OFFICIAL

DECISION RECORD

AGENT	Jack TA
COMPLAINT NUMBER/S	CMP-46428; CMP-47622; CAS-05423-K2S8; CAS-09810-Q2Y9; CAS-10318-D4F8 and CAS-13733-D0D6
DECISION	CANCELLATION
DATE OF DECISION	13 January 2023

TERMS USED FOR REFERENCE

1. The following abbreviations may have been used in this decision:

ABN	Australian Business Number
AAT	The Administrative Appeals Tribunal
BVA/B/E	Bridging Visa A, B or E
MARN	Migration Agent Registration Number
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	*Migration Agents Regulations 1998*
The Agent	***Jack Ta*** (Ta Quang Huy)
The Authority	The Office of the Migration Agents Registration Authority
The Code	The *Migration (Migration Agents Code of Conduct) Regulation**s** 2021* prescribed for the purposes of subsection 314(1) of the *Migration Act 1958*
The Former Code	Code of Conduct prescribed for the purposes of subsection 314(1) of the *Migration Act 1958* by regulation 8 and Schedule 2 of the *Migration Agents Regulations 1998 – repealed on 1 March 2022*
The Department	The Department of Home Affairs
The Register	Register of migration agents kept under section 287 of the Act
VEVO	Visa Entitlement Verification Online

6 Chan Street Belconnen ACT 2617
PO Box 25 Belconnen ACT 2616 • Telephone: 02 6264 1111 • Fax: 02 6225 6970 • www.homeaffairs.gov.au

AGENT BACKGROUND

Agent Registration

2. The Agent was first registered as a migration agent on 21 December 2003 and was allocated the MARN 0212473. The Agent's registration had been renewed annually to date, with the most recent registration commencing on 20 December 2021.
3. The Register lists the Agent's current business name as *TQH Lawyers and Consultants Pty Ltd* with the ABN 21626163086.

Prior Disciplinary action

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

JURISDICTION

5. The Authority performs the functions prescribed under section 316 of the *Migration Act 1958* (Migration Act).
6. The functions and powers of the Authority under Part 3 of the Act and Agents Regulations may only be exercised by the Minister or by a delegate 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

7. 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)).
8. 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)).

9. Subsection 314(2) of the Act provides that a registered migration agent must conduct himself or herself in accordance with the Code. The *Migration (Migration Agents Code of Conduct) Regulations 2021* (Code of Conduct Regulations) made under the Act prescribes the Code.

10. The Code of Conduct for registered migration agents in force at the time of the conduct that is the subject of this decision was the Code of Conduct current from 18 April 2017 (Former Code) (**Attachment A**). On 1 March 2022 the current Code of Conduct (Current Code) (**Attachment B**) replaced the April 2017 Code and is also relevant to the conduct of the Agent. It is an instrument made under the Migration Act: Code of Conduct Regulations 2021.

BACKGROUND

11. Serious allegations were put to the Authority in relation to the Agent's conduct which, if made out, may give rise to disciplinary action. These allegations included that the Agent engaged in conduct which undermines the migration law by submitting unmeritorious visa applications. More specifically, that the Agent may have submitted a substantial number of visa applications for the sole purpose of prolonging the stay of the visa applicants in instances where the visa applicants were not entitled or eligible for the principal visa which was applied for.

12. This conduct was likewise discussed during a televised interview in which the Agent took part. The program was aired on the Nine Network on 6 November 2022. The interview held with '*60 Minutes*' and the ongoing media coverage alluded to the Agent's potential involvement in adverse conduct which leveraged the visa programs with a view to facilitate and prolong the stay of persons actively involved in criminal activity.

ALLEGATIONS – The Authority's Investigation

13. Following the publication of allegations against the Agent in the national media, an investigation was instigated. As a result, the Authority undertook a review of the visa applications lodged to the Department which were cross referenced to the Agent's details, including but not limited to, the Agent's Migration Agent Registration Number (MARN), ImmiAccount, credit cards and Internet Protocol (IP) numbers.

14. As part of this investigation, the Authority also considered five complaints that have been lodged in respect to alleged inappropriate conduct of the Agent in providing immigration assistance to clients (two of which had been raised with the Agent on 8 December 2020 under a section 308 Notice (**Attachment C**) and responded to by the Agent on 19 February 2021 (**Attachment D**)): CMP-46428; CMP-47622; CAS-05423-K2S8; CAS-09810-Q2Y9; CAS-10318-D4F8 and CAS-13733-D0D6.

15. Following an investigation into the Agent's conduct, it is alleged that the Agent:

- Failed to notify the Department that the Agent had provided immigration assistance contrary to section 312A of the Migration Act;
- Failed to act in accordance with the law and the legitimate interests of his clients contrary to clause 2.1 of the Former Code;
- Failed to have due regard to a client's dependence on the Agent's knowledge and experience contrary to clause 2.4 of the Former Code;

- Failed to act in accordance with client instructions and without their knowledge and consent contrary to clause 2.8 of the Former Code;
- Made statements in support of applications under the Migration Act or the Migration Regulations which the Agent knew or believed to be misleading or inaccurate contrary to section 2.9 of the Former Code;
- In communicating with, and otherwise providing information to the Authority, the Agent mislead and deceived the Authority either directly or by withholding information contrary to clause 2.9A of the Former Code;
- Failed to take all reasonable steps to maintain the reputation and integrity of the migration advice profession contrary to clause 2.23 of the Former Code;
- Failed to set and charge fees that is reasonable in the circumstances of the case contrary to clause 5.1 of the former Code;
- Failed to be aware of the effect of section 313 of the Migration Act, and act on the basis that the Agent is not entitled to be paid a fee or other reward for giving immigration assistance to a client unless the agent gives the client a statement of services that is consistent with the services, fees and disbursements in the Agreement for Services contrary to clause 5.5 of the Former Code;
- Failed to act ethically, honestly and with integrity contrary to section 13 of the Current Code;
- Acted in a way that was intended to defeat the purposes of the migration law and evade a requirements of the migration law contrary to section 18 of the Current Code.

16. Further, it is alleged that through the Agent's actions, the Agent is not a person of integrity or fit and proper person to provide immigration assistance as per paragraph 303(1) of the Act.

Notice under section 309 of the Act

17. On 22 November 2022, 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.
18. The Agent was notified that having regard to the information before the Authority, it was open to the delegate to be satisfied that the Agent had engaged in conduct that breached the Agent's obligations under section 312A of the Act, clauses 2.1, 2.4, 2.8, 2.9, 2.9A. 2.23, 5.1 and 5.5 of the Former Code and sections 13 and 18 of the Current Code. Further, that the Agent was not a person of integrity or otherwise a fit and proper person to provide immigration assistance as per paragraph 303(1)(f) of the Act.
19. Pursuant to section 309(2) of the Act, the Authority invited the Agent to provide written submissions on the matter (**Attachment E**).
20. On 13 December 2022, the Agent provided a response by written argument (**Attachment F**). In summary:

- The Agent has been a migration agent since 2001. The Agent is currently undertaking a Bachelor of Laws degree which the Agent is due to complete in 2023.

- The Agent has never held himself out to be a legal practitioner or a solicitor but it is common amongst Vietnamese people to refer to a migration agent as a lawyer.
- *TQH Lawyers and Consultants Pty Ltd* was created in 2018 to handle a broader range of legal work and to cover criminal defence, character matters, matters before the Administrative Appeals Tribunal and Federal Court and some family law matters.
    - *TQH Lawyers and Consultants Pty Ltd* employs legal practitioners who hold practising certificates to provide legal advice and assistance and to run cases in State and Commonwealth law courts. *TQH Lawyers and Consultants Pty Ltd* is registered as a legal practice in Victoria and employees 90 staff in Australia and Vietnam.
- The Agent provided details regarding his previous business entities and the formation of *Jack Ta and Associates Pty Ltd* which was established to '*handle solely immigration assistance work'*. *Jack Ta and Associates Pty Ltd* consists of the Agent and two other employees and has employed eight RMA's (registered migration agents) in the last 5 years.
- The fees charged by *TQH Lawyers and Consultants Pty Ltd* and *Jack Ta and Associates Pty Ltd* vary depending on the scope and complexity of work.
    - Each fee agreement makes clear what charges are to be incurred, what work is to be covered by the agreement and also provides for variation if there is a change in those charges especially in relation to disbursements.
    - The Agent's professional fees reflect a number of factors that differentiate the Agent from other migration agents, including other Vietnamese-speaking agents in that the Agent has offices in Australia as well as in three major Vietnamese cities.
    - The Agent's firm's services are in high demand and employ legal practitioners and registered migration agents as well as administrative and clerical staff.
    - The Agent's firms' offices are equipped with the latest available technology and the officers are contactable 24/7.
    - The Agent and his employees are fluent in the English and Vietnamese as are almost all his firm's staff members. The Agent does not require the services of interpreters in order to communicate effectively with their clients.
    - The Agent's firms' clients receive a high level of attention and service. This comes at a cost and it is up to the market to decide whether that cost or price is reasonable. The Agent is well known in the Vietnamese community and that the Agent's services '*do not come at bargain basement rates*'. It is up to the client to make their choice as to whether they wish to engage the Agent's firms' resources and expertise.
- The Agent described the circumstances of the '*consultation with the Under Cover Agent'* as referenced in the 60 Minutes reporting and how the Agent came to meet 'John'.
    - The Agent had two of his associates present in the meeting as the Agent does not personally deal with skilled worker sponsorship but his colleagues do. *These colleagues are able to be contacted in respect to the meeting with John.*
    - 'John' advised the Agent that he had two Vietnamese non-citizens in mind and that they were unlawful and he wanted to know what visa options were available to them. The Agent proceeded to inform 'John' these were a Bridging Visa E ("BVE") to depart

Australia, a Partner Visa if they had a marriage or defacto relationship with an Australian citizen or permanent resident, a Protection Visa if they had refugee claims, a medical treatment visa and a criminal justice visa.

