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DECISION RECORD

AGENT	Simone Kearney
COMPLAINT NUMBER/S	CMP-39663, CMP-45356
DECISION	Cancellation
DATE OF DECISION	29 June 2023
TERMS USED FOR REFERENCE	Refer Appendix A

JURISDICTION

1. The Authority performs the functions prescribed under section 316 of the *Migration Act 1958* (the Act).
2. The functions and powers of the Authority under Part 3 of the Act and the *Migration Agents Regulations 1998* (Agents Regulations) may only be exercised by the Minister or by a delegate of the Minister. The Minister has delegated the powers under Part 3 of the Act and the Agents Regulations to officers of the Authority. I am delegated under the relevant Instrument to make this decision.

Relevant Legislation

3. 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)).
4. 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

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- an individual related by employment to the agent is not a person of integrity (paragraph 303(1)(g); or
 - the agent has not complied with the Code prescribed under subsection 314(1) of the Act (paragraph 303(1)(h)).
5. 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 the Code.
6. The Code of Conduct for registered migration agents in force at the time of the conduct that is the subject of this decision was the Code of Conduct current from 18 April 2017 (the former Code) (**Attachment A**).

AGENT BACKGROUND

Agent Registration

7. The Agent was first registered as a migration agent on 19 October 2011 and was allocated the MARN 1173899. The Agent's registration has been renewed annually to date, with the most recent registration application submitted on 13 September 2022. A decision is yet to be made on this application.
8. The Register lists the Agent's business name as An Affordable Visa Service Pty Ltd (AVS) located at 2A Derry St, Bentleigh East, Vic, 3165 and with the ABN 46 433 871 105.

Prior disciplinary action

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

ALLEGATIONS – THE AUTHORITY'S INVESTIGATION

10. The Authority received two complaints about the Agent's conduct as a migration agent.

	Reference	Date Received	Complainant
1	CMP-39663	20 September 2018	The Department of Home Affairs
2	CMP-45356	28 June 2019	The Authority

11. Following an investigation into the Agent's conduct, it was alleged that the Agent:
- Failed to act in accordance with the law and the legitimate interests of her clients, contrary to clause 2.1 of the Former Code;
 - Acted without client instructions and without their knowledge or consent, contrary to clause 2.8 of the Former Code;
 - Made statements in support of applications under the Act or the *Migration Regulations 1994* (Regulations) which the Agent knew or believed to be misleading or inaccurate, contrary to section 2.9 of the Former Code;
 - Failed to take all reasonable steps to maintain the reputation and integrity of the migration advice profession, contrary to clause 2.23 of the Former Code;

- Failed to provide service agreements to her clients on multiple occasions, contrary to clause 5.2 of the Former Code.
12. Further, it was alleged that the Agent's actions demonstrated that the Agent was not a person of integrity or otherwise not a fit and proper person to provide immigration assistance as per paragraph 303(1) of the Act.

Allegations - CMP-39663 (the Department)

13. On 20 September 2018 the Authority received a complaint from the Department that the Agent had lodged a nomination application under the Regional Sponsored Migration Scheme (RSMS) where the sponsoring business AOST had no knowledge of the application and had not provided permission for such an application to be lodged.
14. In June 2018, the Department received information from Mr GS, the director of AOST. Mr GS advised the Department that he had received an email on 29 May 2018 from Ms GC of AVS regarding supporting documentation for a nomination application. In her email Ms GC wrote:

"As the application [sic] has been lodged over a year we need to update the financial to avoid a negative decision from immigration: Could we please have:

- *Financial report or Profit and Loss for FY 16/7*
- *last Bases [sic] available after Feb 2017*

The provided financial as were for FY15/16 and Bases up to Feb 17, we need to show immigration that the business is still actively running and can support to sponsor a full time employee"

15. Mr GS advised the Department that he had no knowledge of this nomination application for his business and that he had not employed the nominee, Mr AS. Mr AS was an applicant for a subclass 187 visa. Further, he requested that if any nomination application had been lodged in his business's name, that it be withdrawn.

Notice under section 309 of the Act

16. On 3 April 2019 the Authority sent the Agent a notice pursuant to section 309(2) of the Act, (**Attachment B**) advising that it was considering cautioning, or suspending or cancelling the Agent's registration under section 303(1) of the Act.
17. The Agent was notified that having regard to the information before the Authority, it may be open to the delegate to be satisfied that the Agent:
- (a) had engaged in conduct that breached the Agent's obligations under clauses 2.1, 2.9, and 2.23 of the Code by lodging a nomination application for AOST without the business' knowledge or permission, and was complicit in the creation and provision of false and misleading information and documents to the Department; and
 - (b) was not a person of integrity or otherwise not a fit and proper person to provide immigration assistance.¹
18. The Agent was invited to make a written submission by 1 May 2019.

¹ See paragraph 303(1)(f) of the Act.

19. On 18 April 2019 the Authority received correspondence from the Agent's legal representative requesting an extension of time to respond to the notice. The Authority agreed to an extension until 29 May 2019.

The Agent's response to the first section 309 notice

20. On 29 May 2019, the Authority received the Agent's submission through her legal representative (**Attachment C**).
21. By way of background the Agent stated that:
- (a) AVS included the Agent and her employees. The Agent and her business had been the victims of an apparent fraud, as had AOST.
 - (b) The documents referred to in the Notice were provided to the Agent's business by Mr CT who was working with AOST and acted as an intermediary between AVS and AOST. As such, the Agent and her staff were unaware that the documents provided to the Department were fraudulent.
 - (c) The creation of any fraudulent documents originated outside of the control of the Agent and her staff, who were not knowingly involved in the apparent fraud.
 - (d) She has worked as a registered migration agent since 2011. Since entering the industry, the Agent has been the owner of AVS which operates from her family residence located at [address removed] Victoria. At the time of responding, the Agent employed three staff: two full-time registered migration agents and one part-time administrative assistant.
 - (e) She took a step back from running AVS between June 2016 and February 2019 to: *"grieve the death of her son, to care for physically ill and mentally ill family members, and to care for her then 3-year-old daughter, and to care for her newborn son born in 2018"*.
 - (f) During this period AVS employee Ms RR assisted her to run her migration practice. Her role during this period was *"limited to approximately 1 hour per day to provide general oversight of her business"*.
 - (g) Ms RR commenced working at AVS in March 2016 as an administrative assistant and then as a registered migration agent² from January 2017.
 - (h) Ms RR took carriage of the regional visas at AVS and had 'primary conduct' of the nomination lodged on behalf of AOST and its prospective employee, Mr AS. AVS staff in consultation with the Agent lodged the nomination for AOST.
 - (i) In August 2017 Ms RR ceased working at AVS. Around this period, Ms CG commenced working at AVS as a registered migration agent.³
 - (j) The Agent returned to working at AVS on a full-time basis in February 2019 after receiving full clearance from her psychologist.

² MARN 1678337. The Authority's records show that she was first registered on 13 January 2016 and that her registration lapsed in January 2018.

³ MARN 1791268

- (k) All email correspondence for the AVS is sent to and from her email address simdickenson@hotmail.com to ensure control of all ingoing and outgoing email correspondence.

Mr CT

22. In relation to her interactions with Mr CT, the Agent made the following statements:
- (a) In October 2016 she was contacted by Mr CT who she understood owned a company called The W Group Pty Ltd (W Group). The W Group provided training services to employees sponsored under the Regional Sponsored Migration Scheme (RSMS). The Agent also understood that Mr CT assisted a network of hospitality businesses along the Central Coast of NSW to sponsor employees under the RSMS program and required migration assistance from an experienced migration agent.
 - (b) The Agent and Ms RR travelled to Sydney to meet Mr CT and some of the restaurant owners in his network who required immigration assistance. During this brief visit, the Agent and Ms RR were able to meet two business owners and were given a general overview by Mr CT of the other restaurants that may have required their services.
 - (c) From October 2016 to the time of responding to the first section 309 notice, the Agent's business had provided migration services in relation to 15 applications to the Department for "approximately" 13 businesses that had been introduced by Mr CT⁴.
 - (d) The Agent's business regularly corresponded with the clients and Mr CT by email and telephone. Mr CT would be contacted to assist with obtaining visa and nomination information from these clients. The Agent and her staff were comfortable with this approach as they understood Mr CT had a close relationship with these businesses, it was convenient to contact him because he worked in close proximity to the businesses and could visit them in person, and there had been no issues raised prior to receipt of the complaint.

Nomination for AOST

23. In regard to the AOST nomination, the Agent stated that:
- (a) Between April 2017 and January 2019 AVS prepared, lodged and carried out follow-up work with respect to the nomination for AOST. By coincidence, the Agent's business had also been engaged by Mr AS⁵ to provide him with immigration assistance in relation to his AAT appeal about another visa application.
 - (b) On 10 April 2017 Mr CT sent the Agent an email that contained a number of documents regarding "AOST Cook sponsorship of AS", including AOST's financials. Mr AS was copied on this email.
 - (c) Between approximately 12 and 25 April 2017, AVS emailed Mr CT a request for further information in relation to the nomination. In particular, Mr CT was requested to provide information about the visa status of employees sponsored by AOST, whether the

⁴ The client list provided by the Agent only identified 12 business, including AOST

⁵ Nominee for AOST

position for the cook had been advertised, and updated documents, including a Form 956⁶.

- (d) On 26 April 2017 Mr CT forwarded to her what appeared to be an email chain between himself and Mr GS. Attached to the emails were a number of documents, including a letter of support from W Accountants, Financial Report for financial year ended 30 June 2016, and Business Activity Statements (BAS) for both AOST, and GS, trading as AOST.
- (e) Between 26 April and 1 May 2017, AVS sought further information from Mr CT in relation to salary and outcomes of advertising for AOST. On 1 May 2017, Mr CT emailed a number of documents, including financial information and a lease agreement.
- (f) Between 2 and 5 May 2017 the Agent's business requested further information regarding AOST from Mr CT including a signed Form 956 *Advice by a migration agent/exempt person of providing immigration assistance*, contract for Mr AS, vacancy letter and organisational charts. Mr CT provided a copy of Mr AS's employment contract and signed Form 956 on 5 May 2017.
- (g) On 8 May 2017 AVS emailed Mr CT requesting an AOST organisation chart and salary information for Australian cooks. On or about 10 May 2017, Mr CT forwarded an email chain between himself and Mr GS regarding staffing at AOST.
- (h) On 22 May 2017 the nomination application was lodged on behalf of AOST through the ImmiAccount of AVS. The Agent confirmed that a number of documents were submitted in support of the nomination application through the ImmiAccount on 23 May 2017 including the Form 956 and AOST's nomination application.

Regional Certifying Body

24. The Agent provided the following information in relation to her actions with the Regional Certifying Body (RCB):
- (a) On 19 May 2017 AVS emailed the RCB to conduct an assessment required for the nomination, attaching an application and documents in support of an RSMS for AOST and Mr AS.
 - (b) On the same day, they received email confirmation from the RCB that AOST's application for Mr AS had been received.
 - (c) On 1 June 2017 the Agent received the RCB's approval of the nominated position.
 - (d) The Authority put to the Agent in the first section 309 notice that the RCB had received six applications for AOST since June 2014: five applications for the position of Chef and one for Restaurant Manager.
 - (e) The Agent stated that she had no knowledge of the RCB's advice to the Department until receiving the first section 309 notice. She had received the 1404 form (RCB advice) stating that the RCB had approved the position, and was unaware of any previous applications made on behalf of AOST.

⁶ The form by which a person appoints a registered migration agent, legal practitioner or exempt person.

- (f) The Agent advised that AVS was only involved in Mr AS's nomination, the other five applications must have been lodged by other migration agents. She speculated that concerns with the other applications may have also related to false documents. The Agent argued that it could be possible that the fraudulent documents and information provided by Mr CT to the Agent's business were obtained through parties involved in the five other applications.

Mr GS

25. The Agent made the following statements in regard to interactions with the Director of AOST, Mr GS:
- (a) Between 2 June 2017 and 28 May 2018, AVS took no further action following the lodgement of AOST's nomination application, given the standard waiting period for RSMS visas is typically one to two years.
 - (b) On 29 May 2018, Ms GC contacted Mr GS by telephone to request updated financials regarding Mr AS. It was standard procedure for AVS to follow-up on all applications in their organisational ImmiAccount that were pending for a period of one to two years, because the Department had previously rejected similar visa applications if such information was not up to date.
 - (c) Ms GC recalled that Mr GS could not remember an RSMS visa lodged on behalf of Mr AS but seemed familiar with the fact that RSMS visas had been lodged in the past for other employees. He asked Ms GC to send him an email setting out what information was required and the name of the employee, which Ms GC did on the same day.
 - (d) While Mr GS responded that he *"did not have this candidate at [AOST]"* and enquired why financials were needed in respect of Mr AS, Ms GC recalled that at the time, she did not believe that his reaction was unusual because the nomination application had been lodged one year prior. The Agent asserted that Ms GC was also aware that some sponsoring employers did not know or had not met their prospective employees prior to lodging RSMS applications where a recruiter had placed the nominee.
 - (e) On 30 May 2018, Ms GC forwarded Mr GS's email to Mr CT requesting that Mr CT *"sort the issue out with the owner"*. To which Mr CT replied, *"I will talk to him and fix but please don't ever go direct again without me."*
 - (f) Shortly thereafter, the Agent replied to Mr CT stating *"I am sure you can understand our situation that the employer needs to be aware of all applications. Immigration will possibly call the employer"*. The Agent said she wrote back to Mr CT because she and her staff understood the importance of keeping the employers informed. Mr CT subsequently responded *"of course But still better to go through me first We will have documents hopefully in next few days for you."*⁷

⁷ A copy of this correspondence was provided to the Authority in support of the Agent's submission.

AOST financial report

26. In respect of the financial reports allegedly provided by AOST, the Agent claimed:
- (a) After Ms GC's email correspondence with Mr GS, the Agent's business had no further communication with Mr GS.
 - (b) Mr CT provided updated financials for AOST on 27 September 2018. The Agent provided a copy of this email correspondence in support of her submission.⁸ Since the financials related to Mr GS's business, it was assumed by the Agent and her staff that Mr CT had clarified the issue with Mr GS. The Agent and her staff were *"not concerned about receiving these documents in September as it was common practice for employers to provide financial reports in the months immediately following end of financial year"*. The financial reports were uploaded through ImmiAccount shortly thereafter.
 - (c) On 21 January 2019 the Agent received a natural justice notification from the Department, which she forwarded to Mr AS for his instructions. Mr AS's Form 1446 to request the withdrawal of his visa application was uploaded through the Agent's ImmiAccount on 13 February 2019. The Department notified the Agent that the application had been withdrawn on 16 April 2019.

W Accountants

27. The Agent made the following statements in response to the inconsistencies the Authority had raised in the letter purportedly prepared by W Accountants:
- (a) The Agent accepted the inconsistencies identified by the Authority. She advised that this document had been provided to AVS by Mr CT and was directly uploaded into ImmiAccount once received because the documents *"appeared to be (albeit on a cursory glance) genuine documents sourced by the employer"*.
 - (b) At the time of receiving these documents, it was standard business practice to only review documents to ensure that they were: the documents required by the Department; not in draft form;⁹ and, current and up to date. AVS *"did not undertake the practice of scrutinising documents for forgery or fraudulent activities in circumstances where it did not suspect any fraudulent activity was or could be occurring"*.

Allegations – CMP-45356 (the Authority)

28. On 28 June 2019 the Authority commenced an investigation of the Agent's conduct as a migration agent in light of information received from the Department. This information indicated that eight Employer Nomination Scheme (ENS) nomination applications and corresponding subclass 186 visa applications had been lodged by the Agent without the knowledge or permission of the eight employers.
29. The details of these applications are set out in **Appendix B** to this decision. Further information about the Department's consideration of each of the nomination applications and the corresponding visa applications is at **Attachment D**.

⁸ A copy of Mr CT's email to the Agent's email address containing the SA Pty Ltd financial report was provided to the Authority in support of her response to the first 309 notice.

⁹ The Agent stated that she often received documents that were only in draft form.

Notice under section 309 of the Act

30. On 23 August 2019 the Authority sent the Agent a second section 309 notice advising her that it was considering cautioning, or suspending or cancelling her registration under section 303(1) of the Act.
31. The Agent was notified that having regard to the information before the Authority, it may be open to the delegate to be satisfied that she had engaged in conduct that breached her obligations under clauses 2.1, 2.8, 2.9, and 2.23 of the Former Code. Further, the Agent was advised that it may also be open to find that she was not a person of integrity or otherwise not a fit and proper person to provide immigration assistance.
32. Pursuant to section 309(2) of the Act, the Authority invited the Agent to provide written submissions on the matter by 4 October 2019. Following a request for an extension of time, the Authority agreed to an extension until 31 October 2019.
33. On 29 October 2019 the Agent's legal representative sent a further request for an extension of time to the Authority on the Agent's behalf. The Authority granted a further extension to 7 November 2019 to respond to the section 309 notice.

