



DECISION RECORD

AGENT	Monica Christine Gruszka
COMPLAINT NUMBER/S	CMP-50080; CMP-53399 and CAS-05268-J4S5
DECISION	SUSPENSION – 3 YEARS
DATE OF DECISION	9 June 2022

Terms used for reference

1. The following abbreviations are used in this decision:

<i>ABN</i>	Australian Business Number
<i>AAT</i>	The Administrative Appeals Tribunal
<i>BIR</i>	Business Intelligence Report. The report lists all applications lodged by the Agent in a specified period and is issued by the Department.
<i>BVA/B/C/D/E</i>	Bridging Visa A, B, C, D or E
<i>MARN</i>	Migration Agent Registration Number
<i>Section 308 notice</i>	Notice issued by the Authority under section 308 of the Act
<i>Section 309 notice</i>	Notice issued by the Authority under section 309 of the Act
<i>Section 305C notice</i>	Notice issued by the Authority under section 305C of the Act
<i>The Regulations</i>	<i>The Migration Regulations 1994</i>
<i>The Act</i>	<i>The Migration Act 1958</i>
<i>The Agent</i>	Monica Christine Gruszka
<i>The Authority</i>	The Migration Agents Registration Authority
<i>The Department</i>	The Department of Home Affairs ¹
<i>The Code</i>	<i>The Migration (Migration Agents Code of Conduct) Regulations 2021</i> prescribed for the purposes of subsection 314(1) of the <i>Migration Act 1958</i>
<i>The Former Code</i>	Code of Conduct prescribed for the purposes of subsection 314(1) of the <i>Migration Act 1958</i> by regulation 8 and Schedule 2 of the <i>Migration Agents Regulations 1998 – repealed on 1 March 2022</i>
<i>The Register</i>	Register of migration agents kept under section 287 of the Act
<i>The Agents Regulations</i>	<i>Migration Agents Regulations 1998</i>

¹ And its former manifestations

STATEMENT OF REASONS

Background

2. The Agent was first registered as a migration agent on 13 July 2017 and was allocated the MARN 1795131. The Agent's registration had been renewed annually to date, with the most recent registration proceeding pursuant to section 300(5) of the Act.
3. The Register lists the Agent's business name as 'Gruszka and Associates' with the ABN 40 622 432 295.

Prior disciplinary action

4. The Agent has not had any prior disciplinary action.

COMPLAINTS

5. The Authority received three (3) complaints about the Agent's conduct as a registered migration agent each detailed below.

CMP -50080 Mr [BDN]

6. On 13 February 2020, the Authority received a complaint from Mr [BDN]² (Mr [BDN]). The complainant alleged the following:
 - The Agent was engaged by Mr [BDN] to facilitate the lodgement of a Standard Business Sponsor (SBS) application for [GCA] Pty Ltd ([GCA] Pty Ltd), Mr [BDN]'s sponsor.
 - The Agent provided false and misleading information about the SBS application.
 - On 3 and 10 September 2019, the Agent, confirmed with Mr [BDN] via two separate emails that the SBS application had been lodged. The Agent did not provide a lodgement date to Mr [BDN]. However the Department acknowledgement letter shows the application was lodged on 17 September 2019.
 - After the sponsorship was approved the Agent advised that the nomination would be lodged on 19 November 2019. The Agent did not request the money for the application fee from Mr [BDN] until 20 November 2019, and did not lodge the nomination until 28 November 2019.
 - A request for further information, with regards to the SBS was sent from the Department to the Agent on 20 September 2019, however the Agent did not advise Mr [BDN] or his sponsor of the request and therefore no further information was provided.
 - The nomination was refused on 9 December 2019.
 - On 12 December 2019, based on information provided by the Agent that his chances of success would have improved, Mr [BDN] decided to go ahead with a second SBS application and was charged \$1100 by the Agent for the submission.
 - On 29 January 2020, the Agent advised Mr [BDN] via email that she was putting together a nomination application and would be in touch shortly. The Agent later agreed, via email reply on 3 February 2020, to a 7 February 2020 deadline for the nomination however the nomination was not lodged by this date.

² CID: [redacted]

- On 8 February 2020, Mr [BDN] emailed the Agent to end his agreement with the Agent and asked for a refund of \$4850 (fifty percent of the service fee: \$3750 and \$1100 for the second visa submission). The same day the Agent responded with a rejection of Mr [BDN]'s refund request and wished him luck.

Departmental Records

7. Departmental records obtained by the Authority confirm the following:

Temporary Skill Shortage visa Nomination

- On 28 November 2019, the Agent, on Mr [BDN]'s behalf, lodged a 482 nomination application with the Department.
- On 28 November 2019, the Department emailed to the Agent a letter of acknowledgement.
- On 6 December 2019, the Department refused to grant the nomination application to Mr [BDN]. The decision letter outlines that the visa delegate refused the nomination on the basis that the delegate was satisfied that the position was not genuine.
- On 6 December 2019, the Department emailed to the Agent the refusal notification.

Standard Business Sponsorship Application – One

- On 17 September 2019, the Agent, on behalf of [GCA] Pty Ltd, lodged a SBS application with the Department.
- On 17 September 2019, the Department emailed to the Agent a letter of acknowledgement.
- On 20 September 2019, the Department emailed the Agent a Request for more information specifically requesting information pertaining to the organisation actively operating in Australia.
- On 22 October 2019, the Department refused to grant the SBS application on the basis that the delegate was not satisfied that the sponsor was not lawfully operating a business in Australia. The same day the Department notified the Agent of the decision.

Standard Business Sponsorship Application - Two

- On 30 October 2019, the Agent, on behalf of [GCA] Pty Ltd, lodged a SBS application with the Department.
- On 30 October 2019, the Department emailed to the Agent a letter of acknowledgement.
- On 6 November 2019, the Department approved the SBS application. The same day the Department notified the Agent of the decision.

CMP-53399 Mr [BDS]

8. On 11 June 2020, the Authority received a complaint from Mr [BDS]³ (**Mr [BDS]**). The complainant alleged the following:

- Mr [BDS] had a complicated partner relationship that broke down. He had his first consultation with the Agent on 6 December 2018, to assist with a response to an invitation to comment contained in the Department's natural justice letter concerning his subclass 801 Partner visa application.
- Mr [BDS] was considering applying for a Student visa to pursue his studies in Australia. He gave the Agent his original graduation certificates to assess. These were never returned to him and now appear to be lost.
- After another consultation by phone, the Agent's advice was to respond to the Department's natural justice letter and should the application be refused, appeal to the AAT on the basis of a family violence claim. According to the Agent, this was the better option as Mr [BDS] had a very slim chance of being granted a Student visa as he had almost become a permanent resident.
- Mr [BDS] found the Agent to be very persuasive and trusted the advice she provided. He engaged the Agent's services on 14 December 2018 and paid the Agent in cash but did not receive a receipt.
- On the Agent's recommendation, Mr [BDS] proceeded to write a personal statement and obtained a report from a psychologist to whom the Agent referred him. From that point Mr [BDS] found it increasingly difficult to receive a response or update from the Agent.
- On 6 May 2019, Mr [BDS]' subclass 801 visa was refused. The Department's decision record indicated that there had been no response to the invitation to comment. However, the Agent welcomed the outcome indicating that it was what she had expected and an appeal to the AAT could now be made.
- After again experiencing difficulty in receiving any response from the Agent, Mr [BDS] received confirmation from the Agent that his appeal to the AAT had been lodged. He felt under constant stress as he was unaware of his visa status or his prospects of success.
- On 12 March 2020, the Agent advised Mr [BDS] that his AAT appeal had been unsuccessful. The Agent did not provide him with a copy of the decision record. However he later saw a copy of the decision attached to the Federal Circuit Court of Australia (**FCCA**) affidavit. He discovered that on 23 September 2019 the AAT had requested further information and that this had not been responded to. As a result he lost his opportunity to appear at a hearing before the AAT.
- None of this was explained to him, instead the Agent insisted on lodging an appeal to the FCCA and applying for an onshore Partner visa with his new partner.
- The FCCA application was lodged on the 35th day after the AAT decision was received, rather than within 35 days of the date of the decision. The Agent sent Mr [BDS] a new client agreement for the Partner visa process, however he decided to seek a second opinion, as he could no longer trust the Agent.

³ CID: [redacted]

9. Mr [BDS] believed that, contrary to the former Code, the Agent failed to:

- be honest with him about his chances of securing a visa
- keep him informed on the progress of his application and any changes that may affect it
- be contactable during business hours
- act within the law and his best interests
- provide timely and correct advice, and tell him in writing about the result of his application as soon as possible.

10. In particular, Mr [BDS] believed that the Agent's actions (listed below) resulted in a negative migration outcome, financial loss and jeopardised his credibility:

- Advice to pursue Family Violence claim to achieve permanent residence, rather than make a Student visa application.
- Failure to respond to the Department's natural justice letter.
- Failure to accurately represent him at the AAT and to forward critical communications.
- Inability to explain the FCCA proceedings before appealing on his behalf.
- Advice to make an onshore Partner visa application after the 801 visa refusal.

11. On 21 April 2020, Mr [BDS] requested that all of his original documents be returned and all fees be refunded to him. On 23 April 2020, the Agent advised Mr [BDS] that she was unable to locate his original documents.

Further submission from Mr [BDS]

12. Mr [BDS] authorised Ms [MV] to represent him in the complaint matter before the Authority. Ms [MV] prepared a submission, addressing Mr [BDS]' complaints and provided a copy to the Authority and the Agent. Supporting evidence, mostly email correspondence, was attached. Copies of the emails were not previously provided to the Agent, however their general sense was detailed in a document titled *Timeline of Communications*, initially provided to the Agent with a notice issued pursuant to section 308 of the Act on 1 December 2020

13. The main points raised by Ms [MV] in her submission are outlined below:

- Contrary to Mr [BDS]' wish to pursue further studies, the Agent advised him to pursue his subclass 801 Partner visa on the basis of family violence. However, his relationship difficulties did not fall within the definition of relevant family violence specified in regulation 1.21 of the Regulations. Mr [BDS] relied on the Agent's purported expertise and paid the Agent \$2000 in cash for which no receipt was provided.
- The Agent failed to respond to the Department's invitation to comment on Mr [BDS]' Partner visa application and, after the deadline to respond had passed, the Agent advised Mr [BDS] that she would keep him informed of any updates from the Department. When Mr [BDS]' subclass 801 visa application was refused the Agent advised that "this is what we want and to be expected, NOW we can take this to the AAT".

- The Agent did not inform Mr [BDS] of the AAT's 23 September 2019 invitation to comment, and did not respond to it. On 8 January 2020, in response to Mr [BDS]' query, the Agent advised him that no hearing date had been set as the AAT was seeking further evidence.
- On the Agent's recommendation, Mr [BDS] made an appointment with a consultant psychologist for 29 February 2020. The Agent had advised that they should have a discussion prior to the appointment but when the time came to do so, the Agent did not reply to Mr [BDS]' email.
- On 5 March 2020, the AAT affirmed the Partner visa refusal decision. No hearing took place as Mr [BDS] did not respond to an invitation to comment sent to the Agent. Section 359C of the Act enables the AAT to proceed to make a decision without any further action if there is no response to an invitation to comment.
- The Agent did not forward the AAT's decision to Mr [BDS]. On 12 March 2020 the Agent advised Mr [BDS] that the AAT was not able to wait any longer for an expert psychologist report. It was not until 18 March 2020 that the Agent informed him that the AAT had affirmed the refusal and that it would be necessary to lodge a judicial review application. It is evident that the only purpose of the judicial review application was to "buy time" for the Agent to lodge an onshore Partner visa application.
- The Agent advised Mr [BDS] that she intended to lodge a Partner visa application based on his relationship with his new partner, and seek a waiver of Schedule 3 criteria. However, Schedule 1 to the Regulations precludes a second onshore Partner visa application if a person has been refused a subclass 801 visa in Australia.
- The Agent holds no legal qualifications but prepared a judicial review application that was filed on 17 April 2020. The only ground raised in that application is that the AAT erroneously proceeded to make a decision pursuant to section 359C(2) by failing to give Mr [BDS] a reasonable opportunity to provide a Clinical Psychological Expert Report.
- Section 360(3) of the Act provides that an applicant is not entitled to appear before the Tribunal if section 359C(1) or (2) applies to the applicant. This position was made clear by the Full Court of the Federal Court 10 years ago in the case of *Hasran v Minister for Immigration and Citizenship* [2010] FCAFC 40; (2010) 183 FCR 413.
- The judicial review application was also filed late. Section 477(1) of the Act provides that a judicial review application has to be filed 35 days from the date of the migration decision. As the AAT decision was made on 5 March 2020, the 35th day fell on 9 April 2020.
- Despite numerous requests, the Agent has not returned Mr [BDS]' original documents, leading to the conclusion that the Agent has lost them.
- In summary, the Agent deprived Mr [BDS] the opportunity to lodge a viable Student visa application and drew him into an AAT review and a FCCA judicial review with no reasonable prospects of success.

