

REPORT TO THE STATE SERVICES COMMISSIONER

**INVESTIGATION OF THE HANDLING BY THE DEPARTMENT OF
LABOUR OF IMMIGRATION MATTERS INVOLVING FAMILY
MEMBERS OF THE HEAD OF THE NEW ZEALAND IMMIGRATION
SERVICE**

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INVESTIGATION OF THE HANDLING BY THE DEPARTMENT OF LABOUR OF IMMIGRATION MATTERS INVOLVING FAMILY MEMBERS OF THE HEAD OF THE NEW ZEALAND IMMIGRATION SERVICE

Executive Summary

- 1 This is a report of an investigation into the way in which the Department of Labour (“the Department”) had dealt with immigration matters involving family members of Mary Anne Thompson (“Ms Thompson”), the then head of the New Zealand Immigration Service.
- 2 I have found that Ms Thompson failed to manage appropriately conflicts of interest relating to immigration matters involving her family. In turn, I have found deficiencies in the way the Department dealt with a number of these immigration matters. Ms Thompson’s family members were granted visa waivers and New Zealand residency in circumstances where they normally would not have been. The Department also failed to effectively investigate concerns that were raised about these decisions.
- 3 The Department had in place appropriate policies and guidance concerning conflicts of interest. Employees were not prohibited from becoming involved in helping or sponsoring their families with immigration matters, but before they did so they were expected to inform their managers of this, so that appropriate steps could be taken to manage the potential conflict of interest issues. Ms Thompson did not advise her manager, the chief executive, of any of the details of her involvement with her family’s immigration matters. This made it difficult for the chief executive to manage the conflict issues proactively.

The grant of Visa Waivers

- 4 Visa waivers were granted to members of Ms Thompson’s family in December 2004, and April 2005, following enquiry by Ms Thompson on their behalf about travel arrangements. Immigration officers who hold the necessary warrant have a discretion to grant visa waivers which are normally only granted in special circumstances, for example where it is impossible or impractical for the applicant to obtain a visa from the usual branch office. There were no such special circumstances in these cases. I have concluded that visa waivers were offered for reason of convenience for Ms Thompson and her family. This is contrary to the standards of conduct that require that senior immigration officers and their families be treated the same way as any other travellers in similar circumstances.
- 5 Concerns about the April 2005 visa waivers were raised by a Departmental officer who saw correspondence relating to those waivers. These concerns were escalated through to the then Chief Executive, James Buwalda (“Mr Buwalda”), who promptly spoke to Ms Thompson, advising her of his concerns about this and his expectations for the future. He also asked the Group Manager Service International to check on whether the visa waiver decisions had been properly made, and received an assurance from that manager that they had been.
- 6 I have concluded that Mr Buwalda’s actions were not effective. Ms Thompson did not appreciate that a serious concern had been raised with her, and understood the matter to

be resolved when Mr Buwalda subsequently confirmed with her that the visa waivers had been in order to be granted. The assurance that Mr Buwalda received about the visa waivers was inadequate, and I have found that there was no serious effort made by the Group Manager SI to investigate the matter. At the end of the process, Mr Buwalda remained unaware of other related and serious issues, such as the issue of visa waivers in December 2004.

Visitor Visa extension and Work Permit Applications

- 7 Between the grants of visa waivers in December 2004 and April 2005 Ms Thompson had become involved in further immigration processes concerning her nephews, completing an extension to a visitor visa for one nephew as ‘sponsor’, and assisting the other in completing a work permit application (and signing that form accordingly as person assisting). She paid the requisite fees in each case by personal cheque.
- 8 A Departmental solicitor who took Ms Thompson’s statutory declaration for the visitor visa extension on 2 April 2005 had concerns about the potential conflict of interest arising for Ms Thompson being visibly part of the application process and how that could impact on those officers required to process it. He raised those concerns with his manager, the Deputy Secretary Legal, who in turn had a discussion with Mr Buwalda. Despite this, no steps were taken to address the concern, nor was it raised with Ms Thompson. The result was the Department failed to respond effectively to the issue.

Residency Applications

- 9 Ms Thompson went on to assist her nephew and his family with making a residency application under the Residual Pacific Access Category Places Policy (“PAC Residuals category”). She signed the residency application form as ‘person assisting’ on 14 November 2005 and paid the necessary application fee by personal cheque. The closing date for applications under this category was 31 March 2005. She did not advise Mr Buwalda of her involvement in this application.
- 10 The application was accepted as a ‘late application’ by the Branch Manager of the PAC Manukau branch. I have found that this decision was contrary to immigration policy, that the Branch Manager acted contrary to advice from her staff in deciding to accept it, and that she was influenced by the visibility of Ms Thompson on the application in making that decision. It is also possible that she was influenced by the Group Manager SI, who says he instructed her to accept the application, although there are difficulties with this evidence as is discussed later in the report.
- 11 The end result was that Ms Thompson’s relative’s residency application was accepted, processed ahead of other applications (that had been received before the closing date) and granted, in circumstances where relevant policy required the application to be rejected as out of time. Although the decision was improperly made it was not unlawful, and I have found no fault on the part of Ms Thompson’s relatives.
- 12 Some Immigration staff who were involved with the residency application were rightfully concerned about how it was dealt with. Concerns were raised with internal auditors conducting an audit of the PAC Manukau Immigration office, and this resulted in Mr Buwalda being briefed in March 2007 and being provided with a Preliminary Investigation Report dated 3 April 2007 (“Audit Report”) which raised concerns about not only the residency application processing, but also Ms Thompson’s contacts in December 2004 and April 2005 leading to visa waivers being granted, questioned the assurance that had been given to Mr Buwalda in May 2005 about the April visa waivers

and also noted that a number of other immigration applications had been made in 2005 by Ms Thompson's relatives.