The Agent's response to the second section 309 notice

34. On 7 November 2019 the Authority received the Agent's response to the second section 309 notice by way of a written submission from her legal representative.
35. In addition to reiterating some of the information about her personal circumstances provided in her response to the first section 309 notice, as relevantly summarised above, the Agent provided information about the circumstances of the lodgement of the applications.

Conduct of business with Mr JN

36. In or around 2015 the Agent was contacted by Mr JN who was seeking a registered migration agent to provide migration services for his business clients. Mr JN informed the Agent when they first spoke that he was a New South Wales based solicitor. Mr JN held himself out as acting in the capacity of solicitor for the eight businesses, which were seeking to employ applicants from overseas. Mr JN's associates included Mr SL, Ms GM, and Mr MH.
37. The Agent and Mr JN met in person around three times in total. Otherwise all communication between AVS and Mr JN and his associates was by email and telephone.
38. After AVS received a request from Mr JN to initiate a nomination application, AVS would request documents from Mr JN. Where the documents provided by Mr JN were not complete or sufficient for the nomination application, AVS would request further documentation from him, and he stated that he would obtain the documents from the respective businesses.
39. The Agent would create and amend documents in support of the nomination applications of the businesses from information and documents provided by Mr JN. This included position descriptions and market salary comparison documents. The documents the Agent created or amended were authentic documents as they were created on the authority and instructions of Mr JN, and then were reviewed and approved by him on behalf of the businesses he represented. In order to provide an expedient service for her clients, she would often create these documents by amending an existing document.

40. At no time did AVS communicate directly with the various business entities. The Agent considered it inappropriate to contact these entities given that Mr JN was acting in the capacity of a solicitor for those businesses, and that it was reasonable to rely on the representations that Mr JN made. She advised that all nominations identified in the second section 309 notice were submitted on the instructions of Mr JN.

Nomination for NCC

41. In September 2015, Mr JN contacted AVS and requested assistance for his client, NCC, to prepare and lodge a nomination application for Ms L. Mr JN informed her that he and his associates were acting on behalf of NCC.
42. On 28 May 2015,¹⁰ Mr JN provided her with company documents identified in Attachment D to this decision. These documents were subsequently uploaded to the Agent's organisational ImmiAccount along with the company description document.
43. In November 2015, AVS emailed Mr JN and asked for further information in respect of the salary for the position.
44. In response to this email, Mr JN stated that "*We have forwarded your query to the company and will let you know as soon as they reply*". The Agent understood from this email that Mr JN was continuing to act on behalf of NCC. The nomination application was approved by the Department on 25 February 2016.
45. On 25 May 2016 the Agent lodged the subclass 186 visa application for Ms L with the Department.
46. On 23 February 2017 the Department sent a notice to the Agent under section 57 of the Act.
47. Shortly after receiving the section 57 notice from the Department, the Agent asked Mr JN about the nomination application. He informed the Agent that the position at NCC was no longer available as the person who offered the position was no longer employed there. When she enquired further, Mr JN said that the position was no longer available as it had taken so long. The Agent stated that she had no reason to suspect that there were any issues as to the need for the position or documents that were lodged.
48. The Agent sent an email to the Department on 21 March 2017 to request the withdrawal of Ms L's subclass 186 visa application and refund of the visa application charge.

Nomination for AGC

49. In late April 2016 Mr JN informed the Agent that he and his associates were acting on behalf of AGC. On 1 May 2016 Mr JN sent some of the documents listed in Attachment D to the Agent. Mr JN's associate, Mr MH, provided the Agent with the other documents on or around 7 July 2016, except for the documents created by the Agent¹¹.

¹⁰ The metadata of the documents state that the dates the documents were created were in August and September 2015. Therefore 28 May 2015 is likely a typographical error. It is unlikely that the documents were provided to the Agent before Mr JN approached her to prepare and lodge the nomination application for NCC.

¹¹ Those documents where the metadata stated the creator as the Agent

50. The Agent realised after lodging the nomination application on 26 May 2016 that financial and training information about the business lodged with the application was incorrect. Upon clarifying this information with Mr JN, she lodged a Form 1023 to correct the answers on 9 December 2016.
51. Following the Department's decision to refuse the nomination on 30 August 2017, Mr JN contacted the Agent a few days later and advised that the business did not wish to proceed with an appeal to the Administrative Appeals Tribunal.
52. The APS invoice dated 21 April 2016 and the various CP invoices and receipts submitted in support of the application were provided to the Agent by Mr JN, in his capacity as solicitor for AGC. She had no reason to doubt the authenticity of the documents provided to her.
53. The Agent created and amended the Corporate General Manager position description for AGC¹² and the 'Market salary comparison' document on the instructions of Mr JN. The metadata properties of these documents listed the author as 'Simone'.
54. The Agent responded to the Authority's concern about the poor quality branding in the offer of employment for Ms X and the undated position description for AGC. She stated that it was common practice for her to create documents such as position descriptions on the instructions of her clients. For the AGC nomination application, she may have transposed the sponsor's logo from the offer of employment into the position description document when creating it. Despite the logo looking somewhat out of place, the Agent considered that the content rather than the appearance of a document was her priority. After creating a document on instructions from Mr JN or his associates, she would send it to Mr JN for approval prior to submitting it.
55. The second section 309 notice raised the inconsistencies in the documents signed by Mr F who appeared to have resigned from AGC two years before the dates on the documents. The Agent agreed that the inconsistency in the dates could indicate that Mr F did not sign the documents. However, her knowledge of the businesses and employees was limited to the information that she was provided by Mr JN, including Mr F's employment status. She was unaware that Mr F was no longer employed by AGC, and had no need to make enquiries to verify the information Mr JN had provided her.

Nomination for KLMS

56. On 23 June 2017 Mr JN sent the Agent an email that contained the documents listed in Attachment D to this decision. The Agent emailed Mr JN on or around 2 October 2017 to advise that there was information outstanding that was required to lodge the application. This information included the payroll details of KLMS. Mr JN responded on the same day to advise that "*You will have all of this by COB tomorrow. Just waiting on some updated information from the client*". Mr JN provided her with the documentation on 3 October 2017 and she lodged the nomination and visa applications on 4 October 2017.
57. There were no further developments regarding the nomination application or subclass 186 visa application until 3 May 2019 when the Department contacted the Managing Director of KLMS, Mr Ly. The Department issued a section 57 notice to the Agent advising that the nomination was not considered to be genuine based on information received from Mr Ly. At this time the Agent was no longer in contact with Mr JN and therefore had no means to verify or validate the information contained in the section 57 notice. She considered the most appropriate action

¹² Which contained "WAMHD" details

was to have the nomination withdrawn. The Department actioned her request for the withdrawal of Mr QF's visa application on 24 May 2019.

Nomination for WAMHD

58. On 27 May 2015 Mr JN emailed AVS stating that a client, WAMHD, wanted to nominate Mr ZL in the position of Corporate General Manager. This email included the documents as listed in Attachment D to this decision. AVS lodged the nomination application on 1 June 2015.
59. The Agent received a departmental request for further evidence to demonstrate the need for the position on 16 October 2015, which included evidence that a vacancy existed and further information on the sponsor's diversification. She contacted Mr JN to inform him of the request and to seek the additional documents. Based on instructions received from Mr JN, she submitted the documents on 29 October 2015.
60. On 29 October 2015 the Department sent a second request for information with a response due by 13 November 2015. On 12 November 2015 Mr JN informed the Agent that his father was ill. On receiving this information the Agent emailed the Department to request an extension of time to provide a response. She referred to Mr JN in her correspondence with the Department as WAMHD's business contact. On instruction from Mr JN she provided further documents to the Department on 4 December 2015.
61. The company documents submitted to the Department for WAMHD contained the signature and details of a registered Justice of the Peace (JP)¹³. As Mr JN told the Agent that the JP had signed the documents, she had no reason to doubt the genuineness of the documentation.
62. The Agent created/amended the undated WAMHD letter under dictation and instruction by Mr JN; and market salary document and a position description document which were approved by Mr JN prior to submission.

Nomination for GCCC

63. In early February 2015 Mr JN contacted the Agent to request that she lodge a nomination application on behalf of his client. Shortly thereafter, AVS received the documents listed in Attachment D to this decision from Mr JN.
64. On 28 June 2015 the Department advised the Agent it had refused the nomination application. On 30 June 2015 the Department wrote the Agent about the visa application of the nominee, Ms G. The Agent contacted Mr JN to inform him of the nomination refusal and the invitation to comment. On the same day Mr JN informed her that as a result of the nomination refusal, GCCC had decided that it no longer wanted to proceed with the nomination. Mr JN did not provide the Agent with instructions regarding the visa application. On that basis, the Agent considered the nomination had failed and the matter finalised.
65. The Director of GCCC, Ms B, advised the Department on 1 November 2017 that she had never sponsored anyone from overseas or appointed any person to lodge an application to the Department on her behalf. The Agent advised that she was not aware of this information and was no longer in contact with Mr JN by 1 November 2017. Her final dealing with Mr JN with

¹³ Justice of the Peace registration number JP #XXXXXX belonging to Ms AA

respect to this application was a telephone conversation on 30 June 2015 about the invitation to comment.

66. As with WAMHD company documents, the documents provided by Mr JN for GCCC were certified by JP Ms AA, the Agent considered it reasonable to presume that these documents had been genuinely certified.
67. In response to the concerns raised by the Authority in the second section 309 notice that the information submitted in the nomination applications for GCCC and CaC, contained identical proposed base salary and guaranteed annual earnings, the Agent conceded that she had created these documents and may have effectively created one document by amending the other.
68. However, the Agent maintained that the information contained in the documents was received from Mr JN. She did not consider that the identical base salary and annual earnings for the two different sponsors was an issue. In fact, it was reasonable as Mr JN had likely provided both businesses the same advice regarding base salaries and guaranteed annual earnings. Regardless, each document created or amended by the Agent was always sent to Mr JN for approval before being provided to the Department.

Nomination for MC

69. In March 2015 Mr JN contacted the Agent to request that she lodge a nomination application on behalf of his client, MC. Shortly thereafter, Mr JN emailed her the documents described in Attachment D to this decision. She obtained all documents submitted to the Department for MC's nomination application, and the corresponding subclass 186 visa application for Mr P, from Mr JN.
70. On 26 October 2015 the Department sent a request to the Agent for more information about the nomination application. The Agent sought further information from Mr JN. Shortly afterwards she was informed that Mr JN's father had become unwell and was hospitalised. On receipt of this information the Agent sent a request to the Department for an extension of time to respond. She confirmed that, aside from a slight amendment to dates, the extension requests for both MC and WAMHD were identical as she received the same instructions. The Agent had no reason to doubt the legitimacy of the circumstances.
71. The Agent did not undertake any further work after notifying Mr JN of the approval in December 2015 of both the nomination application and subclass 186 visa application. AVS was not notified that the Department had been advised by MC on 10 November 2017 that it had never sponsored Mr P or nominated anyone for the position of Corporate General Manager.

Nomination for CaC

72. In early May 2015 Mr JN contacted the Agent to request that she lodge a nomination application on behalf of his client, CaC. Shortly thereafter, Mr JN emailed her the documents described in Attachment D to this decision. The supporting documents were lodged with the Department when the application was lodged on 26 May 2015.
73. The metadata properties for the 'Corporate General Manager' position description and 'Market salary comparison' documents showed the author as 'Simone' or 'Simone Dickenson'. The Agent reiterated that all documents created or amended by her were done so with the approval of Mr JN.

Nomination for PhC

74. In early May 2015 Mr JN contacted the Agent to request that she lodge a nomination application on behalf of his client, PhC. Mr JN informed the Agent that he and his associates were acting on behalf of this sponsor.
75. On 26 May 2015 Mr JN emailed the documents to the Agent (listed in Attachment D) to the Agent which were lodged with the Department at the same time as the nomination application.
76. On 25 June 2015 a corresponding subclass 186 visa application was lodged for Mr KY.
77. The Department refused the nomination application on 11 November 2015. On the same day the Department sent an invitation to comment for the nominee, Mr KY. The Agent states that, when she discussed the matter with Mr JN, he said words to the effect that *"whilst the rejection was unfortunate, the business contact that he communicated with within the company had left and the position was no longer available"*.
78. The Agent submitted that she created and/or amended the position description document on behalf of Mr JN's client, PhC. The Agent acknowledged that it was concerning that the wording: *"obtaining soil and rock samples at different depths across sites and testing samples to determine strength, compressibility and other factors"* was included for the position at the cosmetics company but argued that the *"implication"* of this information being included in the notice was unclear. The Agent argued that the most likely explanation for the job description containing references to duties that were entirely unrelated to Mr KY's position was due to the Agent creating this document by amending a different job description she had previously created but failing to identify and amend the text to reflect the different businesses and roles. She stated that although this oversight was unfortunate, she regularly amended existing job descriptions when she was instructed to do so by a client in order to save time and provide an expedient service to clients. The Agent considers it unfortunate that Mr JN did not identify this error when he reviewed and approved this document.

Response to potential findings raised in the second section 309 notice

79. The Agent confirmed that 'simdickenson@hotmail.com' is her email address and that it is used by AVS to interact with the Department (and often clients). Further, she agreed that the nomination applications and any corresponding subclass 186 visa applications were submitted by AVS and that she was the appointed migration agent for all of the applications discussed within the Notice.
80. The Agent conceded that, based on the Department's contact with the eight business sponsors, there were concerns as to the validity of the documentation submitted in support of the nominations. She accepted the Authority's potential findings that the businesses had no knowledge of the nomination applications she made on their behalf. She submitted that she and her employees genuinely believed that they were acting on the authority of the businesses, given Mr JN's representations that he was their solicitor.
81. The Agent accepted in her response to the first section 309 notice that obtaining instructions from a third-party intermediary without confirmation from the client was wholly inappropriate. However, she argued that as Mr JN had initiated all eight nomination applications as the solicitor acting for the businesses, she considered it inappropriate to contact the businesses directly to confirm Mr JN's representation and instructions.

82. She regarded it as reasonable to have confidence in Mr JN as a solicitor because he was required to be "*honest and courteous in all dealings in the course of legal practice*". The Agent had undertaken many successful applications involving Mr JN's clients, which had contained "*presumably genuine documentation*". It would not have made sense if she had questioned Mr JN's "*bona fides*" in relation to these applications when she had no reason to suspect that he was not acting for the eight businesses. She considered her conduct in acting on the instructions and representations made by Mr JN, as the legal representative of the business sponsors, was "*wholly*" appropriate, and undertaken in a competent, diligent and fair manner.
83. After receipt of the section 57 notice for Ms L on 21 March 2017, the Agent asked Mr JN about NCC's nomination and he provided her with reasonable explanations for the issues raised in the notice. There were no obvious issues with the documents provided and she had not found any conduct by Mr JN troubling. In her experience, the Agent stated that it was not unusual for businesses to lose patience with applications given the vast periods of time between nominations and approvals or rejections.
84. The Agent argued there was no evidence that she intentionally created or amended documents in a way that breached the Criminal Code Act. The documents she created were also not to a similar standard of quality as those provided by Mr JN, which she conceded were likely false. As such, she considered this to be evidence that she was not involved in creating all documents submitted. When the Agent created a document, she would often request a copy of the business's logo from Mr JN, or at times take a screenshot of another document she was provided. This image would then be transposed into the document she was working on. The Agent considered the authenticity of the document came from Mr JN's approval, on behalf of the business.
85. The Authority raised concerns as to the genuineness of documents the Agent had provided to the Department. Of particular concern were the three invoices and two receipts from training providers for the nomination by AGC and the letter of support for PhC dated 22 May 2015 and signed by Mr MR.¹⁴ The Agent stated that these documents were provided by Mr JN in response to requests for more evidence of training.
86. The Agent conceded that a finding that a significant number of documents, including the training receipts, were not genuine, based on the information in the second section 309 notice, would be a "*valid finding*". The Agent argued that at no time was she aware that the documents Mr JN provided her were not genuine. Any documents that she created or amended were on the instructions of Mr JN. The Agent genuinely believed that she was creating the documents on the authorisation of the businesses' legal representative.
87. The Agent considered that she and her employees acted at all times in accordance with the law and the legitimate interests and instructions of her clients. At no time when dealing with Mr JN did she consider Mr JN's conduct to be questionable. The Agent remains of the view that any actions she undertook on Mr JN's instructions, including creating documents, was performed competently, diligently and fairly.
88. The Agent stated that she always received and confirmed instructions with Mr JN via email for each of the eight nominations. However, the Agent's Hotmail account inbox had a limited

¹⁴ PhC advised that they had never employed anyone with the name MR.

capacity and due to the volume of emails sent from and to this account, an employee of the Agent was forced to delete many of these emails to allow space for new ones.

