



DECISION RECORD

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| AGENT | Kathy Liu |
| COMPLAINT NUMBER | CMP-32875 |
| DECISION | Suspension – 18 months |
| DATE OF DECISION | 8 March 2021 |

Terms used for reference

1. The following abbreviations are used in this decision:

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| <i>ABN</i> | Australian Business Number |
| <i>AAT</i> | The Administrative Appeals Tribunal |
| <i>BVA/B/E</i> | Bridging Visa A, B or E |
| <i>FOI requests</i> | Requests under the <i>Freedom of Information Act 1982</i> |
| <i>MARN</i> | Migration Agent Registration Number |
| <i>PIC</i> | Public Interest Criteria |
| <i>Section 308 notice</i> | Notice issued by the Authority under section 308 of the Act |
| <i>Section 309 notice</i> | Notice issued by the Authority under section 309 of the Act |
| <i>The Act</i> | <i>The Migration Act 1958</i> |
| <i>The Regulations</i> | <i>The Migration Regulations 1994</i> |
| <i>The Agent</i> | Kathy Liu |
| <i>The Authority</i> | The Office of the Migration Agents Registration Authority |
| <i>The Code</i> | The Migration Agents Code of Conduct prescribed under Regulation 8 and Schedule 2 to the Agents Regulations |
| <i>The Department</i> | The Department of Home Affairs |
| <i>The Register</i> | Register of migration agents kept under section 287 of the Act |
| <i>The Agents Regulations</i> | <i>Migration Agents Regulations 1998</i> |
| <i>VEVO</i> | Visa Entitlement Verification Online |

STATEMENT OF REASONS

Background

2. The Agent was first registered as a migration agent on 14 September 2009 and was allocated the MARN 0958014. The Agent's registration had been renewed annually to date.
3. The Agent's registration application which was lodged on 10 September 2019, was granted on 15 July 2020 pursuant to section 300(5) of the Act. The Agent made an application to renew her registration on 8 September 2020, which remains under consideration, pending the finalisation of the complaint which is the subject of this decision.
4. The Register lists the Agent's business name as Southern Stone International Pty Ltd with the ABN 92 168 466 420.

Prior Disciplinary action

5. The Agent does not have any history of prior disciplinary action.

Complaint/s

6. The Authority received a complaint about the Agent's conduct as a registered migration agent from the Department of Home Affairs (**the Department**).
7. The complaint alleged that:
 - a. The Agent lodged three Employer Nomination Scheme (**ENS**) nomination applications on behalf of FF Pty Ltd on 15 June 2017. The company was not aware of these applications and did not instruct, or authorise the Agent to lodge these applications.
 - b. The Agent also lodged three related subclass 186 visa applications on behalf of the following persons, who were allegedly to be employed by FF Pty Ltd:
 - i. Mr ZW, lodged 15 June 2017
 - ii. Ms XY, lodged 22 June 2017
 - iii. Ms XZ, lodged 23 June 2017
 - c. The Agent provided a Statement on 9 January 2019 to the Australian Border Force (**ABF**) about these applications, which the Agent authorised ABF to provide to the Authority. The Statement describes the Agent's involvement with a Mr HH, who the Agent stated referred the three visa applicants and the nominator to the Agent and facilitated all communication.
 - d. The supporting evidence provided with the Statement included:
 - i. Copy of a business card provided to the Agent by a Mr HH¹ (<<removed for privacy>>)), whom the Agent believed was a migration agent in <<location removed for privacy>>) seeking the Agent's assistance for the applications;
 - ii. E-mail from Mr HH with BAS statements for FF Pty Ltd ;
 - iii. E-mail correspondence with Mr HH, on various dates in 2017;
 - iv. Form 956;

¹ In her responses to the Authority, the Agent frequently refers to Mr HH by his first name (<<removed for privacy>>).

- v. Three letters on FF Pty Ltd letterhead, in support of the applications in question;
- vi. Screenshots of WeChat conversations with Mr HH, accompanied by the Agent's translations.

Information received from the Department

8. Departmental records obtained by the Authority confirm that on 5 June 2017 the Agent lodged three ENS nomination applications on behalf of FF Pty Ltd. The Agent also lodged three related subclass 186 visa applications (**the three visa applications**), for the following visa applicants:
 - i. Mr ZW, lodged 15 June 2017,
 - ii. Ms XY, lodged 22 June 2017,
 - iii. Ms XZ, lodged 23 June 2017.
9. The visa applicants have not previously worked or studied in Australia.
10. The contact person for the FF Pty Ltd Pty Ltd nomination applications was stated as Mr BR, with the email address '<<removed for privacy>>' and contact phone number <<removed for privacy>>.
11. In support of the nomination applications, the following documents were lodged between July and September 2017:
 - a. Balance Sheet and Annual Report for the year ended 30 June 2016,
 - b. Employment agreement for each of the visa applicants, signed by each visa applicant and by Mr BR;
 - c. Business name details extracted from the Australian Securities and Investment Commission (**ASIC**) database;
 - d. Receipt for the advertisement of the nominated positions on seek.com.au,
 - e. Receipts for training issued to FF Pty Ltd Pty Ltd by a number of organisations,
 - f. Organisation chart for FF Pty Ltd,
 - g. Draft Business Activity Statements for FF Pty Ltd,
 - h. A Remuneration Survey document for marketing professionals,
 - i. A letter of support for the application, signed by Mr BR,
12. The three visa applications were supported by documents including birth certificates, academic transcripts, evidence of English language ability, and identification documents. The supporting documents were submitted between July and September 2017.
13. On 19 September 2017 the Agent submitted an *Appointment or withdrawal of an authorised recipient (including migration agent)* form to the Department, advising that the Agent was ending the Agent's appointment as the agent representing the nomination and visa applications
14. The Agent did not provide a reason for the withdrawal of the Agent's appointment as the registered migration agent.
15. There are no records before the Authority to indicate that the Agent reported or discussed any concerns in respect of these applications with the Authority or the Department, prior to being contacted by ABF investigators.

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

16. On 18 June 2019 a notice pursuant to section 308 of the Act was issued to the Agent (**the first section 308 notice**), together with a copy of the Statement. The Agent was advised that the complaint raised possible issues under clauses 2.1, 2.8, 2.9, 2.23, 5.2, 5.5 and 6.1 of the Code of Conduct for registered migration agents (**the Code**).
17. Under subsection 308(1) of the Act the Agent was requested to provide a written response to specific questions asked by the Authority, as listed in Attachment A, and a copy of the client file for each case.

The Agent's response to the first section 308 notice

18. The Authority received the Agent's response to the complaint on 17 July 2019. In summary, the Agent's response, provided in the form of a Statutory Declaration, stated:
 - a. The Agent utilises two e-mail addresses:
 - i. *kathy@xlinternational.com.au* – utilised since July 2011 when the Agent commenced the Agent's business XL International Pty Ltd. This email address is utilised to engage the Agent's own clients.
 - ii. *kathy@southernstone.com.au* – utilised since March 2014 when the Agent formed a new business, Southern Stone International Pty Ltd, with Mr WW. This email address is utilised to correspond with clients on behalf of this business. The Agent initially had problems with this email address, but after February 2018, when Mr WW decided to discontinue his involvement in the migration business, the Agent sought IT assistance to resolve the problems and now uses this email address for all communications with the Department, except for some older, unfinalised cases which were initially engaged through XL International Pty Ltd.
 - b. The Statement the Agent made is an accurate reflection of the circumstances surrounding the Agent's involvement with the nomination and visa applications for FF Pty Ltd and three visa applicants discussed in the notice.
 - c. The Agent's first contact with Mr HH was via a phone call, in which he advised the Agent that he was referred to her by a real estate company operating from <<location removed for privacy>>, but the Agent cannot recall who referred Mr HH to her.
 - d. On 3 December 2015 the Agent had a 'meet and greet' with Mr HH, during which they exchanged business cards and WeChat IDs. During this meeting Mr HH introduced himself as being the owner of a highly experienced and reputable migration agency in <<location removed for privacy>>, <<company name removed for privacy>>,² which assists <<removed for privacy>> applicants with migration and visa assistance for popular destinations such as UK, USA, Canada, Australia, and New Zealand. The Agent had heard of this company previously, and knew that it was a fairly big migration agency in <<location removed for privacy>>.
 - e. The Agent checked Mr HH's company website after the meeting, and it was a legitimate website with full company information. The site is no longer active.
 - f. The Agent's subsequent interactions with Mr HH were by telephone, email and WeChat. The Agent provided copies of email and WeChat conversations with Mr HH.
 - g. Southern Stone and AG entered into an agreement whereby Southern Stone would provide visa lodgement services to AG's clients. This agreement was signed by the Agent's business partner, Mr WW.

² For ease of reference, the company will be referred to as AG.

- h. The Agent also signed agreements for services and fees with each of the three visa applicants and FF Pty Ltd. These agreements were provided to the Agent by Mr HH, and the Agent had no direct contact with these clients.
 - i. Payments for the Agent's professional services and the application fees were made via bank transfer. The Agent provided copies of relevant invoices and Xero Activity/Transaction history reports.
 - j. No refunds were provided as services had been completed.
 - k. Prior to the Agent's dealings with Mr HH, the Agent always had direct contact with her clients except for a few student visa applications a few years ago. Their offshore agents did not have online access to lodge student visa applications and the offshore agents contracted the Agent to lodge the visas for the students. There were only a handful of these cases.
 - l. In regards to the Agent's business interests:
 - i. The Agent has been a director of XL International Pty Ltd since 1 July 2011. The Agent no longer use the business to actively engage with clients, but its purpose was the provision of visa and educational services.
 - ii. The Agent has been a director of Southern Stone International Pty Ltd since 10 March 2014. The purpose of the business is the provision of Australian visa, educational and taxation services.
 - iii. The Agent has been a director of <<removed for privacy>> since 1 July 2018. The purpose of the business is the provision of guardianship/welfare support services for international students under 18 years of age.
 - m. In regards to business relationships the Agent advised:
 - i. Mr WW is the Agent's business partner.
 - ii. Ms EK is a former employee of Southern Stone, employed between 15 August 2016 and 31 December 2017 in a role of <<removed for privacy>>.
 - iii. Ms GH is a current employee in the role of <<removed for privacy>>.
 - n. The Agent has been a registered migration agent since September 2009 and has always been diligent in her dealings with clients. She has reflected on her naivety in accepting the documentation at face value. She had been advised by Border Force that 'everything' including financials and BAS statements were falsified and that there were many 'pawns' like the Agent who had become unknowingly involved. The Agent admits she must take responsibility for not being diligent.
 - o. Since this incident the Agent has refrained from dealing with any clients that she is unable to personally contact, and has moved to using a new set of engagement documentation to ensure full adherence to the Code of Conduct.
 - p. The Agent is fully regretful of lodging the applications, but believed these to be genuine at the time of lodgement.
19. The Agent's Statement stated, of key relevance:³
- a. Mr HH informed the Agent that the visa applicants and FF Pty Ltd were referred to him by a migration agent based in <<location removed for privacy>> named 'Mr T.' Mr HH advised the Agent that 'Mr T' facilitated all of the documentation provided; is <<removed for privacy>>; a registered migration agent and lives in <<removed for privacy>>. However, in going through her chat history with Mr HH, the Agent also noted that Mr HH stated that the referral was from a 'Caucasian lawyer.' The Agent does not know for certain who provided the forged documents to Mr HH. Mr HH advised her that he was not aware that the nominations were fraudulent.

³ Other details provided in the Statement are discussed throughout this decision.