- The conversation with 'John' was very routine for the first part of the conversation as they discussed skilled workers and unlawful non-citizens but then suddenly, 'John' started to '*brag on about being a criminal who used to work in the North of Vietnam and brought Heroin from Vietnam to Australia'*. The Agent was shocked at this turn in the conversation which was towards the end of the meeting.
- The Agent kept asking 'John' about the passports and visas of the two unlawful people he wanted to employ but 'John' kept changing the subject. The last time the Agent asked 'John' for the passport and visa details was when 'John' started to speak about drug importation from Vietnam. The Agent has '*never been involved in assisting such criminal activities and would never do such a thing'*.

- In relation to the *60 Minutes* interview, the Agent met with the Reporter, Nick McKenzie on 11 October 2022. The Agent stated:
  - The first 10 minutes of the interview consisted of questions concerning overseas students overstaying their visas in Australia and what the Australian Government should do about it.
  - Mr McKenzie then proceeded to attack the Agent about being a migration agent who had lodged many unmeritorious protection visa applications to keep criminals onshore. The Agent strongly denies this allegation.
  - The version of the interview that was broadcast on 6 November 2022 was heavily edited and did not include the Agent's full responses to the questions being asked.
  - The *60 Minutes* interview and the article that appeared on the front page of the *Melbourne Age* on 6 November 2022 omitted to refer to the many thousands of successful applications the Agent's firms have made. The Agent contends that the reports failed to mention that people facing criminal prosecution or adverse decisions made pursuant to section 501 of the Migration Act are entitled to representation and advice.
  - As a migration agent, the Agent is obliged to act in the Agent's clients' best interests which includes advising them of all their visa options, some of which will involve making applications for the purpose of accessing Ministerial discretion. Some types of applications will result in the applicant being able to remain in Australia for a lengthy period of time. The Agent contends that it is not the Agent's fault or the applicant's fault that the processing times at the Departmental and merits review levels are so lengthy. There is no way to access Ministerial discretion other than to go through the visa application and merits review process. Although clients are advised that Ministerial Interventions are often not successful, the majority want to at least try that avenue because of the above-mentioned ties to Australia.
- In respect to applications associated with the Agent's firm, the Agent stated that he '*personally [does] not lodge or assist with protection visa applications and my firms do not do many of them in the context of all the visa and review applications they handle'*. The

Agent submitted that the fact that a protection visa application (or any visa application) was unsuccessful does not mean that it was without merit.

- In relation to the allegation of undeclared representation lodged using the 10 IP addresses identified in the section 309 Notice, the Agent identified and reviewed applications linked to seven of these IP addresses.
    - The Agent acknowledged that some of the applications were lodged without a Form 956 and the Agent is unable to explain how and why that occurred but assumes that it was an oversight by the agent who lodged it, most likely due to time pressures.
    - The Agent is in the process of obtaining separate log in IDs for every migration agent and lawyer employer by the Agent's firms so that these individuals can be held responsible for lodgement of applications. The Agent concedes that this practice should have been adopted from the outset.
- Turning to the five specific complaints that were put to the Agent, the Agent submitted as follows:
    - In respect to the complaint lodged by Ms L1 (CMP-47622), the Agent submitted that he had no knowledge of, or involvement in, the Protection Visa that was submitted on behalf of Ms L1 and that the Agent's services at a cost of $42,000 were only associated with a Partner Visa application. The Agent contends that Ms L1 lodged the Protection Visa herself and that the email address attached to the application belonged to Ms L1. The Agent contends that the Protection Visa application was paid with a credit card in the name of Ngoc Ving Nguyen and that the Agent does not know, or have any association with, this individual.
    - In respect to the complaint lodged by Ms T (CAS-05423-K2S8), the Agent provided a summary of the work done in relation to the matter and contends that considerable activity occurred in respect to the matter. The Agent contends that the delay in contact with Ms T between February 2020 and July 2020 was as a result of Ms T's failure to provide the Agent with evidence of her relationship that had been requested.
    - In respect to the complaint lodged by Ms L3 (CAS-09810-Q2Y9), the Agent provided a summary of attendances on the applicant and submitted that the Agent's firm was responsive to Ms L3's requests for assistance. The professional costs were high because of the complexity of her matter and the applicant's personal circumstances. The Agent advised Ms L3 of the low likelihood of success for a Partner Visa application lodged onshore but Ms L3 insisted that the application be lodged. The application was subsequently refused. The Agent's firm offered to do an offshore Partner Visa application at no cost but this was declined.
    - In respect to the complaint lodged by Ms V (CAS-10318-D4F8), the Agent provided a summary of the work done in relation to the matter which the Agent contends shows that due attention and proper advice was provided. The Agent's firm provided a detailed summary of the case including that Counsel was briefed to provide prospects advice on a judicial review application (which advised of low prospects) which then prompted the lodgement of a Ministerial Intervention request. The Agent contends that the fact that the Department assessed the application as not meeting the guidelines for referral,

doesn't mean that the request itself was defective. It was a matter of subjectivity in the assessment.

- In respect to the complaint lodged by Ms L2 (CMP-46428), the Agent provided a summary of the services performed and advice provided in respect to Ms L2. The Agent stated that he met with Ms L2 and explained the outcome of the Tribunal matter and that Ms L2 did not request any further information or records.

DECISION: FINDINGS ON MATERIAL QUESTIONS OF FACT

21. In reaching the following findings of fact the Authority considered the following evidence:
    - Documentation contained in the Authority's complaint files for CMP-46428; CMP-47622; CAS-05423-K2S8; CAS-09810-Q2Y9; CAS-10318-D4F8 and CAS-13733-D0D6;
    - Information held by the Authority in relation to the Agent; and
    - The supporting documentation provided by the Agent in response to the section 308 and 309 Notices dated 19 February 2021 and 13 December 2022 respectively.
22. Having considered the information before me, I am satisfied the Agent:
    - gave immigration assistance and was actively involved with a significant number of visa applications for which he deliberately failed to disclose, or deliberately withheld, his assistance from the Department in breach of **section 312A of the Act**.
    - has engaged in conduct in breach of the Agents obligations under **clauses 2.1, 2.4, 2.8, 2.9, 2.23, 5.1** and **5.5** of the **Former Code** and **sections 13 and 18** of the **Current Code**.
    - is not a person of integrity or otherwise a fit and proper person to provide immigration assistance as per **paragraph 303(1)(f) of the Act**.
23. My findings and full reasons for the decision are set out as per the below.

Allegation by the Authority about undeclared immigration assistance (CAS-13733-D0D6)

24. The Authority undertook a review of visa applications submitted to the Department which established a link to the Agent, and/or the Agent's migration business. Consideration was directed to the Agent's contact details including, but not limited to, the Agent's MARN, ImmiAccount, credit cards and Internet Protocol (IP) numbers.
25. Following this review, the Authority formed the preliminary view that the Agent or persons under his direction or in close association with his business had submitted visa applications to the Department but had failed to disclose or deliberately withheld the fact of his assistance. On 22 November 2022, this view was put to the Agent in the section 309 Notice.
26. The section 309 Notice (**Attachment E**) discussed the analysis of 308 applications the Agent had submitted to the Department between 24 May 2014 and 28 April 2022. From that analysis, the Authority established:
    - Seven (7) IP addresses were used to submit the applications
    - The majority (289) of the applications had been submitted through the Agent's ImmiAccount X39962.

27. The section 309 Notice advised the Agent that further examination of departmental records showed:

    - Between 2 November 2017 and 30 June 2021, 45 Permanent Protection visa (PPV) applications had been submitted from one of the seven (7) IP addresses linked to him and/or his business where no agent was declared. It was also noted that of these 45 PPV applications, at least 11 were also paid for with credit cards which appeared to belong to the Agent. None of these applications was granted. Given the links to the Agent's IP addresses and credit card, I am satisfied that the 45 PPV applications were submitted to the Department by the Agent.
    - Of the 112 visa applications submitted from his IP Addresses 49.176.175.32:
        - the Agent was the authorised migration agent for 43 visa applications submitted through this IP address. On that basis, I am satisfied that the remaining 69 visa applications submitted from this IP address, where no assistance was declared, were also submitted by him.
        - The remaining 69 applications, where no assistance was declared, were submitted through 54 different ImmiAccounts. Of these, 48 were for PPV applications, none of which were submitted through the Agent's own ImmiAccount X39962.

28. The Agent, in his response to the section 309 Notice, confirmed that the "*login user X39962 was set up under MPA and is still use by* [the Agent's] *firms now"*. However, the Agent did not provide any specific evidence or information to refute the allegations that he had provided immigration assistance with some visa applications submitted via the above IP address whilst failing to declare his involvement with other applications submitted via the same IP address. The Agent advised that he was in the process of obtaining a separate ImmiAccount login ID for every migration agent and lawyer employed by his firm, and conceded that this was a practice he should have adopted when he started to engage staff. However, he did not address the 54 ImmiAccounts used to submit the visa applications where no assistance was declared. In the absence of any evidence to the contrary, I have therefore formed the view that the Agent used so many different ImmiAccounts in a further attempt to conceal his involvement with the visa applications he submitted from his IP address where no assistance was declared.

29. In his response, the Agent stated in part the following:

    'Your letter refers to applications made through a number of IP addresses and mentions a few RID numbers. You specifically mention at paragraphs 20-22 that 45 protection visa applications submitted under various IP addresses were all unsuccessful. At paragraph 55(i)-(viii), you make a number of assertions about protection visa applications you state were made by my firm. In the absence of any further detail about these applications, I cannot make any further comment.'

