is held in the name of Australian Migration Specialists. ASIC records list the Agent as the sole director and shareholder of Australian Migration Specialists from 25 June 2012 until the business was de-registered on 19 November 2017, as such the Agent was the director of the company at the time both payments from Mr LS were received. As the director he was responsible for signing off on the accounts.
140. The Agent stated that he paid the fees for the onshore spouse application 'personally from my pocket.' I do not find it plausible that the Agent the paid the fees for the onshore application from his "own pocket" when Mr LS had paid the Agent at least \$20,000. The Agent stated himself that the '\$15050 included 2 DoHA fee.' I consider the Agent's claim to be an attempt to mislead the Authority. In addition it raises concerns about the Agent's handling of client monies and whether they had been deposited in the clients' account as per the Agent's obligations under the Code.
141. It remains unclear why the Agent did not charge Mr LS for the two partner visas and two tourist visas until October 2015 given the offshore application had been lodged in September 2012 and the onshore application lodged on 11 December 2014. The only applications lodged after October 2015 were for the two visitor visas for the youngest children of Ms D: <<removed for privacy>>, in November 2015. Because the Agent has not provided any records it appears that the Agent charged \$15,050 for lodging the two tourist visas.
142. The Agent's failure to provide evidence of any agreement about the services and fees or any receipts and invoices is unacceptable. The Agent made unsubstantiated claims to have provided statements to his clients. I am satisfied that the Agent has breached clauses 5.2, 5.5, 7.2 and 7.4 of the Code.

#### Visa applications with poor prospects of success

143. The Agent lodged the offshore visa application on behalf of Ms D on 21 September 2012.
144. A telephone interview with Ms D was conducted by a departmental officer on 21 June 2013. During the interview Ms D advised the officer that she had met Mr LS over the internet in December 2011. Mr LS travelled to Hong Kong on 25 July 2012 to meet Ms D in person for the first time. They were married in Hong Kong two days later on 27 July 2012.
145. The Agent applied for a tourist visa for Ms D to come to Australia while her offshore partner visa application was being assessed. She arrived in Australia on this tourist

visa on 21 March 2013. The Agent claimed that when it was time for her to depart, on 21 June 2013<sup>22</sup>, Mr LS did not want her to leave so the Agent lodged an onshore Partner visa application for her. The Agent has not provided any evidence of the instructions Ms D provided to him to lodge the onshore application.

146. The Agent states that he advised them to apply for an onshore partner visa as it was the Agent's 'understanding' that they were married. The Agent should have provided evidence of the marriage to lodge the partner visa application. An 'understanding' by the Agent that his clients were married is completely unsatisfactory as that could not meet the visa criteria. Ms D provided some supporting evidence of her relationship to the Department on 27 November 2013, however she did not submit her certificate of marriage to Mr LS until 15 December 2014. A diligent agent would have questioned his clients about their current and previous relationships and sought documentary evidence which could be lodged with the application. In his response to the section 309 extension, the Agent claimed that he acted in good faith in regards to the marriage of Mr LS and Ms D and was satisfied they were married.
147. On 14 January 2015 the Agent submitted copies of online chat logs between Mr LS and Ms D in support of the onshore application. In one conversation Ms D claims to have all the required documentation [for the visa application] 'except the divorce papers.'
148. The Agent was sent an email, by the Department, on 18 April 2016 which highlighted the specific information in the online chat logs. The Agent was asked to submit a statutory declaration from Ms D stating whether or not she had been previously married. She submitted a statutory declaration on 04 May 2016, in which she solemnly declared that prior to her marriage to Mr LS she had had two previous de-facto relationships and had never been married.
149. On 25 October 2018 the Department sent to the Agent an 'Invitation to comment' letter regarding information about Ms D's marital status. The letter set out adverse information found during checks conducted by the Department in relation to the onshore application, with particular regard to Ms D's marital status. The Department had received confirmation from the Civil Registrar General in Hong Kong that Ms D was married to Mr NVG<sup>23</sup> and the marriage had been registered on 15 April 1992.
150. The Agent, in his response to the 'Invitation to Comment' letter, stated that Ms D's marital status at the time of her marriage to Mr LS, as stated on their marriage certificate, was 'Spinster' and that she was not in a relationship with either of her former de-facto partners. In her chat history which she provided to the Department in support of her on-going relationship with Mr LS she mentioned the need to obtain 'divorce documents'. She claimed this was a misunderstanding as she had meant the 'letters of separation' from her previous partners. The Agent further stated in his response that 'both [Mr LS] and her are in a genuine and committed relationship'.
151. In his response to the 'Invitation to Comment' letter, the Agent did not specifically address the information that the Department had received confirmation that Ms D was still married to Mr NVG. However the Agent provided with his response a copy of the birth certificate for Ms D's daughter [GM]. This birth certificate stated that Ms D married Mr NVG, ([GM]'s father) on 06 March 1992. She was not free to legally marry Mr LS. The Agent either did not thoroughly check the documentation his clients provided or he submitted the birth certificate in full knowledge that Ms D was married, whether or

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<sup>22</sup> 3 months from the date of arrival

<sup>23</sup> The father of [GM].

not she was subsequently divorced, and he had provided incorrect and misleading information in the Partner visa applications to the Department about Ms D' marital status. He made statements to the Department despite having evidence which contradicted these statements. Moreover he lodged an application for a visa for which Ms D was not eligible to apply as her marriage to Mr LS was not recognised under Australian Law.

152. It is unclear how the Agent could have assured himself that Ms D and Mr LS were lawfully married, given that Ms D was married in the Philippines. The Agent has not provided any evidence that he made any enquiries into whether or not Ms D was divorced. The Agent had evidence that Ms D was married to [GM]'s father which was corroborated by the information received by the Department from Hong Kong Civil Registrar General, yet there is nothing to indicate the Agent was diligent and sought to clarify the actual status of Ms D's marriage to Mr NVG. Instead he uploaded a chat history which included his client discussing not having her divorce papers. In addition the Agent has not provided any evidence of the advice the Agent provided Ms D when he was issued the 'Invitation to Comment' letter nor of the steps he took to satisfy himself that she and Mr LS were in a marriage which was recognised under Australian law, despite having received significant evidence to the contrary.
153. I am satisfied that the Agent lodged two Partner visa applications for Ms D which he knew could not succeed because Ms D was still legally married to Mr NVG. I find that the Agent's actions demonstrate either gross negligence on his part with respect to the interests of his clients or that he knowingly submitted false and misleading information to the Department in attempt overcome the fact that Ms D could not meet a critical criteria for visa for which she had applied.
154. I am satisfied the Agent has breached clauses 2.1, 2.6 and 2.9 of the Code.