- b. The Agent requested Mr HH provide as much supporting documentation as possible. Mr HH provided letters of support/labour market testing statements for the applications, which he claimed were provided by FF Pty Ltd. However these letters looked “unprofessional and very tacky for such a large company.” These letters prompted the Agent to contact the nominator. She discovered that the nominator had no knowledge of the applications. The Agent then withdrew her appointment as a migration agent for FF Pty Ltd and the three visa applicants. She attempted to get in contact with the nominator to clarify the situation. She left the nominator a voicemail, but did not receive a reply.
 - c. Prior to dealing with Mr HH, the Agent did not usually engage with a client with whom she did not have direct contact via phone calls, emails or messages.
 - d. The documents provided by Mr HH were of such a nature that the Agent believed only a direct party would have access, and she did not doubt the authenticity of the documents.
 - e. The Agent saw Mr HH as an industry colleague with whom she built a level of rapport and trust. She believed that as the owner of a reputable, large migration agency in <<location removed for privacy>> he would have direct contact with the clients. The Agent did discuss contacting clients directly, however Mr HH was adamant that she should not do that. The Agent made a business decision to not damage her relationship with Mr HH by undermining him to his clients, as he offered ‘decent rates.’ She acknowledged this was “a very poor professional decision.”
 - f. The Agent’s only contact in respect of the nomination and visa applications was with Mr HH. She checked the FF Pty Ltd website, and did not notice anything suspicious. The Agent did not doubt the authenticity of the documents provided to her by Mr HH in support of these applications.
20. In support of the response the Agent provided:
- a. WeChat history with Mr HH;
 - b. Mr HH’s business card;
 - c. E-mail correspondence with Mr HH;
 - d. Signed Service Agreement between Southern Stone and AG;
 - e. Signed Service Agreement and Form 956 between Southern Stone and FF Pty Ltd;
 - f. Signed Service Agreement between Southern Stone and the three visa applicants;
 - g. Invoices/Receipts issued to FF Pty Ltd for the three nomination application fees;
 - h. Invoices/Receipts issued to the three visa applicants for the deposit of their service fee;
 - i. Immigration application fee receipts for three nominations and three visa applications;
 - j. Xero Activity/Transaction History for FF Pty Ltd and the three visa applicants;
 - k. Labour Market Testing statements provided to the Agent by Mr HH on behalf of FF Pty Ltd;
 - l. Client files for FF Pty Ltd, and the three visa applicants.

Second Notice under section 308 of the Act (“the second section 308 notice”)

- 21. On 2 June 2020 a second notice pursuant to section 308 of the Act was issued to the Agent (**the second section 308 notice**), seeking additional information about the complaint and the the Agent’s response to the first section 308 notice.
- 22. The second section 308 notice alerted the Agent that the Authority had information that she lodged the following applications with the Department for AA Pty Ltd:
 - a. An ENS nomination application, lodged 16 March 2017, nominating Ms HW (DOB is <<removed for privacy>>) for the position of Mechanical Engineer. This application

was refused on 13 July 2017 as no documents were provided in support of the application.

- b. A related class EN subclass 186 Employer Nomination Scheme visa (186 visa) application on behalf of Ms HW. This application was withdrawn on 3 August 2017 due to the refusal of the nomination application.
 - c. A second ENS nomination application, lodged 21 August 2017, nominating Ms HW, for the position of Mechanical Engineer. On 19 September 2017 the Agent submitted an *Appointment or withdrawal of an authorised recipient (including migration agent)* form (Form 956) to the Department, advising that she was withdrawing her representation in respect of this application.
 - d. A related second subclass 186 visa application on behalf of Ms HW was lodged on 21 August 2017. On 29 September 2017 the Agent submitted a Form 956 to the Department, advising that she was withdrawing her representation in respect of this application.
23. Following the Agent's withdrawal of her representation of the application the Department received information that the sponsor, AA Pty Ltd, was not aware of and did not authorise the application nominating Ms HW which the Agent lodged on behalf of the company.
24. Department records show that the Agent also lodged the following applications:
- a. An ENS nomination on behalf of NT Pty Ltd, lodged 28 November 2016, nominating Mr CL (DOB <<removed for privacy>>) for the position of Sales and Marketing Manager. The Agent withdrew this application on 22 August 2017, citing "company internal issues" as the reason for withdrawal. The withdrawal was effected using Form 1446, but there was no signature of the nominator on this form. On the same date the Department received information that the company had gone into liquidation on or around 17 March 2017
 - b. Two ENS nomination applications on behalf of WC Pty Ltd, lodged 11 May 2016 and 17 November 2016. These two applications were withdrawn on 6 June 2017 and 24 July 2017 in response to an *Invitation to comment on adverse information for a nomination application for a ENS Nomination (Direct Entry) (subclass 186) visa*, issued by the Department of Home Affairs on 18 May 2017 (Invitation to comment), alerting the Agent to the fact that the company had gone into External Administration in April 2017.
25. The following documents were provided with the second section 308 notice to the Agent:
- a. Invitation to comment issued by the Department of Home Affairs in respect of the two applications lodged on behalf of WC Pty Ltd.
 - b. Form 1446 seeking to withdraw the application lodged on behalf of NT Pty Ltd.
 - c. Electronic confirmation of withdrawal of the Agent's representation of AA Pty Ltd.
 - d. Electronic confirmation of the Agent's withdrawal of the Agent's representation of Ms HW.
26. Under subsection 308(1) of the Act the Agent was requested to provide a written response to specific questions asked by the Authority including clarification of her response to the first section 308 notice, as listed in Attachment B. She was asked to provide a copy of her complete client files for AA Pty Ltd, Ms HW (DOB <<removed for privacy>>), NT Pty Ltd and WC Pty Ltd.

The Agent's response to the second section 308 notice

27. The Authority received the Agent's response to the second section 308 notice on 30 June 2020. She provided the following clarification of her response to the first section 308 notice:
- a. At the time of starting up Southern Stone with Mr WW, the Agent already had an established migration business, XL International. She agreed with Mr WW that clients

which came from her own referral network would fall under XL International, would be invoiced by XL International and she would communicate with these clients via her XL International email address. Clients who were introduced to the business by Mr WW or through their joint efforts, would be clients of Southern Stone and be invoiced and communicated with accordingly. Due to IT issues the Agent continued to use her XL International email address to communicate with all clients. There was no urgent need to correct the IT issues until Mr WW ceased in his directorship and shareholding of Southern Stone. At this point the Agent sought to correct the IT issues, and commenced primarily utilising the Southern Stone email address. However, the XL International email address remains active for the purpose of long-term cases. The Agent clarified that by "engage clients" she meant engage with clients through email correspondence.

- b. The payments received for the FF Pty Ltd nominations and the three visa applications were deposited in the Agent's Clients' Account, held at the Bank of Melbourne. The first deposit was on 15 May 2017 with the reference "Mr HH" and the subsequent deposit was on 13 June 2017 with the reference "<<removed for privacy>>" The Agent provided the Xero Reconciled Transaction Record for these two payments.
- c. In respect of evidence of Mr HH's authority to represent FF Pty Ltd, the Agent advised that Mr HH provided "seemingly intimate" details of the business, such that would not presumably be available to a person without authority. Mr HH would also "make calls to his staff/contacts to ascertain information in our presence." The Agent conceded that she was naïve to believe that the documents provided by Mr HH could not have come from a source external to FF Pty Ltd. She further advised that there was a level of trust she had built with Mr HH as she had also been party to telephone conversations involving other business owners and Mr HH.
- d. The documents provided to the Agent in support of the FF Pty Ltd applications were provided via email directly by Mr HH, who would on occasion bring the Agent original documents in person for her to scan and upload to the applications. She believes a few emails may have been from a Ms EG, who Mr HH advised was his assistant.
- e. The Agent does not remember verbatim what she said to Mr BR but believes she would have introduced herself and the reason for the call. The moment Mr BR made it clear that he had no idea what she was talking about she was too stunned to think clearly.
- f. The Agent claimed that she advised Mr HH "several times" that it would be "easier" for her to contact the clients directly, however Mr HH "preferred that this did not happen."
- g. The Agent claimed she did not alert the Department of the potential fraud at the time because she "could not know for sure how serious the matter was at the time and were unable to reach (Mr BR) again to clarify the matter." Mr HH was adamant that everything was fine. He was upset that the Agent had withdrawn her representation from the cases as he felt that she had "done him and the visa applicants a disservice." The Agent wanted nothing to do with Mr HH, and avoided thinking about the matter. She perceived this event to be "professionally humiliating and confronting." It was not until she was approached by ABF that she learned that all of the documents in respect of FF Pty Ltd were falsified.

28. In respect of the AA Pty Ltd-related applications, the Agent advised:

- a. AA Pty Ltd and Ms HW were "another (Mr HH) referral." Mr HH initially spoke to the Agent by phone to discuss the case, and the Agent decided to take on the case after receiving details of the company's website and recent financial documentation.
- b. The Agent received a Form 956, employer declaration and a signed *Service Agreement* from AA Pty Ltd, and a Form 956 and visa declaration from Ms HW. The contact person for AA Pty Ltd was Ms IY, who was listed as the general manager. The Agent verified the company's information on their website and through public information, and was satisfied with the credibility of the information as AA Pty Ltd worked with <<removed for privacy>> manufacturers who supplied their trailers. The Agent was "very taken aback" by the information that AA Pty Ltd was not aware of and did not authorise this application.

- c. The Agent spoke to the listed contact, Ms IY, on the phone and she was aware of the application. She did not recall the precise date the call was made. She sought to obtain a copy of her phone records to verify the details of the phone call, but is yet to receive this documentation. She will forward this information to the Authority when it becomes available. The Agent provided client file notes, which reflect that a phone call was made to Ms IY. The file note is not dated, but appears below a file note made on 21 August 2017.
- d. The Agent received a deposit of \$5000 on 19 January 2017, and application fees for the nomination and visa on 13 March 2017. Reference for both payments is stated as "<<removed for privacy>>" and the Agent provided evidence from her accounting software.
- e. The Agent withdrew her representation from this case on the same date that she withdrew her representation from the FF Pty Ltd applications because she did not want to have anything further to do with "(Mr HH's) cases." She solemnly declared that she had no reason to believe at the time that AA Pty Ltd had no knowledge of the case, and the company representative confirmed her awareness of the application during the phone conversation.
- f. No refunds were issued in respect of these cases.
- g. The documents in support of AA Pty Ltd and Ms HW's applications were provided to the Agent by Mr HH, mostly via email. The Agent provided evidence of email correspondence in respect of the documents being provided to her.
- h. The first ENS nomination lodged on behalf of AA Pty Ltd was lodged without sufficient supporting evidence in reliance on a departmental practice to send a *Request for Information* if insufficient information was provided. The Agent submitted that prior to July 2017 she had never had an application refused due to insufficient information being provided, without that information being requested first. She acknowledged her "lack of prudence in this matter" and that she could have attached the documents she had on hand. She subsequently bore the costs of lodging the second ENS application.
- i. The Agent "had no reason to doubt the authenticity of the documentation provided for AA Pty Ltd." The combination of the documents she received was such that she felt comfortable that it was a nomination application based on merits. The Agent provided copies of the documents in support of her response including tax returns; payroll summary; and a letter from an accountant.
- j. The Agent had no direct communication with AA Pty Ltd apart from the one phone call and no direct communication with Ms HW until after she withdrew from representing her case. Ms HW contacted her in July 2018 to enquire about her options now that her subclass 186 visa was withdrawn. The Agent has provided evidence of email correspondence with Ms HW, dated 23 July 2018.
- k. In respect of WC Pty Ltd, the company was referred to the Agent by a Mr KH who was a Director of a company called 1st Intro. Mr KH knew that WC Pty Ltd was actively looking to recruit overseas staff due to labour shortages in the domestic labour market, and approached the Agent to discuss potential visa assistance. Mr WW had also done work for a company associated with WC Pty Ltd – <<removed for privacy>> Pty Ltd.
- l. A service agreement, declarations and Form 956 were signed on behalf of WC Pty Ltd, by Mr GC and Mr RB, who were partners in the company. The Agent had numerous meetings with key personnel in the company, both at their office and at a restaurant. She became aware of the company's financial strife after it was widely publicised in the media. On 1 March 2017 she performed an ASIC search which revealed that <<removed for privacy>> Pty Ltd was under external administration, however WC Pty Ltd was trading. After receiving advice from the Department on 18 May 2017 regarding WC Pty Ltd's external administration status, the Agent "actioned withdrawal from cases." She has provided documents to evidence this with her response.