30. The assessment and findings in relation to the referenced 45 applications centre around the linkages between the IP addresses used to lodge the PPV applications and the fact the Agent has access to the same IP addresses and, as shown elsewhere in this decision, the Agent did indeed lodge applications through the same IP addresses. Details of the IP addresses were given to the Agent in the section 309 Notice and findings have been made on the information as already given to the Agent.

31. No evidence has been submitted by the Agent to show that he did not have access to or did not use the referred to seven (7) IP addresses when lodging applications to the Department.

32. In his response, the Agent also stated in part the following:

    'I personally do not lodge or assist with protection visa applications …'

33. This statement is not true. I do not accept that the Agent believes he '*does not lodge or assist with protection visa applications*'. The evidence presented with this decision clearly shows that the Agent both lodges and assists with PPV applications. Included in the section 309 Notice given to the Agent were details of applications lodged through the referenced IP addresses above. Included in the applications lodged through the IP addresses were PPV applications where the Agent was listed as the authorised migration agent. I find that this is a dishonest statement by the Agent.

34. In reference to the 'undeclared representation' allegation, the Agent in his response, provided details of some applications submitted through the IP addresses referred to in the Notice. The Agent stated that he '*acknowledge[s] that some of applications were lodged without a form 956 and I am unable to explain how or why that occurred but I am assuming it was an oversight by the agent who lodged it, most likely due to their being under time pressure.'*

35. The Agent concluded under this section in his response by stating in full the following:

    'We are in the process of obtaining a separate, personal login ID for every migration agent and lawyer employed by my firms so that any person who lodges visa and review applications can be readily identified and held responsible for the lodgement. I concede that this practice should have been adopted from the outset once I started to engage more staff.'

36. I have considered why the majority of the aforementioned visa applications where no assistance was declared were PPV applications. But I can find no legitimate reason why so many applicants with no apparent link or connection to the other visa applicants, would all use the same IP address to independently submit their PPV applications. Nor is there any conceivable way so many applicants with no apparent link or connection to the Agent would have access to IP addresses under his control. As noted above, the Agent has claimed that it was an oversight that some applications were lodged without assistance being declared owing to time pressures. I can accept that on occasion this could happen, however, given the number of applications submitted by the Agent where no assistance was declared, I am satisfied this was not an accidental oversight but a deliberate attempt by the Agent to conceal his involvement.

Findings – undeclared immigration assistance

37. It is reasonable to conclude that the Agent was involved with the above referred to PPV applications even though he did not declare his assistance. On balance, it is not probable that the discussed significant number of clients, with no apparent link or connection to the other visa applicants, would all use the same IP address to independently submit their applications.

38. I find that the Agent provided immigration assistance and was actively involved with a significant number of visa applications in which he failed to disclose, or deliberately withheld, the fact of his assistance with the visa applications from the Department.

39. Section 312A of the Act obligates a registered migration agent to notify the Department when they provide immigration assistance within the period specified and in accordance with the regulations. The Agent did not notify the Department when he provided immigration assistance as per above and so **I find that the Agent acted in contravention of section 312A of the Act**.

40. As the Agent provided immigration assistance without having notified the Department in accordance with the regulations, **I find that the Agent did not act in accordance with the law and therefore breached clause 2.1 of the former Code**.

41. Having found that the Agent provided immigration assistance without having notified the Department in accordance with the regulations, it follows that the Agent facilitated the making of statements that he knew to be misleading and or inaccurate with the said applications, i.e. that the visa applicants were not represented, and hence I also **find that the Agent breached clause 2.9 of the former Code.**

42. I find that the Agent's conduct in deliberately not notifying the Department of him providing immigration assistance was deliberate, lacking in integrity and brought the migration advice profession into disrepute. **I therefore find that the Agent breached clause 2.23 of the Former Code**.

Allegation – National Broadcast of Interview – 60 Minutes

43. A significant amount of information was raised in the public domain through the recent televised broadcast and with ongoing media publications[1] attached to the Agent and the Agent's migration business and his role within it.

44. The *60 Minutes* Program discussed the Agent's involvement in facilitating the stay of persons in circumstances where they would appear to not meet the visa requirements, i.e. the applications would have 'no basis'. A transcript of the interview is provided at **Attachment G**.

45. It was put to the Agent in the section 309 Notice that he had engaged in conduct which undermines the migration law by submitting unmeritorious visa applications. Further, that he had submitted a substantial number of visa applications for the sole purpose of prolonging the stay of the visa applicants in instances where the visa applicants were not entitled to or eligible for the principal visa which was applied for.

46. The contentions put forward in the televised broadcast and newspaper article publications raised allegations which are relevant to any consideration given as to the Agent's ongoing fitness and propriety to provide immigration assistance for the purpose of section 303(1)(f) of the Act.

47. In the Agent's response, he provided details on previous times that he had been contacted by the media and provided links to interviews that he had previously been involved in. The Agent

[1] <https://www.theage.com.au/politics/federal/the-migration-agent-and-the-liberal-ministers-how-one-man-gamed-australia-s-visa-system-20221104-p5bvjm.html>

provided background as to how the 60 Minutes interview came about and why he agreed to have the interview.

48. The Agent's response also stated that the 60 Minutes interview and related media articles failed to refer to the good work provided by his firms including the '*many thousands of successful* applications'.

49. In the section 309 Notice sent to the Agent, it was noted that during the investigation the Authority had identified common elements which regularly featured in the Protection visa caseload to which the Agent was connected, whether his representation was disclosed or not, including but not limited to, the following:

- Insufficient detail provided with the applications which would substantiate the claims put forward.
- Little or no supporting documentation provided with the applications.
- Applications are often either preceded or followed by a Partner visa application.
- Applicants fail to attend their scheduled interview or biometric appointment.
- A large number of the applications are found to be invalid.
- Similar or identical details are indicative they are unlikely to be an accurate representation of the applicant's individual circumstances.
- Exceedingly high refusal rate which may reflect on the credibility of the claims put forward.
- Of the applications refused at primary decision stage a large number proceeded through to judicial review following an adverse outcome at merits review.

50. Of great concern are the comments that the Agent made during the interview whereby he allude to his potential involvement in adverse conduct which leveraged the visa program in order to facilitate the prolonged stay of persons actively involved in criminal activity. This is further addressed in the assessment below titled 60 Minutes Interview – '*Under Cover Agent'*.

51. The Agent '*strongly denied the allegation'* put to him in the *60 Minutes* interview that he '*had lodged many unmeritorious applications to keep criminals onshore*'. He went on to say that '*the version of the interview that was broadcast on 6 November 2022 was heavily edited and did not include my full responses to the questions being asked'*.

Findings – national broadcast of interview – 60 Minutes

52. The Agent emphasised in his response that '*as a migration agent I am obliged to act in my clients' best interests which includes advising them of all their visa options, some of which will involve making applications for the purpose of accessing Ministerial discretion'*. I accept that in some very limited circumstances the lodging of applications in order to access Ministerial Intervention once the refusal decision has been affirmed by the AAT may be adopted in order to act in the best interests of certain clients. However, that strategy and the practice adopted by the Agent of lodging applications without merit in order to for applicants to prolong their stay in Australia are two very different scenarios. The Agent has not proffered any evidence to support his practice of '*some … making applications for the purpose of accessing Ministerial discretion'*.

53. I have considered the Agent's response including his comments that '*many of the clients that [he] represents have been in the community unlawfully or are facing permanent removal and absence from Australia. Their visa options are usually very limited. They often have partners and children who are Australian citizens or permanent residents'*.

54. When asked during the interview '*how someone with a serious heroin addiction is entitled to a protection visa'* the Agent replied by saying '*look, he's got family members in Australia. He has got brothers and sisters. He has been here for decades. That's the only visa that's available to him*'. The Agent's response as to why the heroin addict could apply for the protection visa did not include any details as to how the person would meet the relevant criteria for the grant of a protection visa.

55. It is clear from the above, that the Agent knowingly applied for a protection visa for an applicant knowing full well that the applicant did not meet the relevant criteria for the grant of the visa.

56. The evidence and findings made above with respect to the 'undeclared immigration assistance' allegation (CAS-13733-D0D6) and coupled with the assessment and findings made under this allegation clearly shows that the Agent was actively involved with lodging unmeritorious visa applications to the Department.

57. The Agent's own comments as referred to below with respect to the '*undercover agent*' allegation, whereby the Agent stated that it would be '*easy*' and '*doable*' in relation to lodging visa applications for unlawful non-citizens in Australia to prolong their stay, supports the assertion that the Agent's approach is designed to frustrate the proper disposition of Australia's visa program and relevant review process.

58. After considering the Agent's written response and the relevant media reports, I find that the Agent was both willing to, and complicit in submitting applications to the Department in a way that is intended to defeat the purpose of the migration law, and or evade a requirement of the migration law. I also find that the Agent acted in a way that is intended to frustrate the proper disposition of the review process in relation to decisions made under the migration law. As such, I find that the Agent has breached **section 18 of the Current Code**.

59. I find that the Agent's conduct is inconsistent with the principles of honesty and integrity and a clear divergence from the ethical and professional standard expected of a migration agent. I therefore find that the Agent breached **section 13 of the Current Code**.

60. The effect of the Agent's conduct is that visa applicants are able to lodge visa applications that lack merit thereby extending their stay in Australia even though they are unable to meet the relevant criteria for the grant of the visa that they applied for.

61. By doing so, the Agent has shown a complete disregard for maintaining the reputation and integrity of the migration advice profession. I therefore find that the Agent has breached **clause 2.23 of the Former Code.**

Allegation - 60 Minutes Interview – 'Under Cover Agent'

62. Of particular concern was the Agent's responses to questions put to the Agent during a meeting with a potential client who was in fact an undercover agent '*posing as a heroin trafficker'.* During the meeting, the Agent was made overtly aware of the active and ongoing criminal activity of both the potential client and the potential visa applicants in the trafficking of narcotics. Despite

this, the Agent proceeded to advise the potential client that securing visas would be '*easy* and '*doable'.*

63. In his response, the Agent provided background information as to how the meeting with the 'undercover agent' came about. The Agent also provided details of two other staff members who were present throughout the meeting. The Agent provided details as to what transpired, according to him, during the meeting between himself and the 'undercover agent'.