#### CMP – 43708 - Mr S

155. Mr S engaged the services of the Agent in March 2018 to assist with nomination and visa applications for two of his employees. Mr S paid the Agent \$14,233 for his professional services and VAC fees at this time.
156. The Agent sent draft applications to Mr S for review in February 2019. The Agent stated that they would be lodged straight away, however the Agent did not ever lodge any of the applications for Mr S as the sponsor nor the two employees applying for permanent residence visas.

#### Receiving, recording and acting on client instructions

157. In his response to the section 308 notice about Mr S's complaint the Agent stated that he discussed two potential visa options for Mr S's employees, Mr C and Mr N; the RSMS subclass 187 visa and the ENS subclass 186 visa. The Agent advised Mr S that they were eligible for both subclasses.

158. As background, these types of applications require a person to be nominated by an approved Australian employer to be eligible. In addition an application under RSMS requires that a nominated position must be assessed by a Regional Certifying Body (RCB) prior to lodging the nomination and visa applications.
159. Other than a few brief emails between the Agent and Mr S the Agent did not provide any evidence with his response of the actual advice he provided to Mr S about which visa subclass or scheme was suited to the circumstances of <<*business name removed for privacy*>> and the two employees. Nor has the Agent provided any evidence of the reasons for his claim in his responses that they were eligible for both visa options. Furthermore the Agent has not provided any evidence of the instructions the Agent received from Mr S as to which visa option they decided to proceed with.
160. There is no evidence the Agent had any direct dealings at all with Mr C or Mr N, despite them being clients of the Agent and both having signed agreements with him.
161. On 01 May 2018 the Agent sent an email to Mr S requesting further documentation for the 'RCB & 187 nominations.' It would be reasonable to consider that this indicates a decision had been made to proceed with an RSMS application.
162. Some 12 months later, on 03 May 2019, the Agent sent an email to Mr S stating that the Agent had 'all the documents ready for a subclass 186. The other option could have been subclass 187'. The Agent has not provided any reason to indicate why he confirmed he had received all documentation ready for a subclass 186 when he had previously stated that subclass 187 visa applications would be lodged. It would be reasonable to consider that the Agent had received instructions from Mr S to make these changes however the Agent has not provided any evidence of the instructions Mr S gave the Agent nor evidence of what advice these instructions were based on. No RCB assessments are required for ENS nomination applications yet the Agent had requested and received payment for preparing and lodging these assessment applications.
163. Mr N's subclass 457 visa expired in September 2019. The Agent made no attempt to lodge the visa application prior to this date. The Agent claimed he had been waiting on some requisite documentation from Mr S, prior to lodging the nomination and visa applications. The Agent did not confirm receipt of the documentation provided by Mr S on 11 February 2019, until his email dated 03 May 2019. The Agent told Mr S that due to the delay in lodging the applications the fees had increased.<sup>24</sup> However Mr S was reluctant to give the Agent any more money without evidence that the applications had been lodged.
164. The Agent did not respond to Mr S's requests for updates. The Agent only responded when Mr S requested a refund in December 2018 due to the lack of communication from the Agent and lack of progress with the applications.
165. Mr S paid the Agent over \$14,000, yet after two years of waiting the Agent had not lodged any applications with the Department.
166. I find that the Agent failed to lodge the applications for Mr S despite having the received all the supporting documentation and accepting payment to do so. I find that the Agent has not communicated with his client in a timely manner throughout the applications process.

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<sup>24</sup> This is explored in more depth under 'Handling of client monies' from paragraph 177

167. Based on the evidence before me, I am satisfied that the Agent has engaged in conduct which is in contravention of his obligations under 2.1, 2.8 and 2.18 of the Code.

#### Agreements for Services and Fees

168. As part of the Agent's response to the section 308 notice he submitted individual signed copies of the Representation Agreements for Mr C and Mr N, both dated 08 March 2018. The agreements both stated a lump sum amount of \$2,750 for the Agent's professional fees. There were no other fees and charges listed on the agreements: the amount of the VAC was not stated. There was no list of services the Agent would provide stated in the agreements.
169. The Agent provided Mr C and Mr N with agreements lacking in important details such as the work the Agent would be undertaking and relevant departmental fees such as the VAC. No fees were stated other than the Agent's own professional fees which did not reflect the actual monies Mr S paid to the Agent. Mr S paid the Agent far more than the two fees of \$2,750 denoted on the service agreements. The Agent did not have an agreement with Mr S/ <<business name removed for privacy>> despite the Agent purportedly giving advice to and taking instructions directly from Mr S, who also paid all the fees to the Agent.
170. Mr S provided evidence that he paid the Agent a total of \$14,233.40. This was payment for invoice number 1, dated 15 March 2018 as detailed below:

Date	Details	Amount
15/03/18	AGENT FEES -RSMS NOMINATION & APPLICATION APPLICANTS [REDACTED] [GST INCLUDED]	5500.00
	RCB FEES : APPLICANTS [REDACTED]	1320.00
	IMMIGRATION FEES : APPLICANTS [REDACTED]	7413.40

171. There are a number of issues with invoice number 1:
- There is no mention of any of these amounts or services in either of the agreements, other than the Agent's fees totalling \$5,500 for both applicants.
  - Whilst the invoice is addressed to <<business name removed for privacy>>, there are no professional fees listed for the business
  - RCB fees are not required for ENS nomination applications
  - RCB fees for RSMS applications are \$300 for the main applicant only