- m. The Agent had issued invoices for the two nominations to WC Pty Ltd, however these were not paid. Upon learning of their financial plight she did not pursue the payments.
 - n. In respect of NT Pty Ltd, the company's managing director Mr MM was introduced to Mr WW by a mutual friend. Mr WW "handled" the NT Pty Ltd cases initially. The Agent also lodged an ENS nomination and related visa application on behalf of another entity owned by Mr MM, <<removed for privacy>> Pty Ltd.
 - o. A service agreement, declarations and Form 956 were signed on behalf of NT Pty Ltd by Mr MM, who was the Managing Director. The Agent had been to NT Pty Ltd's office and the company was a known <<removed for privacy>> provider. She provided evidence of communication with Mr MM in respect of the applications. Mr MM paid the Agent's professional fees of \$3300 but the nomination application fee remains outstanding.
 - p. Both WC Pty Ltd and NT Pty Ltd provided documents which were in turn submitted to the Department.
 - q. No money was refunded in respect of the WC Pty Ltd and NT Pty Ltd applications.
29. In support of the Agent's response she provided the following documents requested by the Authority:
- a. Complete client files for AA Pty Ltd, NT Pty Ltd, WC Pty Ltd and Ms HW.
 - b. Evidence of payments made in respect of these applications.
30. The Agent re-iterated that prior to engaging with Mr HH, she had never handled cases where she did not have direct contact with the applicant. She takes pride in her profession and the professional assistance that she is able to provide to her clients. Her decision to engage with Mr HH is "one that brought about lengthy self-reflection" and she is deeply regretful of her lapse in judgment and poor business-decision making.

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

31. On 6 July 2020 the Authority sought additional information in regards to the complaint and the information the Agent provided (**the third section 308 notice**).
32. The third section 308 notice sought:
- a. A list of clients that Mr HH referred to the Agent, and on behalf of whom the Agent lodged applications with the Department.
 - b. In respect of these clients:
 - i. Details of whether the Agent had direct contact with the client.
 - ii. If so, how the Agent communicated with the client.
 - iii. What steps the Agent took to verify the information provided by the client.

The Agent's response to the third section 308 notice

33. The Authority received the Agent's response to the third section 308 notice on 10 July 2020 by way of email.
34. The Agent advised that Mr HH referred six other clients to her, on behalf of whom she lodged applications with the Department, as follows:
- a. A nomination application lodged on behalf of SN Pty Ltd and a related subclass 186 visa application lodged on behalf of Ms XS. The nomination application was refused, and the visa application was withdrawn.

- b. A nomination application lodged on behalf of SC Pty Ltd and a related subclass 186 visa application lodged on behalf of Ms ZH. The nomination application was approved, and the visa was granted.
 - c. A nomination application lodged on behalf of AO Pty Ltd and a related subclass 186 visa application lodged on behalf of Ms FC. The nomination application was refused, and the visa application was withdrawn.
35. In respect of these six clients, the Agent advised:
- a. The Agent had no direct contact with the clients.
 - b. All communication was through Mr HH.
36. In respect of verifying the information provided by the client the Agent advised:
- a. The Agent was provided with "intimate company information" for SN Pty Ltd, including bank statements, signed trust deed, internal payroll reports. She had "no reason to believe the documentation came from a source external to the company."
 - b. The Agent was provided with "intimate company information" on behalf of SC Pty Ltd, such as bank statements, ASIC-issued Certificate of Registration of a Company and company and an Australian Business Register document issued by the Australian Taxation Office; and a partial signed copy of Contract for the Sale of Land for the business premises. The Agent received a business card from the director, Mr SZ, a copy of which she provided to the Authority. She recently spoke to the director and he confirmed that the application was authorised. She contacted the director on the mobile number provided on the business card. She introduced herself as the agent that lodged the application, and Mr SZ confirmed that the nominee worked for the company for about a year. The Agent asked "whether the case was done through (Mr HH)." Mr SZ informed her that he did not know who Mr HH is, and that a staff member in the company organised the application with Mr SZ's permission.
 - c. In regards to AO Pty Ltd, this is a known company in the <<removed for privacy>> community. While the Agent does not know the director of the business personally, she had no reason to doubt the legitimate source of the information provided to her, including full financial documents and ASIC payment documents.
37. In respect of each related visa applicant, the Agent advised that Mr HH provided their personal records and documentation.
38. Each of the nomination and visa applications were lodged before the FF Pty Ltd cases, and the Agent still has no reason to doubt the documentation provided, given the "intimate nature of the files."
39. On the question of steps the Agent takes to verify information provided by clients, she confirmed that there is a "good portion of clients" whom she never met in person, and with whom she only communicates via emails, phone calls and social media applications. Further, the Agent submitted that *"even for those clients that we have face to face dealings, it would be often impossible to verify whether the details and documentation that a client has provided to her is genuine/accurate or otherwise and I believe our role as Migration Agents is not to investigate whether the documents provided to us is genuine when what has been provided appears to be legitimate and kosher. I exercise a degree of good faith in the documentation provided to us and at times use common sense to identify areas of concern and in the vast majority of my dealings with clients, I have never had reasons to doubt the documentation provided. (FF Pty Ltd) however is a perfect example of me identifying a source of suspicion and myself acting on that suspicion to reach a very unsettling truth."*

Departmental Records

40. Departmental records in respect of the three pairs of applications indicate that:
- The Agent lodged an ENS nomination application on behalf of SC Pty Ltd Australia Pty Ltd on 13 September 2016, and the related subclass 186 application on behalf of Ms ZH on 16 November 2016. On 5 May 2017 the nomination application was approved, and the related visa application was granted.
 - The Agent lodged an ENS nomination application on behalf of SN Pty Ltd Nominees Pty Ltd on 30 November 2016, and the related subclass 186 application on behalf of Ms XS on 2 December 2016. The nomination application was refused on 25 August 2017 on the basis that the application failed to identify a need for the nominator to employ a paid employee to work in the position under the nominator's direct control. The related visa application was withdrawn on 6 November 2017.
 - The Agent lodged an ENS nomination application on behalf of AO Pty Ltd on 12 May 2017, and the related subclass 186 visa application on behalf of Ms FC on 2 June 2017. The nomination application was refused on 4 September 2017 on the basis that it had not been demonstrated that the employee will be employed on a full time basis in the position for at least two years. The related visa application was withdrawn on 9 November 2017.

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

- On 13 August 2020 the Authority sent to the Agent a notice pursuant to section 309(2) of the Act, advising her that it was considering cautioning him/her, or suspending or cancelling the Agent's registration under section 303(1) of the Act.
- The Agent was notified that having regard to the information before the Authority, it was open to the delegate to be satisfied that she had engaged in conduct that breached her obligations under clauses 2.1, 2.4, 2.8, 2.9, and 2.9A of the Code.
- Pursuant to section 309(2) of the Act, the Authority invited the Agent to provide written submissions on the matter by 10 September 2020.

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

- On 9 September 2020 the Authority received the Agent's submissions by statutory declaration. The Agent advised:
- In respect of Mr HH and his business AG:
 - The Agent had regularly seen AG advertised online, and it is a company well-known to <<removed for privacy>> persons.
 - Prior to 2018 the <<removed for privacy>> government via the Ministry of Public Security managed the registration of businesses providing immigration assistance. Only a limited number of immigration service licenses was issued, and only businesses with such a licence could register as an "Immigration Service Co. Ltd." AG held such a licence under the name "<<removed for privacy>> Immigration Service Co Ltd." The Agent believes they were one of the first entities in <<removed for privacy>> to be granted a licence when the scheme started. The licences were "extremely hard" to acquire, and "consumers used this as a guide to form judgement on the legitimacy and reputation of an immigration agency."
 - At the time of engagement with Mr HH, he appeared to be the Director of a "well-known, reputable and legitimate" immigration business based in <<location removed for

privacy>>. While Mr HH was not registered in Australia, he was duly licenced by the relevant <<removed for privacy>> authority.

- d. The Agent used the term “industry colleague” colloquially, to refer to someone working in the same industry, and sought that the Authority not construe this in a negative manner.
- e. Mr HH stated that his business had “a lot of experience handling business visa applications but wanted to engage Australian Migration Agents to assist with paperwork for employer sponsored visa categories.” He was seeking someone with a good command of both English and <<removed for privacy>> languages.
- f. The Agent saw this as an opportunity to expand her practice.
- g. The Agent asserted that the information provided in respect of Mr HH and AG is not to deflect from any shortcomings, but to provide a background as to why the Agent chose to engage with Mr HH and why it was not implausible that Australian employers would engage Mr HH’s business.

46. In respect of the Authority’s proposition that the Agent acted without authority of the client, and without diligence or regard for the interests of the client, she advised:

- a. She fully acknowledged that in dealing with the clients referred to her by Mr HH she “could have and should have done more to ascertain the clients’ true instructions.”
- b. She recognised that her “failure to take appropriate actions at the right time demonstrated a lack of diligence and professional conduct that fell short of [her] obligations under the Code.” She takes full accountability for this.
- c. In respect of Mr HH being adamantly against the Agent making direct contact with the clients, she accepted that it is “a logical train of thought” to question Mr HH’s authority. However, she clarified that in <<removed for privacy>> culture there is “a great deal of emphasis placed on trust and (face).” Accordingly, in line with her <<removed for privacy>> heritage, she construed Mr HH’s reluctance as not wanting to appear untrustworthy to his clients.
- d. The Agent acknowledged that this does not excuse her for contravening any part of the Code, but emphasised that throughout the course of her dealings with Mr HH she did not have any concerns about the genuineness of the documents provided.
- e. She acknowledged that she had “perhaps delegated to [her] staff too much of the administrative duties.” She further acknowledged that she should have noticed the difference in signatures on the paperwork, and that “there are details in the FF Pty Ltd documentation that should have prompted [her] to make direct contact with Mr BR earlier.” The Agent acknowledged her “failings in these aspects.”

47. In respect of AA Pty Ltd, the Agent stated:

- a. She is adamant that when she spoke with the representative, Ms IY, the representative was aware of who she was referring to. She mentioned the visa applicant’s name and position during this call.
- b. The Agent nonetheless withdrew her representation as she “did not want anything further to do with Mr HH.”

48. In respect of the business card provided by the director of SC Pty Ltd, the Agent acknowledged that it is unprofessional. However, she stated that it is not unusual for <<removed for privacy>> clients to have poor quality marketing material.

49. The Agent reiterated that nothing in the documentation provided in support of the cases referred to her by Mr HH gave rise to any suspicions as to authenticity and genuineness. She contacted AA Pty Ltd after speaking with Mr BR, but did not contact the other clients as the cases were finalised.

50. The Agent acknowledged that in her negligence she had “unknowingly contributed to the lodgement of forged documentation” with the Department.