- The Agent's advice demonstrated a lack of knowledge of migration legislation, a lack of attention to her client's best interests and a deliberate attempted manipulation of the visa application, merits, and judicial review process to achieve a collateral objective.
- Ms [MV] considers that the following clauses of the former Code were breached 2.2(b), 2.3, 2.4, 2.8, 2.17, 2.18, 2.19, 2.23, 5.3(a), 8.1, 10.5(a) and 10.5 (b)

Departmental Records

14. Departmental records confirm the following:

Onshore Partner visa application subclass 820/801

- On 23 May 2017, a Partner visa application was lodged with the Department by Mr [BDS].
- On 19 July 2018, the Department granted Mr [BDS] a subclass 820 onshore Partner visa.
- On 23 November 2018, the sponsor withdrew her sponsorship in relation to Mr [BDS]' subclass 801 visa application.
- On 27 November 2018, Mr [BDS] was invited by the Department to comment on the information pertaining to the withdrawal of the sponsorship.
- On 6 May 2019, the Department refused the subclass 801 visa application as no response was received to the invitation to comment sent in November 2019.
- On 27 May 2019, an application for a review of the decision to refuse the subclass 801 visa was lodged with the AAT. The Agent was the authorised recipient appointed for the matter.
- On 23 September 2019, the AAT invited Mr [BDS] to provide further information
- On 12 March 2020, the AAT affirmed the decision to refuse the subclass 801 visa.
- On 17 April 2020, a judicial review application was submitted to the Federal Circuit Court.
- On 27 April 2020, a BVA was granted to Mr [BDS].
- On 19 October 2020, Mr [BDS] withdrew his judicial review application.
- On 16 November 2020, Mr [BDS]' BVA ceased.

CAS-05268-J4S5 Mr [JPS]

15. On 9 August 2021, the Authority received a complaint from Mr [JPS]⁴ (Mr [JPS]). The complainant alleged that:

- In November 2019, Mr [JPS] contacted the Agent at the request of his employer. At that time Mr [JPS] was applying for a Student visa through an education agent. After analysing his Student visa application, the Agent advised Mr [JPS] that his application would be refused, and he should withdraw his application before that happens. As the Agent had worked with his employer, Mr [JPS] decided not to respond to the Department about his application.

⁴ CID: [redacted]

- The Agent advised Mr [JPS] that it would be best to apply for a (Trainee) subclass 407 visa before his Student visa was refused. The Agent asked Mr [JPS] to take an IELTS⁵ test as soon as possible and to provide the documents needed for a subclass 407 visa application. In January 2020 Mr [JPS] provided everything the Agent had requested.
- After Mr [JPS] provided the documents to the Agent she was slow to answer his emails. While his Certificate of Enrolment (CoE) was cancelled at that time, the Agent advised him that it was nothing to worry about. In March 2020, the Agent requested Mr [JPS] to email her a request to withdraw his Student visa application.
- When Mr [JPS]'s application was withdrawn the Agent told him that he was on a Bridging Visa E and that he had 28 days to apply for a new visa as he needed a valid visa to apply for a subclass 407 Trainee visa.
- On 3 April 2020, the Agent applied for a Tourist visa for Mr [JPS] however on 6 April 2020 the application was returned to him as invalid. He immediately contacted the Agent. The Agent was unaware his application was found to be invalid, however told him he should not worry as he had a bridging visa.
- When Mr [JPS] did manage to contact the Agent, she told him not to worry as she was taking care of his case and assured him that he was not unlawful. After many further attempts to contact the Agent, on 7 July 2021 the Agent called Mr [JPS] to confirm that he was unlawful and told him that she was trying to apply for a new visa to resolve the situation.
- Seeking alternative advice, an immigration lawyer advised Mr [JPS] that he had been unlawful since he withdrew his Student visa application.
- On 10 July 2021, Mr [JPS] terminated the Agent's services and asked for a refund of the money he paid for the subclass 407 and Tourist visa applications. On 3 August 2021, the Agent advised that her accountant would contact him but they have not done so, despite Mr [JPS]'s further prompting.

Departmental Records

16. Departmental records obtained by the Authority confirm the following:

Student visa application subclass 500

- On 12 September 2019, the Agent lodged an application for a Student visa subclass (500) with the Department for Mr [JPS].
- On 18 October 2019, the Department requested a detailed and current curriculum vitae as well as a genuine temporary entrant statement.
- On 18 November 2019, the Agent wrote to the Department and sought an extension for seven days in which to provide a response on account of her personal circumstances.⁶ A form 956 was provided.

⁵ International English Language Testing System (IELTS)

⁶ Loss of a colleague

- On 30 December 2019, a delegate of the Department refused the Agent's request due to the time already provided to the Agent to respond. Prior to the Agent's request the Agent was provided with 28 days in which to provide a response.
- The Agent provided a response the same day advising that the documents would be uploaded on that day.
- On 31 December 2019, the Department issued a section 57 notice requesting Mr [JPS] to comment on information pertaining to working full time during his course.
- On 30 January 2020, a second section 57 notice was issued requesting Mr [JPS] to comment on the cancellation of his CoE.
- On 28 February 2020, the Agent withdrew the Student visa application.

Trainee Nomination Application subclass 407

- On 18 November 2019, the Agent lodged a subclass 407 visa application on behalf of Mr [JPS].
- On 5 February 2020, the nomination was refused and the refusal notification was emailed to the Agent. The Departmental delegate was not satisfied that the nomination was a "a genuine training opportunity to enhance the occupational skills.....but instead be undertaking the position for the primary purpose of employment and to facilitate the entry of the nominated persons to Australia"

Tourist Visa Application subclass 600

- On 3 April 2020, the Agent lodged a subclass 600 visa application on behalf of Mr [JPS].
- On 6 April 2020, the Department advised the Agent the application was invalid, a notification of which was sent to the Agent's email address. The notification stated that the application was to be lodged by way of a paper Form 1419 and not online.

Notice under section 308 of the Act ("the section 308 notice")

17. Complaint matters CMP-50080 and CMP-53399 were put to the Agent in a Section 308 Notice on 1 December 2020. A response to specific questions put forward by the Authority and a copy of the client files were required by 4 January 2021.
18. On 15 December 2020, the Agent wrote to the Authority and requested an extension of time, until 22 February 2021, in which to provide a response. The Authority replied to the Agent's email on the same day and advised that an extension until 27 January 2021 would be provided.
19. On 27 January 2021, the Agent's first legal representative, [LR1], emailed the Authority advising that a response to the section 308 notice could not be provided within the required timeframe as the Agent [removed for privacy]. [LR1] provided evidence⁷ that the Agent [removed for privacy] 29 January 2021, and made a request for an additional 28 days in which to provide a response to the section 308 notice.

⁷ [redacted]

20. On 28 January 2021, the Authority wrote to [LR1] and sought clarification on the arrangements that would be in place to manage the Agent's current client caseload, [removed for privacy]. Upon receipt of the information, the Authority would consider the extension of time request.
21. On 29 January 2021, [LR1] wrote to the Authority and advised that he had enquired with the Agent in regards to the information being sought and advised the Authority of the following:
- *"In order to ensure client continuity [removed for privacy], Monica has made arrangements with another RMA⁸ that she already has a working relationship with to handle all client maintenance, enquiries, DHA⁹ inquiries and related tasks [removed for privacy]. She advises she has approximately 10 current matters that are likely to have any activity during the next 4 weeks. The contracted RMA is being paid for this work.*
 - *Monica's administrative assistant will be taking phone calls for her during her absence and will advise that [removed for privacy], and will refer callers as appropriate to the contracted RMA for any questions regarding current matters.*
 - *Monica is not planning on taking on any new matters while she [removed for privacy], and existing matters will be serviced as the need arises via enquiry etc by the contracted RMA. Form 956 will be put into place as necessary with any clients during [removed for privacy] period adding the contracted RMA.*
 - *Monica's administrative assistants will have complete access to Monica's email account and will forward any client enquiries or other matter-related emails including any emails from the Department, Tribunal, etc to the contracted RMA for follow-up and handling.*
 - *Monica's email will be configured today with an autoresponder noting she [removed for privacy] and advising that her contracted RMA will be following up with any client enquiries and providing contact information for her administrative assistants and the contracted RMA.*
 - *The Contracted RMA will have access to Monica's secure online file area and will be able to access client information as needed to service existing clients" [sic]*
22. On 29 January 2021, the Authority responded to [LR1] and advised that there were concerns with the response that was provided and that further correspondence was required as to how the issues would be addressed.
23. On 5 February 2021, the Agent wrote to the Authority and advised that the Agent had been making progress on the complaints and that a response would be provided to them by 8 February 2021. Further, that the Agent had appointed [LR2] as her legal representative.¹⁰

⁸ Acronym for Registered Migration Agent

⁹ Taken to refer to the Department of Home Affairs as 'DHA' is a common acronym for Defence Housing Australia

¹⁰ [LR2] was the Agent's second legal representative in regards to the complaint matters

The Agent's response to the Authority's section 308 notice

24. On 17 February 2021, the Authority received the Agent's response to the complaints by way of written submission, not in the required form of a statutory declaration. The response was provided through her legal representative at the time, [LR2]. The Agent made the following claims:

- She disputes that Mr [BDS] had intended to apply for a Student visa. His clear instructions were to pursue domestic violence. He went to the Dee Why police station to report an incidence of stalking and intimidation and to apply for an Apprehended Violence Order against his former partner.
- Mr [BDS] also met with a lawyer to go through the threshold required for claiming domestic violence. His "plan" to apply for a Student visa would necessarily, by reason of his Partner visa application, enliven Genuine Temporary Entrant concerns.
- Following the Agent's consultation with Mr [BDS] the Agent formed the view that the relationship fell within the scope of family violence.
- This matter would inevitably have to be resolved by the AAT given the short time frame following the withdrawal of the sponsorship. His visa application would be refused as there was insufficient time to obtain expert evidence, however the AAT's processing times (500 days plus) would allow that time.
- A claim of family violence can be made at any stage, up to and including at review with the AAT (re Sok's case). At the time the Department sent the invitation to comment a claim under the family violence provisions was not supported by any relevant evidence.
- The Agent constantly reminded Mr [BDS] to attend the clinical psychologist, however he did not follow her instructions. The Agent advised him of the AAT's request for further information. This is evidenced through the Agent's email records and 'MM notes'.
- The Agent did not advise Mr [BDS] that the Agent was representing him at the FCCA. The Agent explained her jurisdiction as a registered migration agent and that she was not able to be his representative in this matter.
- The Agent did not consider his relationship to be genuine and did not want to mislead the Department.
- The landlord of the Agent's previous office [redacted] disposed of her belongings when the Agent departed the premises on the expiry of her lease. The Agent had a transition period within which she was to move out and this was done in stages. The Agent made several attempts to recover all of the belongings but received no response. The Agent went to the office with the floor manager and could not locate the documents or the Agent's other personal belongings.
- The Agent acknowledged receipt of the \$2000 cash payment in an email. The Agent had a manual cash receipt book which was with the documents in her old office.

- The Agent is not prepared to provide a refund, however is willing to reimburse any costs incurred for obtaining new documents upon receipt of any invoice directly to the Agent from the issuing authority.

25. A response to Mr [BDN]'s complaint was not provided within the time specified in the section 308 notice.

Documents provided by the Agent in support of her response to the section 308 notice

26. In support of the Agent's response she provided, what was titled a Timeline which referenced annexures A-Z, AA-AZ, BA-BZ, CA-CZ and DA-DY. The Timeline and each series of annexures were provided on 18 February 2021 in separate emails from the Agent's legal representative, referenced as '1/6', '2/6', '3/6', '4/6', '5/6' and '6/6'. While annexures A-Z were attached to email '2/6' and '3/6', annexures AA-AZ were not provided, at the time, with any of the correspondence pertaining to the section 308 notice¹¹.

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

27. On 1 November 2021, the Authority sent to the Agent a notice pursuant to section 309(2) of the Act, advising the Agent that it was considering cautioning, or suspending or cancelling the Agent's registration under section 303(1) of the Act.

28. The Agent was notified that having regard to the information before the Authority, it was open for the delegate to be satisfied that the Agent had engaged in conduct that breached the Agent's obligations under clauses **2.1, 2.3, 2.4, 2.8, 2.9, 2.18, 2.19, 2.23, 5.3, 5.5, 6.2, 7.2, 9.3, 10.1B and 10.5** of the former Code.

29. Pursuant to section 309(2) of the Act, the Authority invited the Agent to provide written submissions on the matter by 29 November 2021.

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

30. On 10 November 2021, [LR3]¹² emailed the Authority and advised that he had been appointed as the Agent's legal representative in relation to the matters before the Authority. [LR3] made a request for copies of all files, relating to the complaint matters, held by the Authority, the Department, and the AAT.

31. On 11 November 2021, the Authority responded to [LR3] and advised that all documentation as relevant to the complaint matters had been provided to the Agent as part of the section 308 and section 309 notices. For completeness, the Authority provided the notices to [LR3].

32. On 25 November 2021, [LR3] emailed the Authority and requested an extension of time until 24 December in which to provide a response to the section 309 notice. The same day the Authority wrote to [LR3] and agreed to the extension of time.

¹¹ On 15 February 2022, the Agent provided Annexures AA- AZ to the Authority refer to [redacted]

¹² The Agent's third legal representative

33. On 24 December 2021, [LR3] wrote to the Authority again and advised that further time until 14 January 2022, was required in which to respond to the section 309 notice as both he and the Agent were leaving for the Christmas break.
34. On 11 January 2022, the Authority emailed [LR3] and agreed to the extension request. The Authority indicated that future extensions are unlikely to be granted on account of the period already provided. The legal representative was also advised that the Authority may proceed to a decision with the information before it should a response not be forthcoming.
35. On 13 January 2022, [LR3] wrote to the Authority and advised that he was providing a chronology of timelines in relation to the complaints in respect of Mr [BDN] and Mr [BDS] and that the Agent would forward a statutory declaration the following day. Moreover, [LR3] [removed for privacy]. [removed for privacy].
36. On 14 January 2022, the Agent submitted an unsworn statutory declaration. The Agent advised that a sworn statutory declaration would be provided to the Authority in due course. In the Agent's response, as relevant to the complaints, the Agent stated:

CMP-50080 Mr [BDN]

- Mr [BDN] contacted the Agent via a recommendation on a Brazilian Facebook Forum group.
- The Agent found [removed for privacy].
- Mr [BDN] advised her that he had lost thousands of dollars to his former agent who lodged a skilled visa however the agent failed to meet any of the major requirements of the visa.
- Mr [BDN] advised the Agent to recoup the money from the previous agent and use the money to pay her fees. The Agent advised Mr [BDN] that she did not conduct business in that way and it was up to Mr [BDN] to obtain the costs of the visa from the previous agent, the Agent advised that she would help draft a letter outlining the Code of Conduct.
- From that point onwards Mr [BDN] would contact the Agent at "*inappropriate times*" in the evening via different social media platforms. The Agent "[removed for privacy]".
- Mr [BDN] was also contacting the Agent's assistant, Ms [A], at the same time also at odd hours. She was receiving phone calls that would ring out, in addition to messages on her social media accounts.
- Mr [BDN], who was in Brazil, was aware that the Agent's business operated in Australia. [removed for privacy].
- The Agent was then introduced to Mr [PP] from [GCA] PTY LTD, the sponsoring business owner who wished to nominate Mr [BDN] in the role of graphics designer. Mr [PP] attended the Agent's office to discuss Mr [BDN]'s matter as well as to seek assistance in obtaining a visa for his girlfriend who was in Colombia.