- e) The Department did not charge a fee for nomination applications lodged under the RSMS or ENS stream the Agent had recommended.<sup>25</sup>
172. On 03 May 2019 the Agent subsequently requested an additional \$4,776 for the purported increase in departmental fees. Whilst the Agent did provide written notice of the change in the estimated cost for lodging the applications on behalf of Mr S the Agent did not provide an updated agreement for either Mr C or Mr N. Regardless it remains unclear as to why the initial agreements only denoted \$2,750 for each visa applicant.
173. In his response to the section 309 notice the Agent did not address any of the issues, raised by the Authority, about the service agreements:
- the services the Agent was to provide were not set out;
  - no service agreement with <<business name removed for privacy>> despite them being a client of the Agent; and
  - no other fees and charges, including departmental fees were listed on the agreement for Mr N and Mr C other than the Agent's professional fees
174. I am satisfied that the agreements for services and fees the agent provided to Mr S did not meet the requirements of clause 5.2 of the Code. The Agent provided his clients with poorly worded, inaccurate and misleading agreements, with only the Agent's own professional fees stated which did not reflect the actual monies received by the Agent. The Agent also failed to provide Mr S with an agreement at all.
175. The Agent did provide Mr S with an invoice which only set out the types of fees; agent's professional fees, RCB application fees and two VACs, however this did not satisfy the Agent's obligations under Part 5 of the Code.
176. Given the above discussed I find that the Agent's conduct is in breach of clauses 5.2 and 5.5 of the Code.

#### Handling of client monies

177. In his response to the section 308 notice the Agent claimed that he was not aware as to whether Mr S had paid the fees or not. The Agent claimed that as a contractor for the businesses his understanding was that the payment, made by Mr S, was transferred into the company account. He further stated that it was his understanding that invoices had been issued for this payment.
178. In addition the Agent claimed that he was unsure if the funds were entered into the relevant client account as 'I am just the contractor of the company and I would not have any information. This question can be put to the director of the company.'
179. As discussed earlier in this decision<sup>26</sup>, the Agent is responsible for complying with his obligations under the Code.
180. The Agent claims that he was a consultant for Australia Migration Specialists, Visa Advice Centre and Visa Junction Australia. However the Agent utilised the same email address on all of the Agreements and throughout all the Agent's interactions with his

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<sup>25</sup> Regional and not Direct Entry – Regulation 5.37 (2)(a)

<sup>26</sup> Paragraph 104

clients: info@migrationspecialist.com.au regardless of which business the Agent was purportedly representing.

181. Invoice number 1 dated 15 March 2018, denoted that payment was to be made to an account in the name Australian Migration Specialists<sup>27</sup>. This was also the account detailed on the Representation Agreements for both Mr C and Mr N.
182. On 03 May 2019 the Agent sent Mr S an email stating that the Agent would be lodging the application by Saturday 04 May 2019. The Agent informed him that the fees for both the nomination application and the visa applications had increased:  
  
"Fees for each nomination: **\$3000(for either 186/187) + surcharge**  
Fees for each primary applicant: **\$3755(for either 186/187) + surcharge**  
**Total: \$13,510, plus the Agentr fees of \$5,500."** [sic]
183. The Agent deducted the amount already paid of \$14,233.40, and advised Mr S the outstanding amount due was \$4,776.60.
184. The Agent provided Mr S with an invoice for this additional amount, dated 03 May 2019. The money was to be paid into the account in the name of Australian Migration Specialists<sup>28</sup>.
185. Whilst the VAC had increased by \$85 from March 2018, there was no departmental fee to lodge the nomination application, nor had there ever been for the visa stream the applications were to be lodged under<sup>29</sup> (either the 186 or the 187). This demonstrates the Agent's lack of knowledge of the relevant migration legislation in regards to the fees associated with the nomination applications.
186. There was no explanation why the Agent was charging additional professional fees of \$5,500. Mr S had already paid the Agent's professional fees of \$5,500 after the initial invoice was issued in March 2018 and the Agent had not yet completed the work for which Mr S had paid him. The Agent's email of 3 May 2019 showed that he was aware of how much money Mr S had paid him.
187. I consider the Agent's claim to have no knowledge as to whether monies had been received into the account, as an attempt by the Agent to avoid his responsibilities under the Code with respect to the handling of clients' monies paid to him for his professional fees, visa application charges and other disbursements.
188. The agreements for both Mr C and Mr N requested fees to be paid into the company account for Australian Migration Specialists. The invoice presented to Mr S also stated the same bank account details for funds transfer. The payments were made into exactly the same bank account as that of Australian Migration Specialists when the Agent was the director of the business<sup>30</sup>, and there is no evidence that there was any change to the account. Therefore I am satisfied that the Agent was fully aware that the payments had been made into the bank account which belonged to the Agent.
189. In his response to the section 308 notice the Agent claimed<sup>31</sup> that since the applicants had been referred to the Agent by a friend the Agent made a payment plan with Mr S

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<sup>27</sup> << removed for privacy>>

<sup>28</sup> << removed for privacy>>

<sup>29</sup> Regional and not Direct Entry – Regulation 5.37 (2)(a)

<sup>30</sup> From 25 June 2012

<sup>31</sup> In the Stat Dec signed 07 September 2019

for a refund 'voluntarily paying \$1000 fortnightly' into Mr S's account from the Agent's 'personal account' as a good will gesture.

190. The Agent claimed in his response to the section 309 notice, that Mr S had been paid a couple of payments in instalments, however the Agent stopped contact with Mr S because he alleged Mr S threatened him. He did not provide any evidence of the alleged instalments paid to Mr S. The Agent's claim that he stopped the instalments because Mr S threatened him is not supported by evidence. Nor would it be in the interests of Mr S to make a threat if he had actually received some refund and could expect more.
191. Regardless, the Agent has not provided any evidence of these repayments despite being requested to do so by the Authority.
192. The Agent was given ample time to provide evidence to substantiate his claims. Moreover Mr S confirmed that he had not received any repayments despite the Agent's claim. It appears that the Agent's statement regarding the refund is another attempt by the Agent to deceive or mislead the Authority.
193. As a registered migration agent the Agent should be aware of his financial obligations under the Code that he must keep separate accounts for his operating expenses (the operating account) and money paid by clients for fees and disbursements (the clients' account). An agent must hold in a separate clients' account, any money paid by a client for an agreed block of work, until that agreed block of work has been completed and an invoice has been issued to the client for the services performed detailing each service performed and the relevant fee for each service. An agent must also maintain proper records of the clients' account and make it available for inspection upon request by the Authority.
194. Based on the above discussion and in the absence of any evidence to the contrary I find that the Agent has retained substantial client funds without completing the agreed services. The Agent has not been transparent in the handling of clients' monies he has not provided the Authority with any records of his clients' account despite repeated requests to do so. The Agent attempted to mislead the Authority by suggesting that he had no knowledge of, or control over monies clients paid to the Agent's business for immigration assistance provided by him.
195. I am satisfied that the Agent has breached his obligations under clauses 2.9A, 7.2, 7.4 and 7.5 of the Code.