Oughton Investigation

- 13 Mr Buwalda appointed an independent investigator, Mr Oughton. Prior to doing so he had spoken to Ms Thompson, who confirmed to him that she had signed the residency application as person assisting, but that she had not subsequently been involved in or attempted to influence the decision making process.
- 14 The Terms of Reference for Mr Oughton's investigation were focussed upon whether the grant of residency permits was lawful and complied with policy, who had made the decision and why and what irregularities had occurred in the process. Mr Oughton was not asked to look at the various other issues and concerns noted in the Audit Report, so that he could carry out a focussed investigation of the issue that presented as raising the most serious concern. I accept the reasoning for having Mr Oughton conduct a focussed investigation, but there also needed to be a plan for investigations of the other issues that had been identified in the Audit Report, which was not done.
- 15 During the course of Mr Oughton's investigation Mr Buwalda left and Mr Fortune took over as acting chief executive. In considering his response to Mr Oughton's report Mr Fortune was unaware of Ms Thompson's previous role in a number of other immigration matters involving her family and he therefore responded to what he believed to be a one-off incident. Mr Fortune accordingly wrote to Ms Thompson stating that her initial involvement in her family's application was unwise, and requiring her to actively distance herself from personal involvement in immigration requests.
- 16 Mr Oughton had also raised three issues in his report requiring further consideration. These were 1. His concern that the grant of residency to Ms Thompson's family may have disadvantaged applicants who had made their applications in time; 2. The case evidenced the need for explicit protocols to deal with how to manage the processing of applications from persons who have relatives employed in the Department, and the reporting of this to management; 3. The staff dealing with this application had at times made the entry "as instructed" into the records of the file where they were taking steps on instruction that they did not agree with – Mr Oughton noted this did not appear to have been an isolated case, and that the actual situation could only be determined by an in depth examination by experienced personnel.
- 17 Mr Fortune did not agree that other applicants had been disadvantaged, as he understood that Ms Thompson's family had been granted residency on top of the residual quota. I have found that the situation is complex, and there remains a risk that other applicants who made their applications within time and whose applications are still being processed may be disadvantaged by the decision. I have recommended that the Department take steps to avoid that outcome.
- 18 Mr Fortune agreed that protocols should be developed to address the concerns arising from Mr Oughton's report, and that work is ongoing. However, no "in depth examination" was undertaken of other instances where staff had made "as instructed" entries. In his letter to Ms Thompson, Mr Fortune advised her that it appeared that the extent of delegated powers for residence decision making needed to be reinforced to NZIS managers and staff, and that if managers were exceeding their lawful authority then they should cease doing so and that any further cases of this should be reported. This response missed the point that Mr Oughton had a real concern about *previous* cases where staff had felt the need to protect themselves by entering "as instructed".

Accordingly, there was a failure to investigate whether there were significant other cases to be dealt with where decisions had been taken outside of policy or delegated authority. This remains a concern and I have recommended that the Department now undertake the in depth investigations originally recommended by Mr Oughton.

Management of Conflicts of Interest

- 19 This matter clearly illustrates the importance of dealing with conflict of interest issues and questions of integrity in an effective and transparent way. The need for this becomes all the more vital where the conduct of the most senior officials is concerned. At various times in this matter employees were placed in the difficult situation of holding significant concerns about the actions of one of their most senior managers. At various times people correctly raised concerns but did not see any outcome whatsoever. The Department's response was inadequate. I have made recommendations for review of processes around both the investigation of integrity concerns around very senior managers and the means by which staff can make Protected Disclosures and their knowledge of this option in order to improve the situation.

The Terms of Reference

- 1 The terms of reference for an investigation into immigration matters involving family members of the head of the New Zealand Immigration Service (“NZIS”) are contained in a report dated 21 April 2008 to the Minister of State Services and agreed by that Minister on that date (see Appendix A). The person referred to in the terms of reference as ‘the head of Immigration Service’ is Mary Anne Thompson, whose former formal title with the Department of Labour was Deputy Secretary Workforce. In that role Ms Thompson had operational responsibility for NZIS.
- 2 The issues lying at the heart of the investigation had resulted in public concerns being raised about whether different rules applied for family members of senior officials. While it was the responsibility of the then chief executive to investigate the matters internally and to make any decisions affecting NZIS or its employees, it was appropriate for the State Services Commissioner to consider whether that function had been discharged effectively. This was considered particularly important in a case where public perceptions of the matter could undermine trust in the Public Service.
- 3 As Chief Legal Advisor of the State Services Commission I was instructed to investigate and report on the matter to the State Services Commissioner. The State Services Commissioner delegated to me statutory powers of investigation under the State Sector Act (see Appendix B). The investigation has involved a much larger number of interviews than originally anticipated, meaning that the reporting date was significantly extended over that indicated in the 21 April report to the Minister of State Services.