- Mr [PP] came across very friendly and said he had no problem with providing anything that the Agent needed to show that the business needed Mr [BDN].
- Mr [PP] also asked if the Agent [removed for privacy]. The Agent was [removed for privacy]
- The Agent [removed for privacy]. Since that meeting, [removed for privacy]. [removed for privacy].
- The Agent decided [removed for privacy]
- The Agent [removed for privacy]. This is why the Agent tried her best to finish the application.
- Mr [BDN] did not know [removed for privacy], as such he blamed the Agent for the delays. The Agent was in a difficult situation and was doing her best to finish the application.
- The Agent thinks she was “[removed for privacy].” Having [removed for privacy]
- With regards to particular issues raised in the complaint the Agent stated the following:
 - “Yes, [she] did mislead Mr [PP] when on 3 September 2019 [she] told him to stand by for an acknowledgement letter for the lodgement of the SBS application for [GCA] PTY LTD that day.” The Agent [removed for privacy]
 - The Agent agrees that she failed to respond to the natural justice letter from the Department of 20 September 2019 requesting information about [GCA] PTY LTD actively operating. The Agent was [removed for privacy] to such a request from the Department.
 - The Agent did fail to advise Mr [PP] that on 22 October 2019 the Department had refused the SBS application as she didn't want “[removed for privacy]
 - The Agent “*did lodge a new SBS application for [GCA] PTY LTD on 30 October 2019, without getting instructions from Mr [PP] or telling him about the new lodgement.*” The Agent wanted to fix the situation and [removed for privacy].” [sic]
 - The Agent did fail to provide Mr [PP] with “*updates or a copy of his documents, as requested, for the [removed for privacy].*”
 - The Agent failed to provide Mr [PP] with a final statement of services. By then the Agent was [removed for privacy] by Mr [BDN], she forgot to do this.
 - The Agent did not use any of the funds for works not completed. The Agent did not charge a professional fee for drafting the second nomination she charged only for the submission.
 - The Agent's “[removed for privacy].”

- The Agent also did not feel confident [removed for privacy].
- An experienced barrister, and former migration agent, is now representing the Agent. [removed for privacy]. The Agent was prepared to take the “*fall*” for this client even though the Agent knew her actions were a way to protect herself.
- [removed for privacy]. The Agent is sorry she didn’t have the strength to tell them to go elsewhere and that it did not work out the way it was expected and that the Agent expectations were not set straight.
- The Agent is willing to refund the \$1100 paid by [GCA] Pty Ltd for the last part of her work.

CMP-53399 Mr [BDS]

- The Agent stated that she has provided a response to this complaint in detail and has nothing new to add.
- The Agent then further added that Mr [BDS]’ intention was not to lodge a Student visa after the breakup of this relationship. He was very clear on the instructions to pursue domestic violence. He attended Dee Why police station to report the incident of stalking and intimidation and to apply for an Apprehended Violence Order against his ex-partner. He also met with a lawyer to go through in detail the threshold that was required to claim domestic violence.
- The Agent claimed that Mr [BDS]’ “*plan*” to make an application for a Student visa would enliven the Genuine Temporary Entrant concerns given he was applying for a Partner visa.
- The Agent confirmed, at the first meeting and signing of the agreement, in her assessment that Mr [BDS] met the grounds for family violence following the withdrawal of his sponsorship.
- Given the length of time that the sponsorship had been withdrawn, it would be at the AAT that the matter would be decided upon. The amount of time to obtain expert evidence, the Agent claimed, would likely result in the matter being refused by the Department. However, given the AAT’s timeframes there would be enough time to obtain the information.
- Therefore there was “*no point at that stage to providing a response to the invitation from the Department to comment in relation to Mr [BDS]’s subclass 801 visa. He had already provided a response, on 27 November 2018, when he had told the Department his relationship was over.*” There was further no point in providing a second response regarding the family violence as this would be provided to the AAT. Noting that, “*the criterion for the family violence exception is a time of decision criterion which includes the time of any AAT decision*”.

- Mr [BDS] was “*well aware of the importance of him seeing the psychologist to help obtain evidence of family violence*”. The Agent constantly reminded him of this as well as the deadlines however he did not follow her instructions.
- The Agent kept Mr [BDS] informed of any developments “*as can be seen from [their] Facebook messages, emails, and notes entered into Migration Manager*”. He was a demanding client who made frequent contact in circumstances where there was no need to reply immediately.
- The Agent did not advise the client that she was representing him in the application to the court. The Agent advised the client of her limitations as a migration agent and “*provided some advice for free, but [she] did not represent him or charge him for any of the advice that [she] gave to him*”.
- The Agent terminated the agreement as she was of the view that the relationship with his current partner was not genuine and as such did not wish to be part of a misleading application.
- Mr [BDS]’ original documents were lost when the landlord disposed of the Agent’s belongings after her departure when her lease expired. Several attempts were made to recover all her belongings.
- A receipt for the cash payment was provided when she sent an email acknowledging she had received the money. A final statement of services was not issued however, she can issue one now to the client.
- The Agent has located an important document of the clients. Mr [BDS] advised the Agent that she could keep the copy “*in case he become famous*” however she is happy to return it and pay for the replacement of any of his other documents.
- “*To be frank, [the Agent is] not sure what [she] would need to offer Mr [BDS] in terms of a refund. [The Agent does not] think [she] did anything wrong in this case, such that [she] would have to refund [her] professional fee.[The Agent] supported him in this case, even paying for the AAT review fee out of [her] own pocket. Mr [BDS] didn’t want to pay [her] back for that until [she] told him he had to*”.

CAS-05268-J4S5 Mr [JPS]

- Mr [JPS] approached the Agent as his CoE was to be cancelled due to his non-attendance.
- Mr [JPS] had been working full time in breach of his visa conditions. The Agent questioned why Mr [JPS] was on a Student visa if he was working full time. Mr [JPS] advised the Agent that he had to support his wife and child. The childcare was expensive as he was a temporary resident. “*He said that studying was costing him money that he could not afford, even though that’s the visa he applied for.*”
- The Agent advised Mr [JPS] that a new visa was the best and right thing to do otherwise he could be sent home.

- Mr [JPS] advised the Agent that he had an employer who was willing to sponsor him. The Agent advised that he did not have the skills/qualifications to meet the visa subclass and as such a Training visa subclass 407 was his option.
- *"However, [the Agent] made a mistake here, arising from [her] strong desire to help Mr [JPS] and his family. [The Agent] misinterpreted Schedule 1 of the Migration Regulations. A subclass 407 visa is not available to an applicant who has not held a substantive visa for more than 28 days since his last substantive visa ceased."*
- An external provider completed Mr [JPS]'s training plan and the Agent was not involved in this aspect and did not charge him a fee. His only fees were for the visa application and the first instalment of her professional fee.
- *"At the time, [the Agent] believed that Mr [JPS]'s only remedy now was to lodge a tourist visa. However, [the Agent] made the same error in relation to the Schedule 1 requirement here as well. [The Agent] accept[s] this"*
- *"After realising [her] error, [the Agent] communicated it to Mr [JPS]. [The Agent] believed lodging a valid application for a subclass 600 visa would give him a BVC, and when refused he could apply to the AAT based on compelling circumstances".* The Agent was happy to accept the cost if this was her fault. The client would have at least *"been on a BVC with potential work rights, instead of being unlawful after the cancellation of his Student visa"*.
- Mr [JPS] was aware that he was unlawful as the Agent advised him over the phone.
- Mr [JPS] has now engaged another migration agent and is pursuing another visa pathway. Upon his engagement with this migration agent the complaint was lodged. The Agent was happy to refund the money at the time and continues to be willing to do so.
- Mr [JPS] was never on a BVE the Agent does not know where this information has come from.
- The Agent's strategy was to try and "save" the client from the cancellation of his visa which would make him, his wife and child unlawful in Australia. *"In retrospect, Schedule 1 was always going to be a major issue for him, limiting his visa options. He was not skilled, qualified...nothing. It was his wish to get off the student visa; [the Agent] thought [she] could save him going on a BVE"*.
- The Agent has not seen all the materials relating to Mr [JPS]'s complaint. However, the Agent withheld repayment of her fees when she saw the complaint in order to seek legal advice. Mr [JPS] advised the Agent that if she repaid her fees he would not report her to the Authority.
- The Agent did not wish to complicate the matter for two reasons; firstly Mr [JPS] had been working in breach of visa conditions and secondly, he wanted to mislead the Department with the lodgement of the onshore protection visa.
- The Agent is happy to refund the visa application fee and her professional fee.

Further submissions made by the Agent within the statutory declaration

37. In addition to the above responses to the complaint matters the Agent, in summary, stated the following:

- She is a single mother to two children who are in her full time care and are dependent upon her income as a migration agent.
- Chronologies have been prepared for each of the three complaints with the assistance of [LR3].
- Hard copies pertaining to the complaint have not been provided *“since there are documents which are apparently in the hands of the complainants (or perhaps MARA) which [the Agent does not] yet have in [her] possession.”*
- [removed for privacy]
- [removed for privacy].
- [removed for privacy]
- [removed for privacy].
- [removed for privacy].
- [removed for privacy]
- Her migration career started in 2017 when she first registered. She worked as a contractor for [removed for privacy] for three months until she was able to move to independent full time work.
- She moved into a share office with an education agent that catered to the Colombian/Latin American Student visa market which is where her practice developed further.
- She was able to bring on two administrative contractors to assist with day to day operations, due to the expansion she required her own office space.
- Presently, in addition to her, her firm has three contractors – two as administrative assistants and a registered migration agent/lawyer. All her staff have worked with her agency for over three years.
- As her business developed she realised she could advance her skillset and is now studying law part time. Once she obtains her law degree she looks to becoming a barrister.
- She, [removed for privacy], is a co-founder of the ‘Migration Pro Facebook Forum’, this is an online community for registered migration agents and immigration lawyers to discuss a variety of topics with likeminded people.

- In addition to the above she is also a co-founder and co-host of the 'The Migration Show' a leading podcast for the migration advice industry that has been broadcasting since 2017.
- She is also a Continuing Professional Development (CPD) "provider" for Migration Law Training [removed for privacy]. During the COVID-19 pandemic she offered free seminars where she could to those who needed to maintain their annual 10-point CPD requirement. She did this not for payment but to help others in her industry.
- She, [removed for privacy], has developed a Capstone Assessment Intense Prep Course to help new graduates of the Diploma in Migration Law and Practice course. This is to help students increase their chances of passing the capstone exam.
- She also helps other RMA's with complex visa matters, especially women in the migration advice profession.

Notice under section 305C of the Act ("the section 305C notice")

38. On 20 January 2022, the Authority sent a notice pursuant to section 305C of the Act. The Agent was required to provide client files for all three complaints as well as client account statements and any other financial documents which pertained to the money paid by the complainants. The documents were to be provided to the Authority by 08 February 2022.

39. On 15 February 2022, a response was provided to the section 305C notice with the below listed documents:

- | | |
|---------------------------------------|-----------|
| • Email 1/5 Annexure Folder A-Z _ | Mr [BDS] |
| • Email 2/5 (Annexure Folder AB -AZ) | Mr [BDS] |
| • Email 3/5- Annexure Folder BA-BZ | Mr [BDS] |
| • Email 4/5 -Annexure Folder CA- CZ _ | Mr [BDS]] |
| • Email 5/5 Annexure folder DA-DY _ | Mr [BDS] |

40. Aside from the five (5) emails listed above, no further information was provided. No information or client files in respect of Mr [BDN] or Mr [JPS] have, to date, been submitted to the Authority. The requested financial documentation likewise has not been provided.

Further requests for information

41. On 10 March 2022, the Authority contacted the Agent's legal representative, [LR3], requesting that a fulsome response be provided to the Authority by 18 March 2022 in relation to the below outlined:

- Confirmation that he remained appointed as the Agent's legal representative.
- Information pertaining to client matters and the arrangements which were put in place during the period the Agent [removed for privacy] and unable to attend her office (January/February 2021).
- Clarification as to whether the unsworn statutory declaration was in response to the section 308 notice or the section 309 notice.

- Reminder that a complete response was still required to the section 305C notice.
- [removed for privacy].

42. On 31 March 2022, the Agent provided a response to the email from the Authority and attached the same statutory declaration, as provided on 14 January 2022, however it was sworn and dated 31 March 2022. The Agent advised the following in the body of the email:

“Dear [delegate]-

See attached Signed Statutory Declaration for your consideration.

[removed for privacy]

Thank you.”

43. To date, no further information has been received in response to the Authority’s request of 10 March 2022, which provided the Agent with a further opportunity to submit information and documentation to support the contentions put forward.