89. The Agent rejected any assertion or implication that she may have made statements in support of an application, which she knew or believed to be misleading or inaccurate, or that she encouraged such statements.

Applications for repeat registration

90. In response to the potential finding that the Agent had failed to disclose that she was unfit to work full-time from June 2016 to February 2019 in three applications for repeat registration, she argued that this was only concerned with her being unfit to work full-time (as opposed to part-time).
91. It was submitted that these statements were in no way inconsistent with the Agent's three applications for repeat registration lodged in 2016, 2017 and 2018. Conversely, the Agent argued that her actions of engaging a psychologist in June 2016 when she was struggling with personal and emotional hardship demonstrated the fitness of her character and to that end, such a course of action should not reflect negatively on her.
92. Despite her not working full-time, at all times the Agent remained a director of the company and retained oversight and control in that capacity. The majority of 'day to day' business was undertaken by her staff who were also qualified and registered migration agents.

The Agent's integrity, propriety and fitness

93. The Agent had struggled to understand what more she could have reasonably done to verify the documents provided by Mr JN, given she believed that he was providing genuine documents as the businesses' solicitor.
94. Further to her response to the first section 309 notice, the Agent has ensured that she obtains written authorisation from clients to communicate through intermediaries going forward, and that she copied these clients into all correspondence sent through intermediaries, even where this is a solicitor acting for the business. Mr JN did not give the Agent any reason to consider that the documents provided by him and his associates may be fraudulent or falsified in nature.
95. The Agent argued that the Authority had provided no evidence to support a finding that she had demonstrated a disregard for the law. In respect of the Authority's potential finding that the Agent had provided misleading information and a significant number of false and misleading documents to the Department, she argued that while the documents may not be genuine she was at no time aware of this fact.

Mitigations

96. The Agent reiterated that her behaviour and actions could still easily be the subject of rehabilitation, and that she has already updated AVS procedures and policies to address this conduct. She also reiterated that she had been forthcoming in both of her responses to the Authority's notices. She regretted the damage her conduct may have caused to the profession's reputation and is disappointed that it now appears there are issues with the authenticity of the nominations and documents submitted to the Department on the instructions of Mr JN.

97. The nominations discussed in both notices represented a very small percentage of the hundreds of nominations that the Agent has worked on and she had an otherwise flawless record.
98. The Agent submitted that the dates of the conduct identified in the Authority's section 309 notices are similar, "around 2015 to 2018" when she played a lesser role in the operation of her business and was experiencing significant hardship. The Agent provided further information regarding her challenging personal circumstances that she raised in her response to the first section 309 notice. She had returned to full-time work and had oversight of all matters and policies.
99. The Agent remained the primary care-giver for her mother and her income from her business is the sole source of income for her family. If the Agent cannot practice as a migration agent in the future, this would impact her three employees, and her family as she would be forced to seek work in other areas, which would take significant time away from her duties as a mother and carer.
100. The Agent submitted that the Authority should consider that the matters identified were isolated incidents that resulted from the Agent relying on the representation of Mr JN.

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

101. Pursuant to section 305C of the Act, on 23 August 2019, the Authority requested that the Agent provide copies of the complete client files including all relevant communication, Service Agreements/contracts, receipts, tax invoices and Statements of Service in relation to the identified nomination applications lodged on behalf of:
 - NCC;
 - AGC;
 - KLMS;
 - WAMHD;
 - GCCC;
 - MC;
 - CaC; and
 - PhC.
102. The Agent was provided until 4 October 2019 to respond to the section 305C notice. A further request for an extension of time was received from the Agent's legal representative. The Authority agreed to an extension until 31 October 2019.
103. On 31 October 2019, the Agent's legal representative provided the Authority with the client files for the eight sponsors identified in the section 305C notice by email. The documents contained in these files comprised email correspondence, particularly with Mr JN, copies of the documents in support of the nomination applications, supporting documents for the nominee, and file notes for the businesses that are listed in Appendix B.

104. These client files did not contain any Service Agreements or written contractual arrangements; receipts or tax invoices; Statements of Service; or direct correspondence between the Agent or her employees, and the employers.

DECISION: FINDINGS ON MATERIAL QUESTIONS OF FACT

105. In reaching the findings of fact discussed in this decision record, I have considered the following evidence:
- Documents contained in the Authority's complaint files for CMP-39663 and CMP-45356, including information and documents provided by the Agent in response to the Authority's two section 309 notices and the section 305C notice;
 - Information held by the Authority in relation to the Agent; and
 - Records held by the Department.
106. Having considered the information before me, I am satisfied the Agent:
- has engaged in conduct in breach of the Agent's obligations under **clauses 2.1, 2.8(a), 2.9, 5.2, 6.1 and 6.1A of the former Code**
 - is not a person of integrity or is otherwise not a fit and proper person to provide immigration assistance as per paragraph 303(1)(f) of the Act.
107. My findings and full reasons for the decision are set out below.

Provision of immigration assistance

108. For the reasons discussed below, I am of the satisfied the Agent gave immigration assistance in relation to the nomination and visa applications that are subject of this decision.
109. Section 306C(1) of the Act defines client as follows:
- A **client** of a registered migration agent is a person to whom the agent has given, or has agreed to give (whether or not in writing), immigration assistance".¹⁵*
110. Section 276 of the Act sets out the circumstances in which a person gives immigration assistance. Subsection 276(2) provides that a person gives immigration assistance if the person uses knowledge of or experience in migration procedure to assist another person by, relevantly:
- (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;
 - (b) or advises the other person about nominating or sponsoring a visa applicant for the purposes of the Regulations.¹⁶

¹⁵ Previously in Regulation 3 of the Agents Regulations

¹⁶ See subsection 276(2) of the Act

111. Departmental records show the Agent was the listed representative for 17 matters comprised of nine nomination applications by employers and eight corresponding visa applications.¹⁷ The Agent's email address was provided as the nominated email address for departmental correspondence and the applications and supporting documents were lodged using the Agent's organisational ImmiAccount, *An Affordable Visa Service*. Moreover, documents provided in support of the applications were either addressed from and signed by the Agent or contained her details as author in electronic document metadata properties. The Agent has acknowledged that she provided immigration assistance through third parties for these applications.
112. The Agent confirmed she submitted the nomination applications, and all the supporting documentation, for:
- AOST;
 - NCC;
 - AGC;
 - KLMS;
 - WAMHD;
 - GCCC;
 - MC;
 - CaC; and
 - PhCs.
113. The Agent also confirmed that she lodged the corresponding visa applications and supporting documentation for Mr AS, Ms L, Mr QF, Mr ZL, Ms G, Mr P, Ms W and Mr KY.
114. Accordingly, I am satisfied that the Agent provided immigration assistance in that she used her knowledge and experience to prepare documents to indicate that the businesses nominated visa applicants for the purposes of the Regulations, for each of the applications that are the subject of this decision.
115. As a registered migration agent, it is reasonable to expect that the Agent would have a sound understanding of the Act as it relates to the provision of immigration assistance. On that basis, it is also reasonable to expect that the Agent would know to whom she had provided immigration assistance and, therefore, who her clients were. It follows that as she did not provide immigration assistance to either Mr JN or Mr CT, they were not her clients in regard to the lodgement of the abovementioned nomination applications. Despite this, the Agent has claimed that the above listed businesses were not her clients, but rather they were the clients of Mr JN.
116. I am satisfied that the Agent should have known that the above listed businesses were the "persons" to whom she was providing immigration assistance and therefore that they were her clients. Having failed to ascertain the instructions of her clients so as to be able to act in their legitimate interests, the Agent has demonstrated a lack of diligence and competence, and has not acted in pursuit of the legitimate interests of her clients, contrary to her obligations under **clause 2.1 of the former Code**.

¹⁷ Seven subclass 186 and one subclass 187 visa applications. No corresponding visa application has been lodged for Ms X in association with the nominated position at AGC.

Lodgement of nomination applications and corresponding visa applications without authority

117. The Department contacted each of the nine businesses because of concerns raised with the genuineness of the nomination applications and supporting documentation. The businesses each advised that they had not engaged any person, nor provided permission or instructions to any person to lodge nomination applications on behalf of their businesses. All of the businesses contacted by the Department advised that they had no intention of sponsoring an overseas worker for the positions identified in the nomination applications.
118. Based on these responses, I am satisfied that none of these businesses had any intention of seeking immigration assistance to nominate workers from overseas to work in positions within their respective businesses. I also find that while Mr GS had authorised the lodgement of nomination applications to sponsor employees, he was unaware of Mr AS, had not made him an offer of employment and had not ever employed him in his business.
119. I am also satisfied that, based on the evidence before the Authority, none of the businesses identified in this decision had engaged the Agent's services, even indirectly through an appointed representative. Those businesses had no knowledge of the nomination or the nominee, and had not authorised the lodgement of a nomination application for their business. It follows that the information and documents submitted to the Department by the Agent were either non-genuine, or genuine but used without the businesses' knowledge and permission.

Failure to obtain evidence of Mr CT and Mr JN's authorisation to act on behalf of the businesses

120. In her responses to the two section 309 notices, the Agent stated that she had relied on the word of both Mr CT and Mr JN that they were authorised to provide instructions on behalf of the identified businesses in relation to the preparation and lodgement of nomination applications and supporting documentation.
121. The Agent submitted that it was reasonable for her to believe that Mr CT and Mr JN were authorised to act on behalf of the businesses because they had produced documents purportedly belonging to the businesses. She also accepted Mr JN's statements to her because he told her that he was a solicitor and was bound by his professional rules of conduct. The Agent stated that it would have been inappropriate for her or her employees to contact the eight sponsoring businesses purportedly represented by Mr JN directly to verify this arrangement. She advised that, in retrospect, Mr CT had only "apparent" but not "actual" authority from AOST to act on the business' behalf.
122. The Agent also submitted that her conduct was reasonable because she had had prior interactions with both Mr JN and Mr CT and lodged many applications on their behalf that had not raised concerns or issues. However, with respect to applications referred by Mr CT, the Agent did not provide sufficient information for the Authority to identify and verify that other referred applications were lodged on the businesses' authorisations.
123. As a registered migration agent, the Agent should have understood who her clients were and her obligations to them. This includes obtaining written instructions from her clients directly, or seeking evidence that Mr CT and Mr JN had the power to act on behalf of those clients. The Agent has provided no evidence that she did so. In respect of AOST, the Agent provided one

email from Ms GC to Mr GS dated 28 May 2018 which is addressed later in this decision. The Agent did not provide any evidence she contacted any of the businesses referred to her by Mr JN. To the contrary, the Agent acknowledged that she did not contact any of the businesses directly to confirm they had authorised a third party to act on their behalf. Nor did she provide any evidence she had asked either Mr CT or Mr JN for evidence of their authority to act on behalf of any of the businesses or the visa applicants. The absence of any corroborating evidence causes me to doubt that the Agent genuinely believed she and her employees were acting with the authority of the businesses and in their interests, or that any such belief was reasonable in the circumstances.

124. The Agent claimed that she accepted Mr JN's instructions because he advised her that he was a solicitor. In the email correspondence with Mr JN the Agent provided to the Authority, there is no evidence that he informed her in writing that he was a solicitor, or provided her with his credentials. The emails the Agent and her employees received from Mr JN and his associates are from assorted private email accounts that do not contain any signature blocks or business branding or information for Mr JN's legal practice. Nor do any other of the documents contained in the relevant client files. Had Mr JN and his associates represented businesses in the professional capacity as an authorised legal representative, it would be expected that their correspondence with the Agent would reflect this arrangement.
125. Clause 2.8(a) of the former Code provided that a registered migration agent must confirm the client's instructions in writing and act in accordance with these instructions. The Agent has confirmed that she did not contact her clients directly to confirm their instructions in writing. Despite this, the Agent has stated she genuinely believed that Mr CT and Mr JN were authorised to represent her clients. I find it implausible that the Agent could have genuinely believed that Mr CT and Mr JN were authorised to represent her clients when she took no action to verify the authorisation with her clients, or that that belief was reasonable in the circumstances. Accordingly, I am satisfied the Agent has not demonstrated the competence and diligence expected of a registered migration agent and I find her conduct to be in breach of **clauses 2.1 and 2.8(a) of the former Code**.

Failure to enter into Service Agreements with the nine businesses

126. The Agent has not provided the Authority with any service agreements or written contracts for the nine businesses in relation to the nomination applications she prepared and lodged on their behalf. Under the former Code, registered migration agents were required to provide clients with written confirmation of the services to be provided, in the form of an Agreement for Services and Fees (Service Agreement).
127. Regardless of whether the Agent thought Mr CT and Mr JN were her clients or if she understood the sponsoring businesses and associated visa applicants were her clients, she should have provided whomever she believed to be her client with a Service Agreement. The Agent has not provided any evidence nor made any statements to the Authority that she did so. In the absence of any evidence to the contrary I am satisfied the Agent did not provide a Service Agreement for any of the nomination or visa applications that are subject of this decision.
128. The Agent's failure to provide any Service Agreements or confirm instructions with any of the clients indicates that she is either lacking in understanding of her professional obligations or disregards them. I find the absence of any written confirmation from her clients and, in particular, the absence of any Service Agreements to be particularly troubling. I am concerned

that the Agent's failure to take even the most basic steps to verify her instructions is evidence of her either being incompetent or wilfully blind to the possibility that the nine businesses may not have genuinely sought her services through their purported third party representatives.

129. For those reasons, I find the Agent has failed to deal with her clients competently, diligently or fairly by not providing Service Agreements and has breached her obligations under **clauses 2.1 and 5.2 of the former Code**.

Did the Agent know the nominations were not authorised by the businesses?

130. The Agent claimed that she acted with diligence and in the interests of her clients; that she had genuinely believed Mr CT and Mr JN; and that she was a victim of their fraudulent conduct.
131. As a registered migration agent, the Agent has an overriding duty to act at all times in accordance with the law, the lawful interests of her clients¹⁸, and her professional obligations. If the Agent had acted in accordance with this duty, she would have sought written confirmation from the businesses that Mr CT and Mr JN were authorised to act as their respective representatives. She would have also entered into written agreements for the services to be provided.
132. The Agent confirmed, however, that she did none of the above. Rather than act in accordance with her professional obligations, the Agent lodged a significant number of applications with the Department at the direction of third parties without taking any steps to verify these purported arrangements with the businesses. For that reason, I do not accept her claim that she acted with diligence and in the interests of these businesses because she has not produced any evidence that she did so. To the contrary the Agent appears to have attempted to abrogate her obligations by blaming Mr CT and Mr JN for her lack of diligence. However, I consider that even if it were the case that the Agent had been the victim of fraudulent conduct by Mr CT and/or Mr JN, that fraud would have been revealed had the Agent complied with her professional obligations and taken even the most basic steps to verify her instructions.
133. The Agent submits, in effect, that she assumed that the intermediaries had access to confidential business documents and that this was sufficient evidence for her to believe that they had authorisation from the sponsors to act on their behalf. She stated that she had not undertaken checks as to whether the confidential business documents, or any other documents she received from Mr CT or Mr JN, were indeed genuine. The Agent expressed the view in her responses that such checking was beyond the scope of what was required of a migration agent.
134. The Agent stated that neither she nor her employees were trained to verify documents received from clients prior to submitting them to the Department, and did not regard this as a professional requirement of the migration advice industry. It was a standard business practice in her migration firm that documents be checked for readability and suitability against the requisite visa criteria or request for information from the Department.
135. The Agent argued that should registered migration agents be obligated to verify documents received as part of their professional duties, the Authority should publish guidance on this as part of the Code. Practice Guides for registered migration agents were available on the

¹⁸ Clause 1.12 of the Code

Authority's website and included information about verifying documents to reduce the likelihood of submitting fraudulent documentation and false or misleading information to the Department. Moreover, had the Agent been in contact with her clients, she could have easily verified the documents with them.

136. I therefore do not accept that the Agent was unaware that it was a professional requirement for her to take steps to verify the genuineness of documents, or that there were insufficient resources available to her providing guidance on this. By not checking documents, nor verifying her instructions, the Agent risked lodging misleading or inaccurate documents or statements in support of applications to the Department.