51. She asserted that with her heightened awareness, "there is absolutely no possibility of [her] ever again accepting a case without first obtaining direct client instructions." She has improved her practice management and lessened her reliance on administrative staff. Through this experience, she asserted she has "become a better migration agent."
52. In respect of the Authority's allegation that the Agent had attempted to mislead the Department and the Authority, the Agent advised:
 - a. She "vehemently" denies that she "ever acted in any way to intentionally mislead the Department or the Authority."
 - b. She did what she believed was right "morally and professionally," and that was to withdraw her representation without delay in respect of the FF Pty Ltd and AA Pty Ltd applications.
 - c. At the time, the Agent believed the documentation provided came from an internal source within FF Pty Ltd, and that the AA Pty Ltd application was duly authorised. It was "absolutely inconceivable" to her that all of the documents she provided in support of these applications were forged to facilitate the lodgement of the applications. Had the Agent been aware at the time that the documents were forged, she would have "reported the matter immediately."
 - d. The Agent asserted that it is "absolutely implausible" that she would jeopardise her career, reputation and hard work to lodge a few applications for the \$5000 per case she received, which is not above market rates.
53. In respect of the allegation that the Agent's employee was actively involved in the creation of documents, she advised that her employee did not create the organisation chart, but rather amended the document to include the nominee's position and the visa/citizenship status of the other employees. She also advised that job descriptions were based on the "advertised job ads that were provided to us." She provided the original documents provided to her in support of the application to support this claim.
54. The Agent asserted that she did not intentionally downplay her involvement in the creation of documents on behalf of FF Pty Ltd. The changes made to the documents were on the basis of information provided to her, and not created "on this air." She stated that it is not unusual for her to draft some supporting documentation on behalf of clients to assist them in the process. She noted that almost two years passed before the Authority sought her client files, and some memory lapse in regards to particular adjustments made to documents can be justified.
55. In respect of not providing refunds to AG the Agent stated that the agreement entered into with AG explicitly stated that AG guaranteed authenticity of the materials provided. As such, the fact that forged documents were provided, voided any refund claims. Further, at the time when the Agent withdrew her representation, she had completed all of the work. AG had not sought a refund.
56. The Agent reiterated that her relationship with AG was a "business referral relationship" and not an immigration assistance relationship. As such she "had no duties to fulfil towards AG in terms of [her] obligations as a registered migration agent." She denied that she was placing her financial gain above her obligations as a registered migration agent by not providing a refund to AG.
57. In respect of the allegation that the Agent attempted to mislead the Authority by not initially disclosing her full level of engagement with Mr HH, she denied that she consciously or intentionally attempted to mislead the Authority. She responded to each section 308 notice truthfully, and interpreted "any" correspondence to mean "any relevant" correspondence to the cases in question. The Agent expected "many more questions from the Authority" following the first section 308 notice, and she acknowledged that her responses may be construed as intentionally misleading, however asserted that she had no intent to mislead the Authority.
58. The Agent addressed the issue of mitigating factors, which will be discussed later in the decision.

59. In support of the response, the Agent provided:
- a. Attachments A-E - online articles referring to Mr HH and AG, translated using Google Translate
 - b. Attachment F – Company registration record in respect of <<removed for privacy>> Immigration Service Co Ltd, in <<removed for privacy>> only.
 - c. Attachment G – Original Organisation chart provided for FF Pty Ltd.
 - d. Attachment H – Job description comparison

Jurisdiction

60. The Authority performs the functions prescribed under section 316 of the Act.
61. The functions and powers of the Authority under Part 3 of the Act and Agents Regulations are the functions and powers of the Minister. The Minister has delegated the powers under Part 3 of the Act and the Agents Regulations to officers of the Authority. I am delegated under the relevant Instrument to make this decision.

Relevant legislation

62. 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)).
63. The Authority may decide to cancel the registration of a registered migration agent by removing his or her name from the register, or suspend his or her registration, or caution him or her under subsection 303(1), if it is satisfied that:
- the agent's application for registration was known by the agent to be false or misleading in a material particular (paragraph 303(1)(d); or
 - the agent becomes bankrupt (paragraph 303(1)(e); or
 - the agent is not a person of integrity, or is otherwise not a fit and proper person to give immigration assistance (paragraph 303(1)(f); or
 - an individual related by employment to the agent is not a person of integrity (paragraph 303(1)(g); or
 - the agent has not complied with the Code prescribed under subsection 314(1) of the Act (paragraph 303(1)(h)).
64. Subsection 314(2) of the Act provides that a registered migration agent must conduct himself or herself in accordance with the Code. Regulation 8 of the Agents Regulations made under the Act prescribes a Code.
65. Before making a decision under subsection 303(1) of the Act, the Authority must give the agent written notice under subsection 309(2) informing the agent of that fact and the reasons for it, and inviting the agent to make a submission on the matter.

Migration Act 1958 (Cth)

Section 276 Immigration assistance

- (1) For the purposes of this Part, a person gives **immigration assistance** if the person uses, or purports to use, knowledge of, or experience in, migration procedure to assist a visa applicant or cancellation review applicant by:
- (a) preparing, or helping to prepare, the visa application or cancellation review application; or
 - (b) advising the visa applicant or cancellation review applicant about the visa application or cancellation review application; or
 - (c) preparing for proceedings before a court or review authority in relation to the visa application or cancellation review application; or
 - (d) representing the visa applicant or cancellation review applicant in proceedings before a court or review authority in relation to the visa application or cancellation review application.
- (2) For the purposes of this Part, a person also gives **immigration assistance** if the person uses, or purports to use, knowledge of, or experience in, migration procedure to assist another person by:
- (a) preparing, or helping to prepare, a document indicating that the other person nominates or sponsors a visa applicant for the purposes of the regulations; or
 - (b) advising the other person about nominating or sponsoring a visa applicant for the purposes of the regulations; or
 - (c) representing the other person in proceedings before a court or review authority that relate to the visa for which the other person was nominating or sponsoring a visa applicant (or seeking to nominate or sponsor a visa applicant) for the purposes of the regulations.
- (2A) For the purposes of this Part, a person also gives **immigration assistance** if the person uses, or purports to use, knowledge of, or experience in, migration procedure to assist another person by:
- (a) preparing, or helping to prepare, a request to the Minister to exercise his or her power under section 351, 391, 417, 454 or 501J in respect of a decision (whether or not the decision relates to the other person); or
 - (aa) preparing, or helping to prepare, a request to the Minister to exercise a power under section 195A, 197AB or 197AD (whether or not the exercise of the power would relate to the other person); or
 - (b) advising the other person about making a request referred to in paragraph (a) or (aa).
- (3) Despite subsections (1), (2) and (2A), a person does not give immigration assistance if he or she merely:
- (a) does clerical work to prepare (or help prepare) an application or other document; or
 - (b) provides translation or interpretation services to help prepare an application or other document; or
 - (c) advises another person that the other person must apply for a visa; or
 - (d) passes on to another person information produced by a third person, without giving substantial comment on or explanation of the information.
- (4) A person also does not give immigration assistance in the circumstances prescribed by the regulations.

The Code of Conduct, under section 314 of the Act

1.10 The aims of the Code are:

- (a) to establish a proper standard for conduct of a registered migration agent;

- (b) *to set out the minimum attributes and abilities that a person must demonstrate to perform as a registered migration agent under the Code, including:*
 - (i) *being of good character;*
 - (ii) *knowing the provisions of the Migration Act and Migration Regulations, and other legislation relating to migration procedure, in sufficient depth to offer sound and comprehensive advice to a client, including advice on completing and lodging application forms;*
 - (iii) *completing continuing professional development as required by the Migration Agents Regulations 1998;*
 - (iv) *being able to perform diligently and honestly;*
 - (v) *being able and willing to deal fairly with clients;*
 - (vi) *having enough knowledge of business procedure to conduct business as a registered migration agent, including record keeping and file management;*
 - (vii) *properly managing and maintaining client records;*
- (c) *to set out the duties of a registered migration agent to a client, an employee of the agent, and the Commonwealth and its agencies;*
- (d) *to set out requirements for relations between registered migration agents;*
- (e) *to establish procedures for setting and charging fees by registered migration agents;*
- (f) *to establish a standard for a prudent system of office administration;*
- (g) *to require a registered migration agent to be accountable to the client;*
- (h) *to help resolve disputes between a registered migration agent and a client.*

1.11 *The Code does not list exhaustively the acts and omissions that may fall short of what is expected of a competent and responsible registered migration agent.*

1.12 *However, the Code imposes on a registered migration agent the overriding duty to act at all times in the lawful interests of the agent's client. Any conduct falling short of that requirement may make the agent liable to cancellation of registration.*

Migration Agents Regulations 1998, regulation 9

Complaints

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

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

Evidence and other material

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

- Information provided by the Department in respect of complaint CMP- 32875;
- Departmental records for the persons and businesses discussed throughout this notice;
- The Agent's responses to the three section 308 notices and the section 309 notice;
- Supporting documents provided by the Agent in response to the three section 308 notices and the section 309 notice.

DECISION AND REASONS

Breaches of the Code

67. Pursuant to paragraph 303(1)(h) of the Act, the Authority may caution a registered migration agent or suspend or cancel their registration if the agent has not complied with the Code.
68. Having regard to the findings I have made, I am satisfied that the Agent has engaged in conduct in breach of the Agent's obligations under clauses 2.1, 2.8, 2.9, and 2.9A of the Code.

Client-Agent relationship

69. It is a requirement of the Code that a registered migration agent acts on the client's instructions, confirms the client's instructions and keeps the client fully informed in writing of the progress of their application. To fulfil this obligation, a registered migration agent must have an understanding of who is their "client."
70. The meaning of "client" is set out in the *Migration Agents Regulations 1998 (Cth)* (the Agents Regulations) as follows:
- "**client**, of a registered migration agent, means a person to whom the agent agrees (whether or not in writing) to provide immigration assistance."*
71. Section 276 of the *Migration Act 1958 (Cth)* defines immigration assistance as (as relevant):
- (1) *For the purposes of this Part, a person gives **immigration assistance** if the person uses, or purports to use, knowledge of, or experience in, migration procedure to assist a visa applicant or cancellation review applicant by:*
- (a) preparing, or helping to prepare, the visa application or cancellation review application; or*
 - (b) advising the visa applicant or cancellation review applicant about the visa application or cancellation review application; or*
 - (c) preparing for proceedings before a court or review authority in relation to the visa application or cancellation review application; or*
 - (d) representing the visa applicant or cancellation review applicant in proceedings before a court or review authority in relation to the visa application or cancellation review application.*
- (2) *For the purposes of this Part, a person also gives **immigration assistance** if the person uses, or purports to use, knowledge of, or experience in, migration procedure to assist another person by:*
- (a) preparing, or helping to prepare, a document indicating that the other person nominates or sponsors a visa applicant for the purposes of the regulations; or*
 - (b) advising the other person about nominating or sponsoring a visa applicant for the purposes of the regulations; or*

(c) representing the other person in proceedings before a court or review authority that relate to the visa for which the other person was nominating or sponsoring a visa applicant (or seeking to nominate or sponsor a visa applicant) for the purposes of the regulations.

72. The meaning of client was also considered in *Hudson v Migration Agents Registration Authority* [2004] AATA 1007 at paragraph 92 per Dwyer SM:

"I accept that a person does not become a client of a professional adviser simply by making an enquiry or seeking information. It is necessary for the professional, in this case, a migration agent, to agree to give some advice or to perform work within the person's area of expertise. For a person to become a client, usually, except in cases of a free consultation or work being done "pro-bono", there will be a fee paid or an agreement or understanding that a fee will be paid".

Furthermore, at [97] per Dwyer SM:

"...I accept that the term 'client', as used in the Code, refers to a person who uses the services of a migration agent to obtain 'immigration assistance'."