Matters for Investigation Auditor General and Chief Executive of Labour

- 4 As this investigation progressed, a number of other investigations and inquiries commenced into related matters, including the following:
 - an inquiry by the Auditor-General into matters of public concern including matters relating to the operations of Immigration New Zealand especially within its Pacific Division, and incidents involving certain senior personnel. Some issues relate particularly to the conduct of Ms Thompson. Some issues relate to how the concerns have been previously handled by others, including chief executives of the Department of Labour, the State Services Commissioner, and Ministers;
 - an independent review commissioned by the Department of Labour into Immigration New Zealand’s Pacific Division; and
 - ongoing investigations by the Office of the Ombudsmen into complaints about decisions affecting individuals.
- 5 I have not sought to inquire into details of what Ministers were told and when, about the matters that are the subject of this report. I consider that this clearly falls within the scope of the Auditor-General’s inquiry, and the Auditor-General agrees.
- 6 I have also not commented in detail upon the State Services Commission’s prior knowledge of or responses to any of the matters falling within this investigation, or the Commission’s role in briefing incoming chief executives other than as necessary in order to assess the Department of Labour’s response to the issues. Assessment in turn of the State Services Commission’s response will be made by the Auditor General.
- 7 During the course of this investigation, where I have become aware of matters that I consider to be investigated further by the chief executive of the Department of Labour,

the Auditor General, or otherwise, I have referred those matters to the appropriate authority.

Methodology

- 8 The investigation commenced on 23 April 2008 and was carried out with the assistance of State Services Commission staff. The principal part of the investigation comprised interviews of all those directly involved in the matters at issue. The investigation also had access to relevant written documentation.
- 9 People interviewed under oath or who provided a sworn affidavit of evidence are listed, by designation, in Appendix C.
- 10 All interviewees were advised they could be accompanied by either a legal advisor or a support person (two exercised that right). Interviews were generally conducted under oath or affirmation and were taped. In some other cases, individuals were spoken to over the phone and so were not placed under oath or affirmation (for example one witness was overseas, and other witnesses simply provided corroborative evidence). The transcripts will not be made public but have been drawn on as the principal source of evidence in this report.
- 11 In accordance with the scope of the investigation, I have reviewed all the material brought together by this investigation and particularly the interviews and associated documents. I have summarised below what I consider to be the most important matters of fact, including those areas where there are significant differences of opinion or recall.
- 12 In the following paragraphs I have used the designations of those involved as much as possible to reduce personal references and to focus on the facts. This is not practicable with respect to the respective chief executives dealing with aspects of this matter, or in relation to Ms Thompson.
- 13 I note that “New Zealand Immigration Service” is a somewhat out of date title; as part of a general restructure of the Department the division became the “Department of Labour - Workforce” and branded outside of New Zealand as “Immigration New Zealand”. In the documentation provided to me references are made to each of these various titles. For ease of reference this report has used the original descriptor abbreviated to “NZIS”.
- 14 During the course of my investigation I prepared a timeline of events, which is attached as Appendix D.

Integrity standards and guidance

- 15 The relevant standards applying to Department of Labour staff (and in particular to officers working within NZIS) provide important context for the decisions and actions considered in this report. Those staff are required to meet the minimum standards of integrity and conduct issued by the State Services Commissioner under section 57 of the State Sector Act 1988 and must also meet the requirements of any specific departmental or NZIS codes of conduct or policy that may apply to them. A summary of the various codes, policies and guidance applicable is set out in Appendix E.
- 16 It is worth summarising here what the expectations are. The ‘Public Service Code of Conduct’ applicable at the time of the majority of the events discussed in this report required of public servants that:

“...the public have no basis on which to believe that decisions are made or policies are applied unevenly. Public servants must observe the principles of fairness and impartiality in all aspects of their work. For example, no individual or organisation with which a public

servant is involved may be given preferential treatment (whether by access to goods and services or access to 'inside information') over any other individual or organisation."

- 17 The various iterations of NZIS codes and guidance applicable all placed major emphasis on the requirements that:
- an employee's personal interest must not override the responsibility he or she owes to NZIS and/or the Department;
 - an employee must not improperly enrich himself/herself (or those close to them) by the misuse of power entrusted to him/her;
 - employees are required to disclose any actual or potential conflict of interest of an employee's or employee's colleague to the appropriate manager;
 - any incidences of fraud, corruption or dishonesty (as defined in the guidance material) are totally unacceptable;
 - When a conflict or potential conflict of interest arises, the staff member concerned is required to report it to their manager who will determine the way it should be managed.
- 18 Senior managers need to lead by example in matters of conduct. Expectations are high for all staff but it is even more critical for very senior managers to adhere strictly to the obligations imposed by codes of conduct and to be seen to do so. This was readily acknowledged by the senior Department of Labour managers and (former) chief executives I spoke to in the course of this investigation.
- 19 In addition to complying with the required standards, it is important that public servants report breaches of applicable standards or wrongdoing by other officials that they become aware of. Sometimes it can be difficult for public servants to report suspected wrong doing through a department's normal channels, particularly where the wrong doing involves actions on behalf of very senior managers. The Protected Disclosures Act 2000 provides a mechanism for reporting of serious wrongdoing in such cases, and provides certain protections for any employee reporting such wrongdoing.
- 20 The Department had internal procedures under which employees could make disclosures of serious wrongdoing within the organisation under the Protected Disclosures Act 2000. I comment further below on the extent to which the Department's policies on protected disclosures appear to be known and understood.