64. The Agent stated that one of the staff members who was in attendance during the meeting '*will provide a statutory declaration about the discussion … shortly*'. At the time of writing, no such statutory declaration has been provided. Any findings made in relation to the meeting with the 'undercover agent' are based on the Agent's response to the Notice and on the Agent's own words in the meeting as set out and recorded in the interview transcript, a copy of which was given to the Agent with the section 309 Notice.

65. It is important to note that the Agent has at no point in time refuted the content of the interview transcript.

66. When asked during the meeting if the Agent could keep the unlawful potential visa applicants in Australia for a further two or three years, the Agent stated that despite the fact that the potential visa applicants' status in Australia was unlawful, '*there are five, six types of different types of visas that they can apply for*'. The Agent further stated '*Yeah, that's easy. So, you know, if that is the one thing that you want, I think we can accommodate. This is very easy*."

67. I have taken into account the Agent's response where the Agent stated that '*I have never been involved in assisting such criminal activities and would never do such a thing*'. However, I give little weight to this statement given the Agent's expressed ability and willingness to facilitate such an undertaking as discussed above.

Findings – 60 Minutes interview – 'undercover agent'

68. After considering and weighing up the Agent's written response and the relevant media reporting, I find that the Agent's conduct as discussed above is inconsistent with the principles of honesty and integrity and a clear divergence from the ethical and professional standard expected of a migration agent. **I therefore find that the Agent breached section 13 of the Current Code.**

69. The Code makes it overtly clear that any conduct which seeks to defeat the purpose, or evade a requirement, of the migration law, so as to obtain a benefit or advantage for any person – such as that portrayed during the interview and subsequent reporting– would be in breach of section 18 of the current Code. **Considering the evidence and findings above, I find that the Agent breached section 18 of the Current Code.**

Allegations from Ms L1 (CMP-47622)

70. Ms L1 alleged she had approached the Agent for immigration assistance with a Partner visa application in July 2019 for which the Agent quoted a $42,000 fee. According to Ms L1, the Agent advised her that he would immediately secure a Bridging visa to enable her to access Medicare as she was pregnant at the time. Ms L1 claimed the Agent did not respond to her calls or messages. Ms L1 also alleged that the Agent lodged a Protection visa application on

her behalf without her knowledge or consent, rather than progressing a Partner visa application for which the Agent had been engaged to do.

71. Departmental records reveal that a Protection visa application was submitted for Ms L1 in July 2019, with the lodgement user ID XXXZZZZ@gmail.com. No immigration assistance was declared in association with this application. In the Agent's response to the complaint, it was asserted that it was Ms L1 herself who lodged the Protection visa application with the Department, not the Agent, and that the email address attached to the application likewise belonged to Ms L1.

72. The Agent's response with respect to this allegation referred the Authority back to his initial response to its section 308 Notice of 8 December 2020. With respect to addressing the allegations in relation to the high fees charged by the Agent to Ms L1, the Agent referred the Authority to Part 2 of the Agent's response to the section 309 Notice.

73. In the Agent's response to the 308 Notice, the Agent provided an '*explanation of charges of $42,000 for partner visa application'* and stated that '*Mr Ta instructed that the fees charged were inclusive of the following services and disbursements'* and then provided a list of those services and disbursements. The response went on to state in part that the services were inclusive of interpreters, even though the Agent and the client are of the same nationality and also included '*multiple submissions AAT*'. It is noteworthy that the Agent, as per the service agreement with Ms L1, was engaged to lodge a partner visa application with the Department, not to lodge a merits review application with the AAT.

74. The Agent's response includes details of the lodgement of the protection visa application, details as to why a final statement of services was not issued and also a statement that the Agent '*is willing, on a without prejudice basis, to refund $10,000.00'*.

75. Various documents pertaining to Ms L1's migration matters were also provided to the Authority by the Agent.

Findings –Ms L1

76. The Agent claimed that Ms L1 lodged an application for a Protection (subclass 866) visa by herself, that is, without any assistance from the Agent. To support this assertion the Agent points out that Ms L1's 'own' email address XXXZZZZ@gmail.com (XXXZZZZ email address), was used to both lodge the application and also used as the email address for all correspondence with the Department.

77. Ms L1 asserted that the XXXZZZZ email address is not her email address. Ms L1 stated that her current email address is L1. This email address was used on the signed service agreement between the Agent and Ms L1 for a partner visa application. Ms Le also stated that she previously used the email address mnop@gmail.com. That email address was recorded in the 'visa application summary' page of the Protection visa application lodged 9 July 2019.

78. On 9 July 2019, an application for a protection (subclass 866) visa was lodged and an acknowledgment of the application was emailed to the XXXZZZZ email address on 11 July 2019.

79. In the Agent's response to the section 308 Notice, the Agent stated in part the following:

On 2 August 2019 … provided advice to Ms [L1] regarding her bridging visa and permission to work application.

On 23 August 2019 … advised Ms [L1] about the likelihood of success with respect to obtaining permission to work.

Jack Ta … assisted with preparation and lodgement of a Bridging visa application.

On 10 September 2019, Jack Ta … received from the Department … Ms [L1's] Bridging visa grant notice with full permission to work.

80. The referred to bridging visa application for Ms L1 was lodged on 23 August 2019. The bridging visa application was lodged through the XXXZZZZ email address. The same XXXZZZZ email address that the Agent claimed supported his assertion that he had no involvement with Ms L1's Protection visa application as the protection visa application was lodged through the thuongthuong email address, being Ms L1's own personal email address.

81. As per the Agent's own admission and supporting documentation, the Agent was notified of Ms L1's Bridging visa grant on 10 September 2019. As per the 'notification of grant of a Bridging visa' notice, the notification was sent via email to the XXXZZZZ email address.

82. Both notifications for the Protection (subclass 866) visa application and the Bridging visa application were sent via email to the XXXZZZZ email address. The Agent confirmed in writing that he assisted with the Bridging visa application and that he was notified of the Bridging visa approval by the Department. That notification was sent via email to the XXXZZZZ email address.

83. The Protection visa application that was lodged on Ms L1's behalf on 9 July 2019 was lodged through IP address 49.176.175.32. Despite the Agent's claims that he had no involvement with the protection visa application, it is important to note that the IP address referred to above is identical to the IP address used, and already discussed above (see Allegation - CAS-13733-D0D6), where the Agent did in fact declare himself as the authorised representative for other visa applicants in his capacity as their migration agent.

84. I have considered the Agent's response that he had no involvement in Ms L1's Protection visa application. However, no evidence has been provided by the Agent to support his assertion. On the contrary, the evidence shows that the Agent did indeed have involvement with Ms L1's Protection visa application. Ms L1's Protection visa application was lodged through an IP address that the Agent used regularly and on numerous occasions. The Agent confirmed that he, as the Agent, was notified by the Department of Ms L1's bridging visa grant through the 'XXXZZZZ email address' – the same email address that Ms L1 asserted was not her email address and the same email address used to lodge the Protection visa application.

85. No evidence has been provided by the Agent to show that the Agent was authorised to act for Ms L1 with respect to a Protection visa application. Ms L1 alleged that she '*instructed* [the Agent's] *office to lodge Partner (provisional) visa-subclass 820*'.

86. It is agreed between the Agent and Ms L1 that they signed an agreement for the Agent to represent Ms L1 with respect to a '*subclass spouse visa – 820'* application and that the '*total professional fees will be in the vicinity of $42,000*'.

87. Ms Le paid the Agent a total of $13,500of the $42,000 under the signed agreement for the partner visa application. The Agent provided a breakdown of '*services performed for claimed $13,500*. Relevantly, the following services were detailed as work undertaken for the partner visa application:

> *On 20 August 2019 … emailed Ms [L1] requesting further information and documents to assist with her application for permission to work and partner visa application.*
>
> *On 22 August 2019, Ms [L1] emailed … with the requested information and documents.*
>
> *Based on instructions, limited evidence and documents provided by Ms [L1], Mr Ta [the Agent] had concerns with the complex nature of the sponsor's mental health condition and limited evidence provided. Ms [L1] was advised on the likelihood of success of her partner visa application.*
>
> *Ms [L1] insisted Jack Ta lodge her Partner visa application contrary to advice. Jack Ta did not lodge an application for a Partner visa due to the lack of merit, limited supporting documents and evidence provided*.

88. The Agent stated that '*he did not lodge an application for a Partner visa due to the lack of merit, limited supporting documents and evidence provided'*. It is notable that the Agent was aware that Ms Le was pregnant with the couple's child at time of entering into the agreement for the 'subclass spouse visa – 820' application.

89. No correspondence between the Agent and Ms L1 with respect to her potential partner visa application has been provided by the Agent. No evidence has been provided by the Agent with respect to having received any written instructions from Ms L1.

90. The Agent has not provided any evidence whatsoever of any work in any shape or form having been undertaken in relation to a partner visa application for Ms L1.

91. Based on the above, I am satisfied the Agent has failed to act in the legitimate interests of Ms L1. Nor has the Agent dealt with Ms L1 competently, diligently or fairly. **I therefore find that the Agent has breached clause 2.1 of the former Code**. **I am also satisfied the Agent has not had due regard to Ms L1's dependence on his knowledge and experience and has therefore breached clause 2.4 of the former Code.**

92. It is noted that the Agent, in his response advised that '*Mr Ta is willing, on a without prejudice basis, to refund $10,000.* At the time of writing, Ms L1 is yet to receive any such refund from the Agent.