AOST

137. In the first section 309 notice, the Authority highlighted that some documents submitted by the Agent in support of the nomination application for AOST appeared to have been fraudulently created or altered or contained false or forged signatures. The Agent was advised that the Form 956, the employment contract, the financial report from SA Pty Ltd, and the letter from W Accountants had irregular signatures. The Agent agreed that those documents submitted for AOST were not genuine.
138. The Agent argued that Mr CT had provided all the documents to her and that neither she nor her employees were aware that they were not genuine. In support of this, the Agent provided the Authority with copies of email correspondence sent by Mr CT to her email address containing these documents. As already discussed, the Agent did not provide a Service Agreement for either AOST or Mr AS, nor did she obtain written instructions from her clients that Mr CT was authorised to represent them. In the absence of having taken steps such as these, I do not accept as credible the Agent's submission that she was satisfied the provided documents were genuine without an attempt to verify them in any way.
139. The Authority advised the Agent that the W Accountant's support letter was an altered copy of a genuine letter submitted by a different registered migration agent for an earlier nomination application for AOST. The alterations to this document were obvious due to inconsistencies in the fonts used and the original wording remaining visible underneath the inserted text boxes. The document submitted to the Department by the Agent was still in its editable form, enabling the Authority to remove the added text. The Agent argued that the document had been directly uploaded to her ImmiAccount and "*appeared (albeit on a cursory glance) genuine*", though it was not her practice to scrutinise documents for fraud.
140. Given the poor quality of this document, it would be reasonable to expect that a diligent registered migration agent would have immediately seen that the document contained alterations to the original document and would not have submitted it. However, it is clear from the client files provided by the Agent that she and her employees were aware of the amendments to this document and submitted it regardless.
141. Mr CT sent the unedited version of the W Accountants letter to the Agent's email address on 26 April 2017¹⁹. It contained the wording "*It is my opinion the business could currently support*

¹⁹ Being the same that was previously submitted to the Department by a different registered migration agent for a different client.

another full-time employee at a salary of \$41,000.00 plus 9.5% superannuation.” On the same day, the Agent’s employee Ms RR responded asking *“is the role only paid being \$41,000 full time?”* Mr CT responded *“will change contract”*. Ms RR responded that the salary was on the *“accountants letter”*. Mr CT stated that he *“will fix that one. Will go there now and have for you later today”*. However, on 1 May 2017 Mr CT sent the amended letter containing the sentence *“In my opinion, this business can easily support three sponsored employees earning \$55,000 each plus entitlements”* placed over the original text to the Agent’s email address, alongside the original version of the document.

142. I do not accept as credible the Agent’s submissions that this document was perceived, even cursorily, to be genuine, as it is clear that Ms RR had examined the original letter and raised concerns with its contents with Mr CT. The Agent then received the poorly altered version of the letter stating a higher salary for Mr AS five days later. Further, both the altered version and the original letter were included in the email sent on 1 May 2017. If the Agent or her staff member compared the two documents the substandard amendments to the later document would have been obvious. The Agent, or her employees, should not have submitted the altered version of the document until they had verified the authenticity of the document. The Department’s records show this particular accountant’s letter of support was provided by a different registered migration agent, with no link to the Agent, in support of a nomination application for a different position and nominee. The Authority has confirmed with Mr GS that he had authorised this other nomination application for a genuine position.
143. Having regard to the poor quality of the alterations made to the document, I am satisfied that it would not require any expertise to identify that it had been altered. Further, I consider that the nature of those alterations would have led a person exercising reasonable diligence to form the view that a business with a genuine position would have requested their accountant to provide an original letter in respect of the business’s finances, not a document with such obvious alterations. On its face, the document should have raised sufficient doubt about its authenticity for the Agent to verify it with the client. There is no evidence that she did so.
144. In addition, Mr CT’s statements in his email correspondence with AVS that he would change the employment contract and fix the accountant’s support letter should also have raised doubt in the Agent’s mind about the document’s authenticity.
145. For these reasons, I do not accept that the Agent or her employees simply failed to act diligently in their examination of the document from W Accountants. Rather, I find that the email correspondence with Mr CT demonstrates the Agent and her employees were aware, or should have been aware, that the document had been amended but elected to do nothing. I am therefore satisfied that it is more likely than not that the Agent knew, or ought to have known, that the document had been altered by someone other than W Accountants and, without verifying its authenticity, submitted it to the Department knowing it was more likely than not a non-genuine document.
146. The Agent’s employee, Ms GC, was *“aware that some sponsoring employers do not know or have not met their prospective employees prior to lodging an RSMS application in circumstances where a recruiter has placed the applicant.”*²⁰ Even if that is the case, it is reasonable to assume that the business should have still been responsible for determining and approving the salary and employment conditions prior to sponsoring them, regardless of how

²⁰ CMP-39663

the person was recruited. I am concerned by the fact that this did not prompt the Agent to make any enquiries of AOST.

147. The correspondence between the Agent's office and Mr CT demonstrates that AOST was excluded from this process. As this was the case, it would be expected that a prudent registered migration agent would have sought to verify with the business that the nomination was genuine.
148. Amongst the other documents emailed by Mr CT to the Agent on 1 May 2017 was an undated letter from AOST titled "*need for nominated position*" for a different nominee, Mr BT for the position of Chef. Ms RR sent a request on 4 May 2017 to Mr CT to provide a vacancy letter with Mr AS's name and role, as only letters for other nominees had been received. On 5 May 2017, Mr CT sent an altered version of the original letter for BT, with both the name and role amended, to the Agent's email address. The Agent submitted this document to the RCB on 19 May 2017.
149. The document contained similar alterations to those in the W Accountants letter, which were clearly noticeable at a cursory glance. Of particular note was the use of text boxes containing different fonts placed over the name of the nominee and the nominated position stated in the original document. The Agent stated that there was no reason to suspect that the discrepancies in the documents were indicators that some of the documents were fraudulently produced. However, I am satisfied that the email correspondence and the Agent's statements show that the Agent and her employees were aware, or should have been aware, that an existing document for a different nominee had been altered to specify Mr AS. Even if I could accept that this one document had been altered by the sponsor for expediency, the combined effect of this document and the obvious alterations to the document purportedly from W Accountants should have raised sufficient doubt with the Agent that she took action to verify whether or not the nomination was genuine. I am particularly troubled by her inaction in these circumstances.
150. On 29 May 2018, the Agent's employee, Ms GC, emailed Mr GS to request updated financial documentation to support AOST's nomination application for Mr AS. Despite Mr GS telling Ms GC that he had not employed Mr AS nor authorised a nomination application for Mr AS, the Agent accepted Mr CT's response that Mr GS was confused about the nomination and that he would talk to him and "*fix*" the issue. Subsequent to this, the Agent continued to submit documents to the Department provided by Mr CT such as the financial report purportedly prepared for AOST by SA Pty Ltd.
151. Despite the Agent's statement that she cautioned Mr CT that an employer should be aware of all applications, she continued to lodge documents in relation to AOST's nomination application after Mr GS had advised Ms GC that the business may not have authorised the nomination. The Agent has made no statements or produced any evidence that she contacted AOST to satisfy herself that Mr GS was aware of the application for Mr AS, nor did she seek to verify Mr CT's appointment or his instructions following Mr GS's email.
152. Even though the Agent had received documents from Mr CT that should have led her to question whether or not the nomination was genuine, she continued to submit documents provided by Mr CT to the Department in support of the AOST nomination application.
153. I am satisfied that there was sufficient information available to the Agent to at least alert her to the possibility that the nomination application for AOSTs was not genuine. That information included two obviously altered documents and correspondence from AOST that they were not aware of the nomination, following which Mr CT said he would "*fix*" things. For that reason I do

not accept that the Agent believed the nomination application for AOST, was genuinely authorised, or that any such belief was reasonable in the circumstances.

Applications referred by Mr JN

154. In its second section 309 notice to the Agent, the Authority advised that its analysis of the subject eight nomination applications had found a significant number of documents:
- appeared to have been created or amended by the Agent;
 - contained false or copied signatures;
 - were presented as company documents with poor quality versions of the businesses' branding;
 - included details and signatures of persons who had never been employed, or were no longer employed, by the businesses; or
 - contained inflated salaries and incorrect details about duties of the positions.
155. The Agent conceded that it appeared that much of the information and many of the documents she had received from Mr JN were not genuine. Even so, the Agent reiterated that despite this, she believed that Mr JN was authorised to provide instructions on behalf of the eight sponsors and that there were no concerns raised with the genuineness of the documents at the time she lodged them with the Department. The Agent also argued that Mr JN had approved the contents of the documents she created or amended prior to her submitting them to the Department. She argued that she had believed that all these documents were authorised by the sponsoring businesses, and she had relied on the instructions, information and branding received from Mr JN.
156. It is unclear how the Agent's belief could reasonably be sustained given that she made no attempt to verify Mr JN's authority to represent any of the respective businesses. Indeed, she stated that it was inappropriate to do so as she was dealing with a solicitor²¹. I do not accept that the Agent could have been reasonably satisfied that she had legitimate authorisation to undertake this work without being provided with any evidence to the fact. This is particularly in circumstances where the Agent's professional obligations required her to provide her clients with an Agreement for Services and obtain written instructions, as detailed above.
157. Instead, I find that the Agent's failure to treat these businesses in accordance with her professional obligations and responsibilities is demonstrative that she was willfully blind to the fact, or that she knew, that the nominations were not authorised.
158. The Agent argued that it was common for her to be provided with substandard documents that had been badly written or badly scanned. She also argued that the documents with poor quality company branding were provided to her by Mr JN to prepare documents on behalf of the business. Despite these claims, I do not accept that a business genuinely nominating an employee would use poor quality images of their branding on documents when it would be much simpler for them to use the original versions. Nor do I accept that it is usual for a business to request that a registered migration agent manufacture their branded business documents.

²¹ A check on the NSW Law Society website shows Mr JN is the Principal of a law practice.

159. Furthermore, I am satisfied a diligent agent would have questioned these documents and contacted the sponsor to verify their validity. The Agent has provided no evidence that she questioned their validity with Mr JN or that she contacted the sponsor. Nor has the Agent provided any evidence as to how she satisfied herself that these clearly substandard documents were genuine.
160. Given that none of the eight businesses were aware of the respective nomination applications, I am satisfied that the poorly branded documents were not legitimately obtained from any of the businesses by Mr JN, his associates, or the Agent. I am also satisfied that the quality of those documents should have led the Agent to doubt their authenticity and to seek instructions directly from the sponsors. However, the Agent has not provided any evidence to suggest that she questioned the authenticity of the documents, or otherwise took any step to verify her instructions.
161. The Agent's actions in relation to the creation and amendment of documents that should have been provided by the sponsor was not simply reckless or negligent, but shows, on balance of probability, that she knew, or ought to have known, that the nominations were not genuine. Indeed, those actions show that she took deliberate and active steps to create documentation on behalf of a business with which she had had no contact. It follows that I am satisfied the Agent was complicit in the production and submission of false and misleading information and documents to the Department for all eight of the nomination applications referred to her by Mr JN.

AGC and WAMHD

162. Despite advising the Authority that Mr JN had contacted her in late May 2015 to request that she lodge a nomination application on behalf of AGC, the Agent provided no evidence of these interactions, the instructions provided by Mr JN, or evidence of the business authorising him to act on their behalf. She also failed to produce the email she allegedly received from Mr JN on 27 May 2015²² stating that WAMHD wanted to nominate Mr ZL in the position of corporate General Manager. The Agent's client files also lacked any evidence of the client's instructions or Mr JN's authorisation to act. It is, therefore, unclear how the Agent has recalled the specific date she was first approached by Mr JN in relation to WAMHD nomination some four years after the fact.
163. The Agent has not provided any explanation for this and in the absence of any evidence to the contrary, I do not give the Agent's explanation in this regard any weight, which in turn causes me to doubt her credibility more broadly.

PhC

164. The Agent advised the Authority that Mr JN contacted her to request that she lodge a nomination application on behalf of PhC. She has not provided any information as to when Mr JN made this request nor has she provided any written records of her contact with Mr JN, or client instructions that Mr JN and his associates were authorised to act on behalf of PhC. The Agent claimed that Mr JN provided her with documents on 26 May 2015. However, she has

²² Five days prior to the date the nomination application was lodged (1 June 2015).

not provided any record to substantiate this claim. Departmental records show that the nomination application for PhC was lodged on 26 May 2015 and the first supporting documents were submitted on 27 May 2015.

165. The PhC offer of employment letter for Mr KY dated 23 April 2015 and submitted to the Department in support of the nomination included the duties: *“obtaining soil and rock samples at different depths across sites and testing samples to determine strength, compressibility and other factors”*. These duties were inconsistent with PhC’s beauty and skincare business. This was noted in the refusal of the nomination application sent to the Agent on 11 November 2015.
166. In her response to the second section 309 notice, the Agent acknowledged that she was the author of the letter of offer from PhC purportedly signed by Mr MR. The Agent offered an explanation for the job description containing references to duties entirely unrelated to the position being that she would have created this document by amending a previously created letter of offer for a different nomination application containing the identified job description. In doing so, she had likely overlooked amending this wording, which was an unfortunate oversight. Nonetheless, Mr JN had approved the position description when she sent it to him, on behalf of the business. The Agent stated that she regularly created documents from templates or amended existing job descriptions when she was instructed by a client to create documents for them in order to save time and to provide an expedient service to her clients. The Agent considered it was reasonable to provide document creation services for sponsors to support the lodgement of nomination applications.
167. The Agent claimed that the employment document she created was signed by the purported General Manager, Mr MR. However, the business advised the Department that no one named MR had ever been employed by PhC. The version of the letter of offer of employment provided to the Department was unsigned by Mr Richmond but signed by Mr KY, while the Agent only had the version signed by both parties on her client file. Inconsistencies such as this raise questions as to whether the Agent has been forthcoming in her interactions with the Department and the Authority.
168. The client file the Agent provided to the Authority for PhC’s nomination application does not contain any evidence that Mr JN or his associates instructed her to create the letter of offer on behalf of PhC. Nor is there any evidence that the Agent sent the draft document to Mr JN for review or of Mr JN approving it. In keeping with her recordkeeping obligations as a registered migration agent, the Agent should have ensured records of all of her correspondence with Mr JN, as the purported authorised representative of her client. Likewise, the client file should have contained evidence of all instructions and documents received from Mr JN. The Agent, however, has not demonstrated to the Authority that she maintained any such records, despite being required under section 305C to provide complete client records.
169. As part of their service to clients, registered migration agents may provide guidance to their clients to assist them to prepare requisite documents in support of applications. This can include assisting clients to prepare documentation specifically required for a nomination application such as those addressing the need and genuineness of the position. However, if a business genuinely sought to employ a person in a position, it would be reasonable to expect they would provide their nominee with their own letter of offer either directly or through an authorised representative. While the Agent has not provided evidence that she was instructed by Mr JN to create a letter of offer for PhC, the claimed request should have alerted her to question why the business had not issued a letter of offer themselves and prompted her to confirm Mr JN’s authority to act on their behalf. Her failure to do so demonstrates at best, a

significant lack of diligence by the Agent, or otherwise that she suspected, or was aware, that the nomination application was not genuine.

170. The Agent provided the Authority with email correspondence regarding PhC's nomination application including the Department's refusal of the nomination. Following receipt of the refusal decision on 11 November 2015, the Agent emailed Mr JN's associate, Mr SL, to advise that *"The job offer had some dodgy position description... Dodgy Bastard... All future application have the position description removed and we do them ourselves..."* It is unclear whom the Agent is referring to as the "Dodgy Bastard", though I note that she stated in her submission that she had received information and documents for this nomination application from Mr JN, and that he had approved any documents she had created or amended.
171. The Agent's statements in this email about position descriptions suggests that she knew there were concerns with the genuineness of the documentation and information provided. Her response implies that she received the job description information from Mr JN, which conflicts with her other statement that she created the letter of offer for PhC using an existing letter of offer for a different business and nomination application, which accounted for the wrong description being used. For this reason, I am concerned that the Agent has not been entirely honest in her response to the Authority.
172. Contrary to her submission that the purpose of amending existing job descriptions was to save time for her clients, the Agent's comment that she needed to remove position descriptions from applications and *"do them ourselves"* indicates that she was aware that there were concerns about the accuracy of the information she was receiving from Mr JN. Had PhC, or their 'authorised representative' reviewed the letter of offer, they would have clearly identified that the offered position had duties relating to a different industry. There is no record in the Agent's files that she addressed this further with Mr JN or his associates in relation to this nomination. Instead, she continued to create and amend documents for other applications on the instructions of Mr JN.
173. The Agent's electronic client records for PhC contained documents for two other businesses: FFD Pty Ltd and BC Pty Ltd. These documents were enclosed in a folder titled *"Dont upload"*, referencing submission to the Department through ImmiAccount. Included was a letter of offer purportedly from FFC and addressed to Mr KY who was also the nominee in the PhC application. The employment offer, dated 23 April 2014, was for the position of Corporate General Manager/Engineering with a salary of \$182,000, and marked in the Agent's client file as *"do not use"*.
174. This document contains electronic amendments that were made more than a year after its creation, using different fonts which are in the same style as the amendments to the W Accountants letter submitted for the AOST nomination.²³ The Agent had attributed the source of the W Accountants letter to Mr CT in her response to the first section 309 notice. Other than the Agent herself, there is no known link between FFD, Mr KY or Mr CT. As such, it would appear that she is the only link between the two similarly amended documents, and I therefore find that she is responsible for both of the amended documents.