Immigration Applications

December 2004 Visa Waiver

- 21 Mr Buwalda appointed Ms Thompson as Deputy Secretary, Workforce and she commenced this role on 19 July 2004. In this role she was the Deputy Secretary responsible for managing NZIS.
- 22 The Department of Labour had at that time (and still has) an oral standing item on its Strategic Leadership Team ("SLT") meetings of "Register of Interests". This item provided an opportunity for senior team members to make known any interests or relationships they had that they considered might give rise to a potential conflict of interest. These were recorded in the relevant meeting minutes. The SLT meeting minutes for 3 September 2004 record that Ms Thompson advised that she was planning to sponsor family members to New Zealand from Kiribati later that year to come for a holiday. At this time Ms Thompson had not taken any action in this regard.

- 23 Mr Buwalda did not specifically recall this matter being raised by Ms Thompson at the 3 September 2004 SLT meeting. He did however recall Ms Thompson mentioning to him in the context of an informal, social conversation that her nephews would be coming to New Zealand. He did not attach any great significance to it, assuming Ms Thompson's nephews would enter New Zealand in the usual way.
- 24 In December 2004 Ms Thompson sought some information about the travel arrangements for her two nephews from Kiribati. The intention at that time was that they would stay with Ms Thompson and her husband until Ms Thompson's birthday in February 2005. She sent an email to the branch manager of the Immigration Service at Suva ("the Suva Branch Manager") on Sunday 5 December 2004, advising him that she was sponsoring a trip for her nephews to New Zealand for Christmas or early in the New Year (commenting that she had mentioned this to James (Buwalda). (A copy of this email is included in the emails attached at Appendix F.)
- 25 Kiribati nationals usually require an entry visa for travel to New Zealand. At this time the normal practice was for Kiribati nationals arriving at the Nadi International Airport in Fiji to then travel to the NZIS office in the capital Suva to obtain their visas. This is reflected in Ms Thompson's email of 5 December 2004, when she wrote:
- "Given the mail issues with Tarawa, I am thinking of flying to Fiji, meeting them at Nadi and travelling to Suva for consideration of a visitor' visa for three months"*
- 26 Ms Thompson went on to inquire as to the process involved and how this could best be achieved. The Suva branch manager provided an initial response to these queries on 6 December 2004 (included in the emails attached at Appendix F).
- 27 In a subsequent email of 8 December 2004 the Suva Branch Manager suggested another option whereby he could arrange visa waivers for the two nephews which would allow them to enter New Zealand without visas. He explained that he did this in cases where there is not enough time for applications to be lodged. He went on to say:
- "This way you avoid the need to come to Suva or even come to Fiji."*
- 28 Ms Thompson accepted this alternative as being "*fantastic*" by email some 20 minutes later, saying "*I will now go and book their tickets and get to you their ETA.*" (the 8 December 2004 emails included in the emails attached at Appendix F). She duly booked flights that had her nephews arriving in Fiji on the afternoon of 16 December 2004, and departing for Auckland in the morning of 18 December 2004. Ms Thompson advised the Suva Branch Manager of those details and the Suva Branch Manager responded confirming that the visa waivers and requests for 4 month visitor permits on arrival in New Zealand had been entered into the 'AMS' (The NZIS computer system).
- 29 The AMS notes recording the reasons for the visa waiver being granted stated:
- "This man and [Mr X] are visiting relatives in NZ and could not apply for visitor visas from Kiribas before travelling to NZ this month."*
- 30 Ms Thompson duly travelled to Fiji and met her nephews there. On their arrival at Auckland airport, there was a delay as the New Zealand Customs officials apparently did not have notification of the visa waivers for the relatives. Accordingly, Ms Thompson, her husband and her two nephews were asked to wait in a waiting area (secondary line) while the situation was confirmed with NZIS. Ms Thompson found this experience uncomfortable, as she was asked to wait in close proximity to where NZIS officials were working. After a wait of approximately 15 minutes, the visa waivers were confirmed and Ms Thompson's nephews were allowed to enter New Zealand without further incident.