93. The signed agreement between the Agent and Ms L1 was for the Agent to prepare and lodge a partner visa application to the Department. The Agent did not prepare or lodge a partner visa application on behalf of Ms L1.

94. No evidence has been provided by the Agent showing that any work was undertaken on a partner visa application for Ms L1. The Agent received $13,500 from Ms L1 with respect to the Agent representing her for a partner visa application. The Agent has therefore received money under the contract with Ms L1 without performing any of the agreed services. Based on all of the above, **I find that that Agent has not set and charged a fee that is reasonable in the circumstances of Ms L1's case and hence has breached clause 5.1 of the former Code**.

95. In the Agent's response to the section 308 Notice it is confirmed that Ms L1 was not issued 'a final statement of Services'. To date, no evidence has been provided that since the Agent's response Ms L1 has been issued with a final statement of services. There is no evidence that Ms L1 was issued with an invoice showing each service performed and the fee for each service as charged by the Agent. **I find that the Agent breached clause 5.5 of the former Code.**

Allegation CMP-46428 – Mrs L2

96. Mrs L2 claimed that she engaged the Agent on 9 June 2017 to pursue a review of her student visa application which had been refused on the basis of her failure to meet the genuine temporary entrant criteria by lodging a merits review application with the AAT.

97. According to Mrs L2, the Agent quoted a set fee of $18,500 for his services, of which a $10,000 deposit was paid when the service agreement was entered into. Mrs L2 proceeded to pay six of the eight monthly instalments ($1000 per month) through bank transfers.

98. Mrs L2 asserted that while she paid the Agent a total of $16,000, for which no receipts or invoices were received, the submission to the Administrative Appeals Tribunal (AAT) the Agent made for her was not to standard and, as a result, her appeal was unsuccessful. Mrs L2 maintains that the Agent did not provide her with the AAT's decision or her documents and she was pursuing a refund on account of the Agent's poor service.

99. The Agent's response with respect to this allegation referred the Authority back to his initial response to the section 308 Notice of 8 December 2020. With respect to addressing the allegations in relation to the high fees charged by the Agent to Ms L2, the Agent referred the Authority to Part 2 of the Agent's response to the section 309 notice.

100. In the Agent's response to the 308 Notice, the Agent provides an '*explanation of $18,500 fees charge for review of a refused student visa*' and stated that '*Mr Ta instructed that the fees charged were inclusive of the following services and disbursements*' and then provides a list of services and disbursements.

101. The response then lists 'services performed for $16,000 paid'. The Agent's response includes a statement that '*a physical copy of the AAT decision record was provided and the decision was explained to Ms [L2]. That Jack T & Associates would be happy to provide Ms [Le] with any documentations she requires or requests'*.

102. The Agent advised that '*a final Statement of Services was not issued as the matter was being investigated*'. The response concludes with information pertaining to work undertaken by the Agent with respect to Mrs L2's AAT matter and also with the statement that '[The Agent] *is willing, on a without prejudice basis, to refund $5,000 to Ms [L2] and waive the outstanding amount owing to Jack Ta & Associates*'.

103. Departmental records show:

- On 15 February 2017, Mrs L2 applied for a Student (subclass 500) visa (visa application).
- On 5 June 2017, Mrs L2's visa application was refused by the Department.
- On 9 June 2017, Mrs L2 engaged the Agent to represent her at the AAT with respect to her 'student visa refusal'.

- On or around 13 June 2017, Mrs L2 applied to the AAT for review of the decision made by the Department to refuse her visa application.
- On 30 November 2018, the AAT affirmed the Department's decision to refuse the visa application.
- On 8 December 2020, the Authority sent the Agent a section 308 Notice in relation to the allegation received from Mrs L2.

Findings – Mrs L2

104. The Agent's response to the section 308 notice was received on 19 January 2021. In the response, the Agent listed the services that were allegedly provided by the Agent's firm to Mrs L2.

105. Included in the Agent's response was a copy of the submissions prepared by the Agent's firm on behalf of Mrs L2 to the AAT (AAT submission) with respect to her review application. The submissions are approximately two (2) pages in length. The submission does not contain any references to relevant case law or other such precedents. It is reasonable to expect that the Agent who has been in practice for approximately 20 years, and who charged his client what are arguably relatively high professional fees, would prepare a comprehensive submission on behalf of their client. I find that this was not the case with respect to the submission prepared for Mrs L2's AAT review application.

106. The Agent was engaged by Mrs L2 on 9 June 2017. According to the available evidence there was only one AAT submission prepared by the Agent and that submission was sent via email to the AAT on 23 November 2018, some 17 months after the Agent had been engaged by Mrs L2. The AAT hearing was held on 30 November 2018 with the oral decision to affirm the Department's decision to refuse the application handed down on the same day. The timeframe within which the AAT submission was filed with the AAT, coupled with the relatively brief content of the AAT submission, shows that the Agent did not, deal with Mrs L2 competently, diligently or fairly.

107. According to the Agent the 'services performed for $16,000 paid', 'on 22 November 2018 … prepared AAT submission' and then 'on 23 November 2018 … emailed a written submission to AAT'. Based on the information provided by the Agent, Mrs L2 was not afforded an opportunity to review the AAT submission prior to it being filed with the AAT. Mrs L2's complaint included the allegation that the AAT submission was not to standard. It follows that had the Agent provided a copy of the draft AAT submission to Mrs L2 prior to it being filed with the AAT, then Mrs L2 would have had at least an opportunity to comment and express her opinion on the content of the AAT submission.

108. Based on the available evidence, it is a reasonable conclusion that Mrs L2 was not given an opportunity to comment on the AAT submission prior to it being filed with the AAT. I find that by not providing a copy of the draft AAT submission to Mrs L2 before it was filed with the AAT, the Agent has not, in this instance, dealt with Mrs L2 competently or diligently nor has the Agent shown due regard for Mrs L2's dependence on the Agent's knowledge and experience.

109. A copy of the AAT's decision (addressed care of the Agent) was also provided with the Agent's response.

110. Besides the above referred to AAT submission and the copy of the AAT's decision to affirm the refusal, no other supporting evidence with respect to work undertaken for the merit review application before the AAT was provided by the Agent in response to the section 308 Notice.

111. Based on the above, **I find that the Agent has breached clauses 2.1 and 2.4 of the former Code**.

112. Mrs L2 also alleged that she was not issued with any receipts or invoices from the Agent. To date the Agent has not provided any evidence that Mrs L2 was issued with the requisite receipts and invoices for the monies paid by Mrs L2 to the Agent.

113. The section 308 Notice requested the Agent to provide details as to whether a final statement of services was provided to Mrs L2. To date the Agent has not furnished evidence of having provided a final statement of services to Mrs L2.

114. Mrs L2 alleged, and the Agent confirmed, that $16,000 was paid by Mrs L2 to the Agent. As per the Agent's response, the Agent has provided a copy of the AAT submission (approximately two (2) pages in length) as supporting evidence of the services rendered to Mrs L2 for the $16,000 in professional fees paid to the Agent.

115. Based on the above and coupled with the minimal supporting documents provided by the Agent in response to the notice, I find that the fees charged by the Agent are not reasonable in the circumstances of the case. The supporting documentation and claims made by the Agent in terms of work undertaken on the case cannot be reconciled with the unreasonable fees as charged by the Agent.

116. It follows that **I find that the Agent breached clause 5.1 of the former Code as the Agent did not set and charge a fee that was reasonable in the circumstances of Mrs L2's AAT case**.

117. Mrs L2 alleged that the Agent did not provide her with receipts or invoices for the monies she paid to the Agent. To date the Agent has not provided evidence that either he or his firm have provided Mrs L2 with the requisite receipts and invoices for the $16,000 paid in professional fees to the Agent. Evidence of a final statement of services having been provided to Mrs L2 has not been provided by the Agent to the Authority.

118. Based on the above and having regard to all the evidence provided by the Agent**, I find that the Agent has breached his financial duties as per clause 5.5 of the former Code**.

Allegation CAS-05423-K2S8 – Ms T

119. Ms T alleged that she engaged the Agent's services to progress a Partner visa on her behalf as her then subclass 457 visa was due to cease and her employer was unwilling to sponsor her again. In order to assist Ms T, the Agent quoted a $25,000 fee which was inclusive of any appeal.

120. Given the high cost, in considering her options, Ms T was allegedly informed that this was on account of the complexity of her case. Notably, that should her visa expire, her stay in Australia would be unlawful and the fee would then increase to $50,000.

121. Ms T was to pay a $12,000 deposit, followed by monthly instalments of $1,000 to engage the Agent's services. Ms T paid $2,000 on 18 October 2019 and her family paid the remaining

$10,000 two days later (21 October 2019) in the Agent's office in Vietnam for a total of $13,000 in fees paid to the Agent.

122. According to Ms T, she was informed that she had been granted a Bridging visa (BVA) on 21 October 2019 and that between 13 February and 19 July 2020, there was little or no activity on her application despite the high fees charged by the Agent. Consequently, on or around 19 July 2020, Ms T sought to terminate the Agent's appointment and requested an itemised invoice outlining the work completed on her behalf for the $13,000 paid which the Agent allegedly refused to provide.

123. In the Agent's response, background information was provided in relation to how Ms T came to engage the Agent's services. Some details are also provided by the Agent in relation to what services the Agent provided to Ms T including details of communication and correspondence between the Agent and Ms T.