²³ The document's metadata shows that it was created on 24 April 2014 but edited on 21 August 2015.

175. In comparison, the letter of offer on the file for PhC, dated 23 April 2015, was for the position of Engineering Project Manager with the same salary of \$182,000. Publicly available ANZSCO occupation descriptions regard these positions as requiring different skills and qualifications. A Corporate General Manager is a substantially higher level occupation and more highly paid than a project manager.²⁴ However, the Agent, who had lodged “hundreds” of nominations, and had copies of both offers, did not question why these employment agreements, purportedly issued a year apart for same nominee, would be for very different roles yet attract the same salary. I consider it implausible that the nominee, Mr KY, would have applied for and accepted an offer for a substantially lower position with PhC, a year after it appears he purportedly received an offer for a position of a Corporate General Manager with a different employer. The Agent has not satisfactorily explained the existence of these documents on her computer files.
176. In light of the above, I am not satisfied that the Agent was unaware that the documents she prepared and/or provided to the Department were not genuine. I consider this, combined with her failure to verify Mr JN’s appointment, and the instructions and documents she received from him, and the incomplete client file, indicates she knew PhC was not involved in the nomination process.

KLMS

177. The Agent did not provide complete email correspondence or any evidence of financial transactions or documentation with the client files requested under section 305C of the Act. In particular, the Agent advised the Authority that she received an email from Mr JN dated 23 June 2017, which contained documents for the nomination application but the Agent did not provide a copy of this email to the Authority. The client file contained email correspondence for KLMS showing inconsistencies in the salary for Mr QF (the nominee), along with other anomalous information.
178. Mr Ly from KLMS advised the Department that he had no knowledge of the nominations or the nominees and had not authorised the lodgement of these applications. Despite this being the case, on 3 June 2017, the Agent received an email from an associate of Mr JN, Mr MH, which contained an unsigned letter of offer from KLMS for Mr QF. Mr MH asked the Agent to confirm whether “*this is suitable and I will arrange for the Nomination documents to be prepared and sent to you*”. The Agent has not provided any evidence that KLMS authorised either Mr MH or Mr JN to act on their behalf. Nor did the Agent provide any evidence that she attempted to do so.
179. The letter of offer dated 2 June 2017, purportedly from KLMS, advised that the commencing salary for the position of Engineering Manager was \$182,000 with 9.5 percent superannuation. The Agent responded on 12 June 2017 advising “*We would like to proceed. Please forward the relevant documents for the nomination and let us know how to pay*”. Mr MH subsequently provided more documents, as well as the bank account details belonging to BCS for payment.

²⁴ Payscale and average salary information on publicly available websites show the salary in the Formscaff offer to be within a suitable range but the Project manager average salary statistics in Australia were less than \$100, 000.
[https://www.payscale.com/research/AU/Job=Project_Manager%2C_\(Unspecified_Type_%2F_General\)/Salary](https://www.payscale.com/research/AU/Job=Project_Manager%2C_(Unspecified_Type_%2F_General)/Salary)

Publicly available company information shows that Mr JN was the sole Director, Secretary and shareholder of BCS²⁵.

180. The lack of comprehensive client records provided by the Agent has inhibited the Authority's investigation of this matter. As such, I cannot make a finding as to whether Mr QF or an intermediary provided any benefit to Mr JN for his nomination.
181. Nonetheless, this information raises questions about the arrangements between the Agent and Mr JN that extended over a number of years. It is possible that the Agent was paid professional fees for the services she provided over a number of years to the eight businesses purportedly represented by Mr JN. However, no evidence of this has been provided to the Authority. To the contrary, the only evidence the Agent has provided suggests she was making payments to Mr JN to procure nominations and supporting documents.
182. I have also considered other anomalies contained in correspondence between the Agent, Mr MH, Ms VS of S Consultant Services Pty Ltd (a skills assessment, recruitment and training consultant) and Mr SB (who appears to be a third party representative of the nominee Mr QF). The anomalies these emails present include the visa applicant paying the purported sponsoring company's advertising fees (September 2017) some three months after his letter of offer from KLMS was supposed to have been signed (June 2017) and that none of the correspondence included KLMS or Mr QF. Of note:
- On 30 August 2017, Mr SB advised Ms VS that *"Simone and I decided to post ads for Mr [QF]"*. Ms Sherry responded the following day to both Mr SB and the Agent to request that the Agent send her *"the details for the advertising"*. The email correspondence shows the Agent and Mr SB contacted Mr JN to obtain information about KLMS and subsequently forwarded this to Ms VS.
 - On 15 September 2017, Ms VS contacted Mr SB (with a copy to the Agent) to ask whether she was charging the costs for the position advertisement to the *"client"*. Mr SB responded on the same day with *"Yes please. I will forward the cost. I'm not sure what's the best way of advertising, but I think Seek may be suitable because the company used Seek before and it will make sense they use it again. Please get advise from Simone as well [sic]"*. He subsequently advised Ms VS to invoice Mr QF for the costs.
 - On 22 September 2017, Mr SB emailed the Agent the letter of offer signed by Mr QF (dated 2 June 2017) in which he advised her that *"we need to finalise the wage and ask the sponsor to change it on the offer"*. Ms VS also emailed the Agent on the same day and asked for an update on the salary for Mr QF. The subsequent email from Ms VS on the same day stated *"Thanks Simone. I will advertise \$80 -\$100K"*. The client file did not contain any evidence of what advice the Agent had provided to Ms VS.
 - On 3 October 2017, Mr MH sent a re-issued letter of offer for Mr QF to Mr SB and the Agent. The new unsigned letter of offer contained amendment to the salary from \$182,000 down to \$89,000.
183. As the Agent was included in this correspondence, and according to Mr SB's email, agreed to posting *"ads"* for the position, I am satisfied that she was aware of an arrangement for the nominee to pay for the publication of a recruitment advertisement for his position. As she had

²⁵ The company was deregistered by the Australia Investments and Securities Commission on 24 November 2019.

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already seen the letter of offer, I cannot think of a legitimate reason as to why the Agent agreed to the running of an advertisement some 3 months after the offer was supposedly made to the nominee. Further, if the nomination was genuine, it is unlikely that a genuine nominee would agree to a decrease in salary of almost \$100,000 for the same position and ostensibly the same nomination.

184. I am satisfied that this email correspondence confirms Mr Ly's statement that KLMS had no knowledge of the nomination and visa applications. Furthermore, I am satisfied that the correspondence indicates it more likely than not that the Agent acted to procure a permanent visa for Mr QF through a non-genuine nomination application for a position vacancy that did not exist. Moreover, I am also satisfied that it is more likely than not that the Agent was a willing participant in the lodgement of a non-genuine application to the Department.
185. I am also satisfied that the Agent had an active role in the production of the non-genuine letter of offer for Mr QF. The Agent's electronic client file records show that she extracted and stored the signed page from the original offer, and then inserted this into this new offer. In the Agent's records, she referred to the versions of the documents of this extracted signature page as "merged" and "Signed Letter of Offer from both". I consider that this is evidence that the Agent amended the new offer document by inserting a copy of the old signature page into the document, without requesting that the business sign the updated offer.
186. The Agent has not provided a plausible explanation as to why it would be reasonable to accept that the nomination and position were genuine given the anomalies discussed above.
187. I consider that the communications between the Agent, Mr SB, Ms VS and Mr MH in these emails evidence that decisions that would belong to the sponsor in a genuine application were made by people who had no authority to do so. I am therefore satisfied that the Agent was aware that the position purportedly offered to Mr QF was not genuine and that the amended offer of employment submitted by the Agent to the Department in support of the nomination was false and misleading. The Agent has provided no evidence to convince me otherwise.

NCC

188. On 1 September 2015, the Agent lodged a nomination application on behalf of NCC with Ms L as the nominee.
189. The Agent stated that Mr JN contacted her in September 2015 to advise he and his associates were acting on behalf of NCC. However, the Agent has not provided any evidence of this interaction in the client file. Nor has she provided any written confirmation of this correspondence or instructions from either NCC or Mr JN.
190. Ms L was nominated for the position of Education Manager with a base salary of \$189,000 and guaranteed total earnings of \$206,955. File notes of email correspondence provided by the Agent in response to the section 305C notice show that an employee of the Agent, Ms Mc, emailed two of Mr JN's associates, Mr SL and Ms GM, on 17 November 2015 to advise:

"Hello [SL and GM],

*The position of Education Manager for [NCC] is **proving to be difficult to justify the 189k salary, after much research and some creativity** [my emphasis]....*

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Are you able to provide contract/s from the company to show there are other related employees in the company with similar salaries to justify the wage for the applicant?

Hopefully this is do-able..?”

191. In response, Ms GM emailed that she had forwarded the query to the “company” and would advise when a reply was received. Mr SL responded on 20 November 2015 asking why the Department required justification for the salary. Ms Mc further advised:

“Actually this is a request thats coming from me, and Simone (so it’s a little higher than immigration) ;) So yes its just part of the application that we need to justify the salary to immigration, its something we always do ourselves however I have found this one too difficult to find evidence/research on...I know Simone had concerns originally so trying to find out how we can justify the salary I tried to justify with combining; the dual role but Simone stated it can only go under one nominating occupation Education Manager. Hope that helps clarify...?”

192. Mr SL answered that he did not realise that the request had come from the Agent, whom he referred to as the “top authority... the big guns”. The request shows that the Agent was concerned as to whether the information she had submitted in support of the application would withstand scrutiny by the Department. It also shows that, contrary to the Agent’s submissions, she was not simply following instructions but had authority in the preparation of these nominations. The Agent did not provide any further file notes or email correspondence on this subject in the client file.
193. If the Agent was legitimately concerned that the salary could not be justified she could have sought clarification, including evidence of salaries for similar positions, from the business before lodging the application. There is no evidence before the Authority that the Agent did so.
194. Contained in the Agent’s files for NCC and Ms L were two different offers of employment for Ms L for different roles with different employers. The first offer purportedly from NCC dated 10 July 2015 was for the position of Traditional Chinese Medicine Practitioner and Course Developer/Coordinator with a salary of \$189,000. The second offer purportedly issued by ‘P Training’, dated 24 March 2014, was for the position of Student Counsellor on a salary of \$182,700. Both documents contain Ms L’s signature agreeing to the terms.
195. It is not clear why the client file for NCC contained a letter of offer from another organization for Ms L. A plausible explanation is that the second offer letter (NCC) was copied from the first offer letter (P Training), the likelihood of which is established by the similarities in the two documents. Aside from the salaries, which are significantly above industry salary standards for such positions,²⁶ both offers contain a significant amount of identical wording. This includes specific sentences “The terms and conditions of your employment will be based on our Office Manual” and “Pays are processed on a monthly basis and monies owing are deposited into your nominated bank account”, as well as the entire paragraphs regarding employment forms, “Confidentiality”, “Occupational Health and Safety”, and “Disclosure of Information”.
196. Given the Agent had access to these documents, I expect she would have been aware of the evident similarities in their contents, despite purportedly being issued by two different sponsors. I also expect that an agent acting in the legitimate interests of her client would have

²⁶ <https://au.indeed.com/salaries/school-counselor-Salaries> - average of \$95,309 per year;
<https://au.indeed.com/salaries/education-manager-Salaries> - average of \$110,307 per year.

had concern about the apparently copied documents and made enquiries with the sponsor. There is no record of such in the client file.

197. I also note that P Training was the same business that purportedly issued PhC with a training invoice. The Department was advised by PhC that this document was fraudulent.
198. Despite her apparent concerns with the salary, the Agent only sought to address issues with the genuineness of the nominations some months after she had lodged the nomination. The use of a salary over \$180,000, as was also the case with the KLMS nomination, despite the significantly lower industry standard for the nominated occupation, may have been an attempt to avoid the English language requirements for the visa applicant²⁷. The Agent would have been well aware of this given her experience in lodging skilled nominations.
199. The Agent also completed a Form 956 dated 20 September 2016 purporting to be NCC's contact person, appointing a third party, Ms ML, to receive correspondence regarding NCC's nomination application as the new migration agent or exempted person. No MARN was given for Ms ML in the Form 956. There is no record of a person by that name as a registered migration agent according to the Authority's records. More importantly, the Agent was neither the applicant nor an authorised person within the company and therefore unable to appoint any person. The fact that the Agent purported to be the sponsor and completed this form for an unknown third party, was a misuse of the Form 956 to enable Ms ML to gain access to information she no authorisation to obtain. I am, therefore satisfied that the Agent submitted information to the Department that she knew was false. This document contradicts the Agent's claim that she was diligent and acted in the interests of the businesses. The Agent's action in lodging the Form 956 with false information shows that she knew she was not actually representing a client and reflects poorly on the Agent's honesty and integrity.
200. On 23 February 2017, the Department sent the Agent a section 57 Notice advising that Ms L was not an employee of NCC, and that the business had never sponsored a person to be employed as an Education Manager or lodged a permanent employer sponsored application with the Department. The Agent forwarded the correspondence to Mr JN with the comment "shit". Mr JN responded on the same day advising that he heard and "*knew*" and suggested that the Agent should "*lodge updated offers for the last remaining old ones so they don't have to call*". He suggested he meet up with the Agent in Melbourne to "*go through some things and future work, etc.*" This correspondence clearly shows that both the Agent and Mr JN were concerned that the Department was contacting businesses to verify the nomination applications, and discussed what they could do to avoid suspicion for other remaining nomination applications lodged by the Agent.
201. The Agent subsequently requested Ms L's visa application be withdrawn²⁸ on the grounds that the employee who offered Ms L the position was no longer employed at NCC and the nominated position was, as a result, no longer available. Given the above, I consider it likely the decision to withdraw the nomination was to avoid responding to the adverse information published by the Department and to avoid a refusal of the visa application.

²⁷ The required minimum salary for the English language exemption was \$180,001 – at that time being the top individual income tax rate as set out by the Australian Taxation Office.

²⁸ Email correspondence shows the Agent received a signed Form 1446 for Ms L through a different third party.

GCCC and CaC

202. The Agent advised that Mr JN contacted her office in early February 2015 and early May 2015 to request that she lodge a nomination application on behalf of his clients, GCCC and CaC, respectively. The Agent has not provided any evidence of either of these interactions or the instructions she received.
203. The Authority put to the Agent in the second section 309 notice that it was unlikely that both GCCC and CaC would have an identical proposed base salary and guaranteed annual earnings for the position of Corporate General Manager. The Agent asserted that she did *“not consider this to be an issue and in fact, if anything, it made sense to her, as she understood Mr JN and his associates were advising their clients and as such, it is likely that they received the same or identical advice when it came to base salaries and guaranteed annual earnings”*.
204. Given the Agent did not seek to verify this information with either business, I give her argument little weight. I do not consider it reasonable that the Agent believed that these businesses, one being a cosmetics company and the other a childcare centre, would offer the exact same remuneration packages, and in the case of GCCC, why a Corporate General Manager would be required for a childcare centre.
205. Further, review of the files provided by the Agent for both GCCC and CaC identified that both of the offers of employment for the respective purported nominees were identical, with the exception of names and business addresses. The position description statements also contained identical statements, except for one additional statement in the description for CaC. Even the names of the contact persons listed in the offers of employment, shared an extremely close resemblance with only a small variation to the surname.
206. As with the two offers of employment for Ms L for NCC and P Training, I do not accept that the Agent was unaware of the identical contents of these documents. Noting this and the similarities between these applications and those already discussed, especially in regard to her dealings with Mr JN, I believe it more likely than not that the Agent knew that the offers and positions did not exist and played an active part in lodging applications to the Department she knew were not genuine.