73. In considering whether a client-agent relationship arose between the Agent and: FF Pty Ltd, AA Pty Ltd, SN Pty Ltd, SC Pty Ltd and AO Pty Ltd (**business entities**),⁴ and whether the Agent provided immigration assistance to these clients, I have considered the following evidence:
- a. Forms 956, submitted to the Department in respect of each application, which show that the Agent was declared as the Agent representing each of the clients referred to in this decision.
 - b. The Agent confirmed to the Authority that she agreed to act as a migration agent for FF Pty Ltd, AA Pty Ltd, SN Pty Ltd, SC Pty Ltd and AO Pty Ltd, and was paid for these services.
 - c. The Agent lodged applications with the Department on behalf of FF Pty Ltd, AA Pty Ltd, SN Pty Ltd, SC Pty Ltd and AO Pty Ltd, and their respective visa applicants.
 - d. In her responses to the Authority, the Agent did not deny that she provided immigration assistance to the clients discussed in this decision.
74. On the basis of available evidence I am satisfied that a client-agent relationship arose between the Agent and the business entities, and the Agent and the respective visa applicants, and that the Agent provided immigration assistance to these clients.

Accepting Instructions from an Intermediary

75. In the first section 308 notice the Agent was asked about her understanding of "who is your client." The Agent stated:
- "... a client when providing immigration assistance is someone who has a visa or related matter that requires the services of a professional such as myself to provide relevant services. The client should have knowledge of who I am."*
76. The Agent's statement that a 'client should have knowledge of who I am' indicates a misapprehension on her part of the client-agent relationship, which is one of mutual knowledge and interaction. Further, the Agent provided no evidence to indicate that the business entities and respective visa applicants discussed in this decision knew of the Agent and who she is.

⁴ The Authority had initially requested information in respect of NT Pty Ltd and WC Pty Ltd. On the basis of the information provided by the Agent, the Authority does not have concerns in regards to the Agent's conduct relating to NT Pty Ltd and WC Pty Ltd, and these clients are not discussed further in this decision.

77. The Agent has confirmed that she had no direct contact with representatives of the business entities, or with any of the respective visa applicants prior to the lodgement of their respective applications with the Department. The Agent's contact and interactions in respect of the applications discussed in this decision were with an unrelated third party as an intermediary, Mr HH. The Agent advised the Authority that the following interactions occurred with Mr HH:
- Mr HH contacted the Agent in December 2015. Mr HH told the Agent that he worked in the migration industry in <<location removed for privacy>> and was seeking an experienced agent to assist with employer sponsored cases.
 - At a later meeting in the Agent's office Mr HH introduced himself as the president of a company in <<location removed for privacy>> (<<removed for privacy>>, the English name of which was AG). The Agent knew of AG as a "fairly big" migration agency in <<location removed for privacy>>. She recalled that following the meeting she checked their website and found it to be legitimate with full company information. However, she stated that at some later point she found that the site was no longer active.
 - The Agent's business entered into a service agreement with Mr HH and AG. The agreement signed on 28 January 2016 by Mr WW, the Agent's business partner, does not provide any evidence that AG or Mr HH had any authority to represent any of the people referred to as AG's clients. Nor is there any other evidence to indicate that AG or Mr HH were authorised to represent any of the clients for whom the Agent lodged applications for.
 - Mr HH arranged for the signing of *Agreements for Services and Fees*, purportedly between Southern Stone and each of the business entities as well as with each of the respective visa applicants. Mr HH also arranged for the signing of the associated 956 forms (pre-populated with the Agent's details), which he then provided to the Agent.
78. Further, the Agent acknowledged that she lodged ENS nomination applications on behalf of FF Pty Ltd, SN Pty Ltd, SC Pty Ltd and AO Pty Ltd. She also lodged the related subclass 186 visa applications on behalf of each visa applicant allegedly nominated by each business entity. The Agent had no direct contact with any of these business entities or their respective visa applicants, and all communication was through Mr HH. Mr HH provided the Agent with documents required to support each application.
79. I have considered the Agent's submissions in respect of the circumstances surrounding these cases and her acceptance of instructions from Mr HH.
80. In response to the first section 308 notice the Agent stated that "not having direct engagement with clients does make me feel uneasy," however she had "built up a level of rapport with (Mr HH) that provided us with a degree of trust in (Mr HH)." The Agent has not provided any evidence to indicate that she ensured that the purported nominators and visa applicants gave their permission to Mr HH to seek immigration assistance for them from the Agent. She has stated that Mr HH would "make calls to his staff/contacts to ascertain information in our presence," but has provided no evidence to support this statement. The Agent admitted that the issue of direct client contact was raised with Mr HH, but he "was adamantly against this so we did not insist." His insistence that he be the only point of contact should have prompted the Agent to question or seek confirmation Mr HH's authority to instruct her.
81. The Agent argued that she did not want to damage the relationship with Mr HH and trusted him as an "industry colleague." Further, she submitted that Mr HH's company, AG, is well known in <<removed for privacy>> circles and licensed by the <<removed for privacy>> government to provide immigration services. The Agent argued that such licensing is "extremely hard to acquire and consumers used this as a guide to form judgement on the legitimacy and reputation of an immigration agency." In support of this argument, the Agent provided numerous online articles which refer to Mr HH and AG. The Agent submitted that Mr HH was a director of a reputable and legitimate immigration business based in <<location removed for privacy>>, and AG is a well-respected company, held in high regard in the <<removed for privacy>> consumer market for immigration services. The Agent provided this information to the Authority to provide a background as to why she decided to engage with Mr HH with the level of trust that she placed in him.

82. In response to the section 309 notice the Agent clarified her perception of the relationship with Mr HH. She referred to the great emphasis placed by <<removed for privacy>> culture on the concepts of trust and “face).” She submitted that contacting the clients directly would have appeared as questioning Mr HH’s authority in front of the clients, resulting in a loss of trust and “face.”
83. Accordingly, it does not appear to be in dispute that the Agent accepted instructions from an intermediary, Mr HH, without confirming or questioning his authority. The Agent has not denied this, but submitted that she did this due to the level of rapport and respect she had developed with Mr HH.
84. The Agent stated she fully acknowledged that in dealing with clients referred to her by Mr HH she “could have and should have done more to ascertain the clients’ true instructions,” and that “doing so would have avoided everything that ensued.” She recognised her failure to take appropriate actions, her lack of diligence and professional conduct that fell short of her obligations under the Code. She has taken full accountability for her conduct.
85. On the basis of the available evidence, I am satisfied that the Agent failed to afford FF Pty Ltd, AA Pty Ltd, SN Pty Ltd, SC Pty Ltd, AO Pty Ltd and the respective visa applicants the expectations and obligations of a client-agent relationship. The Agent failed to communicate directly with each client, and did not ever seek to confirm that the third party intermediary who provided her with information and supporting evidence was actually authorised by each client.
86. Had the Agent acted in accordance with her obligations towards these clients, she would have confirmed whether Mr HH was authorised by each of these parties to act on their behalf. I find that the Agent did not satisfy herself that Mr HH had actual authority from the nominators and visa applicants to instruct her to provide immigration assistance. The Agent’s response to the section 309 notice confirms that she failed to confirm Mr HH’s authority with the clients.
87. The Agent has failed to provide any compelling evidence as to why it may have been reasonable for her to accept the information provided to her by Mr HH, an unrelated third party based overseas, without appropriately verifying it. I have considered the Agent’s submissions. I appreciate that Mr HH was a representative of what is perceived in the <<removed for privacy>> community as a reputable and legitimate organisation. I also understand the cultural influence of the Agent’s <<removed for privacy>> heritage on her perception of the concepts of trust and “face.” Nonetheless, her conduct is at odds with the Australian regulatory scheme for registered migration agents and her obligations under the Code. She has been working under the regulatory scheme in Australia since 2009, and should have a clear understanding of her obligations.
88. As has been acknowledged by the Agent in her response to the section 309 notice, this could have been easily remedied by contacting each client directly, especially the nominators who are Australian-based companies. It was open to the Agent to confirm each client’s instructions in writing so that she could act in accordance with such instructions. The consequence of this failure was the lodgement of some fraudulent applications in respect of FF Pty Ltd and AA Pty Ltd, with the Department.
89. On the basis of available evidence I am satisfied that the Agent has failed to obtain instructions from her clients, being FF Pty Ltd, AA Pty Ltd, SN Pty Ltd, SC Pty Ltd, AO Pty Ltd and the respective visa applicants, instead choosing to lodge applications at the direction of a third party who for all intents and purposes had no authority to act on behalf of the corporate entities. It follows that the Agent was not authorised to lodge the applications and has failed to act in accordance with the client’s instructions. As such, I am satisfied that the Agent has breached her obligations pursuant to clause 2.8 of the Code.

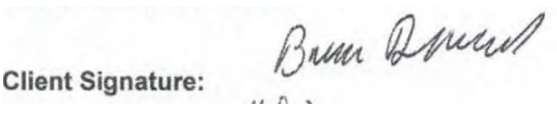
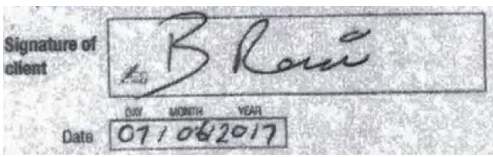
Diligence and acting in the legitimate interests of the client

90. A registered migration agent is expected to deal with their clients in a competent, diligent and fair manner, and to act in the client’s legitimate interests.

91. The Department received confirmation from representatives of FF Pty Ltd, and separately from AA Pty Ltd that they had no knowledge of and did not authorise the ENS nomination applications, and that the positions did not exist. The two companies were also not aware of and had never met the visa applicants. In light of these allegations, I have considered whether the Agent has dealt with FF Pty Ltd, AA Pty Ltd and the respective visa applicants in a competent and diligent manner, and whether she acted in the legitimate interests of the clients. Further, in light of the Agent's advice that she did not have direct contact SN Pty Ltd, SC Pty Ltd and AO Pty Ltd, and their respective visa applicants I have also considered the Agent's treatment of these clients.

FF Pty Ltd

92. As discussed elsewhere in this decision, the Agent acknowledged that she did not meet or speak to a representative of FF Pty Ltd who was authorised to represent the business, prior to the lodgement of the applications.
93. In respect of the documents the Agent received from Mr HH in support of the FF Pty Ltd nomination applications, The Agent stated that:⁵
- a. She checked the FF Pty Ltd website on multiple occasions and had no doubt about the authenticity of the documents Mr HH provided to her.
 - b. The documents were such that it would be "impossible" for an external party to forge, in particular the organisation chart.
 - c. The Agent trusted Mr HH and as he "offered decent rates for us to do the case work" the Agent did not want "his clients to question his ability" by contacting FF Pty Ltd directly
94. The FF Pty Ltd website does not provide details in respect of the financial standing of the organisation. As such, the Agent had no way of determining whether the financial documents for the company provided to her by Mr HH were genuine or not by reading material on the website. Moreover, financial documents in respect of a company are generally in a standard format, and contain standard types of information. This brings into question whether it was in fact "impossible" for an external party to create documents that were provided to the Agent. In spite of this, she accepted the information provided by a third party at face value, and proceeded to lodge the nomination applications for FF Pty Ltd without undertaking checks to verify the authenticity of the documents or their source.
95. Further, in support of the Agent's response to the first section 308 notice she provided a copy of the Migration Agent Representation Agreement, allegedly signed by Mr BR on behalf of FF Pty Ltd on 6 June 2017. The Agent provided a Form 956, also purportedly signed by Mr BR on 7 June 2017. She has stated that these documents were provided to her by Mr HH. The two signatures, purportedly made by Mr BR on the two documents one day apart, are significantly different. For reference, these are the two signatures being compared:

| | |
|--|--|
| Signature extracted from 'Migration Agent Representation Agreement,' dated 6 June 2017 |  Client Signature: |
| Signature extracted from Form 956, dated 7 June 2017 |  Signature of client Date 07/06/2017 |

96. The significant difference in the signatures received one day apart should have alerted the Agent to question the genuineness of the signatures and the authenticity of the documents. The Agent conceded that "there are details in the FF Pty Ltd documents that should have

⁵ In the Statement made to the ABF and in response to the section 308 notice.

prompted me to make direct contact with Mr BR earlier..." The Agent appears to have not noticed these discrepancies, or ignored them in the documents provided to her by a third party.