124. Attached to the Agent's response was 'Ms [T] –Chronology and Client File'.

Findings – Ms T

125. Ms T was granted a subclass 457 on 5 May 2016 which was valid until 5 November 2019.

126. According to both the Agent and Ms T, on 18 October 2019 an agreement for services and fees (i.e. costs agreement) was signed between the Agent and Ms T with respect to a partner visa application. The Agent, in his response titled *Letter to OMARA* stated that he was engaged '*to prepare an urgent partner visa application as the visa she* [Ms T] *was holding was about to expire'*. The Agent further stated that his '*staff worked over the weekend to enable her application to be lodged on Monday 21 October 2019*'. No supporting evidence has been provided by the Agent to substantiate this statement. Furthermore, as Ms T's visa was valid until 5 November 2019, it is unclear why the Agent had his staff work over the weekend so that the application could be lodged on 21 October 2019. There was a time period in excess of two (2) weeks from the time when the Agent was engaged by Ms T to the time when her visa at the relevant time would cease.

127. On 21 October 2019, the Agent lodged a subclass 820 partner visa application on behalf of Ms T to the Department. On the same day Ms T was granted a BVA to allow her to remain in Australia lawfully whilst the subclass 820 partner visa application was being processed.

128. On 5 November 2019, Ms T's former subclass 457 visa ceased.

129. From the time when the Agent was engaged by Ms T to the time the Agent ceased to act for Ms T, a total of nine (9) supporting documents were attached to the partner visa application by the Agent. Included in these nine attached documents was a form 1023 (used to correct previously incorrect information given to the Department) which was provided by the Agent as the Agent had incorrectly spelt Ms T's sponsor's name in the application form. For background information, partner visa applications, through the online system ImmiAccount, have capacity for 60 to 100 documents to be attached in order to evidence the genuineness of an applicant's relationship with their sponsor.

130. The supporting documentation attached to the partner visa application by the Agent was not in itself sufficient evidence to show that Ms T and her sponsor met the requirements for the visa to be granted. Indeed, under the application requirements to provide relationship details, the

Agent completed the section with the statement '*please refer to relationship statement'*. At no stage did the Agent attach to the application or provide the Department with such a statement.

131. A registered migration agent's professionalism must be reflected in a sound working knowledge of the Migration Act and Migration Regulations as per clause 2.3 of the Former Code. The term "spouse" is defined under Section 5F. For subsection 5F(3) of the Act, regulation 1.15A sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F(2)(a), (b), (c) and (d) of the Act exist. The matters for subregulation (2) are: financial aspects of the relationship, the nature of the household, the social aspects of the relationship and the nature of the persons' commitment to each other. At time of lodgement, or within a reasonable period thereafter, supporting documents showing that Ms T met the definition of spouse as defined by the Act should have been attached to her partner visa application. However, they were not provided. For this reason, I am satisfied the Agent did not deal with Ms T's application competently, diligently or fairly. The Agent did not provide sufficient relevant information to the Department to allow a full assessment of all the facts against the relevant criteria. The Agent's representation of Ms T has not shown him as having had due regard for Ms T's dependence on his knowledge and experience as a migration agent. I therefore **find that the Agent breached clause 2.1 of the former Code. I also find that the Agent breached clause 2.4 of the former Code.**

132. Ms T paid a total of $13,000 to the Agent being for professional fees with respect to the partner visa application. According to the Agent's chronology of events for Ms T's partner visa application, the Agent undertook the following work on the matter for the $13,000 (inc GST) charged as professional fees:

    18 Oct 2019 - Worked throughout the weekend in order to lodge on Monday

    21 Oct 2019 – 820/801 visa application lodged

    21 Nov 2019 – discussed with Ms [T] options to pay Agent's fees

    17 Dec 2019 – called Ms [T] but there was no response

    23 Dec 2019 – urged Ms [T] to provide further evidence of relationship

    13 Feb 2020 – emailed client with extensive guidance on relationship

133. The Agent's response to the notice in no way assists in demonstrating that the Agent set and charged a fee that was reasonable in the circumstances of Ms T's case.

134. There was arguably nothing relatively complex about Ms T's partner visa application. Indeed, Ms T and her sponsor's child was born 13 July 2019 – this being before the date when the partner visa application was lodged. At time of application lodgement the couple had already been residing together since August 2017. As per above, there was sufficient time from when the Agent was engaged, to when Ms T's visa at the time would cease, for an application addressing the relevant criteria to be prepared and lodged with the Department.

135. Based on the above and coupled with the supporting documents provided by the Agent in response to the Authority's section 309 notice, I find that the fees charged by the Agent, i.e. $13,000 being for a 'subclass 820 partner visa application', not reasonable in the circumstances of the case. The supporting documentation and claims made by the Agent in terms of work undertaken on the case cannot be reconciled with the unreasonable fees as charged by the Agent.

136. Having taken into consideration all of the above and available evidence, **I find that the Agent has also breached clause 5.1 of the former Code.**

Allegation CAS-09810-Q2Y9 – Ms L3

137. Ms L3 submitted a complaint about the Agent's services in which she alleged the Agent was engaged to progress a Partner visa application, for which the Agent charged a fee of $80,000. Ms L3 alleged that the fees charged were excessive.

138. Ms L3 has asserted that besides being issued with one invoice for $25,000, the Agent failed to provide her with a service agreement or any other itemised invoices. Furthermore, it is alleged that the Agent held himself out to be a qualified practising solicitor to Ms L3 '*from the engagement of his representation'* when he was not entitled to do so.

139. In the Agent's response, background information is provided in relation to how Ms L3 came to engage the Agent's services. Some details are also provided by the Agent in relation to what services the Agent provided to Ms L3 including details of communication and correspondence between the Agent and Ms L3. The Agent briefly detailed why '*the professional costs were high*' including detailing advice that was given to Ms L3 with respect to lodging a partner visa application in Australia and potential review options with such an application and associated fees and disbursements.

140. Attached to the Agent's response was document titled *Ms [L3] – Chronology and Client File (2 parts)*.

Findings – Ms L3

141. Ms L3 alleged that the Agent failed to provide her with an agreement for services and fees (i.e. costs agreement) but in any case stated that the Agent was engaged to represent her with respect to a partner visa application.

142. In a signed statutory declaration Ms L3 stated in part the following:

> *1. "I confirm that, to date, Quang Huy Ta has received from me a total sum of **$80,000 (AUD)** to handle my matters.*
>
> *In about 2012, I **paid an initial $5,000** to Quang Huy Ta [the Agent] to be my legal representative".*
>
> *In about early November 2012, Quang Huy Ta asked me to **pay another $5,000** for him to represent me for a partner visa application.*
>
> *In about November 2012, **my family in Vietnam made a $30,000 payment** on my behalf via money transfer to Quang Huy Ta.*
>
> *In about early December 2012, I **paid $15,000 and subsequently another $25,000** directly to Quang Huy Ta.*
>
> *2. To date, I had only received one invoice from Quang Huy Ta's office for the amount of $25,000.*

143. Ms L3 asserted that she had been issued with an invoice totalling $25,000 from the Agent. No evidence of such an invoice has been provided however a 'client account receipt' (the receipt) for the amount of $25,000 has been provided.

144. Included in the Agent's response to the notice, was a document titled [*L3] ….. Chronology.* On page 1 of the document it is recorded that:

> *29/11/2012 Jack quoted client $75,000 for services:*
> *UNC (subclass 820)*
> *AAT*
> *Visa application charges*
> *Section 501*

145. Of note is the Agent's reference to '*section 501' services* as being included in the quote allegedly given to Ms L3. Ms Le paid $80,000 to the Agent however there is no evidence or otherwise that Ms L3 was involved in any section 501 matter as represented by the Agent.

146. The Agent has not provided any evidence that Ms L3 entered into a written agreement for services and fees with either him or his firm. Based on there being no evidence of a written agreement between the Agent and Ms L3, I find that the Agent did not give Ms L3 written confirmation (an Agreement for Services and Fees) of the services to be performed and the fees for the services and the disbursements that the agent is likely to occur as part of the services before the Agent started work for Ms L3. No evidence has been provided showing that the Agent confirmed Ms L3's instructions in writing to Ms L3 or kept Ms L3 fully informed of the progress of each case that the Agent undertook for Ms L3. **I therefore find that the Agent has breached clause 2.8 of the former Code.**

147. On 28 December 2012, an application for a UK Partner (Temporary) and BS Partner (Residence) visa (partner visa application) was lodged on Ms L3's behalf by the Agent.

148. On 14 February 2014, a decision was made by the Department to refuse the partner visa application and a copy of the decision was sent to the Agent.

149. On 26 February 2014, a merits review application with respect to the partner visa refusal was lodged at the AAT. Ms L3 was represented by the Agent for the review application.

150. The Agent's response included a copy of an invoice for fees being due to, and paid to, Ms C1 of Counsel being for services related to Ms L3's AAT review application. The fees paid to Ms C1 of Counsel totalled $4,800.

151. A payment receipt was provided by Ms L3 showing that the Agent transferred $5,000 to Ms L3's representative. A signed statement dated 4 May 2016 by Ms Le acknowledging '*receipt a cheque in the amount of $4,000.00 payable to [*Ms L3's representative*]* was also provided by Ms L3.

152. I have given the above evidence of payments made by the Agent to third parties due consideration when assessing the totality of the fees charged to Ms L3 by the Agent.

153. On 23 April 2015, the AAT affirmed the Department's decision to refuse the partner visa application.

154. The Agent engaged Counsel to represent Ms L3 during the AAT hearing. During the hearing it was put to the Agent that he had '*an instructing solicitor role'*. The Agent at no point in time corrected the Member's or Counsel's statement in relation to him having an instructing solicitor role but instead maintained that he '*has an instructing solicitor role'*. The Agent neither is at time of writing, nor was at the relevant time, a solicitor. It is reasonable to expect that the Agent would have corrected the Member and or Counsel at the time when he was referred to as

having an instructing solicitor role. Included in Ms L3's allegation is that '*from the engagement of his representation, Mr Ta has held himself out to be a qualified practising solicitor … so that I can have more faith in his credential'*.