Findings

207. Contrary to her submissions, I am satisfied that the Agent failed to take any steps to confirm that Mr CT and Mr JN were authorised to act on behalf of any of the businesses, or to verify the instructions, information and documents she received from them. Her failure to do so for all nine nomination applications reflects either systemic negligence of the Agent's professional obligations towards her clients as to call into question her fitness to provide immigration assistance, or is otherwise demonstrative of her knowledge and complicity in the lodgement of non-genuine applications to the Department.
208. I cannot accept an Agent acting in the legitimate interests of her client would have ignored the anomalies presented through the intermediaries without seeking to ascertain their authorisation by the sponsoring businesses and establishing the bona fides of the documents provided.
209. For this reason, I am satisfied the Agent was aware, or should have been aware, that the instructions and documents she was receiving from these parties were not authorised by the sponsoring businesses, that the nominated positions did not exist, or were not genuinely

offered to the proposed nominees. I consider that the Agent's actions in preparing and lodging these nomination applications directly undermined the integrity of the migration program in order to facilitate permanent visas for individuals who did not have genuine business sponsors. Such conduct demonstrates a disregard for the migration law and the reputation of the migration advice profession and for this reason I find her actions to be contrary to her obligations under **clause 2.23 of the Former Code**.

210. The Agent lodged a substantial number of documents in support of the nine nomination applications that were created without the knowledge or permission of the businesses, and contained misleading or false information. The Agent conceded that she had created and/or amended documents that were signed or authored by her and submitted them to the Department.
211. Based on the evidence before the Authority, I am satisfied that the Agent knew, or should have reasonably known, that many of these documents were not genuinely authorised by the businesses. As such, I find that her conduct in creating, amending and/or submitting these documents to the Department to have breached **clause 2.9** of the Former Code.
212. The Agent has argued that Mr CT and Mr JN were her clients. If I were to accept that she truly believed that to be the case, I would also find that she breached her obligations under clause 2.1 of the Former Code, having failed to act in their legitimate interests.

The Agent's recordkeeping practices

213. The Agent was requested under section 305C of the Act to provide the complete client files for the eight nominations published in the second section 309 notice noting the complete client files should contain "*all relevant communications, Service Agreements/contracts, receipts, tax invoices and Statements of Service*". However, the Agent failed to produce all email correspondence despite her statements about their existence. She did not provide copies of any service agreements or records of the relevant financial transactions such as invoices and ledger records. Nor did she provide copies of written instructions from the sponsoring businesses that authorised Mr JN to act on their behalf.
214. The Agent did not provide any such records in relation to AOST in her response to the first section 309 notice.
215. Despite failing to provide any records of how she received payment for her work for the nominations she lodged, I am satisfied that the Agent must have received some form of payment for these applications. She, however, has only provided evidence that she intended to pay Mr JN on receipt of documents and instruction to lodge a nomination application for KLMS. If KLMS sought to lawfully sponsor Mr QF in the nominated position, and had appointed Mr JN to act on their behalf, there would be no reason for the Agent to pay Mr JN for obtaining information and documents to prepare and lodge the application. As none of the businesses were aware of the applications, I am satisfied that any payments the Agent did receive were not from these businesses but were likely paid by the offshore visa applicants. The Agent retained copies of credit cards belonging to the visa applicants or their relatives, on the nomination application client files, including the card security code. I consider it highly inappropriate for the Agent to have retained this information, unsecured, which would have enabled her or any other person with access to her files to have used these credit cards without the knowledge or permission of the cardholders.

216. The Agent advised that one of her employees had to delete many of the emails with Mr JN which contained instructions in relation to the nominations to make space in her email mailbox. The Agent as the director of her business is required to maintain complete and proper records in compliance with the Code for all matters for which she had been appointed and including work undertaken by the employees under her supervision. I note, however, there are a range of methods for storing records that could have been utilised by the Agent and her employees. As such, regardless of the Agent's email mailbox storage limitations, I expect that copies of all relevant emails should have been maintained in the respective client files. Registered migration agents are required to keep client records for seven years after the date of the last action on the file. The Agent should have been able to produce all email correspondence for each matter, regardless of data restrictions.
217. While the Agent provided file notes in a number of the client files in response to the section 305C notice, these only contained text copied from emails included in the client files anyway. The Agent asserted that she had met with Mr JN in person on approximately three occasions, and had taken instructions from him and his associates by both email and telephone. It also appears that there was a conversation between Ms VS and the Agent, presumably by telephone, based on the nature of their email correspondence on 22 September 2017. However, there are no file notes or other records of any telephone conversations or meetings conducted by the Agent and/or her employees with the intermediaries in her files.
218. Contrary to her obligations to maintain proper records, I am satisfied that the Agent has repeatedly failed to comply with **clauses 6.1 and 6.1A** of the Code. However, I consider that the Agent's failure to produce complete records of her interactions with Mr JN, his associates and other parties such as Ms VS and intermediaries acting for the visa applicants is not simply a failure to maintain records.
219. Despite being aware of her recordkeeping obligations, the Agent has admitted to the destruction of some of her communications records with Mr JN. She has not provided the Authority with a significant number of records that, if they had been produced, would verify her preparation and lodgement of the nomination applications and supporting documentation created or amended by her. Whether the records have been withheld, deleted or did not exist, that they have not been produced to the Authority leads to the conclusion that the Agent has sought to conceal the nature of her practice of lodging nomination applications that she was aware that she did not have the authority to do so. Such conduct when considered with the misleading statements in the Agent's responses as to her knowledge of, and involvement in, the lodgement of nomination applications without the Authority of the businesses raises her lack of honesty and integrity.

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

Integrity

220. Pursuant to paragraph 303(1)(f) of the Act, the Authority may caution a registered migration agent, or suspend or cancel their registration, if it becomes satisfied that the agent is not a person of integrity or is otherwise not a fit and proper person to give immigration assistance.
221. There is a degree of overlap between "fit and proper" and "integrity" to the extent that fitness and propriety includes consideration of the honesty of the actions of an individual.

222. 'Integrity' means 'soundness of moral principle and character, uprightness and honesty'.²⁹

Fitness and Propriety

223. 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.

224. In *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321, Toohey and Gaudron JJ indicated several factors that could be taken into account in determining whether a person was 'fit and proper.' These included, but were not limited to conduct, character and reputation. At 380 their Honours stated:

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

225. 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.³⁰

226. The context in which the reference to 'fit and proper' person occurs in section 303(1)(f) is the person's giving of immigration assistance. The context also includes:

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

227. Key elements of the fitness test are:

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

228. The reference in section 303(1)(f) to a registered migration agent not being a 'person of integrity' is not concerned with the person's knowledge of the migration scheme or ability as a migration agent, but is primarily concerned with a person's reputation, moral principle and

²⁹ See *Re Peng and Department of Immigration and Multicultural Affairs* [1998] AATA 12 at paragraph [26].

³⁰ See *Cunliffe v Commonwealth* (1994) 182 CLR 272

character, including their honesty (*Tejani and Migration Agents Registration Authority [2009] AATA 240*).

229. Having regard to the body of case law cited above, a consideration of whether the Agent is a fit and proper person or a person of integrity to provide immigration assistance can legitimately include the following:
- that the Agent's past conduct can be an indicator of the likelihood of the improper conduct occurring in the future;
 - the Agent's honesty and competency towards clients, the Department and the Authority;
 - a consideration of the context in which the agent works, for example whether or not the Agent is an employee or owner of the business through which immigration assistance is provided;
 - the Agent's knowledge and competency in immigration law and practice;
 - the reputation of the Agent as a result of their conduct and the public perception of that conduct; and
 - the perception of the conduct by the Agent's "professional colleagues of good repute and competency".
230. Having regard for the totality of the matters discussed within this decision, I am satisfied that the Agent has:
- acted with a blatant disregard for, or a significant degree of indifference to, the migration law and the visa programs in general;
 - made misleading, deceptive or inaccurate statements and otherwise acted dishonestly;
 - acted without regard for the adverse impact the conduct would have on the reputation of the migration advice industry;
 - acted in a manner not consistent with the principles of integrity nor of a person who is fit and proper to provide immigration assistance.
231. In consideration of the discussion on the Agent's conduct in this decision and my findings above, I am satisfied that the Agent is not a person of integrity and is otherwise not a fit and proper person to give immigration assistance.

CONSIDERATION OF APPROPRIATE DISCIPLINARY ACTION

232. In deciding to discipline the Agent under section 303 of the Act, I have taken into account all of the circumstances of the case, including the following:
- Whether the Agent's behaviour is of a minor or serious nature. Conduct that the Authority considers to be adverse, extremely serious and therefore likely to result in discipline at the higher end of the scale includes but is not limited to:
 - criminal behaviour;
 - fraudulent behaviour;
 - behaviour that demonstrates fundamental lack of knowledge of the law; or

- involves a blatant disregard for or a significant degree of indifference to the law;
- repeated occurrences of the conduct described in subsection 303(1) (d)-(h) and/or;
- agent behaviour that has resulted in significant harm or substantial loss to clients.
- Any aggravating factors that increase the Agent's culpability including but not limited to previous conduct.
- Any mitigating factors that decrease the Agent's culpability including but not limited to evidence that the Agent's health has contributed to the Agent's culpability or where the Agent has undertaken steps to remedy the situation.

Seriousness of behaviour

233. In deciding to discipline the Agent under section 303 of the Act, I have taken into account all of the circumstances of the case, including the severity of the Agent's behaviour and any mitigating or aggravating circumstances which may exist. I have also considered:
- whether the behaviour in question could be the subject of rehabilitation;
 - the level of impact, if any, that a sanction would have on the Agent's livelihood;
 - the circumstances of the clients, including any vulnerability; and
 - any wider issues pertaining to consumer protection or the national interest.
234. Having regard to the matters before me, I consider that the Agent's adverse behaviour is of a very serious nature because:
- (a) The Agent lodged nomination applications for businesses with the Department even though she knew, or should have known, the businesses making the applications had not instructed her to do so;
 - (b) The Agent has breached the former Code as a result of her long term practices involving fraud and dishonesty and a failure to comply with her professional obligations;
 - (c) The Agent has demonstrated her propensity for dishonesty by lodging nine fraudulent nomination applications for business sponsors and corresponding visa applications. She acted without the knowledge or permission of the businesses. In support of these applications, the Agent provided the Department with information that she knew, or should have reasonably known, was false and misleading information and a large amount of fraudulent documentation;
 - (d) The Agent believes that she has not breached her professional obligations, and has made excuses for her conduct, including diverting blame to her employees;
 - (e) The Agent's conduct has demonstrated that the Department could not rely on the authenticity of documents or the genuineness of applications lodged by the Agent or her office; and
 - (f) The Agent's conduct has compromised the integrity of Australia's skilled migration program and has undermined the reputation of the migration advice profession.

Aggravating factors

235. The Agent, by her dishonest conduct, has sought to undermine the integrity of Australia's Skilled Migration Program on nine occasions and likely more in light of her submissions. The Agent's dishonest conduct has extended over a number of years and undermines the trust that the Department places in registered migration agents that they will lodge applications based on genuine need and accurate information and documents. Further, in having amended and submitted documents herself purporting to have been authorised by the sponsoring businesses in circumstances where she knew, or ought to have known, that the businesses had not authorised those documents, the Agent played an active and deliberate role in the perpetuation of deceit of the Department.

Mitigating Factors

236. In her submissions responding to the two section 309 notices, the Agent provided the following mitigating circumstances to be taken into account in making this decision.
- The Agent suffered significant personal and emotional hardship and played a minor role in her business as she was not fit to practice full time *"between June 2016 and February 2019"*. She revised this in the second section 309 notice submission, when the Authority raised concerns with an additional eight nominations, and extended the period to *"around 2015 to 2018"*. The Agent advised in both submissions that this hardship was the result of:
 - Grieving the death of her son who committed suicide in June 2016;
 - Supporting her partner of 8 years who had suffered a five-month nervous breakdown, and was unable to work due to a back injury;
 - Having two miscarriages in recent years;
 - Giving birth and caring for her newborn son in 2018, and three year old daughter;
 - Being the primary carer for her mother, who was diagnosed with bowel cancer;
 - Supporting her siblings who are going through personal issues, including her brother who was in and out of mental health facilities, and incarcerated, due to substance abuse; and
 - Seeing a psychologist for herself from June 2016 to present.
 - The Agent is the sole source of income for her family. If the Agent was unable to practice as a migration agent, this would impact her mother, husband and children. The Agent would be forced to seek work in other areas, which would take significant time away from her duties as a mother and carer.
 - Any sanction which affects the Agent's registration would impact on the livelihoods of her three employees.
 - The Agent submitted that the Authority should consider the nature of the alleged breaches of the Act and Code identified in the notices as "isolated incidents", and in the case of the eight nominations discussed in the second section 309 notice they resulted from the adverse actions of a single source, being Mr JN.
 - The nominations that are the subject of both notices represent a very small percentage of the Agent's caseload, which has an otherwise "flawless"/ "largely unblemished" record, having processed many hundreds of nominations without any issues.

- The Agent's behaviour and actions could easily be the subject of rehabilitation by ensuring that she and her staff undertake further training and share their learnings with the professional community. She has already updated her business' procedures and policies to address this conduct.
237. The Agent submitted that she was not fit to practice full-time between June 2016 and February 2019. During this period of time she had business interactions with Mr CT in relation to the nomination application for AOST. She stated that her employee Ms RR had taken carriage of the work on the AOST nomination application during this time, despite the Agent being listed as the appointed migration agent for the application and her email address being used for all correspondence with the Agent's business.
238. It would appear that the Agent was attempting to apportion blame to Ms RR, who is no longer a registered migration agent. Had the Agent been significantly inhibited from carrying out her role as a registered migration agent, it is reasonable to expect that she would not have continued to accept work, and would have transferred her caseload to either her employed migration agents or other migration firms. The Agent was still working in her business, run from her residential address, on a part-time basis during this time and was recorded as the migration agent representing all the applications. As such, I consider that the Agent was responsible for these applications and all the work undertaken by her employees working under her supervision in support of those applications.
239. I note that the Agent initially argued that she experienced significant hardship between June 2016 and February 2019 as a result of the aforementioned personal circumstances. However, in the second section 309 notice the Authority highlighted that a number of the nomination applications predated this period. In response to the publication of this information, the Agent altered the period of hardship in the second submission to "2015 to 2018" without providing any explanation or additional factors that encompassed this period.
240. In altering her responses, I am of the view that the Agent has only sought to extend the relevant period with the sole intention of decreasing her culpability for the adverse conduct identified by the Department and the Authority in the second section 309 notice, and not on account of her personal circumstances at the time. Whilst I accept that the Agent may have been experiencing personally hardship at some points during the relevant period, I am not satisfied on the evidence currently before me, that this explains her conduct over such a prolonged period.
241. Contrary to the Agent's submissions that the conduct discussed in the two section 309 notices should be regarded as "*isolated incidents*" and those applications represented a very small percentage of her caseload, I consider that the Agent's conduct in these nine nomination applications, and by extension, the eight corresponding visa applications represented serious shortcomings in her professional conduct. I also consider that the submissions provided indicate that the Agent did not perceive any concerns with her practices until she received the first section 309 notice from the Authority. The Agent advised the Authority that she had prepared and lodged "*many hundreds*" of nominations, and admitted that she received other referrals from Mr JN and did not contact another sponsor referred by Mr CT, in addition to AOST.
242. I have considered that the Agent has not previously been subject to a sanction or disciplinary action by the Authority. However, I am of the view, due to the serious transgressions of the Agent, that this does not mitigate the conduct in this decision. I am of the view that the conduct of the Agent, and the employees that she supervised demonstrates complicity in the activities of two separate third party entities.

243. The Agent advised that she had already updated her business policies and procedures following receipt of the two section 309 notices, and could be rehabilitated through further training. Despite this, the submissions provided indicated that the Agent would continue to take instructions from intermediaries and third parties when undertaking nomination applications for businesses. The Agent's responses also indicate that despite her assertions, she has attempted to downplay the seriousness of her actions, and avoid culpability for repeated failings of her professional obligations and integrity. I, therefore, am not satisfied that remedial action will adequately address the serious conduct that has been found in this decision.
244. In light of the Agent's statements regarding her personal and financial commitments, I accept and give weight to the fact that a disciplinary decision would affect the Agent's negatively financial earning capacity and livelihood. There is no information currently before the Authority that the Agent has any other sources of income. As such, I accept that any decision that affects the Agent's ability to practice within the migration advice profession for a prolonged period of time, such as a significant period of suspension or cancellation, will impact on her livelihood. However, I am satisfied that this is significantly outweighed by the seriousness of the Agent's conduct, which reflects on her integrity, judgement and knowledge of, and compliance with, her professional obligations, and relevant law. In those circumstances, I am of the view that the findings made in this decision warrant a strong disciplinary decision being made.