AA Pty Ltd

97. In respect of the application lodged on behalf of AA Pty Ltd, the Agent submitted that she spoke to the representative of AA Pty Ltd once, over the phone:
- a. The Agent contacted Ms IY, advising her that the Agent was calling in respect of "the 186 nomination." The Agent "distinctly remembers" referring to the nominated position of Mechanical Engineer and mentioning the nominee's name.
 - b. Ms IY confirmed her awareness of the application, but did not provide the Agent with any information pertaining to the application as she was out of the office and did not have her files with her.
 - c. Ms IY asked that the Agent contact her again later, which the Agent did not do as the phone call was "for the sole purpose of confirming whether she had knowledge of the application," and this was confirmed in that phone call.
98. The phone call is reflected in the Agent's client file notes, which the Agent has provided to the Authority. The Agent's client file notes indicate that Ms IY "asked to call back another time as she's out."
99. The Department's records indicate that AA Pty Ltd has sponsored other persons for employment. It is not inconceivable that when the Agent contacted Ms IY, without having details in front of her, she assumed the Agent was referring to one of the nominations the company had knowingly lodged. Had the Agent acted on Ms IY's instructions to call her back at a later stage, the Agent would have been alerted to the fact that the application was not authorised by the company. The Agent's disregard for the client's instruction is indicative of a lack of diligent treatment of this client.
100. Further, upon learning that the representative of FF Pty Ltd was not aware of the application, the Agent withdrew her representation of both FF Pty Ltd and AA Pty Ltd, as well as the respective visa applicants, without discussing her withdrawal with any of the clients. The Agent claimed that this was due to the fact that she did not want "to have anything further to do with (Mr HH's) cases." The Agent's withdrawal from representing AA Pty Ltd is inconsistent with her claim that she was certain that the representative of AA Pty Ltd was aware of the application. Had AA Pty Ltd been genuinely aware of the application, the Agent could have continued representing the company before the Department. The Agent's actions are also inconsistent with her obligation to act in the legitimate interests of the client.
101. In respect of documents received in support of the application, the Agent stated that she "*had no reason to doubt the authenticity of the documentation provided for AA Pty Ltd.*" The Agent has made similar statements in respect of the documents provided in support of the FF Pty Ltd, SN Pty Ltd, SC Pty Ltd, and AO Pty Ltd applications. She advised that the documents provided to her by Mr HH were of such a nature that would only be available to legitimate company representatives. She conducted online searches in respect of the companies, but did not contact the companies or the visa applicants directly. It is questionable that organisations operating only in Australia would seek out an overseas-based business such as AG and contact Mr HH to obtain assistance to lodge applications for nominations and visas for purportedly prospective employees from overseas.
102. The Agent submitted that it was the documents provided in support of the FF Pty Ltd applications that prompted her to contact Mr BR, and that she "would have contacted AA Pty Ltd after speaking with Mr BR because the AA Pty Ltd case was still active at the time." The Agent did not attempt to contact the other clients⁶ as those cases had been finalised.
103. The evidence before the Authority, being the Agent's own submissions and information, indicates that:

⁶ SN Pty Ltd, SC Pty Ltd, and AO Pty Ltd.

- a. The Agent did not have direct contact with representatives of FF Pty Ltd, AA Pty Ltd, SN Pty Ltd, SC Pty Ltd, or AO Pty Ltd, or with the relevant visa applicants.
 - b. The checks the Agent undertook on behalf of each organisation extended to an open-source internet search.
104. The Agent has provided no evidence to indicate that she confirmed the instructions of each of the business sponsors or any of the visa applicants in writing to each client referred to in this notice. The Agent submitted that prior to dealing with Mr HH, due to direct personal contact with clients she was able to verify the client's identity, and therefore their authorisation of any documents provided to her.
105. I am satisfied that the Agent has not fulfilled her obligations as a migration agent by accepting information from an unauthorised third party, failing to question discrepancies in documents and the implausibility of the circumstances. I find that the Agent has not exercised care and the required level of diligence by not pursuing whether a third party, Mr HH, had the authority to appoint her to act in relation to the applications.
106. The Agent has conceded that she "must take ownership in letting my full diligence slip" in respect of the FF Pty Ltd cases. Although the representatives of SN Pty Ltd, SC Pty Ltd, or AO Pty Ltd have not made complaints about the applications lodged on their behalf by the Agent being fraudulent, the fact remains that the Agent took no steps to establish that those applications were authorised. In respect of each case referred to in this notice, it was open to her to refuse to accept the cases, or insist on contacting the client directly. Accordingly, I am satisfied that by not having direct contact with the clients the Agent did not deal with the clients competently, diligently or fairly. Accordingly, I am satisfied that the Agent has breached clause 2.1 of the Code.

Misleading the Department

107. I have considered whether, through the lodgement of these applications and supporting documents, the Agent has made statements in support of an application under the Migration Act or Migration Regulations which the Agent knew to be misleading or inaccurate. The Agent has "vehemently" denied intentionally misleading the Department.
108. The Agent did not adequately satisfy herself that she had authority to lodge the applications, nor as to the authenticity of documents she lodged in support of the applications. This is in spite of the fact that the Agent had no direct contact with the clients and the documents were provided to her by a third party. The Agent advised that she did not verify the documents provided to her by Mr HH beyond generic online searches of each company.
109. The Agent's Statement indicates the following in respect of the FF Pty Ltd applications:
- a. On 19 September 2017 the Agent was reviewing further evidence provided by Mr HH, letters of support, and felt that these looked "unprofessional and very tacky for such a large company." She then "decided to directly phone the company contact," Mr BR. She confirmed the contact phone number on the company's website.
 - b. During this conversation with Mr BR the Agent "asked him if he was aware of the 186 nominations that has been lodged on behalf of FF Pty Ltd." Mr BR advised her that he was not aware of any applications lodged for his business and had "no idea what the whole process was about." The Agent terminated the telephone call at this stage.
 - c. Following this phone call, the Agent logged into the Agent's "DIBP portal" and withdrew her appointment as a migration agent for FF Pty Ltd and the three visa applicants.
 - d. The Agent also withdrew her appointment in respect of AA Pty Ltd and the respective visa applicant on this date. The Agent did not discuss the application with a representative of AA Pty Ltd at this time, but did not want "to have anything further to do with Mr HH's cases"

- e. The Agent telephoned Mr HH to advise him that she has withdrawn her representation as the nominator was unaware of the nominations. Mr HH informed the Agent that he was not aware and did not produce any fake documents. Mr HH then advised her that "the referral came from a <<location removed for privacy>> based migration agent named 'Mr T.'" The Agent do not have any contact details for 'Mr T' and has never communicated with him.
 - f. In November and December 2017 the Agent attempted to contact Mr BR again, and left him voicemail messages. She did not receive a reply and has not provided evidence of her attempts to contact Mr BR. She has also not advised what she hoped to achieve through this attempted communication.
110. In the Agent's response to the Authority's first section 308 notice she stated that the letters which prompted the withdrawal of her representation of the FF Pty Ltd applications were provided by Mr HH in support of the 'genuine position' requirement of the applications. These were not attached to the application due to their poor quality, but the Agent provided them to the Authority.
111. The Agent claimed that she was unaware that she did not have the authority to lodge the applications in question until 19 September 2017. Upon learning of the Agent's lack of authority, the Agent took no action other than to withdraw her representation of these applications before the Department.
112. In considering the extent of the Agent's knowledge of the true circumstances, I have considered the following information the Agent provided:
- a. The Agent only ever communicated with Mr HH.
 - b. The Agent regarded Mr HH as an industry colleague, and did not insist on engaging directly with the clients, as she trusted Mr HH.
 - c. The Agent stated that this was a business decision at the time as Mr HH offered "decent rates" for her work.
 - d. The Agent has acknowledged that she lodged a number of nomination applications with the Department without receiving instructions from a person who was authorised to represent the business.
113. I have also considered that the Agent accepted information from an unrelated, unauthorised third party, ignoring discrepancies in those documents and the implausibility of the circumstances, as discussed above. The Agent accepted that an overseas based person without registration and without apparent links to Australia is an "industry colleague." I acknowledge that the Agent believed Mr HH to be licensed in some way in <<location removed for privacy>>. However, her approach indicates a lack of appreciation of the importance of Australia's registration scheme if she considers any person who purports to deal with migration matters (without registration in Australia) as an "industry colleague."
114. The Agent stated that she has been a migration agent since September 2009 and has always been diligent in her dealings with clients. Prior to the Agent's conversation with Mr BR, she had no knowledge that the documents was falsified. She has reflected on her "naivety" and acknowledged that she "must take ownership of letting (her) diligence slip." Since this incident, she has not handled cases without direct personal contact with clients. The Agent is "fully regretful" of lodging applications without direct contact with the clients.
115. The Agent's comments are noted. She has conceded that she acted without the knowledge and authority of her clients in lodging the nomination applications on behalf of FF Pty Ltd, and that she had "unknowingly contributed to the lodgement of forged documentation to the Department." However, the Agent did not take steps to ensure that she had the appropriate authority to act
116. The Agent did not take any action to alert the Department or the Authority to the fraud once she became aware of it. The Agent submitted that at the time she did what she "believed the right thing to do morally and professionally," being to withdraw her representation "without delay." She believed that an employee within FF Pty Ltd provided the documentation, and "it

was absolutely inconceivable [to her] that there really are operators out there who would forge entire sets of employer documentation to facilitate the lodgement of employer nomination applications.” The Agent failed to acknowledge that it is irrelevant whether the source of the fraud was internal or external to the nominating businesses – the applications were not authorised by persons with the authority to bind the businesses, and as such were fraudulent. The fact that the Agent merely withdrew her representation, and did not alert the Department to the fraud she had uncovered, perpetuated the fraud and left open the possibility for the applications in question to be approved, undermining the intention of Australia’s visa regime.

117. I am satisfied that these actions are indicative of the Agent’s lack of diligence, resulting in providing the Department with false and misleading information in connection with applications she lodged with the Department. The Agent did not act in accordance with the law and her professional obligations under the Code. Further, the fact that she took no action to inform the Department or the Authority about the fraud, once she became cognisant of it, demonstrates her lack of understanding of the duties of a registered migration agent, and enabled the continuation of the fraud on the Department. On the basis of the available evidence I am satisfied that the Agent’s actions in lodging applications without the knowledge and authority of her clients is in breach of clauses 2.1 and 2.9 of the Code.