155. It does not appear the Agent clarified his instructing solicitor role or his standing before the AAT.

156. On 13 May 2015, a request for Ministerial Intervention was lodged on behalf of Ms L3 by the Agent.

157. To lodge the request for Ministerial Intervention the Agent emailed the Department and included a single attachment to support the intervention request, namely a copy of the AAT's decision of 23 April 2015 to affirm the Department's decision to refuse the partner visa application. No detailed submissions, supporting evidence, or other supporting documents were provided to the Department in support of Ms L3's request for Ministerial intervention.

158. Indeed, when the Agent lodged the request for Ministerial Intervention, the Agent stated that he was '*instructed that the couple would like their Ministerial Intervention request to be considered on the basis that they are legally married spouses in a genuine relationship'*. The reasons given per se for Ms L3 requesting Ministerial Intervention do not come within the Minister's guidelines on ministerial powers (s351 …). In fact, the request goes against the '*Ministerial intervention principles'*. No evidence has been provided by the Agent showing that he advised Ms L3 that the request would not be successful or that the request did not come within the Minister's guidelines for intervention. As a registered migration agent the Agent knew that Ms L3 was reliant on his knowledge and experience in dealing with the Migration Act and other relevant legislation. Instead, the Agent's conduct demonstrated a lack of due regard for Ms L3's dependence on his knowledge and experience. **I therefore find that the Agent has breached clause 2.4 of the former Code.**

159. On 7 September 2015, the Agent notified the Department that he was no longer representing Ms L3.

160. On 9 September 2015 Ms L3 was notified by the Department that the request for intervention was not successful as the '*Minister … has personally considered your case and has decided that it would not be in the public interest to intervene*.'

161. The work undertaken by the Agent with respect to Ms L3's request for Ministerial intervention does not show that the Agent acted either competently, diligently or fairly in Ms L3's matter.

162. **I am satisfied, after considering all the evidence, that the Agent also breached clause 2.1 of the former Code.**

163. In excess of 300 pages of documentation was provided with the Agent's response to the notice though no evidence was included in the documentation to show that the services rendered by the Agent and or his firm to Ms L3 were commensurate with the fees charged to Ms L3. The Agent stated in the response that '*the professional costs were high because of the complexity of her matter …*'.

164. No evidence of a statement of services setting out the particulars of each service performed and the charges made in respect of each such service having been given to the client, Ms L3. The Agent has not provided evidence that all required invoices were given to Ms L3 for the service fees that she paid to the Agent.

165. It is impossible to reconcile the considerable amount of monies paid by Ms L3 to the Agent without there being a signed agreement for services and fees (i.e. costs agreement) and invoices itemising each service performed and the fee for each service.

166. The documentation provided by the Agent in his response to the notice in no way demonstrates that the Agent set and charged a fee that was reasonable in the circumstances of Ms L3's case. It would not be logical to make a finding that Ms L3 was charged a reasonable fee in her case without having the benefit of considering the services to be performed as contained in a signed agreement and then reconciling such services as performed by the Agent against invoices given to Ms L3.

167. Having taken into consideration all of the above and available evidence, **I find that the Agent has also breached clauses 5.1 and 5.5 of the former Code**.

Allegation CAS-10318-D4F8 – Ms V

168. According to Ms V she engaged the Agent's services to assist her with her judicial review application of her Partner visa which had been refused. She was quoted approximately $18,700 payable which could be paid in monthly instalments. According to Ms V, she was led to believe that the Agent was a qualified lawyer. Ms V claimed that the Agent's fees were both unreasonable and excessive.

169. After entering into an agreement for the Agent's services, Ms V was allegedly advised by the Agent that she would need to pay an additional fee to engage a barrister which increased her cost to $20,200. According to Ms V, despite paying $19,200, no judicial review application was submitted. She also stated that had she been aware that the Agent was not a qualified lawyer she would not have engaged his services. Ms V asserted that instead of pursuing judicial review, a submission was made for Ministerial Intervention even though her request '[does] not meet the guidelines for referral to the Minister'. Ms V also alleged that despite the Agent being aware that her bridging visa was about to expire, this was not addressed by the Agent and as a result she became an unlawful non-citizen.

170. Details are provided in the Agent's response in relation to when Ms V and the Agent met on or around 17 December 2020 and what instructions the Agent received from Ms V. Some background information in relation to Ms V's visa history was provided including details of Ms V's Ministerial Intervention request. The Agent provided details as to why Ms V was charged the fee that she was charged.

171. The Agent's response stated that '*Ms [V] was given due attention and proper advice'*. The AAT (AAT case) affirmed the refusal of Ms V's partner visa application on 20 April 2021. That '*Ms* [V] *insisted that she did not wish to return to Vietnam and wanted to know what other avenues were available for her to remain in Australia. I suggested that judicial review was an option and that a barrister needed to be briefed to provide advice as to the prospects of success for such an application*'.

172. The Agent stated that advice from Counsel was that there were no prospects of success for judicial review. On that basis '*Ms* [V] *was then advised that a final option for her was a Ministerial Intervention request. The Ministerial Intervention request was refused on 15 March 2022'*.

173. In response to the application for Ministerial Intervention allegation, the Agent advised that he 'took the view that Ms V's circumstances were such that the application of migration legislation would lead to an unfair and unreasonable result'.

Findings – Ms V

174. Ms V was granted a subclass 309 temporary partner visa on 10 August 2015. Ms V's application for a subclass 100 Partner visa was refused on 4 May 2018. On 30 April 2021 the AAT affirmed the decision of the Department to refuse Ms V's subclass 100 Partner visa application.
175. The Agent asserted that he met Ms V at his Adelaide office on 17 December 2020 '*and it was agreed that a post hearing submission would be made to the AAT and necessary further assistance provided*'.
176. The Agent stated that '*a post hearing submission was filed with the AAT on 15 January 2021'*.
177. According to Ms V's statement and the Agent's '*itemised bill of costs'*, the Agent charged circa $6,000 for '*work done by Mr Ta's assistant,* [MC], *in relation to 'post-hearing submissions'*.
178. The Costs Letter dated 17 December 2020 as signed by the Agent stated that '*Mr Jack Ta of the firm, is the registered migration agent who will primarily perform the following work* …'
179. The Agent has provided a Client Payment Form confirming that the Agent received $18,700 from Ms V being for 'professional fees'.
180. On 21 December 2020, the Agent's firm emailed the AAT requesting an extension of time in order to provide the AAT with post-hearing submissions.
181. On 21 December 2020, the AAT advised the Agent in writing that an extension for post-hearing submissions had been given and should be received by 15 January 2021.
182. On 15 January 2021, the Agent provided post-hearing submissions to the AAT.
183. The submissions are approximately one and a half pages in length. The Agent proposed in the submission that '*infidelity is not in and of itself indicative of a non-genuine relationship'*. The Agent should be aware of the definition of 'spouse' as per section 5F. Section 5F(2)(b) states that persons are in a married relationship if they *have a mutual commitment to a shared life as a married couple to the exclusion of all others*.
184. Limited supporting evidence has been provided by the Agent to substantiate the Agent's response that '*Ms* [V] *was given due attention and proper advice'*.
185. On 30 April 2021, the Agent was notified of the AAT's decision to affirm the Department's decision to refuse the application.
186. Based on the above and coupled with the supporting documents provided by the Agent in response to the Authority's section 309 notice, I find that the fees charged by the Agent, i.e. circa $6,000 being for 'post-hearing submissions', are not reasonable in the circumstances of the case. The supporting documentation and claims made by the Agent in terms of work undertaken on the case cannot be reconciled with the unreasonable fees as charged by the Agent.

187. **As per above, I find that the Agent breached clause 5.1 of the former Code as the Agent did not set and charge a fee that was reasonable in the circumstances of Ms V's AAT case.**

188. The Agent has been a registered migration agent for close to 20 years. It is reasonable to expect the Agent to have an understanding of the law with respect to the requirements to be met in order for a partner visa application to be approved - in particular, to be familiar with the definition of '*spouse*' under the Act. To support this statement I make reference to the Agent's response whereby he stated that his firm '*has acted for tens of thousands of clients'*. The AAT affirmed the decision to refuse the merits review application on the basis that 'the requirements of s5F(2), i.e. spouse definition, was not met. With the Agent's background it is a reasonable expectation that, based on his experience, he would have been able to advise Ms V that in light of her not being able to satisfy the spouse definition requirements, any further applications would be futile.

189. The Agent engaged Counsel 'to advise on prospects of success …' In short, Counsel advised that *'there do not appear to be any arguable grounds of judicial review … because … the regulations relevantly required Ms* [V] *to be the spouse of her sponsor, as defined in s.5F of the Act'*.

190. Counsel's fees for such advice as per above was $1500. In addition to those costs, according to the Agent's 'itemised bill of costs', 20 units, or two (2) billable hours were spent '*reviewing counsel's advice regarding grounds for judicial review and prospects of success'*. A further 10 units, or one (1) hour was spent calling Ms V '*explaining counsel's advice that there are no grounds for judicial review and no prospects of success'*.

191. As the Agent has previously lodged partner visa applications with the Department, it is reasonable to find that the Agent should have known that in order for a (partner) visa application to be approved, one of the criteria is that the applicant is/was the '*spouse*' of the sponsoring partner.

192. By referring the AAT decision to counsel for an opinion as to the prospects of success whilst knowing that Ms V was unable to meet either the genuine relationship criteria or the sponsorship criteria, he has failed to demonstrate a sound working knowledge of the Act and the Regulations, and has failed to deal with Ms V competently**.**

193. As per above, the Agent's conduct demonstrated a lack of due regard for Ms V's dependence on his knowledge and experience. **I therefore find that the Agent has breached clause 2.4 of the former Code.**

194. According to Ms V's statement and the Agent's 'itemised bill of costs', the Agent charged circa $5,000 in relation to work related to 'Ms V's application for Ministerial Intervention'.