Application for Work Permit

- 31 In early February 2005, one of Ms Thompson's nephews changed his mind about returning to Kiribati. He told me that rather than return to Kiribati with his uncle and brother in May 2005, he instead decided to apply for a work permit as the first step in potentially obtaining permanent residency in New Zealand.
- 32 Ms Thompson's nephew filled out his application for a work permit on 22 February 2005. Ms Thompson assisted him with completing the application, and duly signed the form as person assisting the applicant. She also furnished her personal cheque for payment of the necessary application fee. Ms Thompson's husband then delivered the work permit application form and fee to the Wellington office of NZIS.
- 33 The work permit application form was then delivered to the Director of the Pacific Division ("the Director") and left at her desk. The Director recalls being out of the office when this occurred, and believes that someone must have alerted her to the fact that the application had been delivered to her, although she does not recall who did this. The Director does recall calling an officer from the Pacific Division ("the PAC Officer) and asking her to collect the application form from her desk, and to assist the applicant. After collecting and checking the form, the PAC officer recalls ringing Ms Thompson and enquiring of her whether she would like the PAC Officer to attend the Wellington Immigration Branch office with her nephew. Ms Thompson agreed to this.
- 34 I note that for her part, Ms Thompson does not recall receiving a phone call from the PAC officer, but does not deny that such a call was made. She did not know why the application form was delivered to the Director - she had not directed that this happen.
- 35 Ms Thompson's nephew subsequently attended at the NZIS Wellington Branch on 24 February 2005, accompanied by the PAC Officer and his uncle, (Ms Thompson's husband). Along with the application form and cheque provided by Ms Thompson, there was a handwritten note addressed to the Immigration Officer who received and processed the application ("the Immigration Officer").
- 36 The Immigration Officer told me that he had a concern when he saw that the cheque for the application fee was Ms Thompson's personal cheque and that he queried the PAC officer attending with the applicant about whether this might create a conflict of interest issue. He recalled her advising him that this wasn't a problem. The PAC Officer could not recall this exchange.
- 37 When the Immigration Officer considered the application, he felt that it was in order to be accepted. The job offer (supermarket shelf stacker) that had been made to the applicant was a 'trainable' one which would not ordinarily pass the workforce availability tests. However, the Immigration Officer told me that these tests were not applied to work permit applications under the 'PAC Residual' residency category, following a recent policy change applying to this category of applicants. The AMS notes entered for this work permit application appeared to support this, noting that the application was approved on 24 February 2005 under the "Residual PAC Kiribas" policy.

Extension to Visitor Permit

- 38 Ms Thompson's other nephew planned to return to Kiribati in May 2005 which would take him over the four months that had been granted to him pursuant to the visa waiver discussed above. Accordingly, in early April 2005, he applied for an extended visitor's permit, to allow him to stay lawfully in New Zealand until his return to Kiribati.

- 39 Ms Thompson assisted this nephew with the necessary application form to apply for this extension, and signed the form as person assisting the applicant on 2 April 2005. On the same date and on the same form, she completed a sponsorship form. This included entry of personal details about her as sponsor for her nephew, a commitment to accept financial responsibility for him for the remainder of his stay, and the completion of a statutory declaration confirming that the information supplied by her was correct and that she would honour the obligations contained in it.
- 40 Ms Thompson's statutory declaration was taken by a Department of Labour solicitor. This solicitor recalls being called to Ms Thompson's office to take the declaration. He also recalls having concerns over the fact that Ms Thompson was completing an application form in this way. He was concerned about whether a conflict of interest issue arose, and what effect Ms Thompson's signature might have on NZIS officers required to process the application. He advised me that he may have made some comment about that to Ms Thompson, but he also noted that he felt unable to refuse Ms Thompson's request that he witness her declaration, given her seniority. Ms Thompson does not recall any such concerns being raised with her by the solicitor at the time.
- 41 After the statutory declaration was signed the solicitor recalled raising his concerns about it with one of his colleagues and also with the Deputy Secretary, Legal. While the Deputy Secretary Legal did not specifically recall these concerns being raised with him or of referring these on to Mr Buwalda, he believed that they had been, referring as evidence of this to me a file note that he made in preparing for a regular 'catch up' meeting he had with Mr Buwalda on 14 April 2005 which included a brief reference to "Mary Anne – C of I" and further down the page a reference to "conflict of interest". For his part, Mr Buwalda recalls at this meeting discussing in general terms managing the potential conflict of interest issues arising in relation to Ms Thompson's extended family from Kiribati. He does not recall having the solicitor's concerns or any other specific matter or concern being brought to his attention.
- 42 This application was approved on 18 May 2005 by the same Immigration Officer (Wellington) as approved the work permit application for Ms Thompson's other nephew. He told me that he did not remember noticing that this application was signed by Ms Thompson.

Visa Waivers April 2005

- 43 Ms Thompson's nephew who was considering remaining in New Zealand decided that he would like his wife and children to come to New Zealand to see how they liked the country. The decision was made that when Ms Thompson's husband travelled to Kiribati in May 2005 to see off the other nephew, he would return with his niece and her son. Ms Thompson decided to meet her husband and niece in Fiji and return to New Zealand with them.
- 44 On 25 April 2005 Ms Thompson emailed the Suva Branch Manager regarding arrangements for her niece and her niece's son to travel from Kiribati to New Zealand. She advised that her niece and her son would be visiting for 3 months and would be staying with her. In this email Ms Thompson advised travel dates and referred to her experience in December 2004:

"My husband could drive to Suva to get a visitor's permit or we would you [sic] consider a visa waiver. Either way is fine. I might travel to Nadi to surprise them but also to deal with the airport staff who did give us a hard time last time. The Nadi lot seemed pretty hopeless to us and the customs people in Auckland could not find your loading on AMS so we all had to step aside and spend time in the waiting lounge used for seeking asylum etc."

(Included in emails attached at Appendix G)

- 45 Ms Thompson likely received an ‘out of office’ automatic email reply from the Suva Branch Manager, and she remembered at that point that he was travelling to New Zealand for an NZIS conference. Accordingly, some minutes later she sent a further email to another officer in the Suva office (“the Suva Officer”), noting that she had forgotten the Suva Branch Manager was coming to New Zealand and attaching the text of her earlier email to the Suva Branch Manager. She said in that email :

“My preference would be a visa waiver given the certainty of my family returning back to Kiribati and given that they will live with me and our family.”

(emails attached at Appendix G)

- 46 The Suva Officer subsequently contacted the Suva Branch Manager (while he was in New Zealand) about the request from Ms Thompson. The Suva Branch Manager asked the employee to organise the visa waivers that Ms Thompson had requested.