#### CMP – 47741 – Mr B

##### Agreements for Services and Fees and handling of client monies

196. In support of his complaint Mr B provided the Authority with a copy of the Agent's Representation Agreement with him<sup>32</sup>. It is signed and dated, by the Agent, on 03 May 2019.
197. The agreement stated a lump sum fee of \$3,300 for the Agent's professional fees. There are no other fees and charges listed on the agreement, and no mention of the

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<sup>32</sup> Under Visa Advice Centre Pty Ltd A.B.N. 62 624 823 589

visa application charge. There is also no list of the specific services to be provided by the Agent stated in the agreement.

198. The Agent provided his client with an inadequate agreement which did not reflect the actual amount of money Mr B paid to the Agent. Mr B provided evidence of funds transfers that he made to the Agent. They were for more than the fee of \$3,300 denoted on the service agreement. Mr B provided evidence that he paid the Agent a total of \$8,000 in two separate instalments. The funds were paid to an account in the Agent's own name; Rajiv Luthra BSB << removed for privacy>> Mr B did not receive invoices or receipts for any of these payments from the Agent.
199. On 11 May 2019, via "WhatsApp" the Agent requested further payment of \$2,750 from Mr B. The Agent instructed that it be transferred into the same account; Rajiv Luthra BSB << removed for privacy>> This was not the bank account detailed on the Representation Agreement<sup>33</sup> nor was there any mention of the sums of \$8,000 or \$2,750 on the agreement. It appears that this money was separate from the Agent's service agreement and it is unclear what this payment was for.
200. The Agent did not issue Mr B with a statement of services when he informed the Agent he wished to terminate his services in late October 2019. Mr B paid the Agent \$10,750 but the application was never lodged as agreed.
201. In his response to the section 309 notice, the Agent did not make any submissions in regards to any of the issues and shortcomings of the agreement raised as possible findings by the Authority.
202. The Agent did however state in his response that he was aware of the monies owed to Mr B.
203. Mr B advised that, on 01 November 2019, the Agent agreed to provide him with a full refund of the amount of \$10,750, as he had terminated the Agent's services. The Agent requested 7 – 14 days to fulfil this arrangement.
204. On 18 November 2019, the Agent provided Mr B with a refund of \$1,000, however, the remaining refund of \$9,750 remains unpaid.
205. Based on the above evidence I find that the Agent instructed his client to deposit fees ahead of any services being performed into his personal account. The Agent did not complete any of the agreed services and did not provide invoices and receipts to his client, as required by the Code. He failed to provide a statement of services to Mr B or any form of documentation which itemised the services the Agent had undertaken on his behalf, the respective costs related to those services and any disbursements. The Agent also told his client that he would provide a full refund of the monies to him. The Agent has not done so.
206. I find that the Agent's has breached clauses 5.2, 5.5, 7.2, 7.4 and 7.5 of the Code

Failure to provide the agreed services after accepting payment to do so

207. Mr B provided evidence that he contacted the Agent at the end of April 2019 to obtain assistance with a Partner visa application which was to be lodged whilst Mr B was offshore.

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<sup>33</sup> BSB << removed for privacy>> – Visa Advice Centre Pty Ltd

208. The Agent sent Mr B an email on 02 May 2019 which included a checklist of the relevant documentation required from Mr B for lodgement in support of the application.
209. Mr B arrived in Sydney on 04 May 2019 as the holder of a tourist visa. He provided a copy of a "WhatsApp" message from the Agent in which he asked Mr B to complete forms prior to a face to face meeting scheduled on 05 May 2019 at the Agent's business address: << removed for privacy>>.
210. Mr B contacted the Agent on 17 May 2019, to inquire about obtaining a Bridging visa. The Agent told Mr B that he would let him know. The Agent failed to respond to numerous attempts by Mr B to contact him between 17 May 2019 and 31 July 2019.
211. On 31 July 2019 the Agent stated that he would lodge the Partner visa application 'the day after tomorrow'.
212. On 04 August 2019 the Agent stated that the application was 'All ready Tuesday I'll get acknowledged' [sic].
213. Despite numerous attempts by Mr B to contact the Agent again, the Agent did not respond until 14 August 2019. The Agent informed Mr B that his application had been lodged, however 'due to technical issues haven't received acknowledgement yet I have spoken to DOHA<sup>34</sup> The are fixing this and we should get it soon'.[sic]
214. Mr B then did not hear from the Agent again until the end of October 2019 when he advised that he had lodged the Partner visa application and provided Mr B with a reference number as verification<sup>35</sup>. The Agent only appears to have responded to Mr B, despite his numerous attempts to contact him, after he told the Agent, on 18 October 2019, that he was going to make contact with the Authority in relation to his conduct.
215. Mr B checked this reference number with the Department and learned that no application had been lodged in his name. Departmental records indicate that not only was this reference number not associated with Mr B but it did not actually exist.
216. It is completely unacceptable that the Agent told Mr B that his application had been lodged when he knew that it had not. The Agent compounded his dishonesty by going to the trouble of providing Mr B with a departmental reference number which was not genuine. The Agent has not given any explanation as to why he provided his client with a false reference number. Given that no explanation has been forthcoming from the Agent and that the number does not actually exist in departmental systems, I am satisfied that the Agent deliberately attempted to mislead his client.
217. The Agent did not dispute that he was paid to provide immigration assistance to Mr B. However in his response to the section 309 notice the Agent did not address any of the possible findings in respect of Mr B's complaint. The Agent has not provided any evidence as to the advice he gave Mr B in regards to his eligibility to lodge a Partner visa application nor of Mr B's instructions to the Agent to proceed.
218. Mr B advised the Agent that he was intending to work the UK for 12 months. In spite of the information that Mr B would be offshore for 12 months, the Agent advised him to lodge an onshore application. The Agent has provided no evidence to indicate the basis of his advice which prima facie appears to be inaccurate.