Jurisdiction

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

45. The functions and powers of the Authority under Part 3 of the Act and Regulations may only be exercised by the Minister or by a delegate of the Minister. The Minister has delegated their powers under Part 3 of the Act and the Regulations to officers of the Authority. I am delegated under the relevant Instrument to make this decision.

Relevant Legislation

46. 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)).

47. 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 former Code prescribed under subsection 314(1) of the Act (paragraph 303(1)(h)).

48. 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 made under the Act prescribes a Code.
49. The Code of Conduct for registered migration agents in force at the time of the conduct was the Code of Conduct current from 18 April 2017. On 1 March 2022 the current Code of Conduct replaced the April 2017 Code. It is an instrument made under the Migration Act 1958: the Migration (Agents Code of Conduct) Regulations 2021.
50. The services of the Agent to the conduct had ended before the commencement of the 1 March 2022 Code of Conduct.
51. Before making a decision under subsection 303(1) of the Act, the Authority must give the agent written notice under subsection 309(2) informing the agent of that fact and the reasons for it, and inviting the agent to make a submission on the matter.

Migration Act 1958 (Cth)

Section 276 Immigration assistance

*(1)For the purposes of this Part, a person gives **immigration assistance** if the person uses, or purports to use, knowledge of, or experience in, migration procedure to assist a visa applicant or cancellation review applicant by:*

- (a)preparing, or helping to prepare, the visa application or cancellation review application; or*
- (b)advising the visa applicant or cancellation review applicant about the visa application or cancellation review application; or*
- (c)preparing for proceedings before a court or review authority in relation to the visa application or cancellation review application; or*
- (d)representing the visa applicant or cancellation review applicant in proceedings before a court or review authority in relation to the visa application or cancellation review application.*

*(2)For the purposes of this Part, a person also gives **immigration assistance** if the person uses, or purports to use, knowledge of, or experience in, migration procedure to assist another person by:*

- (a)preparing, or helping to prepare, a document indicating that the other person nominates or sponsors a visa applicant for the purposes of the regulations; or*
- (b)advising the other person about nominating or sponsoring a visa applicant for the purposes of the regulations; or*
- (c)representing the other person in proceedings before a court or review authority that relate to the visa for which the other person was nominating or sponsoring a visa applicant (or seeking to nominate or sponsor a visa applicant) for the purposes of the regulations.*

*(2A)For the purposes of this Part, a person also gives **immigration assistance** if the person uses, or purports to use, knowledge of, or experience in, migration procedure to assist another person by:*

- (a)preparing, or helping to prepare, a request to the Minister to exercise his or her power under section 351, 391, 417, 454 or 501J in respect of a decision (whether or not the decision relates to the other person); or*
- (aa)preparing, or helping to prepare, a request to the Minister to exercise a power under section 195A, 197AB or 197AD (whether or not the exercise of the power would relate to the other person); or*

(b)advising the other person about making a request referred to in paragraph (a) or (aa).

(3)Despite subsections (1), (2) and (2A), a person does not give immigration assistance if he or she merely:

(a)does clerical work to prepare (or help prepare) an application or other document; or

(b)provides translation or interpretation services to help prepare an application or other document; or

(c)advises another person that the other person must apply for a visa; or

(d)passes on to another person information produced by a third person, without giving substantial comment on or explanation of the information.

(4)A person also does not give immigration assistance in the circumstances prescribed by the regulations.

The Code of Conduct, under section 314 of the Act

Division 2 of Part 1 of the Code provides that the purpose of the Code is to:

- protect clients of migration agents; and
- strengthen the integrity of the immigration advice industry and Australia's immigration system.

Division 2 further provides that the Code is not an exhaustive statement of the duties of migration agents under Commonwealth law.

Migration Agents Regulations 1998, regulation 9

Complaints

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

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

EVIDENCE AND OTHER MATERIAL

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

- Documentation contained in the Authority's complaint files for CMP-50080; CMP-53399 and CAS-05268-J4S5;
- Information held on departmental records in relation to the matters raised in the complaints;
- Information held by the Authority in relation to the Agent; and
- The supporting documentation provided by the Agent and her legal representatives in response to the Section 308, Section 309, and Section 305C notices.

DECISION AND REASONS

Mr [BDN]

Sponsorship application

53. On 3 September 2019, Mr [PP], the CEO of [GCA] Pty Ltd, asked the Agent if the application had been lodged. In reply the same day the Agent advised that the sponsorship application would be lodged 'shortly', but also told him that he should stand by for the acknowledgement letter 'today'.¹³ Just under a week later, on 9 September 2019, both Mr [BDN] and Mr [PP] in separate emails, referred to the Agent's previous email, and advised that they had not received an acknowledgement letter. Mr [PP] also asked whether the acknowledgement would be coming from the Agent or directly from the Department.
54. Replying to both the next day, the Agent told them that 'All is good' and that she was waiting on the acknowledgement letter from the Department. The Agent stated she would let them know if the Department needed anything in the interim. That same day, 10 September 2019, Mr [BDN] asked if the Agent had already lodged the sponsorship application, and whether the Department had sent the Agent an acknowledgement. In reply, also that day, the Agent confirmed that 'Yes it has been lodged'. The Agent had not yet received an acknowledgement, which the Agent said was not the first time this had happened, but she was following this up.¹⁴
55. On 16 September 2019, Mr [PP] expressed his confusion about what had been done and when it was done, and asked the Agent for a copy of the lodged application.¹⁵ The Department's records confirm that the Agent lodged the sponsorship application on 17 September 2019.¹⁶ In the absence of any response from the Agent to Mr [BDN]'s complaint, I am satisfied that the Agent first indicated on 3 September 2019 that the application would be lodged that day, and that on 10 September 2019 the Agent told Mr [BDN] and Mr [PP] that it had been lodged.
56. Given the above discussed I find that the Agent falsely informed them that the application had been lodged, when it had not been. The Agent has conceded that she had misled the sponsor. In her response to the Authority the Agent has stated that she misled Mr [PP] when she advised him on 3 September 2019 to "*stand by for an acknowledgement letter from the lodgement of the SBS application*".

Request for further information

57. On 20 September 2019, the Department requested evidence that the business was actively operating in Australia. With the request was a list of seven types of documents stated to be the minimum of evidence that had to be provided. If any of these items could not be provided, a written explanation was required.¹⁷ In addition to these specifically requested items, the Department advised that the sponsor may also provide evidence of active operation of the business, such as:

¹³ [redacted]: Mr [BDN]'s supporting evidence pages 3&4

¹⁴ Ibid pages 9-11

¹⁵ Ibid page 13

¹⁶ Application ID: [redacted];, [redacted]:

¹⁷ [redacted]: Request letter [redacted];, Checklist and Details: [redacted]:

- evidence of registration with industry associations
- contracts obtained or contracts to provide services
- advertisements/promotional information
- letters to/from the business/organisation.

58. There was no indication that the Agent forwarded the Department's request to the sponsor. However, the same day the Agent advised Mr [PP] that there was good news, the Department was ready to finalise the sponsorship application. The Agent added that they just needed a 'couple more things', and listed four items (below) which the Agent said was a summary of what was requested.

- Contracts/advertisements
- Investor contributions
- Legal costs associated with the start up
- Any lease agreement in Macquarie St

59. However, with the exception of the lease agreement, the Agent's list did not include any of the other documents that the Department stated were a minimum requirement. The Agent did include contracts and advertisements, however the Department considered those to be useful but not essential. On 22 October 2019, the Department refused the sponsorship application as the Department's decision noted that there had been no response to the request for further information. Other than a single business activity statement submitted with the application, there was insufficient evidence that business operations had commenced or would do soon.¹⁸ There is no indication from Mr [BDN]'s statement of complaint or the email correspondence that either he or Mr [PP] were aware of this refusal decision. According to Mr [BDN]'s statement, the next relevant date was 6 November 2019, which he states is when the sponsorship was approved. This however is when a second sponsorship application was approved, having been lodged on 30 October 2019, just over a week after the first application was refused.

60. On 28 October 2019, two days before the second application was lodged, Mr [BDN] asked the Agent for an update on the application process.¹⁹ His query appears to have gone unanswered, and a week later Mr [PP] expressed concern that his emails were not being responded to. He requested a copy of his file and evidence that his application had been lodged.²⁰ In the absence of any intervening evidence, it is reasonably likely that he was asking about the first application. The same day the Agent told Mr [PP] that she would send the file to him shortly.

61. In response to this complaint, in her statutory declaration provided to the Authority, the Agent conceded that she did not advise either Mr [BDN] or Mr [PP] that the Department on 22 October 2019 had refused the sponsorship application. Further, the Agent conceded that she did not receive instructions from her client to lodge the second application with the Department on 30 October 2019. According to the Agent, she was trying to "*fix the situation*" as she was [removed for privacy] to the refusal of the sponsorship application. Moreover, the Agent conceded that she failed to respond to the natural justice letter issued to her by the Department on 20 September 2019.

¹⁸ [redacted]:: Decision Record: [redacted]:

¹⁹ [redacted]:: Mr [BDN]'s supporting evidence page 16

²⁰ Ibid page 17

62. Given all the above discussed, I am satisfied that the Agent breached her obligations under **clause 2.1 and 2.8 of the former Code**. The Agent has admitted to lodging a second sponsorship application without the instructions, knowledge, or consent of the sponsor. I therefore find that the Agent made a statement (through the application) that she knew to be misleading or inaccurate, and as such I find the Agent in **breach of clause 2.9 of the former Code**.

Nomination

63. The nomination application was also lodged later than Mr [PP] or Mr [BDN] were led to believe, an expectation that the Agent had given them. On 10 November 2019, Mr [PP] asked when 'Mr [BDN]'s documentation' would be lodged, presumably referring to the nomination application.²¹ The Agent did not reply until a week later, advising that she was double and triple checking to ensure that there were no errors, and appeared to ask for a day to do so.²² On 19 November 2019, Mr [PP] advised the Agent to go ahead with the application and asked for the confirmation of lodgement with the Department.²³ The next day in reply, the Agent indicated that she was ready to lodge the nomination and just needed the company's credit card details.²⁴ The company did not have a credit card however, on 22 November 2019, the Agent was provided with confirmation that the necessary funds had been transferred into her client account and she was instructed to lodge the application that day.²⁵ The nomination would however not be lodged for a further six days.
64. On 6 December 2019, the Department, on the basis that the visa processing officer was not satisfied that the nominated position of graphic designer was consistent with an IT business, refused the nomination. There were also concerns that the business would not be able to support the position financially. The Agent persuaded Mr [BDN] to lodge another nomination application, though he was surprised that the Agent was to charge him a further \$1100 for a submission.
65. On 9 December 2019, the Agent emailed Mr [BDN] and stressed that a submission would be needed to address the Department's concerns, and recommended against applying without a submission. In justifying the Agent's fee, she told him that it would take her approximately ten hours to prepare the submission.²⁶ Mr [BDN] stated that on 29 January 2020, he was told that the Agent was putting the nomination application together and would be in touch soon. However, with what appears to have been growing frustration, he set a 7 February 2020 deadline for the Agent to lodge the nomination, and terminated the Agent's services when this was not met.

²¹ [redacted]:: Mr [BDN]'s supporting evidence, page 20

²² Ibid page 21

²³ Ibid page 23

²⁴ Ibid page 25

²⁵ Ibid page 29

²⁶ Ibid page 35

66. I am satisfied that the Agent misled Mr [BDN] and Mr [PP] about the lodgement of the first sponsorship application and lodged the second without their instruction, knowledge or consent. It is also apparent that the Agent delayed lodging the first nomination application when it appeared to be ready to lodge, and failed to lodge what would have been the second nomination application when it too appeared to be ready to lodge. Consequently, I am satisfied that the Agent did not act in the legitimate interests of her clients in breach of **clause 2.1 of the former Code**. I also find that by lodging the second sponsorship without the sponsor's knowledge was contrary to the reputation and integrity of the migration advice profession and as such I am satisfied that the Agent breached **clause 2.23 of the former Code**.

Mr [BDS]

Partner visa application

67. On 19 July 2018, Mr [BDS] was granted a temporary Partner subclass 820 visa based on his relationship with Ms [SSOL].²⁷ Four months later Ms [SSOL] advised the Department that she was withdrawing her sponsorship as their relationship had ceased. On 27 November 2018, Mr [BDS] confirmed for the Department that the relationship had ceased, but that Ms [SSOL] could remain as his authorised recipient, with him copied into any communications. The same day the Department invited Mr [BDS] to comment on the breakdown of his relationship. The Department advised him of the circumstances under which he could still be considered for a Permanent Partner visa, including if he had suffered family violence. The Department provided Mr [BDS] 28 days within which to respond. No response was received to the invitation to comment nor was there any other contact from Mr [BDS] or anyone on his behalf. As a result the Department refused his visa application on 6 May 2019.

68. According to Mr [BDS]' account, he met with the Agent on 6 December 2018, to discuss the Department's invitation to comment. The respective timelines provided by the Agent and Mr [BDS] confirm that the family violence provisions were discussed. This discussion is also recorded in the Agent's case note of the consultation in which the Agent noted that solid evidence would be needed.²⁸ Mr [BDS] claims that he was considering applying for a Student visa and had brought his qualifications to the meeting with that in mind, however the Agent advised him that he would have a better chance under the family violence provisions. In the Agent's response to the complaint the Agent indicated that as a Partner visa applicant Mr [BDS] may have had difficulty satisfying the Genuine Temporary Entrant (GTE) requirements for a Student visa.