- 47 Visa waivers were authorised on 27 April 2005; the relevant AMS notes state:

“As per correspondence with the Deputy Secretary of the NZIS/Workforce, applicant and son has been issued visa waivers for 3 months where they will be accommodated by the Dep Sec and her family. They arrive in Fiji on Monday 9 May on Air Nauru (ON 211) and leave for Auckland the next day (10 May on Air New Zealand NZ59) and therefore will be unable to travel to Suva for the issue of their Visas”

- 48 Following standard procedure on 27 April 2005 the Suva Officer faxed letters to Air New Zealand in Nadi and to the Department’s ‘Border and Investigation’ unit in Auckland to advise of the travel arrangements made for Ms Thompson’s family members. In these letters it was advised:

“As the uplifting carrier, special permission has been requested on behalf of the passenger to: “Uplift with no visa”

- 49 And further:

“We would be grateful if your handling agents at Nadi International Airport could be advised about the decision that has been made concerning the uplifting of this passenger.”

- 50 The Suva Officer also emailed Ms Thompson and the Suva Branch Manager copies of the above correspondence on 27 April 2005, and confirmed that “*visa waivers have been done*” for Ms Thompson’s relatives. The Suva Officer then forwarded that email to a Service Leader at Auckland airport to “*give you the heads up on this*”. That email forwarded attached the earlier email string of 25 April 2005. (Email forwarded to Service Leader included in emails attached as Appendix G).

- 51 In an email to Ms Thompson of 1 May 2005 the Suva Branch Manager confirmed that he had checked the visa waivers and they were in the system.

- 52 Ms Thompson met her husband and relatives in Nadi on Monday 9 May 2005. They all departed for Auckland the following day, arriving in Auckland on Tuesday afternoon. They again had to wait in the ‘secondary line’ waiting area for a period on arrival, (which is standard practice for those travelling on visa waivers), while Immigration checked on the visa waiver status of the niece and her son.

The Reporting of and Response to Concerns Regarding the Visa Waivers

- 53 The Service Leader at Auckland Airport was concerned on reading the email forwarded to him. He thought it was concerning that Ms Thompson, the most senior NZIS official, had been corresponding with the Suva branch directly and had expressed her preference for visa waivers to be issued to her relatives. He was also concerned that there appeared

to be no good reason for visa waivers to be granted to Ms Thompson's relatives. It appeared to the Service Leader that the visa waivers had been granted as a convenience. The Service Leader was familiar with visa waivers, having dealt with a large number of waiver requests at the border. The decision to grant visa waivers in this case appeared out of step with his experience.

- 54 The Service Leader accordingly decided to raise his concerns with a Department of Labour solicitor in Auckland. He printed off the email he had been sent and provided the solicitor with the hard copy. The solicitor forwarded this copy of the email to the legal office in Wellington on the same or following day, where it was brought to the attention of the Deputy Secretary Legal. He in turn promptly referred it as a potential issue of concern to the then Secretary of Labour, Mr Buwalda.
- 55 Mr Buwalda recalls that at the time he saw very real problems with the apparent direct communication by Ms Thompson to the Suva branch officers involved in making the decision about visa waivers. He was concerned that the request by Ms Thompson did not appear to meet his expectations of staff to distance themselves from immigration processes that might create a conflict of interest. He also recalls seeing a significant risk that by this direct communication, and by expressing a preference for visa waivers, Ms Thompson could have created a situation where relevant policy or rules may have been broken because of the immigration officers concerned acting on a belief that she expected that visa waivers would be granted. He said the email accordingly raised for him significant questions of conflict of interest and judgment on Ms Thompson's part.
- 56 Mr Buwalda decided that he needed to raise the issue with Ms Thompson. He also decided that he needed further information as to whether the visa decisions had been made on proper grounds. He was clear in his evidence that the issue related to the April 2005 visa waiver queries with the Suva office only, as at this time he was unaware of the December 2004 contacts.
- 57 Mr Buwalda's decision to deal with this matter himself was consistent with his usual practice not to seek advice from or involve Deputy Secretaries in matters involving their peers. He preferred to take external advice on such issues where he considered this necessary.
- 58 Mr Buwalda spoke to Ms Thompson either on the same day or soon after his discussion with the Deputy-Secretary Legal. No record was made of this discussion, and Mr Buwalda and Ms Thompson have significantly different recollections of it. The discussion appears to have taken place on or about 5 May 2005, based on the follow up emails discussed below. I note that this date would mean that the initial discussion occurred before the actual travel of Ms Thompson's relatives on 9 May 2005, although both Mr Buwalda and Ms Thompson recalled it as taking place after the arrival of her relatives. However, there was also a follow up discussion, and it is possible that this discussion occurred after the arrival. I note there appears to have been no consideration of or discussion between Mr Buwalda and Ms Thompson of the possibility of regularising the travel arrangements by requiring her relatives to obtain the normal visitor visas.
- 59 For his part, Mr Buwalda recalls checking with Ms Thompson whether she had made the recent queries about visa waivers with the Suva office – Ms Thompson confirmed that she had. Having established Ms Thompson's involvement, Mr Buwalda went on to emphasise to Ms Thompson his concern about conflict of interest, perceptions of conflict of interest and the standards of appropriate behaviour for a senior person responsible for immigration matters. Mr Buwalda recalled Ms Thompson responding to him to the

effect that as a person with a migrant family and given her responsibilities this raised inevitable issues for her and she asked how she was expected to deal with these. Mr Buwalda says he explained to Ms Thompson there were ways that such situations can be appropriately managed. By way of example he described how he had declared a potential conflict of interest on being appointed as chief executive that had involved a relative, and he gave instructions that any matter pertaining to this relative was to be handled by a Deputy Secretary independently of him.