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<sup>34</sup> Department of Home Affairs

<sup>35</sup> << removed for privacy>>

- 219. During the six months that he was a client of the Agent Mr B paid him over ten thousand dollars. It is unclear why, when the Agent had all the relevant documentation and had accepted payment to do so, he failed to lodge the Partner visa application according to his instructions from the client and his obligations under the Code.
- 220. I find that the Agent has failed to act in the legitimate interests of Mr B, he has been far from diligent and has not acted competently or fairly. I find that the Agent has demonstrated a blatant disregard for Mr B's dependence upon his knowledge and experience.
- 221. I find that the Agent knowingly misled his client about the lodgement process in order to conceal his lack of diligence in performing the services for which he was engaged and had accepted payment.
- 222. I am satisfied the Agent has breached clauses 2.1, 2.4, 2.8, 2.17 and 2.18 of the Code.

CMP - 49873 – Mr PS/Ms P

Misleading his clients

- 223. Evidence before the Authority indicates that Mr PS engaged the services of the Agent in January 2019, to provide assistance with lodging a Visitor visa and Partner visa application on behalf of his sister-in-law; Ms P. He paid \$10,343 for these services. No Service Agreement was provided to Ms P/Mr PS.
- 224. The Agent sent an email to Mr PS dated 11 February 2019 which included a draft copy of the Partner visa application for Ms P. The Agent asked him to check the draft and ensure the details were all correct.
- 225. The Agent subsequently advised Mr PS verbally, that both the Visitor and Partner visa applications had been lodged.
- 226. Mr PS provided email correspondence he had with the Agent, dated 12 April 2019. He requested confirmation of Ms P's visa status. In the email he referred to a conversation he had with the Agent in February 2019 in which the Agent told him that Ms P's Visitor visa application had been refused, however he would be re-applying and would likely receive an outcome for this application in March 2019.
- 227. Mr PS sent a follow up email to the Agent on 10 May 2019, however the Agent never responded to him and Mr PS had no information about the status of Ms P's visa applications.
- 228. Mr PS and Ms P made their own enquiries with the Department and learned that no Partner visa application had been submitted to the Department on behalf of Ms P, despite the Agent assuring them that it he had lodged it.
- 229. There is no record in departmental systems that the second Visitor visa or the Partner visa applications for Ms P, were ever lodged by the Agent.
- 230. The Agent acknowledged that he acted on behalf of Mr PS/Ms P however in his response to the section 309 notice he did not address any of the possible findings in

the notice in regards to these clients. The Agent did not provide any evidence of the advice he gave Ms P about her eligibility to lodge a Partner visa application, nor of her instructions to him to proceed. Furthermore he has not provided any evidence that he kept his client informed of the progress, or otherwise of her applications.

231. Ms P's migration pathway was unnecessarily delayed by over six months. She was of the mistaken belief, due to the Agent's false information, that her applications had been lodged and were under assessment. . In addition Mr PS was over \$10,000 out of pocket and had to engage the services of another registered migration agent at additional expense.
232. I find that the Agent failed to act in the legitimate interests of his clients, he has not demonstrated the diligence or competence expected of a registered migration agent. I find that the Agent deliberately misled his clients by informing them that he had lodged the applications when he had not done so. After telling his clients their applications had been lodged he then avoided any further contact.
233. Based on the evidence before me I am satisfied that the Agent has breached of his obligations under 2.1, 2.8 and 2.18 of the Code.

#### Agreements for services and fees and handling of client monies

234. Mr PS claimed that the Agent did not provide him with any 'contract details'. Neither he nor Ms P entered into an agreement for services and fees with the Agent. Therefore they had no understanding of the actual services the Agent would provide them nor details as to the cost of each service or the relevant visa application charges.
235. This was a serious omission by the Agent's particularly when the Agent was paid more than \$10,000 to provide immigration assistance for the Visitor and Partner visa applications for Ms P.
236. In addition the Agent did not provide Mr PS with a statement of services or any documentation which itemised the services undertaken and the respective costs related to those services.
237. Mr PS provided to the Authority in support of his complaint, copies of bank statements which indicated a number of payments made to an account in the name of Visa Advice Centre Pty Ltd, Harris Park. There is no evidence that the Agent issued any invoices to his clients detailing the services which the Agent would perform nor the relevant fee for each of the services. It is not clear what the \$10,000 payment was for other than the lodgement of a Visitor visa application for Ms P on 03 January 2019, for which the VAC was \$140. No Partner visa application was ever lodged, despite the Agent claiming he had lodged it and accepting payment to do so.
238. The Agent has failed to provide any evidence, despite a number of requests from the Authority, that Mr PS provided the Agent with an authorisation to pay for Mr TS's Partner visa application. It remains unclear why Mr PS would pay the VAC for an apparently unknown person's visa application when the Partner visa application he did pay the VAC for was never lodged by the Agent. It would be reasonable to consider that the Agent has misappropriated client funds. This also raises serious concerns in regards to the Agent's respect for his clients' personal information and his handling of not only Mr PS's monies but Mr TS's too. It also elicits the question as to what happened to any monies Mr TS paid the Agent, given that he engaged his services to

lodge a visa application on his behalf. Fraudulent conduct<sup>36</sup> such as obtaining property or a financial advantage, or causing a financial disadvantage, by deception constitutes a criminal offence under the Criminal Code Act 1995 (the Criminal Code Act).

239. In his response to the section 309 notice the Agent did not address the serious allegation of misuse of Mr PS's credit card details. Rather the Agent claimed that the application was not lodged because the director of the company did not provide the Agent with the amount of the VAC for the application. The Agent further stated that he has taken full responsibility: he has contacted Mr PS and will refund Mr PS's money from his "own pocket".
240. The Agent stated he would provide the Authority with the consent he purportedly received from Mr PS to permit his credit card to be used to pay the VAC for Mr TS. To date nothing has been received from the Agent. I do not accept that Mr PS gave the Agent permission to use his credit card to pay a substantial VAC for a stranger.
241. On 09 January 2021 Mr PS informed the Authority that he had received reimbursement from the Agent for the funds paid to him in relation to his sister-in-law's applications. However, the \$7,254.51 amount, debited from his credit card, remains outstanding.
242. I consider that if Mr PS had provided an authority for the Agent to use his credit card for Mr TS's application that this is a significant piece of documentation and should have been in his client's file.
243. I am of the view that the Agent's claim that he had authority from Mr PS to use his credit card for Mr TS is a further attempt to deceive the Authority.
244. As there is an unresolved issue with the payment for the VAC fee for Mr TS's Partner visa application, that application cannot be finalised until the VAC matter is settled. The Agent was advised by the Authority on 22 July 2020 that the application remained on hold due to this problem. The Agent was also advised that under Regulation 2.12K<sup>37</sup> he was the only person who could resolve the issue and was consequently required to take immediate action.
245. The Agent responded to the Authority's email on 27 July 2020 advising he would "get the fee sorted within the next 10 days and also advise MR [TS] of the same." No further action has been taken by the Agent and Mr TS's Partner visa application remains on hold.
246. The Agent has taken no responsibility for what has done. He has taken no action to resolve the matter or resolve the harm he has caused both Mr PS and Mr TS. The Agent's handling of client monies does not comply with the Code of Conduct in that he has used Mr PS's credit card to pay the VAC for Mr TS's application.
247. In the absence of any evidence to the contrary I find that the Agent has:

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<sup>36</sup> Part 7.3 of the Criminal Code; division 134 – please refer to [Attachment D](#)

<sup>37</sup> Reg 2.12K - [Who is the person who pays an instalment of visa application charge](#)

For regulations [2.12F](#) and [2.12H](#), the person who pays an amount by way of an instalment of [visa application charge](#) in relation to an application for a visa is:

(a) if the payment is made by an agent (whether or not a [registered agent](#) within the meaning of [Part 3](#) of the Act) on behalf of the applicant — [the applicant](#);



- i. failed to provide Mr PS/Ms P with a service agreement and statement of services as required by the Code;
- ii. not invoiced and receipted payments from his clients according to the requirements under Part 7 of the Code;
- iii. has retained substantial client funds without completing the agreed services;
- iv. he has not responded to the s305C notice and has not provided evidence of payments received from Mr PS
- v. attempted to mislead the Authority by suggesting that he had no control over monies paid to the Agent's business for immigration assistance provided by him and claiming that he would provide refunds to his clients;
- vi. used his clients' personal financial information without authorisation to do so, contrary to law.

248. I am satisfied the agent's conduct is in contravention of his obligations under 2.9A, 3.2, 5.2, 5.5, 7.2, 7.4 and 7.5 of the Code.

#### Maintaining Proper Records - with regards to all five complaints

249. Under clause 6.1 an agent must maintain proper records that can be made available for inspection on request by the Authority, this includes written communications and file notes of every substantive oral communication. Under clause 6.1A these records must be kept for a period of seven (7) years.
250. The Agent was required to provide documents pursuant to notices issued under sections 308 and 305C of the Act. In his responses to the section 308 notices, aside from copies of service agreements, copies of limited email correspondence and some invoices, no other documentation from his clients' files was provided to the Authority by the Agent.
251. In his response to the 309 notice the Agent did not provide copies of any of his clients' files, nor did he provide client ledgers or client accounts documents as requested under section 305C. In his response the agent states that 'I am not the director of the above mentioned companies and have no access to client ledgers, client account documents.'
252. He further state that Mr K, Mr LS and Mr S were clients of Australian Migration Specialists Pty Ltd for which the Agent was the' Director and Migration agent from 25/06/2012 until 31st December 2016. Thereafter the company was taken over by Mr HMP' However the Agent remained as the director for the company for another year.
253. The Agent claimed that Mr B and Mr PS were clients of Visa Advice Centre Pty Ltd where the Agent also worked as a consultant. He was not the director of this business. ASIC records list Mr JRM, of << removed for privacy>>, as the sole director and shareholder of Visa Advice Centre Pty Ltd which was first registered on 06 March 2018. Mr JRM is also the director of Visa Junction Australia Pty Ltd which was registered on 28 March 2019, The Agent is a consultant for Visa Junction Australia, and the Register lists the Visa Junction Australia address as the Agent's current business address.
254. Mr JRM is not a registered migration agent and according to departmental records is the father of the Agent's wife.

255. The Agent states in his response to the section 309 notice that 'After the case was finalised all documents related to Mr K, Mr LS were handed over to the Owner of AMS<sup>38</sup>.' The Agent claimed that 'Also there were other admin staff, and migration agents who were communicating with Mr S. I can try and get all email communications with Mr S.' However 'As mentioned all documents and files are with the Australian Migration Specialists Pty Ltd'. ASIC records do not support the Agent's claim about another owner of Australian Migration Specialists. The Agent was the sole director and shareholder of Australian Migration Specialists until it was deregistered in November 2017. Nor is there evidence to support the Agent's claim that other administrative staff and migration agents communicated with Mr S.
256. With respect to the location of files for Mr B and Mr PS, the Agent further stated in his response that 'As mentioned all documents and files are with the Director with whom I have not been able to communicate as I understand they are overseas and under lockdown.' Given his claims above that his client files are with the relevant director of the business it would be reasonable to conclude that as they were clients of Visa Advice Centre that the files are with the director of that company.
257. Departmental records show that both Mr HMP and Mr JRM are offshore and have been since the beginning of 2018.
258. The Agent has claimed that he has given all his clients' documentation to the directors of the businesses, neither of whom are registered migration agents. The directors' departures from Australia were prior to Mr S, Mr B and Mr PS engaging the Agent's services. This is another attempt by the Agent to mislead the Authority. The Agent has provided unacceptable and implausible reasons as to why he cannot provide records from his client files. The Code of Conduct requires a registered migration agent to keep records for seven years. It does not permit registered migration agents to provide client records to third parties.
259. Furthermore there was evidence supplied by the complainants of "SMS/WhatsApp" conversations which have been held between the complainants and the Agent on his mobile telephone. At the very least the Agent should have access to his own mobile phone records and transcripts of correspondence with his clients.
260. Regardless, the Agent's claim that he has given his clients files' to third parties raises very serious concerns in regards to his obligations to protect the confidentiality of his clients. The Agent has not provided any evidence that his clients gave their permission for their files to be given to another party and the Agent has not shown any regard for the need to protect his clients' personal information.
261. In support of his claim that Mr HMP took over as the director of Australian Migration Specialists after 31 December 2016, the Agent submitted a 'Change to company details' form, advising that Mr HMP had taken over as the director of Australian Migration Specialists Pty Ltd; ACN 159 165 394 on 01 January 2017.
262. According to ASIC records no such change in ownership took place. The Agent was listed as the sole director from 25 June 2012 until the business was de-registered on 19 November 2017. This document was not lodged with ASIC but provided to the Authority in an attempt to mislead the Authority and evade his professional responsibilities as a registered migration agent and in particular his record keeping obligations under the Code.