²⁷ Application ID: [redacted]; [redacted]:

²⁸ [redacted]:: Agent's Annexure A

69. However it seems that Mr [BDS] had not given up on applying for a Student visa despite any advice against that option. On 11 December 2018, five days after the initial meeting, Mr [BDS] asked for a further meeting so he could discuss the possibility of returning to study. He added that after thinking about it, he did not want to go ‘through on that way’. That comment is open to interpretation, however as it appears only two options were being considered, it might be reasonable to presume that going ‘through on that way’ related to applying under the family violence provisions. In reply the same day the Agent said that a Student visa would be a good option, and the best decision for him. The Agent believed it was the right choice and would talk about the best courses for him.²⁹ It seems however that there was no further discussion about applying for a Student visa. It does not feature in any of the further communications provided by either Mr [BDS] or the Agent.
70. In his timeline, Mr [BDS] refers to an email he sent the Agent on 17 December 2018 about messages to contact Northern Beaches Police as soon as possible. In the Agent’s timeline she confirmed that Mr [BDS] contacted her about making a report to the police. The Agent provided a copy of a message from Mr [BDS] in which he states ‘I will to do today what you said to me’, which indicates that it was on the Agent’s advice that the police report was made.³⁰ The timeline provided by the Agent also indicates that, at the initial consultation, she confirmed with Mr [BDS] that he had not been to the police. Making a report to the police might suggest that action was being taken to make a claim under the family violence provisions, however no further steps were taken at that time.
71. On 18 December 2018, Mr [BDS] wanted to know how the Agent would be responding to the Department’s invitation to comment, and asked to see a copy of the submission prior to its lodgement with the Department. On 24 December 2018, under a week later, the Agent agreed to keep him posted and would contact him if she received any correspondence. The agent advised Mr [BDS] that she would be available throughout the Christmas holiday period.³¹ The 28th day on which Mr [BDS] was given to respond to the Department fell on Christmas Day, meaning that a response needed to be made a day earlier, namely 24 December 2018. On that day the Agent replied to Mr [BDS], however, the Agent did not answer his question or mention in any way how his application might progress.

²⁹ [redacted]:: Mr [BDS]’ further evidence, page 12

³⁰ [redacted]:: Agent’s Annexure H

³¹ [redacted]:: Mr [BDS]’ further evidence, pages 11 & 10 respectively

72. On 2 and 8 January 2019, Mr [BDS] claims he followed up with the Agent but that no further communication was received after the 24 December 2018 email until May 2019. The supporting documents provided by the Agent reveal that there was more communication than claimed by Mr [BDS]. Over 9 and 10 January 2019 there was an exchange of messages about someone checking Mr [BDS]' work rights.³² About two weeks later the Agent confirmed for Mr [BDS] that there had been no news, adding that they were 'both waiting anxiously'. The Agent encouraged him to go on his planned trip to Bali in March.³³ In an exchange of messages in early March, Mr [BDS] stated to the Agent that he was excited about his trip to Bali. He also asked if there had been anything from the Department, and the Agent appeared to have asked him the same question.³⁴ A week later he sent a photograph from Bali, and at the end of March he thanked the Agent for recommending Bali to him, he did not as the Agent claimed in her timeline, thank her for her support.³⁵
73. In mid-April 2019 Mr [BDS] wanted to know if he could still work as prospective employers were asking him about his work status, and at the end of the month he passed on a message that Ms [SSOL] was closing their joint bank account. The Agent did not reply to either of these two messages.³⁶ On 6 May 2019, the Department refused Mr [BDS]' Partner visa application due to not receiving a response to the invitation to comment. The Department notified Mr [BDS] directly as the Department had not been advised by the Agent that she had provided him with immigration assistance and was now acting for him, despite the Agent being required to do so under section 312A of the Act.
74. When Mr [BDS] forwarded the refusal notification to the Agent, the Agent told him that this is what 'we' want and is 'to be expected', and that his case could now be taken to the AAT.³⁷ In a separate message the same day the Agent described the situation as being 'ideal for us'.³⁸ In explaining the comment, 'to be expected', the Agent stated her response to the refusal was because 'we' did not have the threshold of evidence to respond to the Department. The Agent in her statutory declaration response stated that "*there was no point at that stage to providing a response to the invitation from the Department to comment in relation to Mr [BDS]'s subclass 810 visa. He had already provided a response, on 27 November 2018 when he had told the Department that his relationship was over*" [sic]. The Agent again claims in her statutory declaration "*there was no point*" in providing a second response to the Department when they did not have the sufficient evidence required to pursue the claim of domestic violence. The Agent further stated that "*[t]his could all be done at the AAT stage...*" However, other than the apparent report to the police there is no indication that any steps were taken to support a claim under the family violence provisions, nor that Mr [BDS] had been advised of what evidence would be required.

³² [redacted]:: Agent's Annexures I, J & K

³³ Ibid: Annexure L

³⁴ Ibid: Annexure M

³⁵ Ibid: Annexure N & O

³⁶ Ibid: Annexure P & Q

³⁷ [redacted]:: Agent's Annexure V

³⁸ Ibid: Annexure Y

75. Based upon the evidence before the Authority, there is no indication that there was any instruction or agreement not to respond to the Department. The evidence indicates that Mr [BDS] thought that a response was being prepared, and requested to see a copy of it before it was submitted. It was apparent that Mr [BDS] was clearly aware of the relevant deadline. On 24 December 2018, the Agent advised Mr [BDS] that she would let him know if she received any correspondence about his case. In January 2019, the Agent advised him that they were both waiting anxiously for news and then in March the Agent appeared to ask Mr [BDS] if he had any news regarding the application. Given, the Agent had not responded to the Department's request for information on behalf of Mr [BDS]'s, the only likely correspondence that the Agent would receive would be that of a refusal notification. When Mr [BDS]' application was refused it appears that he did not know what was going to happen next, and when that would happen, and he admits to finding his situation scary.³⁹
76. Mr [BDS]' agreement with the Agent specifically states that it was to respond to the invitation to comment on adverse information by the Department. The agreement is taken to be written confirmation of his instructions to act in relation to this matter. However it seems that the Agent took no relevant action, but had given Mr [BDS] the impression that she was doing so, and later that she had done so.

Review application

77. On 27 May 2019, Mr [BDS] lodged a review application with the AAT in relation to his refused Partner visa application. On 5 March 2020, the AAT affirmed the Department's refusal decision. According to the AAT's decision record on 23 September 2019, Mr [BDS] was invited to comment on or respond to information in which a response was required by 7 October 2019, however no response had been received at the time of the AAT's decision. The AAT was satisfied that the invitation to comment had been sent correctly to Mr [BDS]' authorised recipient namely, the Agent. The AAT notified the Agent of their decision on 12 March 2020, a week after the decision had been made. Further, the AAT also notified the Department that the Agent was Mr [BDS]' authorised recipient.⁴⁰
78. The Agent in her response to the Authority stated that a family violence claim can be made at any stage including during the review application, citing the case of Sok. However, the Agent added that, at the time of the invitation to comment, any relevant evidence did not support such a claim. The Agent also stated that Mr [BDS] was advised of the AAT's request for further information and she had constantly reminded him to attend the clinical psychologist. The Agent claimed this was evidenced in email records and 'MM notes'. The records provided by the Agent to the Authority do not support these claims.
79. The AAT's invitation to comment gave the same three circumstances under which a permanent visa could be considered, including family violence, as the Department had given in its invitation to comment. It also clearly stated that if no response to the invitation for comment was received, the AAT may make a decision based upon the information before it. It also stressed in bold that any entitlement to appear before the AAT would be lost if no response was received.⁴¹ Mr [BDS] claims that he only became aware of the invitation to comment when he read a copy of the AAT's decision attached to his judicial review application.

³⁹ Ibid: Annexures X & Z

⁴⁰ [redacted]: Scanned copy of Department file [redacted]:, AAT decision pages 2-13

⁴¹ [redacted]: Mr [BDS]' further evidence, pages 110-113

80. The Agent's timeline also gives no indication that she advised Mr [BDS] about the invitation to comment. The first entry after the invitation to comment is on 10 October 2019, more than two weeks later there is a two email exchange with Mr [BDS]. A copy of this exchange was also provided by Mr [BDS], though his included a third, initial, email in which he mentions travelling overseas with Ms [JT], his new partner. In reply, the Agent asked whether Ms [JT] will sponsor him, and offered to help with a bridging visa for travel. Mr [BDS] replied with some less than clear comments regarding the sponsorship and also advised the Agent that he wanted more information including steps, deadlines and any specific dates for the AAT. Based upon the evidence before the Authority, provided by Mr [BDS] and the Agent, no reply was made to him nor was there any mention of the AAT's request for information, the deadline for which had expired only three days earlier.⁴²
81. In an exchange the following month, November 2019, the Agent's office told Mr [BDS] that the Agent did not think it was a good idea for him to go overseas as his hearing was scheduled for next month - December. He was advised that the Agent would provide further details tomorrow, though it seems none were provided. In early January 2020, Mr [BDS] followed up on his hearing date which was supposedly the previous month. The Agent replied that no hearing date had been set, as the AAT was seeking further evidence before setting a date.⁴³ This appears to be the only instance of what may be considered the Agent informing Mr [BDS] of the AAT's invitation to comment. The Agent however did not tell him what evidence the AAT was seeking nor that the deadline had already passed.
82. In relation to Mr [BDS] seeing a psychologist, the Agent's timeline only contained two relevant entries. The evidence for these two timeline entries are Annexures AS and AX respectively⁴⁴. On 15 July 2019, in a phone call the Agent reminded Mr [BDS] about the clinical psychologist. The next reference is not until 19 February 2020, some seven months later. This appears to refer to a file note of a meeting in the Agent's office, when the Agent met Ms [JT] for the first time, and explained how important it was to get an expert clinical psychologist. The Agent advised the clients that Dr [name redacted], who specialises in domestic violence, was recommended to her.

⁴² [redacted]:: Agent's Annexure BB and Supporting evidence to 3 September 2021 submission, pages 31&32

⁴³ [redacted]:: Mr [BDS]' further evidence, pages 35-38

⁴⁴ Provided by the Agent on 15 February 2022

83. Based on the evidence provided by Mr [BDS] it appears that Dr [name redacted] was not approached by the Agent, until early 2020. On 29 January 2020, Dr [name redacted] told the Agent that he could do a report for \$1500, and would advise the Agent of potential appointment times. He followed up with potential times in early February before a consultation was booked for 29 February 2020.⁴⁵ On 12 March 2020, the Agent forwarded the AAT's decision to Mr [BDS], and told him that 'the member was unable to wait any longer for the report'.⁴⁶ Dr [name redacted]'s report would not be finalised until 20 March 2020, a week after the AAT's decision.⁴⁷ This initial contact with Dr [name redacted] was six months after the Agent had told Mr [BDS] about his relevant expertise. More significantly, it was eight months after the review application was lodged, and four months after the AAT's invitation to comment. Furthermore, it was more than a year after the Agent first discussed proceeding with the application on the basis of the family violence provisions with Mr [BDS] in December 2018. If, as claimed by the Agent, she was constantly reminding Mr [BDS] to attend the appointment, then according to her timeline, this did not occur until at least February 2020. By that time his review application was all but over and there is nothing before me to substantiate the February 2020 timeline entry.

Judicial review

84. On 17 April 2020, a judicial review application was lodged with the FCCA for Mr [BDS]. The grounds for the application were stated to be:

"That the tribunal erred in making a decision under section 359C(2) which did not take into consideration a reasonable opportunity to provide the Clinical Psychologist Expert Report. The Tribunal is not bound by this subsection and has discretion to allow for further evidence to be provided and considered prior to decision."

85. The application did not include the details of any lawyer or law firm representing Mr [BDS].⁴⁸ Based upon this it would appear that Mr [BDS] would be representing himself. There is no indication that Mr [BDS] has any legal qualifications or experience. As such it would appear highly unlikely that he had the necessary knowledge to formulate the grounds for applying, or the ability to represent himself in court. The Agent told Ms [MV] that the nature of her assistance with the judicial review was within the scope of section 276 of the Act.⁴⁹ On the information before the Authority, it is apparent that the decision to appeal to the FCCA was instigated by the Agent and that the Agent, possibly with the assistance of someone legally qualified, formulated the application grounds. This can be evidenced by Annexures CS through to CW provided by the Agent, wherein there are numerous email exchanges regarding the urgent lodgement of the Federal Court application between the Agent, the FCCA and Mr [BDS].