Consumer Protection

245. 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.
246. The behaviour demonstrated by the Agent falls short of the standards expected of registered migration agents. I consider that the Agent poses a serious risk not only to consumers but to the integrity of the Department's visa programs that are made available to visa product consumers. I am satisfied that if the Agent were to continue to practice as a registered migration agent, the Agent would not demonstrate the requisite skills expected of a registered migration agent. I therefore consider that a disciplinary decision is warranted to address the serious conduct the subject of this decision, in the interests of consumer protection, and in maintaining confidence the integrity of the Australian migration program.
247. I expect that a decision to sanction the Agent would more likely than not deter other registered migration agents from engaging in a similar practice and ensure that public confidence in the migration agent industry is maintained.

DECISION

248. I have turned my mind to the appropriate sanction action to impose on the Agent, and whether a caution or suspension with conditions imposed on the Agent would maintain the interests of consumer protection and the migration program in general.
249. The findings made have been on the Agent's lack of integrity, judgement, knowledge and diligence. In light of the severity and extent of this conduct, which occurred over a period of no less than three years and involved multiple complicit parties, I consider that the Agent should not be able to continue to work in the profession and requires a significant period of separation

from the migration advice industry. I am, therefore, of the view that a decision to caution or suspend the Agent would not adequately address the seriousness of the misconduct in the subject of this decision.

250. Taking all of the circumstances discussed, including the Agent's responses to the section 309 notices, I am satisfied there is no remedial action that is appropriate that would enable her to continue practising as a registered migration agent at this time. In particular, the Agent's continued refusal to accept that she breached her professional obligations leads me to doubt that it is appropriate that she continue to work in the migration advice industry. In the interests of consumer protection and the integrity of the Department's visa programs, I consider that it is appropriate to cancel the Agent's registration.
251. Based on the facts and evidence before me, and my findings as discussed in the decision, I have decided to cancel the Agent's registration as a migration agent under subparagraph 303(1)(a) of the Act.
252. I am satisfied for the purposes of subparagraphs 303(1)(f) and (h) that:
- the Agent is not a person of integrity, or is otherwise not a fit and proper person to give immigration assistance; and
 - the Agent has not complied with clauses 2.1, 2.8, 2.9, 5.2, 6.1 and 6.1A of the Former Code.
253. In accordance with section 292 of the Act, an agent who has had their registration cancelled must not be re-registered within 5 years of the cancellation.
254. Accordingly, this cancellation will be in effect for a period of 5 years from the date of this decision.



Elizabeth Pettit
Office of the Migration Agents Registration Authority
Department of Home Affairs

Date of Decision: 29 June 2023

APPENDIX A: TERMS USED FOR REFERENCE

The following abbreviations may have been used in this decision:

AAT	The Administrative Appeals Tribunal
ABN	Australian Business Number
FOI	<i>Freedom of Information Act 1982</i>
MARN	Migration Agent Registration Number
PIC	Public Interest Criteria
RSMS	Regional Sponsored Migration Scheme
ENS	Employer Nomination Scheme
Section 308 Notice	Notice issued by the Authority under section 308 of the Act
Section 309 Notice	Notice issued by the Authority under section 309 of the Act
The Act	<i>The Migration Act 1958</i>
The Agent	Simone Louise Kearney (nee Dickenson)
The Authority	The Office of the Migration Agents Registration Authority
The Code	<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>
The Department	The Department of Home Affairs
The former Code	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</i> – repealed on 1 March 2022
The Register	Register of migration agents kept under section 287 of the Act
The Agent Regulations	<i>Migration Agents Regulations 1998</i>
The Regulations	<i>Migration Regulations 1994</i>
VEVO	Visa Entitlement Verification Online

APPENDIX B: SUBCLASS 186 NOMINATION APPLICATIONS

Business	Nominated person, position and salary	Date of nomination application lodgement	Date of nomination application outcome	Outcome of Department's check with employer
NCC	Ms L - Education Manager Salary: \$189,000 (base); \$206,955 (total earnings)	01/09/2015	25/02/2016 Approved	<ul style="list-style-type: none"> • Business contacted: 23 February 2017. • Ms L was not an employee of NCC. College had never sponsored a person as an Education Manager or lodged a nomination application. • Section 57 notice sent to Ms L on 23 February 2017. • Visa application withdrawn on 21 March 2017.
AGC	Ms X- Corporate General Manager – China project Salary: \$182,000.	26/05/2016	30/8/2017 Refused	<ul style="list-style-type: none"> • Business contacted: 31 October 2017 – 3 November 2017. • Company contact listed in application had resigned two years prior. Business had not authorised the lodgement of the nomination application and had not provided any financial documentation to any third party for immigration assistance.
KLMS	Mr QF - Engineering Manager Salary: \$89,000.	04/10/2017	24/5/2019 Withdrawn As business did not authorise nomination, matter finalised on 29/08/2019.	<ul style="list-style-type: none"> • Business contacted: 3 May 2019. • Business was unaware that a nomination application had been lodged, had not authorised any person to lodge an application for position of Engineering Manager. No intention to sponsor any person and did not provide financial documentation to any third party for immigration assistance. Application could not proceed as there was no valid nomination.

OFFICIAL

Business	Nominated person, position and salary	Date of nomination application lodgement	Date of nomination application outcome	Outcome of Department's check with employer
WAMHD	Mr ZL - Corporate General Manager Salary: \$183,400 (base); \$200,823 (total earning)	01/06/2015	04/12/2015 Nomination Approved Visa granted on 08/12/2015	<ul style="list-style-type: none"> Business contacted: 10 November 2017 and 14 August 2019. Business had never heard of Mr ZL and was not employed by WAMD.
GCCC	Ms G Corporate General Manager Salary: \$180,200 (base); \$197,319 (total earnings)	16/02/2015	29/06/2015 Nomination Refused Visa application refused 31/08/2015	<ul style="list-style-type: none"> Business contacted: 1 November 2017. Business had never sponsored anyone from overseas, or engaged or appointed any person, including a registered migration agent to lodge an application to the Department on their behalf.
MC	Mr P- Corporate General Manager Salary: \$182,600 (base); \$199,947 (total earnings)	22/05/2015	7/12/2015 Nomination approved Visa application granted on 22/12/2015	<ul style="list-style-type: none"> Business contacted: 10 November 2017. Business had never sponsored Mr P, had not authorised or instructed another person to lodge any application on its behalf, or nominated any person for the position of Corporate General Manager.

OFFICIAL

Business	Nominated person, position and salary	Date of nomination application lodgement	Date of nomination application outcome	Outcome of Department's check with employer
CaC	Ms W - Corporate General Manager Salary: \$180,200 (base); \$197,319 (total earnings)	26/05/2015	29/10/2015 Nomination approved Visa application granted on 11/11/2015	<ul style="list-style-type: none"> • Business contacted: 13 November 2017. • Business had not engaged the services of, or instructed, a person to lodge a nomination, had no intention of sponsoring an overseas worker in the position of Corporate General Manager with a salary of \$180,200, and had not provided the business' financial documentation to any third party for immigration assistance.
PhC	Mr KY - Engineering Project Manager Salary: \$182,000 (base); \$199,290 (total earnings)	26/05/2015	11/11/2015 Nomination refused. Visa application refused on 10/12/2015	<ul style="list-style-type: none"> • Business contacted: 2 November 2017. • Business had not engaged services of, or instructed, a person to lodge a nomination, had no intention of sponsoring an overseas worker in the position of Engineering Manager with a salary of \$182,000. No company documentation provided to a third party for immigration assistance. No employee named 'MR'.

NCC

1. On 1 September 2015 an Employer Nomination Scheme (ENS) nomination application was submitted on behalf of NCC Pty Limited (NCC), nominating Ms L for the position of Education Manager with a base salary of \$189,000 and guaranteed annual earnings of \$206,955.
2. The nomination application contained the Agent's name as the registered migration agent representing the application and listed her email address: simdickenson@hotmail.com, as the authorised email address for correspondence. The following documents were submitted in support of the nomination application:
 - NCC offer of employment dated 10 July 2015, addressed to Ms L, purportedly signed by Ms KH, Director of Education and Training;
 - NCC written submission for Ms L and the nominated position, dated 25 August 2015, purportedly signed by Ms KH;
 - Australian Securities and Investments Commission (ASIC) and Australian Business Register (ABR) company search result documents for NCC; and
 - Position description document purportedly issued by NCC, submitted to the Department on 17 November 2015. The document's properties show it was created on 17 November 2015 and lists the author as 'Simone Dickenson'.
3. The nomination application was approved by the Department on 25 February 2016 and the approval notification was sent to the Agent's email address.
4. On 23 May 2016 the Agent lodged a subclass 186 visa application (Direct Entry Stream) for Ms L, the nominee in the approved nomination. The visa application stated that the Agent was the registered migration agent representing the application. The Agent's email address, simdickenson@hotmail.com, was the authorised email address for correspondence.
5. On 24 January 2017 the Department sent to the Agent requests for more information regarding the visa application and payment of the second visa application charge (VAC). The Agent provided the Department a receipt for the second visa application charge by email on 7 February 2017 as evidence of payment.
6. On 23 February 2017 the Department telephoned the contact person at NCC, listed in the approved nomination, to confirm that the position Ms L had been nominated for was still available to her. The Department received written confirmation on the same day that Ms L was not an employee of NCC, and that *"To the best of my knowledge we have never sponsored a person to be employed in our organisation as an Education Manager or lodged a permanent employer sponsored application with the department."*
7. On 23 February 2017 the Department issued to Ms L an *Invitation to comment on information for an Employer Nomination (subclass 186) visa - Adverse information received* (section 57 notice). It was sent to the Agent as Ms L's appointed registered migration agent. On 21 March 2017 the Department received an email from the Agent stating *"We wish to withdraw this application. The employee who offered this position to my client is no longer employed and the position no longer available. We will also send a refund request for the VAC2 payment that this applicant has made [sic]."*

AGC Pty Ltd

8. On 26 May 2016 the Department received an ENS nomination application (Direct Entry Stream) for AGC, nominating Ms X for the position of Corporate General Manager – China project with a salary of \$182,000. The nomination application stated that the Agent was the registered migration agent representing the application. Her email address, simdickenson@hotmail.com, was provided as the authorised email address for correspondence from the Department. The following documents were submitted in support of the nomination application:
- Letter of Offer of Employment from AGC addressed to Ms X, purportedly signed by the General Manager of AGC, Mr F, and signed and dated by Ms X on 18 March 2016;
 - ASIC company search results and company extract for AGC;
 - Nomination application submission dated 14 June 2016 and signed by the Agent;
 - AGC organisational chart;
 - Business Activity Statement (BAS) for AGC for 1 January 2015 to 31 March 2015;
 - Position description for Corporate General Manager – China project with AGC branding, undated. Metadata properties for this document state the author as 'Simone', created on 16 June 2016, and the document's title as ["WAMHD"] [Address and telephone number redacted];
 - Market salary comparison document for Corporate General Manager, undated, submitted to the Department on 17 June 2016, with metadata properties stating the document was created on 6 June 2016, last modified on 14 June 2016, and the author as 'Simone';
 - Copies of unsigned employment contracts for three employees of AGC;
 - Certification Form – paying for visa sponsorship, signed by Mr F and dated 23 June 2016 on behalf of AGC for nomination transaction reference number (TRN) EXXXXXXXXXX
 - AGC's Annual Financial Report for 2015, signed by joint Director and Board Chairman, stating the names, positions and images of the company's Chief Executive Officer (CEO), General Managers, Chief Financial Officer (CFO), Managers and Directors;
 - CP training invoice and corresponding receipt dated 6 July and 6 August 2015, respectively, addressed to AGC for payment of four participants in the Competitive Systems & Practice Certificate III course as part of the training benchmark requirement;
 - CP training invoice and corresponding receipt dated 19 October and 19 November 2015, respectively, addressed to AGC for payment of four participants in the Competitive Systems & Practice Certificate IV course as part of the training benchmark requirement;
 - IG training invoice and corresponding receipt dated 10 August and 10 September 2015, respectively, addressed to AGC for payment of 15 participants in the Glass Production Technician Course, as part of the training benchmark requirement;

- GSA training invoice and corresponding receipt dated 20 January and 10 February 2016, respectively, addressed to AGC for payment of four participants in the Certificate III in Glass and Glazing course, as part of the training benchmark requirement;
 - The APS training invoice dated 21 April 2016, addressed to AGC for payment of 11 attendees at the 'Year End Seminar for Legislative Developments', requisitioned by the CFO; and
 - Form 1023 Notification of incorrect answer(s), submitted to the Department on 9 December 2016 from An Affordable Visa Service's ImmiAccount, seeking to correct the gross payroll expenditure of the business in the application form. The amendment was to correct the reported gross payroll expenditure over the previous 12 months from \$37,526,934 as stated in the application to \$17,922,021, and the gross expenditure on training Australian citizens or permanent residents in the past 12 months from \$400,000 to \$250,180. The reason provided for the errors was *"Misread values, human error"*.
9. On 30 August 2017 the Department refused the nomination as there was insufficient evidence to demonstrate the need for the position of a Corporate General Manager with a high salary package of \$182,000 within AGC. The Department sent the refusal notification to the Agent's email address, simdickenson@hotmail.com, as the authorised email address for correspondence.
 10. On 31 October 2017 the Department contacted AGC using the telephone number listed on their website. A representative of the company advised the departmental officer that Mr F, who was listed as the contact person in the nomination application, did not work for the business anymore. Further, AGC had not lodged any applications with the Department since 2010 – 2011. AGC managed all paperwork for new staff, including checking VEVO for visa conditions. Mr F had resigned two years prior but had recently returned to the company as a contractor.
 11. On 3 November 2017 the Department spoke with the CEO who advised that the company had not lodged a nomination application for Ms X. The CEO confirmed by email on the same day that AGC had not engaged the services of, or instructed, another person to act on its behalf or liaise with the Department, or authorised another person to lodge an employer nomination for the company. Further, the CEO advised that there was no intention to sponsor an overseas worker on a visa in the position of Corporate General Manager with a salary of \$182,000, and no business financial documentation had been provided to any third party to make an employer nomination.
 12. Also on 3 November 2017 the Department contacted APS regarding the training invoice dated 21 April 2016 and addressed to AGC that had been lodged in support of the nomination application. The Department received a written response from an authorised representative of APS on the same day, who advised that the invoice in question did not resemble the training provider's invoices, and that they had initiated an investigation to ascertain the document's origins.
 13. On 9 November 2017 the Department contacted CP regarding the training invoices and receipts submitted in support of the nomination application. The Department received written confirmation from an authorised representative of CP that the documents submitted did not belong to the training provider, and that the money purportedly paid in the receipts had never been received into the provider's account.
 14. No visa application was lodged for Ms X for the nominated position at AGC.

KLMS

15. On 4 October 2017 the Department received an ENS nomination application (Direct Entry Stream) for KLMS, nominating Mr QF for the position of Engineering Manager with a salary of \$89,000. The nomination application named the Agent as the registered migration agent representing the application, and listed her email address, simdickenson@hotmail.com, as the authorised email address for correspondence. The following documents were submitted in support of the application:
 - ASIC company search results and company extract for KLMS;
 - Business activity statements (BAS) for KLMS July 2016 to March 2017;
 - KLMS Annual Financial Report for 2016;
 - Employment Agreement between KLMS and Mr QF, dated 2 October 2017, purportedly signed by KLMS Mr Ly;
 - KLMS nomination submission dated 22 June 2017, unsigned;
 - RMIT University receipt dated 28 November 2016, and addressed to KLMS, for payment of four short courses, as part of the training benchmark requirement;
 - CCF training receipt dated 21 May 2017, and addressed to KLMS, for payment of four courses as part of the training benchmark requirement;
 - Bus Vic invoice and corresponding receipt dated 18 April 2017 and 20 May 2017, respectively, addressed to KLMS for payment of four courses as part of the training benchmark requirement; and
 - SG training receipt dated 9 April 2017, and addressed to KLMS, for payment of four courses as part of the training benchmark requirement.
16. A subclass 186 visa application was lodged for Mr QF on the same day. The Agent was also the registered migration agent for the visa application. Her email address, simdickenson@hotmail.com, was the authorised email address for correspondence.
17. On 3 May 2019 the Department contacted Mr Ly to confirm Mr QF's position. On the same day, Mr Ly provided the Department with a written response advising that he was unaware that a nomination application had been lodged; that he had not engaged the services of, or instructed, another person to act on his behalf or liaise with the Department; or authorised another person to lodge a Permanent Employer Sponsored Entry nomination for KLMS. Further, Mr Ly advised that he had not intended to sponsor an overseas worker in the position of Engineering Manager with a salary of \$89,000 and had not provided the business's financial documentation including BAS statements to any third party for migration purposes. He also expressed concern that whoever had lodged the application may have illegally obtained information about KLMS and him for the nomination.