60 Mr Buwalda recalls that he then advised Ms Thompson he would be making inquiries as to whether the decision to grant the waivers had been made on proper grounds within Departmental policy and discretion.

61 Following the exchange with the Group Manager, Service International (“Group Manager, SI”) that is discussed below, Mr Buwalda then spoke to Ms Thompson again and his evidence is that he told her then that the outcome of his inquiry was that the visa waivers were able to be granted, but he reiterated his earlier advice about her actions being unwise.

62 Mr Buwalda considered at the end of the discussions with Ms Thompson that he sought from and obtained from her acknowledgment that what had happened was inappropriate. He also made it clear to her that he required her to take steps to ensure that this type of issue would not happen again. Mr Buwalda considered Ms Thompson an intelligent, senior and experienced public servant. He was satisfied that he had conveyed his position to her in an appropriate way and that she had understood the message.

63 Ms Thompson’s evidence of these discussions was that she recalled Mr Buwalda raising an issue with her briefly and informally, speaking to her about it from the doorway of her office. She recalls him telling her that a concern had been raised at Auckland by a staff member about her family travel arrangements. She did not recall him providing any detail or even mentioning the term “visa waivers”. He did talk to her about conflict of interest issues generally. Her evidence was that she did not gain any appreciation from Mr Buwalda that he considered that there had been a lapse of judgment on her part or that he considered the issue to be serious. She recalled that Mr Buwalda told her that he would have someone look into it, and within a few days later he spoke to her briefly (again from the door of her office), telling her that he had had a report back and that the matter had been resolved. Ms Thompson felt that this effectively closed the issue.

64 Ms Thompson sent an email on 5 May 2005 at 7.08 pm to the Group Manager SI, under the subject heading “Avoidance of perception of conflict of interest” and directed:

“As Group Manager, Service International and for (sic) responsibility for the Pacific region, I request you to ensure that any immigration activity involving family members is isolated from me. This is to avoid any perceptions of conflict of interest or undue influence.”

65 The Group Manager SI responded by email the following morning (6 May 2005 at 9.02 am) with a one word reply:

“Sure”.

66 Both emails were copied to Mr Buwalda. These emails are attached at Appendix H.

67 I consider it highly likely on the evidence that this email exchange was a direct response to Mr Buwalda’s request that Ms Thompson take steps to meet his concerns and to ensure that this type of issue did not recur.

68 I spoke to the Group Manager SI about the email of 5 May sent to him by Ms Thompson. He told me that he was not surprised to receive this email as he was aware generally of issues where Kiribati nationals were using Ms Thompson’s name when they were dealing

with immigration officers and of situations where Kiribati nationals were emailing Ms Thompson directly wanting her personal attention to an issue. In terms of response to this email from Ms Thompson he advised me that he had a discussion with the Director of the Pacific Division and other relevant staff, about how to deal with contacts from Pacific peoples including Kiribati citizens who may have used Ms Thompson's name (these were to be treated like any other case), and that he also agreed with Ms Thompson and her Executive Assistant that any direct approaches to Ms Thompson were to be referred in the first instance to the Group Manager SI or the Director to decide how to deal with the matter. I note the processes that the Group Manager SI says he put in place did not specifically address any conflict of interest issues that might arise in relation to Ms Thompson's relatives.

69 Mr Buwalda had also separately decided to task the Group Manager SI with assessing whether the visa waivers had been granted on proper grounds. He advised me that he had telephoned the Group Manager SI soon after he had spoken to Ms Thompson and asked him to check on whether the decision to grant visa waivers to Ms Thompson's family in April was correct or not. He did not provide the Group Manager SI with any documentation on the issue, but he assumed that the Group Manager SI would have access to the necessary information to be able to make an assessment.

70 The Group Manager SI emailed Mr Buwalda on 6 May 2005 at 9.15 am, saying:

"You asked me to look at an issue raised by [the Service Leader]. Last night I asked the Manager of the Hamilton Branch to go through the material and provide me with an assessment. It is his assessment as presented to both myself and the GM for Border Security that there is no conflict of interest in the engagement. I therefore submit to you that there is no foundation for [the Service Leader's] concern and that the answer is NO."

(this email is attached at Appendix I)

71 Mr Buwalda interpreted this response as meaning that the visa waivers had been properly granted within law and applicable policy. He was clear from the information before him that the visa waivers had been essentially granted as a matter of convenience; the waivers would significantly ease the transit though Fiji for Ms Thompson's relatives. However he did not know whether or not it was common for visa waivers to be granted on this basis, and he believed that the response from the Group Manager SI confirmed that this was an appropriate option in this case.

72 When I interviewed the Group Manager, SI he did not recall at all being asked by Mr Buwalda to undertake any check into the circumstances behind the grant of visa waivers for relatives of Ms Thompson, and he thought it possible that the email exchange may have related to an entirely separate incident. I note that at the time of this interview the Group Manager SI was still unwell following a brief period of hospitalisation, and after having an opportunity to reflect on this issue and consider his evidence he advised me that he was able to recall much greater detail about this request.