⁴⁵ [redacted]:: Mr [BDS]' further evidence: pages 43-46

⁴⁶ [redacted]:: Agent's Annexure BM

⁴⁷ [redacted]:: Mr [BDS]' further evidence, pages 55-58

⁴⁸ [redacted]:: Mr [BDS]' further evidence Ibid: pages 132-136

⁴⁹ Ibid: page 95

86. Upon receiving notification of the AAT's decision, the Agent requested an urgent meeting with Mr [BDS]⁵⁰ and it appears that meeting took place on 18 March 2020. The same day Mr [BDS] asked for a summary of what was discussed. He indicated that it was the Agent's idea to lodge an application with the FCCA. However, he appears to have been confused about the purpose of this application, asking what type of application it was, and what type of visa he would get.⁵¹ The Agent, in a later email, assured him that an application to the FCCA would maintain his current visa.⁵²
87. On 11 May 2020, Mr [BDS] urgently asked the Agent to contact him, as he had not heard from the Agent for two weeks. Mr [BDS] advised the Agent that he was anxious and did not know what to do next.⁵³ Ten days later he again asked what the next step will be, and said that he was waiting on the Agent's draft reply to the FCCA which she was to send him. He did not want to leave things to the last minute and not reply on time as happened for his review application. He urgently asked the Agent to reply to him.⁵⁴ The circumstances of Mr [BDS]' case would suggest that the grounds for the application were not genuine. Contrary to what was claimed, it appears that the AAT did provide a reasonable opportunity to provide any relevant information to support the review application. However, no information was provided within the allowable time, and no indication given that relevant information would be forthcoming if more time was granted.
88. The AAT clearly stated in its invitation to comment that a decision may be made without further requests for information if a response was not received, and that the entitlement to a hearing would be lost in such circumstances. Even if the AAT did have discretion to allow further evidence, as is claimed in the grounds for the application, they were not given an opportunity to exercise it, as they were given no indication that any evidence would be forthcoming.
89. Ms [MV] stated that the judicial review was lodged late, as it had to be lodged within 35 days of the AAT's decision dated 5 March 2020. This 35 day period is clearly advised in the information provided by the AAT with the notification of its decision. According to Ms [MV] that meant Mr [BDS]' application had to be lodged by 9 April 2020. It seems that the Agent knew that this was the relevant date and had advised Mr [BDS] of it. On 7 April 2020, in an email exchange with the Agent Mr [BDS] asked when the papers would be signed as he was conscious that the Agent advised that the deadline was the 9th.⁵⁵ However for reasons unknown, Mr [BDS]' judicial review application was not lodged until 17 April 2020. The issue in respect of the lodgement date appears to have been raised early on by the lawyers representing the Minister. In reply to a query by Ms [JT], in relation to what the letters from the lawyers had meant, the Agent advised her that the Minister's contention was incorrect as the review application 'was filed on day 35', which was presumably contested by the lawyers representing the Minister.⁵⁶

⁵⁰ Ibid: page 51

⁵¹ Ibid: page 53

⁵² Ibid: page 69

⁵³ [redacted]:: Agent's Annexure DK

⁵⁴ [redacted]:: Agent's Annexure DL

⁵⁵ [redacted]:: Mr [BDS]' further evidence, page 73

⁵⁶ Ibid: page 126 & 127

90. It appears that the explanation the Agent gave Ms [JT] was an attempt to explain away her failure to act within the prescribed period. The Agent lodged the application within 35 days of *receiving* the notification of the decision from the AAT, not 35 days *from* the date of the decision. There is no indication how, or if, this issue was resolved by the court. Ms [MV] stated that there had been a directions hearings, and that the judge had directed that an amended application be filed by 22 October 2020. Then in November 2020, Mr [BDS] withdrew his application, and became liable for the Minister's costs.⁵⁷ By that time the Agent had already abruptly withdrawn her services. On 27 May 2020, Ms [JT] queried the \$4840 fee the Agent would be charging for a new Partner visa application. In reply the same day the Agent explained that this was a brand new matter, but then told her that it was best they found a new agent as the Agent was restructuring her business.⁵⁸
91. Having taken Mr [BDS] down a path that led him to represent himself in a court case, the Agent abandoned him without any warning. The Agent in her response stated that she had done so because the relationship was not genuine and she did not want to mislead the Department. There is however no indication that Ms [JT], his would be sponsor, was other than supportive of Mr [BDS]. Her emails to the Agent show that she was interested in what was happening and what his/their options were. There appears to be no basis for the Agent's claim that the relationship was not genuine.

Bridging visa

92. At the time the AAT made its decision to affirm the refusal of Mr [BDS]' Partner visa application he was the holder of a Bridging Visa B (BVB). Subclause 020.511(1)(b)(iii) of the Regulations states that a BVB will remain in effect until 35 days after the AAT makes its decision. Another bridging visa needs to be applied for, with the Department, if a judicial review application is lodged. While the AAT's decision was made on 5 March 2020, the notification of the decision was made a week later on 12 March 2020. Departmental systems reveal that the date of notification is the date recorded. It is from this date that the 35 day count for his BVB appears to have commenced. Mr [BDS]' BVB is recorded as being in effect until 16 April 2020.
93. Mr [BDS] was aware that his bridging visa would cease on 16 April 2020. He refers to this in his 27 March 2020 email and more noticeably in the subject line of a chain of emails on 31 March 2020, and more urgently again on 13 April 2020, when he was concerned that he had not heard from the Agent, and noting that his visa expires in three days.⁵⁹ Despite Mr [BDS]' concerns, it was only on the afternoon of 16 April 2020, that the Agent attempted to lodge the judicial review. In what seems like a sign of desperation, in the subject line the Agent asked the court to '*URGENT URGENT PLEASE PROCESS – EXPIRY TODAY*'.

⁵⁷ Ibid: page 140

⁵⁸ [redacted]:: Agent's Annexures DQ & DR

⁵⁹ [redacted]:: Mr [BDS]' further evidence, page 63-78

94. It would not be until the following day that the court replied providing a link to make a credit card payment of the application fee. This was paid by Mr [BDS] that day, 17 April 2020, which is taken to be the date the application was lodged.⁶⁰ By then Mr [BDS] had become unlawful as his BVB had ceased and an application for another bridging visa was not received by the Department until 21 April 2020, by which time he had been unlawful for five days.⁶¹ On 27 April 2020, Mr [BDS] was granted the bridging visa however due to the Agent's delay in lodging the judicial review he unnecessarily became unlawful for a few days, which his emails clearly show was something he wanted to avoid.

Advice regarding new Partner visa application

95. On 1 June 2020, the Agent advised Ms [MV] that according to the Agent, Mr [BDS] and Ms [JT] wanted to lodge an offshore Partner (subclass 309) visa as soon as possible. Mr [BDS] would apply for a BVB which would allow him to return to, and remain in, Australia after lodging the subclass 309 application offshore.⁶² There is however no indication that the Agent discussed an offshore application with Mr [BDS]. The evidence shows that only two months earlier than the Agent expressed her view to Ms [MV], the Agent was providing advice about applying for an onshore subclass 820 Partner visa. On 30 April 2020, in the Agent's email to Ms [JT] telling her that the Agent had lodged the judicial review on time, the Agent suggested lodging an onshore Partner visa application while they wait for a hearing date. The Agent explained that, as Mr [BDS] has had a visa refused, he would need a waiver, and the chances would improve if the Agent knew more about Ms [JT], including her medical reports. The Agent added that this meant that they could 'potentially' lodge onshore.⁶³
96. On 26 May 2020, Mr [BDS] advised the Agent that he wanted to apply for a Partner visa (onshore) as soon as possible, and asked her what the next steps were.⁶⁴ In reply later that day the Agent advised that after reviewing the relevant legislation and policy she determined that the subclass 820 Partner visa was the most suitable option for him, based on his particular requirements. The Agent attached a service agreement and an 820 fact sheet.⁶⁵ Ms [MV] has pointed out Mr [BDS] could not make a valid onshore Partner visa application. He was subject to section 48 of the Act as he did not hold a substantive visa and had been refused a visa since his last entry into Australia. A person subject to section 48 can only apply for a prescribed class of visa, which does include an onshore Partner visa, but only if the visa that was refused was not a Partner visa.⁶⁶ Therefore due to the refusal of Mr [BDS]' subclass 801 visa application, based on his previous relationship, he was not eligible to apply for an onshore (subclass 820) visa.
97. This is not the only inaccurate advice the Agent appears to have given about a subclass 820 visa. On 13 April 2020, in the lead up to applying for judicial review, the Agent advised Mr [BDS] that his 'current 820 visa will extend automatically' as it had done for his review application.⁶⁷ However Mr [BDS]' subclass 820 visa had ceased when his subclass 801 visa application had been refused, almost a year earlier in May 2019.

⁶⁰ Ibid: page 81&82

⁶¹ [redacted]:

⁶² [redacted]: Agent's Annexure DU

⁶³ Ibid: Annexure DE

⁶⁴ [redacted]: Agent's Annexure DO

⁶⁵ Ibid: Annexure DP

⁶⁶ Schedule 1, Item 1248 (3)(e)(i)

⁶⁷ [redacted]: Agent's Annexure CM

98. Based upon all the above discussed in relation to Mr [BDS] I find that the Agent:

- failed to act on her client's instructions by not providing a response to the Department's invitation to comment, as per her service agreement with Mr [BDS]
- failed to provide a response to the AAT's request for more information
- did not provide Mr [BDS] with any written advice on his options, including why a Student visa was not viable
- did not have agreement from the client to not respond to the Department's invitation to comment and further misled the client by stating that she had provided a response
- failed to notify the Department that she was providing immigration assistance to the client as is her obligation under section 312A of the Act
- delayed obtaining information until well past the deadline in response to the AAT's invitation to comment
- failed to advise the client that a hearing was requested, which in turn led to his matter being refused by the AAT
- placed her client in a position of having to represent himself in a process he had no understanding of, and that had no prospects of success
- failed to act in the legitimate interests of her client who was dependant on her knowledge and experience; and
- failed to take all reasonable steps to maintain the reputation and integrity of the migration advice profession.

99. As such I am satisfied that the Agent is in **breach of clauses 2.1, 2.3, 2.4, 2.8, 2.18, 2.19, 2.23, 5.3, 6.2, 10.1B and 10.5 of the former Code.**

Mr [JPS]

The Training visa

100. Mr [JPS] applied for a Student visa on 12 September 2019, the last day of validity of his then current Student visa.⁶⁸ On 18 October 2019, the Department requested that Mr [JPS] provide a comprehensive Curriculum Vitae and GTE statement. He was given 28 days to respond, which was until 15 November 2019. According to Mr [JPS] the advice that the Agent gave to him was to withdraw his Student visa application as it would be refused, and apply for a subclass 407 (Training) visa. Mr [JPS] made the decision not to respond to the Department.

101. On 18 November 2019, the Agent lodged a training visa nomination application for Mr [JPS].⁶⁹ The same day the Agent advised the Department that she had been appointed as Mr [JPS]'s migration agent. The Agent requested an extension of seven business days in which to respond to the Department's request.⁷⁰ In reply the same day the Department granted a 28 day extension, until 16 December 2019.

⁶⁸ Application ID: [redacted]., [redacted]:

⁶⁹ Application ID: [redacted]., [redacted]:

⁷⁰ [redacted]:

- 102.** On 17 December 2019, the Agent requested a further extension of seven business days, citing the distress caused by the loss of a close colleague in the New Zealand volcano eruption.⁷¹ The Department did not respond to the Agent's request until 30 December 2019. They acknowledged the Agent's compassionate circumstances, however the Department declined the extension as ample time had already been given. The Agent replied the same day advising that the evidence would be uploaded 'today', however that did not happen.⁷² The following day, 31 December 2019, Mr [JPS] was invited to comment on information given in the Training visa nomination which indicated that he had been working full time while his course was in session, and hence in excess of his work limitation and in breach of his visa conditions. On 30 January 2020, Mr [JPS] was invited to comment on other adverse information, this time that his enrolment had been cancelled due to non-commencement of studies, due to start on 6 January 2020. In both cases Mr [JPS] was given 28 days to respond.⁷³ In both cases no response was provided to the Department. On 27 February 2020 Mr [JPS] withdrew his Student visa application.
- 103.** On 5 February 2020, a week after the due date for the second invitation to comment, the Training visa nomination was refused as no supporting documents had been submitted with the application, most notably being a training plan and a skills audit. The application indicated that supporting documents would be provided post-lodgement but none were. The Department considered that rather than being a genuine training opportunity to enhance Mr [JPS]'s skills, the position was for the purpose of employment.⁷⁴
- 104.** Mr [JPS] stated that following the withdrawal of his Student visa application the Agent told him that he was on a 'bridging visa E', and that he had 28 days in which to apply for another visa. The Agent would apply for a tourist visa for him, as he needed a 'valid' visa to apply for a Training visa. On 12 September 2019, Mr [JPS]'s Student visa had ceased, according to the Schedule 1 requirements, a Training visa by someone without a substantive visa, must be lodged within 28 days of their substantive visa ceasing. By the time Mr [JPS] engaged the Agent's services in November 2019, this 28 day period had long since passed. However, it seems that he was only told of this requirement more than three months after the Agent advised him to apply for a Training visa.

The Visitor visa

- 105.** On 3 April 2020, the Agent lodged a tourist visa application for Mr [JPS].⁷⁵ This was presumably an attempt to provide him with a substantive visa so he could then apply for a Training visa. The application was lodged electronically however a valid onshore Tourist visa application is required to be a paper application posted or couriered to a specific address. Mr [JPS]'s application was therefore deemed to be invalid.⁷⁶ Even if a valid application had been lodged, he would still have had to apply within 28 days of his Student visa ceasing. As this was not the case, he would have had to demonstrate that he was not the holder of a substantive visa because of factors beyond his control, and that there were compelling reasons to grant him a visa. Mr [JPS] has given no indication that he was made aware of this requirement.