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<sup>38</sup> Australian Migration Specialists

263. In his responses to the section 308 notices, the Agent stated that he informed his clients about their eligibility and supporting evidence requirements for their respective visa/nomination applications. His clients paid the Agent for his assistance and they depended upon the Agent's knowledge, experience and expertise, yet the Agent has provided no evidence of the advice he claims to have provided to them. I consider that, given the Agent has provided such minimal information from his client files that it is unlikely that there is any supporting evidence available to support his claims.
264. In his response to the section 309 notice the Agent did not address any of the possible findings in regards to his dealings with Mr B or Mr PS/Ms P. He also did not provide any evidence from his clients' files. In view of this and the lack of evidence to support of his claims in response to the first three complaints, I consider that it is the Agent's usual practice not to keep proper client files in compliance with his obligations under the Code.
265. I find that the Agent's record keeping practices are not of the standard expected of a registered migration agent under the Code. There is no evidence to suggest that he keeps proper client files. Despite repeated requests of the Agent for evidence, the Agent has been unable to provide any evidence of the actual advice the Agent gave to any of his clients or of the instructions any of his clients gave to him. There are no file notes to provide an accurate representation of what transpired with any of his clients either orally or in writing.
266. Having access to records held by registered migration agents is necessary for the Authority's consideration of a complaint as it allows an assessment of whether an agent has complied with their obligations under the Code. By failing to comply with the section 308, and section 305C notices, the Agent has not only acted contrary to the Code and Australian law, but has undermined the purpose and intent of the migration agents' regulatory scheme.
267. I find that the Agent failed to maintain proper records and file notes in accordance with his obligations under Part 6 of the Code. He has attempted to avoid his record keeping obligations by claiming that he handed over his clients' records to the directors of Australian Migration Specialists and Visa Advice Centre, which the Code does not allow, whilst attempting to mislead the Authority in the process.
268. I find that the Agent has engaged in conduct in breach of his obligations under 2.9A, 3.2, 6.1 and 6.1A of the Code.

### **Integrity, fitness and propriety**

269. 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.
270. There is a degree of overlap between 'fit and proper' and 'integrity' to the extent that fitness and propriety include consideration of the honesty of the actions of an individual.

*'Integrity' means 'soundness of moral principle and character, uprightness and honesty'.<sup>39</sup>*

271. 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.
272. At common law, the basic test to determine whether a person is “fit and proper” is known as the “Allinson test”. A person is not fit and proper person if his or her conduct “would be reasonably regarded as disgraceful or dishonourable by his professional colleagues of good repute and competency”.<sup>40</sup>
273. 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.*
274. The formula 'fit and proper' (and 'person of integrity') must be construed in light of the particular legislative context at the registration scheme underpinning the migration advice profession.<sup>41</sup>
275. The context in which the reference to 'fit and proper' person occurs in section 290 of the Act is the applicant's giving of immigration assistance. The context also includes:
- the Act which creates offences for misleading statements and advertising, practicing when unregistered and misrepresenting a matter; and
  - the Code contained within the Agents Regulations which refers to the applicant being able to perform diligently and honestly, being able and willing to deal fairly with clients, having knowledge of business procedure and properly managing and maintaining client records and maintaining client confidentiality.
276. Key elements of the fitness test are:
- (a) the honesty of the person; and
  - (b) the person's knowledge of the migration scheme and ability to fulfil the position of a migration agent.
277. 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.

<sup>39</sup> See *Re Peng and Department of Immigration and Multicultural Affairs* [1998] AATA 12 at paragraph [26].

<sup>40</sup> See *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750

<sup>41</sup> See *Cunliffe v Commonwealth* (1994) 182 CLR 272

278. Having regard to the body of case law cited above, a consideration of whether the Agent is a fit and proper person or a person of integrity to provide immigration assistance can legitimately include the following:
- (a) that the Agent's past conduct can be an indicator of the likelihood of the improper conduct occurring in the future;
  - (b) the Agent's honesty and competency towards clients, the Department and the Authority;
  - (c) a consideration of the context in which the agent works, i.e. the provision of immigration assistance to migration clients;
  - (d) the Agent's knowledge and competency in immigration law and practice;
  - (e) the reputation of the Agent as a result of their conduct and the public perception of that conduct; and
  - (f) the perception of the conduct by the Agent's "professional colleagues of good repute and competency"<sup>42</sup>.
279. Having regard to the totality of the Agent's conduct in relation to the complaint and my findings above, I am satisfied that the Agent is not a person of integrity or is otherwise not a fit and proper person to give immigration assistance. Based on the evidence before me, I am satisfied that the Agent has been dishonest with his clients and been dishonest in his responses to the Authority's notices.
280. Clients seek the assistance of a registered migration agent because they need assistance to negotiate the complexities of: applying for a visa; or to sponsor a person on a visa for employment; or are too busy to do it themselves. Engaging the services of a registered migration agent should increase the likelihood of a successful outcome for an application and make the process faster and smoother.
281. For each of the five complainants, their dealings with the Agent left them out of pocket for services which were well below what they were entitled to expect and none of them were successful in being granted a visa. The Agent failed to lodge applications for four of the five complainants. They all suffered significant detriments because they sought and paid for immigration assistance from the Agent.
282. The Agent demonstrated his lack of regard for the interests of his clients. He took large sums of money in advance of providing assistance and did not lodge applications for four out the five complainants. When his clients enquired about the progress of their applications he was not honest with them. In the case of Mr B the Agent knowingly provided him with a false reference number to create the false belief that the Agent had lodged his partner visa application and that it was under consideration by the Department.
283. The Agent has claimed that he had no control over monies paid by clients for his services. However this not been supported by the evidence. The Agent had control over the accounts for Australian Migration Specialists because it was his company. He asked clients to make payments into the account for Australian Migration Specialists which they did. He also asked Mr B to make payments into a bank account in his name. When he was asked for refunds by clients because he had not provided the services for which he had received payment he claimed he had no access to the accounts because they were controlled by the "directors". One director is the Agent's

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<sup>42</sup> *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750

father in law and the other director was not ever a director of Australian Migration Specialists.