195. On 4 June 2021, the Agent lodged with the Department a request for Ministerial Intervention under section 351 of the Migration Act. Included with the request was a 'submission to the Minister's office and a 'statutory declaration by Ms V'. The submissions are approximately two pages in length and do not contain any attachments. The statutory declaration as signed by Ms V is approximately two pages in length.

196. On 15 March 2022, the Department notified the Agent that the Ministerial Intervention had not been referred as the Department '*has assessed that* [the] *request does not meet the guidelines for referral to the Minister'*.

197. The Agent has not provided evidence to substantiate his claims with respect to Ms V's application for Ministerial Intervention that '*Ms* [V] *was given due attention and proper advice'*.

198. Ms V's circumstances did not warrant her case being brought to the attention of the Minister, i.e. Ms V did not meet the Minister's guidelines on ministerial powers under section 351.

199. Based on the above and coupled with the supporting documents provided by the Agent in response to the Authority's section 309 notice, I find that the fees charged by the Agent, i.e. circa $5,000 being for her 'ministerial intervention request', are not reasonable in the circumstances of the case. The supporting documentation and claims made by the Agent in terms of work undertaken on the case cannot be reconciled with the unreasonable fees as charged by the Agent.

200. **As per above, I find that the Agent breached clause 5.1 of the former Code as the Agent did not set and charge a fee that was reasonable in the circumstances of Ms V's Ministerial Intervention case.**

201. In considering Ms V's personal circumstances, it is apparent that she had limited options at the time the Agent was engaged. This made Ms V particularly vulnerable, and consequently arguably more agreeable to accept any terms of the Agent's engagement, irrespective of how unreasonable the terms may have been. Ms V was dependent upon the Agent's knowledge and professionalism to work in their legitimate interests.

202. Neither the 'post-hearing' submissions filed with the AAT nor the submissions related to Ms V's request for Ministerial intervention show that the Agent acted either competently, diligently or fairly.

203. **After considering all the evidence, I find that the Agent also breached clauses 2.1 and 2.4 of the former Code.**

204. In the Agent's 'response bundle', it is noted that the letterhead details for the 'post-hearing submissions' as provided to the AAT had been redacted. The agreement for services and fees was signed by the Agent and Ms V on Jack Ta & Associates letterhead. I make no finding in relation to when the Agent corresponded with the AAT the correspondence was on *TQH Lawyers & Consultants letterhead* rather than *Jack Ta & Associates letterhead*.

INTEGRITY, FITNESS AND PROPRIETY – SECTION 303(1)(F) OF THE ACT

Integrity

205. Pursuant to paragraph 303(1)(f) of the Act, the Authority may caution a registered migration agent, or suspend or cancel their registration, if it becomes satisfied that the agent is not a person of integrity or is otherwise not a fit and proper person to give immigration assistance.

206. There is a degree of overlap between "fit and proper" and "integrity" to the extent that fitness and propriety includes consideration of the honesty of the actions of an individual.

207. 'Integrity' means 'soundness of moral principle and character, uprightness and honesty'.[2]

Fitness and Propriety

208. 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.

209. 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. At 380 their Honours stated:

> *[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.*

210. 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.[3]

211. The context in which the reference to 'fit and proper' person occurs in section 303(1)(f) is the person'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
- section 290(2) of the Act, which provides that in considering whether it is satisfied that an applicant is not fit and proper or not a person of integrity, the Authority must take into account specified matters, including the person's knowledge of migration procedure; and any other matter relevant to the person's fitness to give immigration assistance.
- the Code which refers to (among other matters) a registered migration agent acting diligently, ethically, honestly and with integrity, treating persons with appropriate respect, and properly managing and maintaining client records and maintaining client confidentiality.

212. Key elements of the fitness test are:

- the honesty of the person (*Peng and Department of Immigration and Multicultural Affairs [1998] AATA 12*); and
- the person's knowledge of the migration scheme and ability to fulfill the position of a migration agent (Mottaghi and Migration Agents Registration Authority [*2007] AATA 60*).

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

[3] See *Cunliffe v Commonwealth* (1994) 182 CLR 272

213. The reference in section 303(1)(f) to a registered migration agent not being 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 (*Tejani and Migration Agents Registration Authority [2009] AATA 240*).

214. Having regard to the body of case law cited above, a consideration of whether the Agent is a fit and proper person or a person of integrity to provide immigration assistance can legitimately include the following:

- that the Agent's past conduct can be an indicator of the likelihood of the improper conduct occurring in the future;
- the Agent's honesty and competency towards clients, the Department and the Authority;
- a consideration of the context in which the agent works, for example whether or not the Agent is an employee or owner of the business through which immigration assistance is provided;
- the Agent's knowledge and competency in immigration law and practice;
- the reputation of the Agent as a result of their conduct and the public perception of that conduct; and
- the perception of the conduct by the Agent's "professional colleagues of good repute and competency".

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

- acted with a blatant disregard for, or a significant degree of indifference to, the migration law and the visa programs in general;
- made misleading, deceptive or inaccurate statements and otherwise acted dishonestly;
- deliberately concealed his involvement in a significant number of visa applications with a view to mislead the Department;
- acted without regard for the adverse impact the conduct would have on the reputation of the migration advice industry;
- sought to jeopardise the integrity of the visa program by facilitating applications being made for protection visas, in circumstances where the Agent knew, or ought to have known, that there was no reason to think that the applicants had claims that would engage Australia's protection obligations;
- acted in a manner not consistent with the principles of integrity nor of a person who is fit and proper to provide immigration assistance.

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

CONSIDERATION OF APPROPRIATE DISCIPLINARY ACTION

217. 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:

- Whether the Agent's behaviour is of a minor or serious nature. Conduct that the Authority considers to be adverse, extremely serious and therefore likely to result in discipline at the higher end of the scale includes but is not limited to:
    - criminal behaviour;
    - fraudulent behaviour;
    - behaviour that demonstrates fundamental lack of knowledge of the law; or
    - involves a blatant disregard for or a significant degree of indifference to the law;
    - repeated occurrences of the conduct described in subsection 303(1) (d)-(h) and/or;
    - agent behaviour that has resulted in significant harm or substantial loss to clients.
- Any aggravating factors that increase the Agent's culpability including but not limited to previous conduct.
- 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

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

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

219. Having regard to the matters before me, I consider that the Agent's adverse behaviour is of a very serious nature because:

- The conduct involves a blatant disregard for, or a significant degree of indifference, to the law and the visa programs in general;
- There is evidence that the Agent has attempted to conceal his involvement when giving immigration assistance on a not insignificant amount of occasions;
- The Agent's actions demonstrate an intention to undermine, and therefore jeopardise, the integrity of the visa programs;

- Continued registration of the Agent is not in the public interest;
- The conduct demonstrates serious repeated breaches of the Code of Conduct, and dishonest or reckless behavior; and
- I have found that the Agent is not a person of integrity, or a fit and proper person to provide immigration assistance.

Aggravating factors

220. The Agent's conduct involved deliberate, systemic and organised activity which jeopardised and undermined the integrity of the visa program. I therefore consider the Agent's conduct falls well short of the standard expected of a registered migration agent.

221. The Agent's failure to declare his assistance, in a substantial number of visa applications, demonstrates the scale, and therefore the corresponding risk, the Agent's conduct poses to the migration program.

222. Given the covert nature of the Agent's involvement, I am of the view the Agent has demonstrated a deliberate disregard for the migration law. On that basis, I consider the Agent would be unwilling to accept direct responsibility for his actions and that he is unlikely to refrain from engaging in such conduct going forward. Therefore, there remains a real likelihood that he will continue to engage in similar conduct in the future.

223. I consider the Agent's failure to take reasonable steps to ensure that only applications with merit are lodged with the Department to be extremely serious. Such conduct has a direct and profound impact upon the integrity of Australia's visa and migration programs.

Mitigating Factors

224. I accept that any disciplinary decision will have an impact on the Agent's future livelihood. However, I am of the view that any loss in earnings from the provision of immigration assistance is significantly outweighed by the public interest given the seriousness of the Agent's conduct in relation to the applications and the information submitted to the Department. I consider that the serious nature of the conduct reflects adversely on the Agent's integrity and on the Agent's fitness to remain in the migration advice industry.

Consumer Protection

225. 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.

226. The behaviour demonstrated by the Agent falls short of the standards expected of registered migration agents. I consider that the Agent poses a serious risk not only to consumers but to the integrity of the Department's visa programs that are made available to visa product consumers. I am satisfied that if the Agent were to continue to practice as a registered migration agent, the Agent would not demonstrate the requisite skills expected of a registered migration agent. I therefore consider that a disciplinary decision is warranted to address the serious conduct the subject of this decision, in the interests of consumer protection, and in maintaining confidence the integrity of the Australian migration program.

227. I expect that a decision to sanction the Agent would more likely than not deter other registered migration agents from engaging in a similar practice and ensure that public confidence in the migration agent industry is maintained.

DECISION

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

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

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

231. Based on the facts and evidence before me, and my findings as discussed in the decision, I have decided to cancel the Agent's registration as a migration agent under subparagraph 303(1)(a) of the Act.

232. 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 former Code and the sections of the Code.
- the Agent committed an offence under section 312A which is a strict liability provision. In relation to this offence, the Department will refer the information it holds in relation to the multiple breaches of that provision to the Commonwealth Director of Public Prosecutions.

233. In accordance with section 292 of the Act, an agent who has had their registration cancelled must not be re-registered within 5 years of the cancellation.

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

Tim
Position number: 60018723
Office of the Migration Agents Registration Authority
Department of Home Affairs

Date of Decision: 13 January 2023