⁷¹ [redacted]:

⁷² [redacted]:

⁷³ [redacted]: and [redacted]: respectively

⁷⁴ [redacted]:

⁷⁵ Application: [redacted]:, [redacted]:

⁷⁶ [redacted]:

106. Mr [JPS] claims that when he contacted the Agent she was not aware that his Tourist visa application was deemed to be invalid, and assured him that he still held a bridging visa. However, the bridging visa Mr [JPS] held in relation to his Student visa application ceased on 3 April 2020, 35 days after he withdrew that application. No bridging visa was granted in relation to the Tourist visa application as that was not a valid application. Therefore, from 3 April 2020 Mr [JPS] did not hold a visa of any kind and was unlawful from that date. He claims that in response to his repeated questions about his status the Agent advised him that he was not unlawful. This persisted until July 2021 when the Agent finally told him that he was indeed unlawful by which time Mr [JPS] had been unlawful for about 15 months. The emails provided by Mr [JPS] support his account.
107. On 11 May 2020, Ms [DS], Mr [JPS]'s wife, asked for confirmation of their status, whether they are on a bridging visa or unlawful. On 28 September 2020, Ms [DS] describes their frustration and fears about their situation, believing that they were unlawful despite the Agent telling them otherwise. Ms [DS] followed up that message about ten days later, and the Agent replied the next day stating that the Agent had just returned from personal leave, and acknowledged that their concerns were completely understandable, adding that their status was the Agent's responsibility. On 19 May 2021, Mr [JPS] asked the Agent to tell him the truth about whether she could solve his situation or not, he also indicated that this had put a great strain on his marriage.
108. During this period the Agent appears to indicate that some action was being taken. On 28 July 2020, the Agent asked Mr [JPS] if he had managed the tasks⁷⁷, and told him that she wanted to get his bridging visa by Friday. On 18 October 2020, the Agent advised Mr [JPS] that the Department had called her about payment for a Tourist visa she asked him to check that they had not already taken payment, and told him that once the payment was confirmed his bridging visa would be provided. There is however no indication that any visa applications were lodged at those times or were attempted to be lodged.
109. Based on the information provided by Mr [JPS] and the Department's records, and no evidence to the contrary from the Agent, I find that the Agent:
- misled the Department that she intended to respond to their invitation to comment, for Mr [JPS]'s Student visa application, when she had no intention to respond
 - failed to adequately advise Mr [JPS] about the requirements for a training visa, particularly about the need to hold a substantive visa to apply
 - failed to ascertain that an onshore Tourist visa application could not be lodged online
 - lodged the Training visa nomination with no supporting documents, which therefore had no prospects of success
 - charged Mr [JPS] for costs that his sponsor was liable for
 - charged for applications that were not lodged and a training plan which she did not produce
 - failed to provide a final statement of services detailing the work she had done and the cost for that work
 - failed to prevent Mr [JPS] and his wife from becoming unlawful, and repeatedly misled them about their immigration status, resulting in them being unlawful for an extended period

⁷⁷ [redacted]: The Agent does not within her email elaborate further on what the tasks are

- failed to act in their legitimate interests and failed to have regard for their dependence on her knowledge and experience
- failed to take all reasonable steps to maintain the reputation and integrity of the migration advice profession.

110. Given the above discussed in regards to Mr [JPS] I find the Agent **breached clauses 2.1, 2.3, 2.4, 2.8, 2.19, 2.23, 5.5 and 7.2 of the former Code.**

Failure to respond adequately to the Authority's requests for information.

The Section 308 Notice

111. Section 308(1) of the Act stipulates that registered migration agents may be required to provide the Authority with specified documents or records relevant to their continued registration. Pursuant to section 308 (1) the Authority may require a registered migration agent to:

- make a statutory declaration in answer to questions in writing by the Authority;
- appear before an individual or individuals specified by the Authority and to answer questions;
- provide the Authority with specified documents or records relevant to an agents continued registration.

112. A registered migration agent is also required to comply with the Code. The former Code outlined professional standards expected of registered migration agents including, but not limited to:

- maintaining sound working knowledge of migration law and procedure;
- following client instructions and informing clients of the progress in their cases;
- making and retaining records relating to client's immigration and financial matters;
- making records available to the Authority for inspection on request.

113. On 1 December 2020, the Authority notified the Agent of the complaints by Mr [BDN] and Mr [BDS]. The Agent was required to provide a response by no later than 4 January 2021. On 15 December 2020, the Agent requested an extension of time to respond until 22 February 2021, citing the need to look after her sons during the school holidays, completing assignments for her legal studies and her involvement in legal proceedings. The Agent's request was granted the same day though only until 27 January 2021.

114. On the new due date, 27 January 2021, the Agent's first legal representative advised that he would be responding on the Agent's [removed for privacy]. He requested a further extension of 28 days to respond. In the Authority's reply, the Agent's legal representative was advised that, as the Agent [removed for privacy], the Authority required an explanation as to how the Agent's clients' cases would be managed [removed for privacy], before the extension request would be considered. In his response the Agent's legal representative advised that another registered migration agent would be managing the Agent's cases with the assistance of the Agent's office. The Authority then raised concerns regarding client confidentiality and whether the clients had consented to such an arrangement.

115. On 4 February 2021, the Agent advised that she had been '*working hard on the responses*' and expected to provide a response by 8 February 2021. The Agent added that a new, second, legal representative had been appointed. However, on 9 February 2021, the second legal representative acknowledged to the Authority that he had not been able to provide the Agent's response by Monday (8 February 2021) but he was confident he could do so by the end of the week.
116. It was not until 17 February 2021, just over a week later, that a response was provided to Mr [BDS]' complaint. There was however no mention of Mr [BDN]'s complaint nor any indication that a response to it was forthcoming. A month later the Authority asked the second legal representative whether the Agent had any intention to respond to Mr [BDN]'s complaint, but no response was ever received either by the Agent or the legal representative.
117. In the section 309 notice, the Authority raised the Agent's failure to respond properly to the Authority's requests for documents, including client files, as set out in the notice issued pursuant to section 308 of the Act. The section 308 notice required the Agent to provide responses to specific questions, by way of statutory declaration. The Agent has, to date, failed to provide the required information in the manner specified in response to the section 308 notice.
118. While the Authority received a response on 17 February 2021, it was not in the prescribed form as requested in the section 308 notice. I acknowledge that the Agent provided a statutory declaration almost one year later, in January 2022, however this was not a sworn declaration. The Agent's failure to provide a proper statutory declaration to the Authority, in response to the section 308 notice, indicates that the Agent does not have a sound working knowledge of relevant legislation relating to migration procedure.
119. Following repeated requests for information from the Authority, the Agent provided a sworn copy of the statutory declaration in March 2022. It is reasonable to expect that as a registered migration agent the Agent would have cause to assist clients with the preparation of statutory declarations and would be aware on the requirements with which it should comply. Furthermore, despite requests for clarification on a number of issues in relation to the statutory declaration, these were not forthcoming.
120. The Agent claimed in her statutory declarations that she was overseas and that her children [removed for privacy] and was unable to have the document sworn. I note that the Agent was well aware of the complaints and the requirements to provide a statutory declaration prior to her departure, and therefore could have finalised the response prior to leaving Australia. The Agent has repeatedly failed to respond properly to the Authority to a number of formal and informal requests since the Authority first notified her of the complaint matters. The Agent's failure to provide the responses and engage with the Authority has unnecessarily hampered and prolonged the investigation into the complaints.
121. Despite the Authority affording the Agent multiple opportunities to provide the client files over the period of the investigation, the Agent failed to submit the requested documents. I consider that the Agent's failure to do so is indicative of a lack of care and attention to detail when responding to the notices, undermining the regulatory function of the Authority. Having access to the records requested pursuant to section 308 of the Act is important to ensure that the Authority's consideration of a complaint is based on all of the relevant information.

122. To date, the Agent has not provided the Authority with the client files requested. The Agent in her statutory declaration has conceded that she has *“not yet provided the hard copy documents to accompany each complaint.”* Furthermore, the Agent appears to apportion blame for not providing the documents on the complainants, and the Authority, wherein she states *“...since there are documents which are apparently in the hands of the complainants (or perhaps MARA) which [she does not] yet have in [her] possession.”*

123. By failing to comply with a section 308 notice, a registered migration agent not only acts contrary to the Code and Australian law, but undermines the purpose and intent of the migration agents’ regulatory scheme and demonstrates contempt for its consumer protection function. Such behaviour is incompatible with the honesty, integrity and moral character required of a registered migration agent. I am satisfied that the Agent’s repeated failure to provide a proper response and client files to the Authority, requested pursuant to section 308 of the Act, has hampered the Authority’s investigation into the complaints, the subject of this decision, and is in breach of her obligations.

The Section 305C Notice

124. Section 305C⁷⁸ of the Act states:

(1) This section applies if the [Migration Agents Registration Authority](#) is considering:

(a) refusing a registration application from a [registered migration agent](#); or

(b) making a decision under section [303](#) to cancel or suspend such an agent’s registration or to caution such an agent.

(2) The Authority may, by written notice given to the agent, require him or her to provide the Authority with prescribed information or prescribed documents within the specified period and in the specified manner.

(3) A period specified in a notice under this section must end at least 14 days after the notice was given.

Note: Section [332H](#) sets out when the agent is taken to have been given the notice.

125. On 20 January 2022, a notice pursuant to section 305C of the Act was issued to the Agent in order for the Authority to obtain record holdings for the complainants which were held by the Agent. The requested documentation, specifically, complete client files and statements and financial documents for monies paid by the clients, were to be provided to the Authority by 8 February 2022.

⁷⁸ Requiring registered migration agents to give information or documents

126. The Agent referred to hard copy documents, as well as electronic holdings such as emails, telephone calls, and social media application chats (WhatsApp) in both her unsworn statutory declaration as well as the two chronology documents provided to the Authority in January 2022. Despite this, the Agent has failed to provide any of the mentioned record holdings or an adequate response to the section 305C notice. The only response provided to the Authority in respect of the section 305C notice were five emails pertaining to Mr [BDS] which were already submitted earlier in the investigation and held by the Authority.⁷⁹

127. The Authority highlighted that failure to comply with a request made pursuant to section 305C of the Act was one of strict liability. This was brought to the Agent's attention within the body of the email which contained the notice, as replicated below:

“Consequences of not providing information or documents

It is an offence to fail to comply with this notice to the extent that you are capable of complying. Failure to comply is an offence of strict liability attracting a maximum penalty of 60 penalty units (see subsection 305C(4) of the Act).

It is an offence to:

- knowingly give information you know is false or misleading in response to this notice unless it is not false or misleading in a material particular; or*
- knowingly omit any matter or thing without which the information is misleading in response to this notice, unless the information did not omit any matter or thing without which the information is misleading in a material particular.*

Giving false or misleading information in response to this notice is a serious offence. The penalty is imprisonment for 12 months (see section 137.1 of the Schedule to the Criminal Code 1995).”

128. Given that the five emails were an inadequate response to address the request made under section 305C of the Act, in the interest of natural justice, the Authority contacted the Agent and her legal representative, the third appointed representative, on 10 March 2022. Noting that the time to respond to the section 305C notice had passed, the Authority sought clarification as to whether any further response would be forthcoming to address the request and the additional questions put forward by the Authority.

129. The Agent provided a response to the Authority's email on 31 March 2022, by attaching a sworn statutory declaration. No further response to the content of the email was received from the Agent or her legal representative. Furthermore, to date, the Authority has received no confirmation from either the Agent, or her legal representative, that the email submissions received on 17-18 February 2021 and 13-14 January 2022 comprised the totality of the Agent's response to the section 309 notice.

130. Clients of migration agents can be among the most vulnerable individuals. As such, the position of migration agent is one of significant trust and therefore requires a high level of moral character. The prevention of abuse of that trust is an important and relevant concern for the Authority in considering an agent's fitness to effectively discharge his or her obligations as a migration agent in accordance with the Code.

⁷⁹ as provided by [LR2] in response to the section 308 notice

131. In light of the matters discussed above, I find the Agent has failed to respond adequately the section 308 and 305C notice issued by the Authority and that such a failure constitutes conduct in breach of the Act and **clauses 2.1, 2.3, 6.3 and 9.3 of the former Code**.

Failure to maintain and secure clients files

132. A registered migration agent is required to keep their clients' documents securely and in a way that will ensure confidentiality. It appears that whatever arrangements the Agent had in place for the relocation to her new office were inadequate for that purpose, to the extent that the Agent lost control of documents that were entrusted to her for safekeeping. No evidence was attached to support the claim or no further explanation was provided as to why the Agent was unable to produce the required client files for Mr [BDN] or Mr [JPS] or provide responses to the questions put forward by the Authority.

Mr [BDN]

133. Mr [PP] has asked the Agent several times for a copy of his file including of the applications that she had submitted to the Department and the AAT. There is no indication that the Agent ever provided these despite agreeing on occasion that she would. Furthermore, there is also no indication that the Agent provided Mr [PP] with a copy of the submission for the second nomination application, which the Agent claimed to have put much work into. The Agent was paid \$1100 for this work and was obliged to provide him with a copy of the submission.

Mr [BDS]

134. According to Mr [BDS], he left his original documents, including his graduation certificates, with the Agent at the time of his initial meeting with her in December 2018, and they have never been returned to him. The Agent, in the response provided by her second legal representative, stated that she had moved out of her [address redacted] office in stages, however during this process it appears that documents and some of the Agent's personal belongings could not be located. Mr [BDS]' documents were some of those that could not be located. Of particular concern to Mr [BDS] were his graduation certificates. However very early on the option to apply for a Student visa was discounted, so these documents should have been returned at that time. Alternatively, and preferably, certified copies could have been made eliminating the need to keep the originals.

135. The Agent has disputed the documents that Mr [BDS] was entitled to on the termination of her services. The Agent told Ms [MV], his new agent, that emails did not fall within the scope of the Code.⁸⁰ The Code does indeed only refer to documents that the client is entitled to however, the Authority's website provides guidance on what documents should be returned to a client, which includes an agent's correspondence with their client, the Department and by inference the AAT.⁸¹

⁸⁰ [redacted]:: Mr [BDS]' further evidence, pages 98 & 99

⁸¹ Returning documents to clients (mara.gov.au)

136. In her statutory declaration response the Agent has conceded that Mr [BDS]' original documents were lost when the landlord disposed of the Agent's belongings after her departure when her lease expired. Several attempts were made to recover all her belongings. The Agent claims that she has located an important document of Mr [BDS]' however the Agent has stated that Mr [BDS] advised her that she could keep the copy "*in case he become famous*". The Agent also stated that she "*failed to provide Mr [PP] with ... a copy of his documents as requested...*" as she was [removed for privacy] by the Department.
137. The Agent has failed to produce any evidence to support her contention that her landlord took possession of her office. Even if she had, this would not absolve her from her responsibility in maintaining adequate arrangements to ensure the safekeeping of her clients' documentation and personal information. Given the Agent's failure to provide the client files, in response to the section 308 notices and subsequently the 305C notice, I am satisfied that the Agent failed to maintain the client files, securely or otherwise, in line with her obligations. A prudent migration agent would have ensured that they responded to the Authority's notice in totality and provided the documentation requested. Conversely, however, the Agent has failed to provide this evidence.
138. In light of the matters discussed above, I find the Agent has failed to maintain and ensure the safekeeping of documents provided to her by clients and that such a failure constitutes conduct in breach of the Act and **Part 6 of the former Code**.