284. The Agent has retained clients' funds to which he is not entitled because he did not provide the services. He has not demonstrated that he has returned the funds to his clients. Moreover the Agent has attempted to mislead the Authority by claiming that he has no control over his clients' funds. This lack of honesty and transparency is exacerbated by the fact that the Agent instructed clients to deposit funds into a personal bank account.
285. The Agent's clients placed their trust in him to act for them and lodge their respective visa applications with the Department. From the complaints discussed in this notice the Agent has let them down significantly due to his dishonesty and disregard for their respective situations.
286. I find that the Agent's conduct demonstrates a repeated disregard for the law, the legitimate interests of his clients and his professional obligations as a registered migration agent. The factors were all within the Agent's control and are compounded by his significant period as a registered migration agent. Such conduct, represents a serious breach of trust, and demonstrates a lack of honesty, moral character and good judgement by the Agent. I find that the Agent's behaviour falls far below the standards of honesty and integrity and the moral character required of a registered migration agent.
287. The Agent has engaged in conduct which breached the Code in relation to almost all areas of practice – administrative functions; financial obligations; consumer protection obligations; dealings with the Authority; dealing with his clients; and the need to act in the legitimate interests of clients.
288. I find that the Agent's conduct is indicative of someone who is not a person of integrity and/or otherwise not a fit and proper person to give immigration assistance.

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

289. 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**

- 290. 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.
- 291. Having regard to the Complaint Classification Matrix, I have considered that the Agent's conduct falls within the 'Major' classification for the following reasons:
  - i. The Agent has repeatedly breached multiple clauses of the Code indicating systemic poor practices and indicating a real likelihood that such misconduct will continue.
  - ii. The Agent has demonstrated a disregard for the law by being dishonest in his dealings with his clients and the Authority, resulting in significant financial loss to all of his clients.
  - iii. The Agent has engaged in fraudulent conduct.
  - iv. The Agent has shown a disregard or indifference to his professional obligations and failed to respond adequately to the Authority in relation to the allegations.
  - v. The Agent has failed to maintain record keeping and financial management practices consistent with his obligations and as such was unable to provide the requested files to the Authority.
  - vi. The Agent attempted to evade his obligations in respect of client funds and client records by claiming that he was subject to the instructions of 'Directors' of the businesses for which he claimed to only be a consultant.

### **Aggravating factors**

- 292. I consider the Agent's conduct in the matters which are the subject of this decision is of a serious nature. His conduct falls far short of the standard expected of a registered migration agent in that he had demonstrated disregard for his clients' legitimate interests. I find that his conduct poses a serious risk to consumers of immigration assistance and to the integrity of the migration advice profession.
- 293. The Agent has been registered since 2009 yet these complaints have demonstrated that the Agent is incapable of meeting the minimum standards required of a registered migration agent to deal honestly with his clients and lodge applications for them in a timely manner.

294. The Agent has not merely made mistakes but has demonstrated systemic poor practices in his work and entrenched disregard for his clients and the obligations he owes to them. He has failed to acknowledge his responsibility for the detriment he caused to his clients.
295. Whilst the Agent claimed to take responsibility for his actions, he has not provided any evidence to substantiate this claim. Rather his conduct demonstrates a lack of remorse or accountability. I am of the view that it is highly unlikely this behaviour would change if the Agent continued to practice as a registered migration agent. The Agent attempted to distance himself from his personal responsibilities and obligations as a registered migration agent under the Code by seeking to divert attention and apportion blame onto others. By doing so he has acted contrary to the purpose of the regulatory framework and has shown a lack of insight into the seriousness of his conduct.

### **Mitigating Factors**

296. The Agent has claimed that this case has put him under immense mental stress. However, despite being invited to do so, the Agent has failed to provide any evidence of mitigating factors.
297. While the Agent has not had any prior disciplinary decisions made against him by the Authority, this does not mitigate the Agent's responsibility for the impact of his conduct and the risks posed by such conduct for his clients and the reputation and integrity of the migration advice profession.
298. I accept that a disciplinary decision will have an impact on the Agent's livelihood, however I believe that this is significantly outweighed by the seriousness of the Agent's conduct. I consider that the serious nature of the conduct reflects adversely on the Agent's fitness to remain in the migration advice profession.

### **Consumer Protection**

299. 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.
300. The behaviour demonstrated by the Agent falls far short of the reasonably expected standards of a registered migration agent. I consider that the Agent's conduct evidenced by these five complaints poses a serious, ongoing risk to consumers. I am satisfied that, if the Agent were to continue to practice as a registered migration agent, the Agent would not be able to demonstrate the requisite skills of honesty, integrity and diligence expected of a registered migration agent. .
301. I consider that a disciplinary decision is warranted to address the conduct which is the subject of this decision, and in the interests of consumer protection.



## DECISION

302. In making this decision I considered the possibility of suspending the Agent's registration. A decision to issue an agent with a suspension would usually be imposed with appropriate conditions attached. I believe that there is no remedial action which could be undertaken by the Agent that address the dishonest nature of the Agent's conduct and his failure to properly respond to the Authority. The Agent's conduct is serious and demonstrates such a lack of integrity and fitness and propriety that I am not satisfied that can be addressed by remedial tuition or further study. I am also satisfied that the continued registration of the Agent is not in the public interest. The Agent has breached a wide variety of the clauses of the Code relating to both professional conduct and administrative requirements.
303. In all of the circumstances, and in the interests of consumer protection, I consider that it is appropriate to **cancel** the Agent's registration.
304. Based on the facts and evidence before me, and my findings as discussed in this decision, I have decided to cancel the Agent's registration as a migration agent under subparagraph 303(1)(a) of the Act. I am satisfied for the purposes of subparagraphs 303(1)(f) and (h) that:
- the Agent is not a person of integrity, or is otherwise not a fit and proper person to give immigration assistance; and
  - the Agent has not complied with clauses of the Code.
305. 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.
306. Accordingly, this cancellation will be in effect for a period of 5 years from the date of this decision.



Julie Ramsay  
Professional Standards Officer  
Office of the Migration Agents Registration Authority  
Immigration Integrity and Assurance Branch  
Immigration Integrity Assurance and Policy Division  
Immigration and Settlement Services Group  
Department of Home Affairs

Date of Decision: 22 April 2021