Misleading the Authority

118. I have considered whether the Agent attempted to mislead or deceive the Authority through her communications and information provided in respect of this complaint. The Agent has “vehemently” denied intentionally misleading the Authority.
119. In respect of documents submitted in support of the FF Pty Ltd nomination applications the Agent advised that these were provided to her by Mr HH. The Agent submitted that she “had not been involved in creating these forged documentations.” However, Departmental records indicate that the organisation chart submitted in support of the nominations was authored by “Ms EK,” as indicated in the document’s metadata.
120. The Agent advised, in her response to the first section 308 notice, that Ms EK is an ex-employee who was a ‘<<removed for privacy>>,’ and left the position of her own volition on 31 December 2017. The Agent submitted that Ms EK amended the organisation chart provided by Mr HH to reflect the residency status of employees, and did not create the document. The Agent provided the original organisation chart provided by Mr HH. I accept the Agent’s explanation.
121. The following correspondence was in the client file the Agent provided to the Authority:
- a. An email dated 15 May 2017⁷ from Ms EK to Mr HH, which asks Mr HH for position descriptions for the three applicants. The Agent and Mr WW were carbon copied into this email.
 - b. Mr WW responded to Ms EK on the same date, stating “(Ms EK), we can just draft these for them.” The Agent was carbon-copied into the response.
122. The Agent advised, in her response to the first section 308 notice, that Mr WW is the Agent’s business partner. The Agent submitted that Ms EK drafted the position descriptions on the basis of the job advertisements that were provided to the Agent by Mr HH. The Agent provided copies of the job advertisements in support of her response. I accept the Agent’s explanation.
123. On the basis of this information, I am satisfied that the Agent was not involved in the fraudulent creation of the documents submitted to the Department in support of the FF Pty Ltd applications, and as such did not attempt to mislead the Authority in this regard.
124. I have considered that the first section 308 notice asked the Agent about her communication with Mr HH prior to the referral of FF Pty Ltd. The Agent was also asked to provide copies of “any” correspondence she had with Mr HH (my emphasis). In response, in addition to

⁷ Included in Annexure M of the Agent’s response to the first section 308 notice.

communication contained in the Agent's FF Pty Ltd client file, the Agent provided two emails from November 2016, and her translation of WeChat conversations throughout 2016 and 2017. The communication appears trivial in nature, and does not appear to refer to any applications lodged. In respect of the request for copies of any correspondence, the Agent indicated that she had "not engaged with (Mr HH) further after this incident and after our conversation in November." Accordingly, the Agent's response to the first section 308 notice gives the impression that prior to the FF Pty Ltd applications her dealings with Mr HH was generic in nature and did not entail lodgement of any other applications, and that she has not had dealings with him since.

125. The Agent's response to the second section 308 notice indicated that Mr HH referred AA Pty Ltd and Ms HW to the Agent. The Agent stated that Mr HH sent her information about the company, including "recent financials," as well as Form 956, signed service agreement from both AA Pty Ltd and Ms HW, and payment for visa declarations from each client. Notably, this correspondence was not provided to the Authority in the Agent's response to the first section 308 notice, in spite of the fact that she had been asked for copies of any correspondence with Mr HH.
126. The Authority sent a third section 308 notice, seeking from the Agent a list of all clients referred to her by Mr HH. It is only in response to this notice that the Agent revealed three other nomination applications and three related visa applications which she had lodged at the request of Mr HH. Departmental records indicate that the ENS nomination applications lodged on behalf of SN Pty Ltd, SC Pty Ltd, and AO Pty Ltd, as well as the subclass 186 visa applications lodged on behalf of the respective visa applicants were lodged throughout 2016 and 2017. The Agent provided supporting documents in respect of each case to the Department. Her response to the Authority's third section 308 notice confirmed that her communication in respect of these cases was only with Mr HH. Notably, correspondence in respect of these cases was not provided to the Authority in the Agent's response to the first section 308 notice, in spite of the fact that she had been asked for copies of any correspondence with Mr HH.
127. I have further considered the Statement the Agent made and the manner in which she has responded to the notices issued by the Authority. She stated that "*prior to dealing with (Mr HH)*" she always had direct contact with her clients.
128. The Agent's Statement at paragraphs 5-10, indicates the following timeline of events in respect of her communications with Mr HH:
 - e. Around December 2015 the Agent was contacted by Mr HH by telephone, and shortly thereafter he attended a meeting in her office.
 - f. At the meeting he introduced himself as the President of a company in <<location removed for privacy>>.
 - g. The Agent would usually communicate with Mr HH via email.
 - h. Mr HH would contact the Agent "once in a while to ask some migration related questions."
 - i. Throughout the Agent's contact Mr HH mentioned that he was looking for "an experienced agent to deal with some employer sponsor cases..."
 - j. Around April 2017 Mr HH informed the Agent that he had a referral for FF Pty Ltd and sought her assistance with the applications.
129. This statement suggests that the Agent initially met Mr HH around December 2015, but it wasn't until April 2017 that she lodged applications for cases referred by him.
130. The Authority's first section 308 notice asked the Agent to confirm that her Statement was an accurate reflection of the circumstances surrounding her involvement with the applications for FF Pty Ltd and the three visa applicants. The notice also asked if there is any further information or details that the Agent would like to provide. In her response she confirmed that the statement is an accurate reflection, and in terms of additional information, she provided another chat history involving Mr HH.

131. It appears that in the Agent's Statement and in her response to the first section 308 notice the Agent did not mention that she had lodged other applications for persons and businesses referred to her by Mr HH. Further, in response to the Authority's first section 308 notice the Agent did not provide copies of correspondence with Mr HH in respect of AA Pty Ltd, SN Pty Ltd, SC Pty Ltd, and AO Pty Ltd, in spite of being asked for copies of any correspondence she has had with Mr HH.
132. The Agent "vehemently and emphatically" denied that she had consciously or intentionally attempted to mislead the Authority. She submitted that she responded directly to each section 308 notice and answered all questions asked truthfully. She interpreted "any" correspondence to mean "any relevant" correspondence rather than "any and all" correspondence. The Agent further submitted that the fact she provided a copy of the agreement between Mr HH and Southern Stone to the Authority is a clear indication that she may have dealt with other cases for Mr HH. She declared that she had no intention to mislead the Authority.
133. On the basis of this evidence I am satisfied with the Agent's explanation in respect of the involvement of her staff in the creation of the documents provided in support of the FF Pty Ltd applications. However, in spite of the Agent's clarification, I am satisfied that she purposely withheld relevant information about the other applications she lodged at the request of Mr HH when responding to the Authority's section 308 notices. I am satisfied that the Agent withheld relevant information from the Authority in order to minimise the impact of any potential findings the Authority could make, which are more significant if additional cases are identified, indicating a pattern of behaviour. The Agent's desire to minimise her responsibility for her actions is supported by the fact that she did not inform the Department or the Authority of her alleged discovery of the fraud in September 2017, instead merely withdrawing her representation of the applicants. It was not until January 2019 that the Agent made a Statement, once she was confronted with an investigation. On the basis of these findings, I am satisfied that the Agent's lack of candour when responding to the Authority's section 308 notices constitutes a breach of clause 2.9A of the Code.
134. Having regard to the evidence set out in this decision, I am satisfied that the Agent repeatedly breached the Code in her dealings with respect to the clients referred to in this notice, the Department and the Authority.

Integrity, fitness and propriety

135. Pursuant to paragraph 303(1)(f) of the Act, the Authority may caution a registered migration agent, or suspend or cancel their registration, if the Authority becomes satisfied that the agent is not a person of integrity or otherwise not a fit and proper person to give immigration assistance.
136. There is a degree of overlap between 'fit and proper' and 'integrity' to the extent that fitness and propriety include consideration of the honesty of the actions of an individual.
'Integrity' means 'soundness of moral principle and character, uprightness and honesty'.⁸
137. 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.
138. At common law, the basic test to determine whether a person is "fit and proper" is known as the "Allinson test". A person is not fit and proper person if his or her conduct "would be reasonably regarded as disgraceful or dishonourable by his professional colleagues of good repute and competency".⁹
139. 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

⁸ See *Re Peng and Department of Immigration and Multicultural Affairs* [1998] AATA 12 at paragraph [26].

⁹ See *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750

was 'fit and proper'. These included, but were not limited to, conduct, character and reputation. Their Honours stated (at 380):

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

140. 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.¹⁰
141. The context in which the reference to 'fit and proper' person occurs in section 290 of the Act is the applicant's giving of immigration assistance. The context also includes:
- (a) the Act which creates offences for misleading statements and advertising, practising when unregistered and misrepresenting a matter; and
 - (b) the Code contained within the Agents Regulations which refers to the applicant being able to perform diligently and honestly, being able and willing to deal fairly with clients, having knowledge of business procedure and properly managing and maintaining client records and maintaining client confidentiality.
142. Key elements of the fitness test are:
- the honesty of the person; and
 - the person's knowledge of the migration scheme and ability to fulfil the position of a migration agent.
143. The requirement in section 290 that the applicant also be a 'person of integrity' is not concerned with the person's knowledge of the migration scheme or ability as a migration agent, but is primarily concerned with a person's reputation, moral principle and character, including their honesty.
144. Having regard to the body of case law cited above, a consideration of whether the Agent is a fit and proper person or a person of integrity to provide immigration assistance can legitimately include the following:
- that the Agent's past conduct can be an indicator of the likelihood of the improper conduct occurring in the future;
 - the Agent's honesty and competency towards clients, the Department and the Authority;
 - a consideration of the context in which the agent works, i.e. the provision of immigration assistance to migration clients;
 - the Agent's knowledge and competency in immigration law and practice;
 - the reputation of the Agent as a result of their conduct and the public perception of that conduct; and
 - the perception of the conduct by the Agent's "professional colleagues of good repute and competency"¹¹.
145. Having regard to the totality of the Agent's conduct in relation to the complaint and my findings above, I am satisfied that the Agent is 'not a person of integrity or is otherwise not a fit and proper person to give immigration assistance'. The evidence and reasons on which this finding is open are set out in detail below.

¹⁰ See *Cunliffe v Commonwealth* (1994) 182 CLR 272

¹¹ *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750

146. I am satisfied that the Agent has demonstrated serious shortcomings in her judgment and diligence in the performance of her obligations as a registered migration agent. I am satisfied that the Agent:
- a. Failed to ensure that an overseas-based, unrelated third party was authorised by multiple Australian-based businesses to engage her services and instruct her on behalf of those clients.
 - b. Did not ensure that Mr HH was authorised by each visa applicant to engage the Agent's services and instruct her on behalf of each visa applicant.
 - c. Lodged four nomination applications,¹² and four corresponding visa applications containing false and misleading information and documents.
 - d. Did not fulfil her duty to ensure that accurate information was provided to the Department in support of applications the Agent lodged.
147. I am satisfied that the Agent took no steps to confirm that the applications in question were consented to by the sponsors or a person with legal authority to act on behalf of the sponsor. Further, I am satisfied that, having lodged the applications, the Agent failed to take reasonable steps to ensure that the applications were not false or misleading, thereby enabling false or misleading documents and information and non-genuine applications to be submitted to the Department. Such conduct falls well short of the professionalism expected of migration agents from both consumers of migrations services and the Department.
148. Further, once the Agent learned that she did not have the authority to lodge the applications, she merely withdrew her representation before the Department, but took no steps to alert Department or the Authority to the fraud. I am satisfied that this indicates the Agent's lack of honesty and integrity expected of a migration agent.
149. I am also satisfied that the Agent attempted to mislead the Authority by withholding relevant information and not being forthcoming in respect of the source of the information. The Agent had been asked to provide copies of *any* correspondence with Mr HH. She initially implied to the Authority that the applications lodged on behalf of FF Pty Ltd and the respective visa applicants were the only matters referred by Mr HH. In spite of expressing remorse, it took a further two notices for the Authority to ascertain that the Agent lodged applications for Mr HH on behalf of other companies and persons. Accordingly, I am satisfied that the Agent has been dishonest in her dealings with the Authority with view to minimise the impact of her wrongdoing.
150. I am satisfied that the conduct described in this decision falls short of the professionalism and integrity expected of a registered migration agent. On this basis, I am satisfied that the Agent's conduct indicates that she is not a person of integrity and not fit and proper to provide immigration assistance.

Consideration of Appropriate Disciplinary Action

151. In deciding to discipline the Agent under section 303 of the Act I have taken into account all of the circumstances of the case, including the following:
- (a) Whether the Agent's behaviour is of a minor or serious nature. The Authority has identified the following behaviour as extremely serious and therefore likely to result in discipline at the higher end of the scale:
 - i. criminal behaviour;
 - ii. fraudulent behaviour;
 - iii. behaviour that demonstrates fundamental lack of knowledge of the law; or

¹² Being applications lodged on behalf of FF Pty Ltd and AA Pty Ltd.