Refunds

Mr [BDN]

139. Mr [BDN] requested that the Agent refund an amount of \$4850, comprising of \$3750 (fifty per cent of services fee) and \$1100 (submission fee). The Agent declined his request stating that she had done a lot of work and had not charged for the second nomination application. The Agent added that she would not refund money for work that she had completed.
140. The section 308 notice requested the Agent provide a copy of a final statement of services that she may have provided to Mr [BDN] or the sponsor. This should have detailed the actual work that the Agent did complete and the cost for that work. The Agent, in her response dated 14 January 2022, advised that she was willing to refund the \$1100 paid by [GCA] Pty Ltd for the last part of her work. The Agent has had ample time in which to provide this refund to Mr [PP] and provide evidence to the Authority that she has done so, however to date there is no indication that a refund has been paid to Mr [PP] or Mr [BDN].
141. Furthermore, I am satisfied that the Agent did not provide a statement of services, and as such I am satisfied that the Agent has **breached clause 5.5 of the former Code**.

Mr [JPS]

142. On 10 July 2021 Mr [JPS] sent the Agent an email terminating her services, and requested a refund of the \$9665 he paid for the Training and Tourist visa applications. He resent his message just over a week later, and again on 28 July 2021, wherein he stated that no visa was applied for and no work was done. On 3 August 2021, the Agent responded to the email and advised Mr [JPS] that she had been on leave, and that she would organise the ‘funds with Accounts as soon as possible’, who would then contact Mr [JPS].
143. As Mr [JPS] stated in his email, no visa applications were lodged on his behalf. There is also no indication that any significant work, if any, was done on his behalf, and no indication that he was issued a statement of services detailing what work was done, if any, and the cost for that work. According to the invoices provided by Mr [JPS], he was charged for various costs associated with the Training nomination application. However, under regulation 2.87 such costs, including migration agent fees, are the responsibility of the sponsor and cannot be transferred to another person. It appears that the Agent facilitated a breach of this regulation. Further, even if such costs could be transferred to Mr [JPS], it appears that the Agent did little work for the nomination. Invoice 0488, dated 9 December 2019, was for a training plan at a cost of \$1400, however neither a training plan or nor any other documents were lodged with the nomination.
144. Despite appearing to agree to Mr [JPS]’s request the Agent has not provided a refund, indicative that the Agent did not actually intend to provide one. In her statutory declaration response dated 14 January 2022, the Agent again stated that she is willing to refund the visa application fee and her professional fee. However, despite the Agent having had ample time in which to provide Mr [JPS] with a refund, she does not appear to have done so.
145. Based upon the above discussed in regards to Mr [JPS], I am satisfied that the Agent had not rendered the contracted services as was not entitled to the associated fees and find her in breach of **clauses 5.5 and 7.2 of the former Code**.

Other considerations

146. The Agent and her legal representatives have raised [removed for privacy]. In January 2021, the Agent’s first legal representative, [LR1], advised the Authority [removed for privacy].
147. Furthermore, the Agent stated, in her statutory declaration, [removed for privacy].
148. In her unsworn statutory declaration, submitted to the Authority in January 2022, the Agent made mention that there was a “*major influence*” in relation to Mr [BDN]’s complaint [removed for privacy]. [removed for privacy] however advises that her legal representative, [LR3], was in the process of arranging [removed for privacy] provide further details to the Authority in due course.

149. The Agent's legal representative raised concerns [removed for privacy]. In her response, dated 31 March 2022, provided in reply to the Authority's correspondence of 10 March 2022, the Agent advised that she [removed for privacy].
150. While the Agent was requested to provide evidence [removed for privacy], I note that this did not appear to prevent her from travelling overseas. Furthermore her trip coincided at a time when her response to the section 309 notice was due. The Agent departed Australia on 4 January 2022 and returned on 22 January 2022.

INTEGRITY, FITNESS AND PROPRIETY

151. Pursuant to paragraph 303(1)(f) of the Act, the Authority may caution a registered migration agent, or suspend or cancel their registration, if the Authority becomes satisfied that the agent is not a person of integrity or otherwise not a fit and proper person to give immigration assistance.
152. There is a degree of overlap between 'fit and proper' and 'integrity' to the extent that fitness and propriety include consideration of the honesty of the actions of an individual.
- 'Integrity' means 'soundness of moral principle and character, uprightness and honesty'.⁸²*
153. 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.
154. At common law, the basic test to determine whether a person is "fit and proper" is known as the "Allinson test". A person is not fit and proper person if his or her conduct "would be reasonably regarded as disgraceful or dishonourable by his professional colleagues of good repute and competency".⁸³
155. In *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321, Toohey and Gaudron JJ indicated several factors that could be taken into account in determining whether a person was 'fit and proper'. These included, but were not limited to, conduct, character and reputation. Their Honours stated (at 380):

[D]epending on the nature of the activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides indication of likely future conduct) or reputation (because it provides indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question.

⁸² See *Re Peng and Department of Immigration and Multicultural Affairs* [1998] AATA 12 at paragraph [26].

⁸³ See *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750

156. 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.⁸⁴

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

- a) the Act which creates offences for misleading statements and advertising, practising when unregistered and misrepresenting a matter; and
- b) the former Code contained within the Agents Regulations which refers to the applicant being able to perform diligently and honestly, being able and willing to deal fairly with clients, having knowledge of business procedure and properly managing and maintaining client records and maintaining client confidentiality.

158. Key elements of the fitness test are:

- the honesty of the person; and
- the person's knowledge of the migration scheme and ability to fulfil the position of a migration agent.

159. The requirement in section 290 that the applicant also be a 'person of integrity' is not concerned with the person's knowledge of the migration scheme or ability as a migration agent, but is primarily concerned with a person's reputation, moral principle and character, including their honesty.

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

- that the Agent's past conduct can be an indicator of the likelihood of the improper conduct occurring in the future;
- the Agent's honesty and competency towards clients, the Department and the Authority;
- a consideration of the context in which the agent works, i.e. the provision of immigration assistance to migration clients;
- the Agent's knowledge and competency in immigration law and practice;
- the reputation of the Agent as a result of their conduct and the public perception of that conduct; and
- the perception of the conduct by the Agent's "professional colleagues of good repute and competency".⁸⁵

161. Having regard to the totality of the Agent's conduct in relation to the complaints and my findings above, I am satisfied that the Agent is 'not a person of integrity or is otherwise not a fit and proper person to give immigration assistance'. Based on the evidence before me, I am satisfied that the Agent:

⁸⁴ See *Cunliffe v Commonwealth* (1994) 182 CLR 272

⁸⁵ *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750

- acted in contravention of the law by failing to notify the Department of her representation as required by section 312A of the Act;
- deliberately failed to act on her clients instructions;
- submitted applications without her clients instruction, knowledge or consent;
- deliberately failed to provide a response to the Department and the AAT;
- engaged in conduct which resulted in her clients becoming unlawful non-citizens;
- failed to display a sound working knowledge of migration law and procedure;
- acted in a manner which unnecessarily increased the cost for her clients;
- failed to act in the legitimate interest of her clients who were dependant on her;
- misled her clients throughout the processing of their applications;
- failed to take all reasonable steps to maintain the reputation and integrity of the migration advice profession; and
- failed to be honest and frank with the Authority by failing to provide the information and documents prescribed in its notices.

Consideration of appropriate disciplinary action

162. In deciding to discipline the Agent under section 303 of the Act I have taken into account all of the circumstances of the case, including the following:

- a) Whether the Agent's behaviour is of a minor or serious nature. The Authority has identified the following behaviour as extremely serious and therefore likely to result in discipline at the higher end of the scale:
 - i. criminal behaviour;
 - ii. fraudulent behaviour;
 - iii. behaviour that demonstrates fundamental lack of knowledge of the law; or
 - iv. involves a blatant disregard for or a significant degree of indifference to the law;
 - v. repeated occurrences of the conduct described in subsection 303(1) (d)-(h) and/or;
 - vi. agent behaviour that has resulted in significant harm or substantial loss to clients.
- b) Any aggravating factors that increase the Agent's culpability including but not limited to previous conduct.
- c) Any mitigating factors that decrease the Agent's culpability including but not limited to evidence that the Agent's health has contributed to the Agent's culpability or where the Agent has undertaken steps to remedy the situation.

Seriousness of behaviour

163. 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. Having regard to the Complaint Classification Matrix, I have considered that the Agent's conduct falls within the Major classification for the following reasons:

- My finding that the Agent is not a person of integrity, or a fit and proper person to provide immigration assistance.
- My findings that the Agent breached the former Code with respect to multiple counts of serious conduct.

- The Agent's own admission that she:
 - i. Failed to issue invoices and receipts to the clients.
 - ii. Failed to inform clients on the lodgement of their applications.
 - iii. Lodged applications with the Department without the knowledge or consent of the clients.
 - iv. Failed to respond to natural justice letters issued by the Department and the AAT.
 - v. Failed to inform her clients that their applications before the Department were refused and to do so in a timely manner.
 - vi. Failed to exercise sound working knowledge of migration legislation.
- The Agent's failure to comply with a number of requests made by the Authority, including those pursuant to section 308, 309 and 305C of the Act, indicative of her attempts to avoid providing information and documents to the Authority, and in doing so, seek to evade culpability for the conduct.

Aggravating factors

164. I consider the Agents conduct falls short of the standard expected of a registered migration agent.
- The Agent hindered the investigation by withholding information and documents, inhibiting the Authority's investigation of the complaint matters against her and unnecessarily delaying the resolution of the complaints.
 - The Agent has attempted to distance herself from her personal responsibilities, as a registered migration agent, and the obligations under the Code by failing to respond to the Authority's requests for information.

165. [removed for privacy].

166. Furthermore, despite [removed for privacy] circumstances may explain factors which contributed to her behaviour, they cannot excuse her consistent failure to exercise care and diligence in her dealings with her clients and the Department. [removed for privacy]. However, she elected to do so nevertheless with adverse consequences for her clients.

Mitigating Factors

167. The Agent has provided the following submissions to be taken into account in making this decision:
- She is a single mother with two children who are in her full time care and are entirely dependent upon her livelihood.
 - [removed for privacy].
 - She has employees who rely upon her to provide them with employment.
 - She has provided many contributions to the migration advice professions namely in the form of a podcast she co-hosts.
 - She is a CPD "provider" for Migration Law Training and provided free seminars during the pandemic and whilst lockdowns were occurring.
 - Along with another agent she has provided sessions helping new graduates of the Capstone course increase their chances of passing the exam.
 - She has assisted other migration agents with complex matters and championed female migration agents.

168. I have taken the above factors into account with regards to my disciplinary decision. I also note that during the period the Authority was awaiting a response from the Agent on the complaint matters, which the Agent argued she was in no position to provide despite being obligated to do so, she was nevertheless able to present CPD events within the industry. Further, she appears to have been able to continue with her podcast and hold free seminars for graduates of the Capstone course. As such, I have given little weight to the matters specifically relating to the Agent's contributions to the migration advice industry.

169. I have also taken into account that a disciplinary decision would affect the Agent's financial earning capacity and livelihood. There is no information currently before the Authority that the Agent has any other sources of income other than her employment as a registered migration agent. As such, I accept that any decision that affects the Agent's ability to practice within the migration advice profession, such as a period of suspension or cancellation, will likely have an impact on her livelihood. I have given weight to these factors in my decision, however I am of the view that this is outweighed significantly by the public interest given the seriousness of the Agent's conduct.

Consumer Protection

170. 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.

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

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

DECISION

Following consideration of the information before me, I have decided to **suspend** the Agent from being registered as a migration agent from the date of this decision for a period **three (3) years**, and until the Agent has met the following conditions:

- a) Evidence that the Agent has properly responded to the notices that were issued to her by the Authority on:
 - i. Notice pursuant to section 308 dated 1 December 2020,
 - ii. Notice pursuant to section 309 dated 1 November 2021 and
 - iii. Notice pursuant to section 305C dated 1 November 2021 and
 - iv. Informal request for information dated 10 March 2022
- b) Evidence that the Agent has completed a total of 10 Continuing Professional Development (CPD) points (as approved by the Authority) for every 12 months that the suspension is in force. The CPD activities are to be completed throughout each year that the suspension is in force and should cover professional standards, conflict of interest and ethics.
- c) Evidence that the Agent has passed the Capstone assessment to assess the Agent's ability to meet the Occupational Competency Standards for Registered Migration Agents;
- d) Evidence that the Agent has successfully completed all of the following private tuition sessions which are conducted by an individual or individuals approved by the Authority and who are accredited immigration law specialists:
 - i. 3 hours of private tuition in Compliance with the Code of Conduct, with specific attention to Ethics and Professional Practice.
 - ii. The Agent is not to accrue CPD points from this private tuition.
- e) Evidence by way of a report from the Accredited Immigration Law Specialist or Specialists who provided the private tuition sessions indicating that:
 - i. they were provided with a copy of this decision before the sessions were conducted, and
 - ii. that the Agent has successfully completed the relevant sessions.
- f) A statutory declaration in Commonwealth form stating that the Agent has not made immigration representations for a fee, has not advertised the provision of immigration assistance and has not given immigration assistance whilst suspended.

Professional Standards Officer
Professional Standards and Integrity Section
Office of the Migration Agents Registration Authority
Department of Home Affairs
Date of Decision: 9 June 2022