18. On 3 May 2019 the Department issued Mr QF a notice under section 57 of the Act about the adverse information received. It was sent to the Agent's email address. In the notice, the Department advised Mr QF of the correspondence with Mr Ly that the nomination application was not genuine as the nominator had not lodged the application and had no intention to employ Mr QF in the position.
19. On 23 May 2019 the Agent emailed the Department to request that Mr QF's visa application be withdrawn. The Department withdrew Mr QF's visa application on 24 May 2019.

Review of caseload by the Authority

20. In light of the nominations and visa applications discussed above, the Authority undertook further reviews of the Agent's client caseload. As a result, the following additional matters were identified.

WAMHD

21. This company name was in the metadata properties of the position description document lodged for AGC's nomination application, the Authority undertook a review of the Department's records to identify any applications linked to WAMHD. The Authority identified that an ENS nomination application (Direct Entry Stream) was lodged for WAMHD on 1 June 2015, nominating Mr ZL in the position of Corporate General Manager with a base salary of \$183,400 and guaranteed annual earnings of \$200,823. The nomination application stated that the Agent was the registered migration agent representing the application. Her email address, simdickenson@hotmail.com, was the authorised email address for correspondence. The following documents were initially submitted to the Department in support of the nomination:
 - ASIC and ABR company search results and company information for WANHD;
 - BAS for WA for July to September 2013;
 - WAMHD Annual Financial Report for year to June 2014;
 - Employment Agreement between WAMHD and Mr ZL, dated 23 April 2015, purportedly signed by WAMHD's Managing Director, Mr DMc, and signed by Mr ZL on 29 April 2015;
 - WAMHD letter of support for the nomination of Mr ZL, dated 26 May 2015, purportedly signed by Mr DMc;
 - FE training invoice (number 00104592), dated 20 June 2014, addressed to WAMHD for payment of seven courses in "*Business Front Line Management*" to commence 1 July 2014, as part of the training benchmark requirement; and
 - Documentation from the National Australia Bank (NAB) regarding an application for a business loan in the name of WAMHD, including a letter dated 2 May 2015, advising of the approval of the business loan application.
22. On 23 June 2015 the Agent lodged subclass 186 visa application for Mr ZL. The Agent's email address, simdickenson@hotmail.com, was the authorised email address for correspondence.
23. On 16 October 2015 the Department sent a request for information to the Agent's email address requesting further evidence to demonstrate the sponsor's need for the nominated position, including that a vacancy existed and further information on the sponsor's diversification. On 29 October 2015 the Agent provided the following documents to the Department:

- Market salary comparison document for Corporate General Manager, undated, with metadata properties stating the document was created on 1 October 2015, with the author being 'Simone', and the document last edited by 'Simone Dickenson';
 - Nomination application submission *"in representation of the nominator"*, dated 27 July 2015 and signed by the Agent;
 - Corporate General Manager position description document with WAMHD branding, undated. Metadata properties for this document lists its author as 'Simone', created on 21 October 2015, and the document's title as WAMHD; and
 - ASIC company extract for WAMHD.
24. Also on 29 October 2015 the Department sent a further request for information to demonstrate the genuine need for the position of a Corporate General Manager in the company. On 12 November 2015 the Agent emailed the Department to request an extension of time to respond. In the attached letter dated the same day, the Agent advised that *"Our client has not been able to access the information required within the time period and has requested we contact the department to seek an extension."* She emailed the Department again on 20 November 2015 with a second request for an extension of time. In the attached letter from the Agent, and dated the same day, she stated:
- "Our office was contacted today and informed that the business contact who is providing the information for the information request concerning the nomination has had a family emergency. The business person forwarding the documentation has requested from us and so we appeal to you for a further 7 days extension for the information request.*
- This is due to his father being taken to hospital with a stroke.*
- As you can appreciate his father is his main concern during this sudden event although he is aware of the importance of this request, he therefore is unable to provide the information at this time. We apologise for this delay and advice due to this unforeseen event we unfortunately are unable to provide the information by the due date."*
25. The Department granted the further extension of time, and received the following additional documentation on 4 December 2015:
- Business plan for WAMHD, undated;
 - WAMHD letter, dated 30 November 2015, purportedly signed by Mr DMc, responding to the Department's request for additional information for Mr ZL's nomination; and
 - Undated WAMHD letter, purportedly from Mr DMc, advising that Mr ZL's English had been assessed as suitable for the nominated role, and that *"Our company has interviewed him and we have communicated with him several times during the course of the nominating period and prior to. He has always been pleasant and generally easy to understand. We are keen to have him commence working with us as the position is needed to be filled quite urgently. I hope you find this is adequate to address your request for information we are most eager and hope for an approval for this nomination as soon as may be possible. Thank you for considering the application"*. The Authority reviewed the metadata properties of this document, which identified that the document had been created on 11 November 2015 and the author as 'Simone'.

26. The Department approved the nomination application on 4 December 2015, and subsequently Mr ZL's subclass 186 visa application on 8 December 2015. Notification of both grant decisions was sent to the Agent's email address.
27. On 10 November 2017 the Department contacted WAMHD to confirm that Mr ZL was employed by the sponsor. The departmental officer spoke to the sponsor's payroll manager and Mr DNc, who was listed as the contact person for the sponsor on the nomination application form, who advised during a telephone interview that the sponsor was not aware of the nomination or Mr ZL. No written correspondence was received at that time.
28. The Department subsequently sent a follow up email to Mr DMc on 14 August 2019 to seek written confirmation as to whether the nomination for Mr ZL was authorised by the sponsor. The Department received a telephone call from Mr DMc on the same day who advised that Mr ZL was not employed by WAMHD and that he had never heard of this person, that there were no visa holders employed at the business as all employees were Australian citizens, and that the nomination was false and a scam. He also provided a written statement to this effect by email shortly afterwards.

GCCC

29. On 16 February 2015 an ENS nomination application (Direct Entry Stream) was lodged for GCCC nominating Ms G for the position of Corporate General Manager with a base salary of \$180,200 and guaranteed annual earnings of \$197,319. The Agent was the registered migration agent representing the nomination application. Her email address, simdickenson@hotmail.com, was the authorised email address for correspondence. The nomination application listed the contact person for GCCC as Ms B. The following documents were submitted to the Department in support of the nomination application:
 - GCCC Annual Financial Report for year to 30 June 2014, containing the signature block for its director Ms SS but unsigned;
 - BAS for GCCC for July to September 2013;
 - Publicly available ABR company search results information for GCCC;
 - Letter of Offer of Employment dated 18 June 2014 from GCCC addressed to Ms G for the position of Corporate General Manager, purportedly signed by Ms SS, and signed and dated by Ms G on 26 June 2014;
 - Market salary comparison document for Corporate General Manager, undated, with metadata properties stating the document was created on 26 March 2015, the author being 'Simone Dickenson'; and
 - Nomination application submission for GCCC dated 26 March 2015 and signed by the Agent.
30. On 16 February 2015 the Agent lodged a subclass 186 visa application for Ms G. The Agent was the registered migration agent representing the application. Her email address, simdickenson@hotmail.com, was the authorised email address for correspondence.
31. On 29 June 2015 the Department refused GCCC nomination application as insufficient evidence had been provided to establish that the business needed a paid employee in the nominated position given the nature and scope of the business activities of the nominator. Notification of the decision was sent to the Agent's email address.

32. On 30 June 2015 the Department sent the Agent, as Ms G's representative, an invitation to comment on information for an Employer Nomination (subclass 186) visa, in light of the nomination's refusal. The Department did not receive a response from the Agent. The Department refused Ms G's subclass 186 visa application on 31 August 2015.
33. On 1 November 2017 the Department contacted GCCC and conducted a telephone interview with its director, Ms B, who advised the interviewing officer that GCCC had never sponsored anyone from overseas, or engaged or appointed any person, including a registered migration agent to lodge any application to the Department on their behalf.

MC

34. On 22 May 2015 an ENS nomination application (Direct Entry Stream) was lodged for MC, nominating Mr P in the position of Corporate General Manager, with a base salary of \$182,600 and guaranteed annual earnings of \$199,947. The Agent was the registered migration agent representing the application. Her email address, simdickenson@hotmail.com, was the authorised email address for correspondence. The following documents were submitted to the Department in support of the nomination application:

- MC business overview document;
- ASIC and ABR company search results and company extract information for MC;
- MC business training program for 2013-14;
- BAS for MC for January to June 2013;
- FE training invoice (number 00104589), dated 20 June 2014, and addressed to MC for payment of seven courses in "Business Front Line Management" to commence from 1 July 2014 but dated 20 June 2013, as part of the training benchmark requirement;¹ and
- MC Annual Financial Report for year to 30 June 2014, containing the signature block for MC's director Mr RB but unsigned.

35. On 16 June 2015 a subclass 186 visa application was lodged for Mr P. The visa application was represented by the Agent and listed her email address, simdickenson@hotmail.com, as the authorised email address for correspondence.
36. On 26 October 2015 the Department sent the Agent a request for more information. On 23 November 2015 the Agent contacted the Department to request an extension of time. The Agent wrote that:

"Our office was contacted on Friday evening and informed that the business contact who is providing the information for the information request concerning the nomination has had a family emergency. The business person forwarding the documentation has requested from us and so we appeal to you for an extension for the information request.

This is due to his father being taken to hospital with a stroke.

As you can appreciate his father is his main concern during this sudden event although he is aware of the importance of this request, he therefore

¹ Containing the same date, courses and costs as the invoice purportedly issued to WAMHD

is unable to provide the information at this time. We apologise for this delay and advice due to this unforeseen event we unfortunately are unable to provide the information by the due date."

37. On 25 and 27 November 2015 the Department wrote to the Agent to confirm that a seven day extension had been granted. The following documents were provided:
- Employment Agreement between MC and Mr P, dated 30 November 2015, purportedly signed by MC's Director, Mr RB;
 - Additional ASIC documentation and land title documentation for MC;
 - MC Annual Financial Report for year to 30 June 2015, containing the signature block for MC's director Mr RB but unsigned.
 - BAS for MC for 31 December 2014 to 28 February 2015;
 - Undated cash flow forecast document;
 - MC's business organization chart;
 - Unsigned overseas contract/memorandum of understanding between MC and Shunjie Zhejiang Construction Group Co Ltd dated 29 June 2015;
 - MC letter of support for the nomination of Mr P, in response to the Department's request for more information, dated 1 December 2015, and purportedly signed by Mr RB;
 - Nomination application submission for MC dated 7 August 2015 and signed by the Agent;
 - Market salary comparison document for Corporate General Manager, undated, with metadata properties stating the document was created on 28 September 2015, the author being 'Simone', and last modified by 'Simone Dickenson'; and
 - MC Corporate General Manager job description document, undated and unsigned, with metadata properties stating that the document was created on 21 October 2015 and the author being 'Simone'.
38. On 7 December 2015 the Department approved the nomination application. Mr P's subclass 186 visa application was approved on 22 December 2015. Notification of both decisions were sent to the Agent's email address.
39. On 10 November 2017 the Department contacted Mr RB by telephone and email to verify Mr P's nomination. On 11 November 2017 Mr RB confirmed in writing that MC had never sponsored Mr P, or had nominated any person for the position of Corporate General Manager. Further, to the best of his knowledge, MC had handled any previous nomination applications in house, and had not authorised or instructed another person to lodge any application with the Department on the company's behalf.

CaC

40. On 26 May 2015 the Agent lodged an ENS nomination application (Direct Entry Stream) for CaC nominating Ms W for the position of Corporate General Manager with a base salary of \$ 180,200 and guaranteed annual earnings of \$197,319. The Agent was the registered migration agent representing the application. Her email address, simdickenson@hotmail.com, was given as the authorised email address for correspondence. The following documents were submitted to the Department in support of the application:
- ASIC and ABR company search results and company extract information for CaC;
 - BAS for CaC for July to September 2013;
 - CaC Annual Financial Report for year to 30 June 2014, undated and unsigned;
 - CaC company profile publication;
 - CaC submission letter in support of Ms W's nomination, dated 21 May 2015, purportedly signed by Ms KB, Director of CaC's Product Research and Development. Ms KB was also listed as the sponsor contact person on the nomination application;
 - Letter of Offer of Employment dated 18 April 2015 from CaC addressed to Ms WC for the position of Corporate General Manager, purportedly signed by Ms KB and signed and dated by Ms W on 27 April 2015;
 - VLC training invoice (number 00104592), dated 19 August 2014, and addressed to CaC for payment of 2 courses in "*Business Front Line Management*" to commence September 2014, as part of the training benchmark requirement; and
 - Publicly available information on the company's products, downloaded from a website on 21 May 2015;
 - Nomination application submission for CaC dated 27 July 2015 and signed by the Agent;
 - CaC Corporate General Manager job description document, undated and unsigned, with metadata properties stating that the document was created on 6 October 2015 with author 'Simone'; and
 - Market salary comparison document for Corporate General Manager, undated, with metadata properties stating the document was created on 1 October 2015, and author 'Simone', and last modified by 'Simone Dickenson'
41. On 19 June 2015 a subclass 186 visa application was lodged for Ms W. The Agent was the registered migration agent representing the visa application. Her email address, simdickenson@hotmail.com, was the authorised email address for correspondence.
42. On 29 October 2015 the Department approved CaC's nomination. Notification of the decision was sent to the Agent's email address. Ms W's subclass 186 visa application was approved on 11 November 2015.
43. On 13 November 2017 the Department contacted CaC by telephone and in writing to verify Ms W's nomination. On the same day the Director of Ca, Mr GSM advised the Department in writing that the company had not engaged the services of, or instructed, another person to act on its behalf or liaise with the Department, or authorised another

person to lodge a Permanent Employer nomination for the company. Further, Mr GSM advised that CaC had no intention to sponsor an overseas worker in the position of Corporate General Manager with a salary of \$180,200, and had not provided the business' financial documentation including BAS statement to any third party for migration purposes.

PhC

44. On 26 May 2015 an ENS nomination application (Direct Entry Stream) was lodged for PhC nominating Mr KYu for the position of Engineering Project Manager with a base salary of \$182,000 and guaranteed annual earnings of \$199,290. The nomination application was represented by the Agent. Her email address, simdickenson@hotmail.com, was the authorised email address for correspondence.
45. The following documents were submitted to the Department in support of the nomination:
 - ASIC and ABR company search results and company extract information for PhC;
 - PhC company profile publication;
 - PhC letter of support for the nomination of Mr KY, dated 22 May 2015, and purportedly signed by the General Manager of PhC, Mr MR, as well as a copy of the same letter of support, unsigned;
 - Letter of Offer of Employment dated 23 April 2015 from PhC addressed to Mr KY for the position of Engineering Project Manager, containing Mr MR's signature block, and signed and dated by Mr KY on 29 April 2015
 - PT training invoice dated 1 June 2014, and addressed to PhC for payment of an integrated training and development course for 12 employees to commence 1 June 2014, as part of the training benchmark requirement;
 - PhC Annual Financial Report for year to 30 June 2014, undated and unsigned;
 - BAS for PhC for April to June 2013;
 - Mr KY's resume; and
 - Job description for Engineering Project Manager, undated and unsigned, with metadata properties stating that the document was created on 21 October 2015 and the author being 'Simone Dickenson'.
46. On 25 June 2015 the Agent lodged a subclass 186 visa application for Mr KY. The Agent was the registered migration agent representing the application and her email address, simdickenson@hotmail.com, as the authorised email address for correspondence.
47. On 11 November 2015 the Department refused PhC's nomination application on the grounds that the sponsor had not satisfactorily demonstrated that there was a need for a paid position in its business operations. The Department also identified a number of concerns with the nomination application, including that Mr KY's position description included duties such as *"obtaining soil and rock samples at different depths across sites and testing samples to determine strength, compressibility and other factors"*, inconsistent with PhC's beauty and skincare business.
48. On the same day as the nomination application was refused, the Department sent an invitation to comment on information for an Employer Nomination (subclass 186) visa to the Agent, on behalf of Mr KY. On 10 December 2015 the Department refused Mr Y's subclass 186 visa application as there was no approved nomination before the

Department. Notification of the decision was sent to the Agent, as Mr KY's appointed registered migration agent.

49. On 2 November 2017 the Department contacted PhC by telephone and email to verify Mr KY's nomination and the nomination application. The Department received verbal and written responses from an authorised representative of PhC on 2 and 3 November 2017, advising that the company had not engaged the services of, or instructed, another person to act on its behalf or liaise with the Department, or authorised another person to lodge a Permanent Employer nomination for the company. In addition, that the company had never employed anyone by the name of 'MR', and had not had any intention to sponsor an overseas worker in the Engineering Manager with a salary of \$182,000, had not provided any company documentation, including financial to a third party for migration purposes. Further, the authorised representative advised that PhC had not engaged PT to provide the training in the invoice dated 1 June 2014, and was not aware of this training provider.