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

Seriousness of behaviour

152. 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.
153. Having regard to the Complaint Classification Matrix, I have considered that the Agent's conduct falls within the Major classification for the following reasons:
- (a) The conduct, involving matters of fraud and dishonesty, demonstrates a blatant disregard for, or a significant degree of indifference, to the law, the Authority, Departmental visa processing officers and the best interests of her clients;
 - (b) The Agent's conduct has, or is likely to have an adverse impact on or undermine the reputation of the migration advice profession;
 - (c) The Agent has claimed she felt remorseful for her behaviour, however this is not supported by her actions. She was not forthcoming with relevant information. I would consider that if the Agent was really a person of integrity, she would have alerted the Department to the fraud at the time that she became aware of it in 2017, and subsequently been forthcoming with information in respect of other cases linked to Mr HH to the Authority; and
 - (d) The Agent's conduct demonstrates that she is not a person of integrity or is not a fit and proper person to give immigration assistance.

Aggravating factors

154. I consider the Agents conduct falls short of the standard expected of a registered migration agent.
155. The Agent claimed that she did not know she was a party to fraud. However, the Agent did not undertake her duties in the diligent and professional manner expected of a registered migration agent in that:
- a. The Agent failed to ensure that an intermediary was authorised to represent clients;
 - b. The Agent was not diligent in carrying out her duties, failing to conduct appropriate checks of the information that was provided to her by the intermediary;
 - c. When the Agent became aware of the fraud, she simply removed her representation from the applications and did not alert the Department or the Authority of the fraud;
 - d. The Agent knowingly and purposely withheld information from the Authority when asked about her involvement in these matters.

Mitigating Factors

156. The Agent has provided submissions in respect of mitigating factors, including:
- a. The Agent has built her career in the migration industry and this has been a hugely rewarding experience for her. She believes she is good at what she does, and able to achieve life-changing outcomes for her clients and their families.
 - b. The Agent has accepted her shortcomings in the handling of the cases discussed in this decision, and acknowledged that the “should have known better.”
 - c. The Agent took full ownership of the factors that led to her breaches under the Code.
 - d. The economic impact of Covid-19 in Victoria is “beyond devastating.” If the Agent is unable to practise and needs to contemplate a career change, it would be almost impossible for her to seek other employment as she has little experience in the non-migration industry. Additionally, the unemployment records in Victoria is at a record high.
 - e. If the Agent is restricted from practising for a period of time, this may mean that her business cannot remain viable as she is the only registered migration agent in her practice.
 - f. Prior to the Covid-19 pandemic the Agent’s partner <<removed for privacy>>. The Agent is now the sole source of income for the family. She has <<removed for privacy>> who need “family and financial stability” – a material sanction imposed would inevitably bring financial hardship to the Agent’s family.
 - g. In 2017 the Agent commenced a Juris Doctor degree part time. She was at the time working with her business partner, Mr WW. Mr WW felt particularly responsible for the situation with FF Pty Ltd, and left the migration agent profession as a result. As Mr WW felt he could no longer add value to the business, he left Southern Stone as both a director and shareholder in February 2018. This left the Agent as the sole registered agent in the company. Due to this pressure she initially deferred her studies in 2018, and officially discontinued in 2019. The Agent perceives that as a result of the trust she placed in Mr HH, she lost a business partner and an ability to pursue personal development she had a long-term interest in.
 - h. This “ordeal” has been “thoroughly emotionally draining and hurtful” to the Agent. The Authority’s assertions have “likened [the Agent] to unscrupulous operators out there who knowingly take advantage of vulnerable clients.” She considers herself to be a person of integrity and high moral conduct, and would not intentionally do anything “wrong” by her clients.
157. I have considered that the Agent has been registered since 14 September 2009, and no previous disciplinary action has been taken against her.
158. I have also taken into account that a disciplinary decision would affect the Agent’s financial earning capacity and livelihood. <<Removed for privacy>> The Agent has not provided information to the Authority in respect of the income she generates from <<removed for privacy>>.
159. I accept that should the Agent’s registration be cancelled or suspended for a prolonged period of time, she may incur some financial hardship. However, I am of the view that this consideration is significantly outweighed by the seriousness of her conduct.

Consumer Protection

160. 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.
161. The behaviour demonstrated by the Agent falls short of the reasonably expected standards of a registered migration agent. I consider that the Agent poses a serious risk to consumers. I am satisfied that if she were to continue to practice as a registered migration agent, the Agent would not demonstrate the requisite skills expected of a registered migration agent. I consider that a disciplinary decision is warranted to address the conduct the subject of this decision, and in the interests of consumer protection.

DECISION

162. Following consideration of the information before me, I have decided to **suspend** the Agent under section 303(1)(b) of the Act from being registered as a migration agent from the date of this decision for a period of **18 months**, and until the Agent has met the conditions specified. The Agent is to meet the following conditions, which are to be completed within the period of suspension or no more than four (4) years from the date of suspension:
- (a) Evidence that the Agent has completed a total of 10 Continuing Professional Development points (as approved by the Authority) for every 12 months that the suspension is in force. The Continuing Professional Development activities are to be completed throughout each year that the suspension is in force and should cover professional standards and ethics.
 - (b) Evidence that the Agent has passed the Capstone assessment to assess the Agent's ability to meet the Occupational Competency Standards for Registered Migration Agents;
and
 - (c) A statutory declaration in Commonwealth form stating that the Agent has not made immigration representations for a fee, has not advertised the provision of immigration assistance and has not given immigration assistance whilst suspended.



Senior Professional Standards Officer
Professional Standards and Integrity Section
Office of the Migration Agents Registration Authority
Department of Home Affairs

Date of Decision: 8 March 2021

Attachment A

Questions posed in first section 308 notice

1. In order to address the allegations raised in this complaint, under paragraph 308(1)(a) of the *Migration Act 1958* ("the Act"), you are required to answer the following questions **in the form of a statutory declaration**.
 - a. *Please confirm that the copy of the Statement (Affidavit) to the Australian Border Force included with this notice is made by you, and is an accurate reflection of the circumstances surrounding your involvement with the applications for FF Pty Ltd and three visa applicants, as discussed in this notice.*
 - b. *Is there any further information or details supplementary to this Statement that you would like to provide to the Authority?*
2. In relation to the Statement you have made to the Australian Border Force, can you please clarify:
 - a. *Why do you use the two different e-mail addresses?*
 - b. *How do you decide which e-mail address will be used for a particular application?*
 - c. *You have stated, at paragraphs 5-6 that your initial meeting with Mr HH was at your office, shortly after your phone interaction in December 2015. In regards to this meeting:*
 - i. *What was the purpose of the meeting?*
 - ii. *What documents did Mr HH provide you with at this meeting?*
 - iii. *Please provide copies of these documents.*
 - d. *In relation to your e-mail and We-Chat communication with Mr HH prior to the referral of FF Pty Ltd, can you please provide copies of this communication?*
 - e. *Did you sign an Agreement for Fees and Services with Mr HH, FF Pty Ltd or any of the three visa applicants? If so, please provide copies.*
 - f. *How was payment made for these applications? Please provide evidence of payment made.*
 - g. *In light of your withdrawal from this case, was the money partially or fully refunded?*
 - i. *If so, who was it refunded to? Please provide evidence.*
 - ii. *If not, why was the money retained?*
 - iii. *Was a statement of services provided to each applicant?*
 - h. *You have stated that Mr HH informed you that he will 'try and find Mr T.' Have you got any further information available in regards to the identification of 'Mr T'? If so, please provide details of the information you have available.*
 - i. *What is your understanding of who is your client when providing immigration assistance? Why did you not enter into direct communications with the nominator and visa applicants?*
 - j. *You have stated that communication in regards to these application commenced around April 2017, and in June 2017 you received sufficient supporting documentation to submit the applications.*
 - i. *Did you request the letters that were provided to you on 18 September 2017?*
 - ii. *What prompted Mr HH to provide you with these letters?*
3. In relation to your business operations:
 - a. *Please provide details of each company where you hold a position of director or secretary, or where you are a shareholder.*

- b. Please provide details of the nature of the business that each of these companies is involved in.*
- c. Please provide details of the steps you take to verify information provided to you by clients.*
 - i. Were these steps followed in regards to the nomination and visa applications discussed in this notice?*
 - ii. If no, why not?*
- d. What is your relationship with:*
 - i. Mr WW*
 - ii. Ms EK*
 - iii. Ms GH*

Attachment B

Questions posed in second section 308 notice

1. In relation to your response to the first section 308 notice, can you please clarify the following responses you provided:
 - a. You advised that you've used the email address *kathy@xlinternational.com.au* to engage your own clients since July 2011. You further advised that you have used *kathy@southernstone.com.au* to engage clients on behalf of Southern Stone International Pty Ltd (Southern Stone) since March 2014. Could you please clarify what you mean by *your own clients* and *clients on behalf of Southern Stone*? Could you please also clarify what you mean by "engage clients" using these email addresses?
 - b. You stated that payment for your fees in respect of your assistance to FF Pty Ltd and the three visa applicants was made via bank transfer. Can you please clarify who was the bank transfer from, and provide the details of what account the payments were deposited into?
 - c. What evidence or information did you have available to indicate that Mr HH had authority to represent FF Pty Ltd?
 - d. In respect of the documents provided in support of the applications lodged on behalf of FF Pty Ltd, were all of these documents provided directly by Mr HH? If not, who else was involved in providing the documents?
 - e. In respect of your conversation with Mr BR, in which you learned that he had no knowledge of the ENS nominations you lodged on behalf of FF Pty Ltd, how did you introduce yourself to Mr BR? What information did you provide him with in regards to the reasons for your call?
 - f. When you became aware that the applications you lodged were not authorised by FF Pty Ltd, why did you not alert the Department to this potential fraud?
2. In relation to the applications you lodged on behalf of AA Pty Ltd and Ms HW:
 - a. Under what circumstances did AA Pty Ltd and Ms HW retain your services?
 - b. Was an *Agreement for Services and Fees* signed with AA Pty Ltd and Ms HW? If so, who was the person acting on behalf of AA Pty Ltd and how did you verify their authority to bind the company?
 - c. What, if any fees were paid to you? How was this payment made? Please provide evidence from your client file?
 - d. Why did you withdraw your representation for the applications you lodged on behalf of both AA Pty Ltd and Ms HW?
 - e. Did you refund any fees to either AA Pty Ltd or Ms HW?
 - f. What information and documents did AA Pty Ltd and Ms HW provide to you in support of the applications you lodged on their behalf? How were they provided to you and by whom?
 - g. Why was the first ENS nomination application lodged without sufficient supporting evidence?
 - h. What steps did you take to verify the information you provided to the Department in support of the second ENS nomination application you lodged?
 - i. What methods of communication did you use to communicate with AA Pty Ltd and Ms HW?

3. In relation to the applications you lodged on behalf of NT Pty Ltd and WC Pty Ltd:
- a. How did each company come to be your client? Did they approach you directly or through a third party?
 - b. Was an *Agreement for Services and Fees* signed in respect of each company? If so, who was the authorised person to act on behalf of each company, and how did you verify that they had authority to bind the company?
 - c. What, if any, fees were paid to you? How were the payments made?
 - d. What information did each company provide to you in support of the ENS nominations that you lodged on their behalf?
 - e. How did you verify the accuracy of the information and documents provided to you?
 - f. When did you first become aware that NT Pty Ltd had gone into liquidation, and that WC Pty Ltd went into external administration?
 - g. What are your procedures for ensuring that information you provide to the Department is accurate and not misleading?
 - h. Why did you withdraw the ENS nomination lodged on behalf of NT Pty Ltd without providing evidence of authorisation to the Department? What information did you rely on to take such action? Please provide evidence of this.