73 The Group Manager, SI's further evidence was that he recalled in early May 2005 being briefed by the Regional Manager (whose role the Group Manager, SI had taken over in March 2005) on a directive that the Regional Manager had received from Mr Buwalda to investigate the appropriateness of the December 2004 visa waivers issued to Ms Thompson's relatives. The Group Manager, SI provided significant extra detail around what he recalled of the process around the investigation and the difficulties he said he faced in arranging an effective investigation solely on a verbal briefing from the Regional Manager together with a brief call from Mr Buwalda, with no documentation or anything in writing clearly outlining expectations of him.

- 74 This evidence is contradicted by Mr Buwalda, who was clear in his evidence that it was the April 2005 visa waiver incident that he referred to the Group Manager SI to investigate and that this was the first approach he had made to any of his officials in respect to visa waivers granted to Ms Thompson's relatives. The Group Manager SI's account is also contradicted by the evidence I have received from the GM for Border Security, the then Hamilton Branch Manager and the former Regional Manager. Accordingly I do not accept the Group Manager SI's recollection of events accurately reflect what actually occurred with this investigation.
- 75 The GM for Border Security recalled having a discussion with the Group Manager SI at about the time of the email. He had been in the GM Border Security role only a few days at this stage. He did not recall the then Hamilton Branch Manager being involved, and he did not recall any assessment being 'presented'. He did think that the discussion had concerned visa waivers granted to Ms Thompson's relatives, and his recollection was that he was asked about whether a conflict arose simply from the fact that visa waivers had been granted to Ms Thompson's relatives. On that basis, he did not think that a conflict arose.
- 76 The GM for Border Security did not recall seeing the relevant emails, nor being advised that Ms Thompson had contacted the Suva branch office directly, or that she had expressed a preference for visa waivers to be granted to officers at that branch. Accordingly I consider that he was not provided with the necessary information to enable him to make a proper assessment of the issue.
- 77 For his part, the then Hamilton Branch Manager (who the Group Manager SI referred to as presenting an assessment on the material) advised me that he does not recall any such approach for an opinion on the issue of visa waivers. He was in Wellington at the relevant time, and he was in an extremely busy phase of work, so he could not rule out the possibility that he had been approached. However he thought that given the circumstances of the apparent request he would expect to be able to recall it. He also told me that he had no particular experience in matters relating to visa waivers, and if he was asked to assess and decide on one himself, he would seek technical help.
- 78 The former Regional Manager does not recall ever being asked by Mr Buwalda to investigate the December 2004 visa waivers (or the April 2005 ones) or being involved in any meeting with the Group Manager SI or the Manager Border Security about this issue.
- 79 I find that Mr Buwalda did specifically task the Group Manager SI with investigating the basis on which the visa waivers were granted to Ms Thompson's family members in April 2005, and that this was what that Group Manager's email to Mr Buwalda of 6 May 2005 was concerned with. The evidence is also clear that despite Mr Buwalda's request the Group Manager SI did not undertake any serious or effective investigation of the issue. The Group Manager SI has subsequently suggested he faced difficulties in 'inheriting' the investigation, but this is not supported by the evidence. He has also said that he lacked clear details upon which to investigate – I consider this may be true, but there is no evidence that he ever raised this as a problem. Certainly his email to Mr Buwalda of 6 May 2005 was unequivocal.

The Residence Ballot Process

- 80 After Ms Thompson's niece and her son arrived in New Zealand, the family did decide to remain in New Zealand. On 29 June 2005 Ms Thompson's nephew accordingly completed the necessary registration form under the 2005 Pacific Access Category Ballot ("the Ballot") to seek residency. Ms Thompson and her husband were named on the

form as person(s) assisting the applicant. Only Ms Thompson signed the form as person assisting.

81 I have not been made aware of any particular issues arising with the processing of this form. The applicant's registration was not drawn, and Ms Thompson's nephew was advised that his family's registration for the residence ballot was unsuccessful on 28 September 2005.

Residency Applications – Residuals Category

82 The ballot process was one means in 2005 by which Kiribati and some other Pacific country nationals could seek to obtain New Zealand residency. The other main avenue was by applying for residency under the "Residual Pacific Access Category Places Policy" ("PAC Residuals category"). A narrative providing additional detail around the introduction and operation of the ballot system and the PAC Residuals category is attached at Appendix J. For the purposes of this narrative, the principal features of the PAC Residuals category are:

- There had been an extensive communications campaign in late 2004 and early 2005 by NZIS to inform Pacific communities about the PAC Residuals category;
- Ms Thompson had been personally involved in presenting to community meetings on this subject;
- The closing date for applications under this category was (extended to) 31 March 2005; and
- Applicable Government Residence Policy specified that applications were to be processed in the order in which they were received.

83 It appears that in about October 2005 Ms Thompson's nephew learned of the possibility of making a residency application under the PAC Residual category, likely from discussion with others in the Kiribati community. He obtained the necessary form (he could not recall for me precisely how) and set about filling it out. The available evidence suggests that this was on or about 29 October 2005.

84 Ms Thompson became aware that her nephew and his family were completing these forms. She told me that when she saw that her relatives were applying under the PAC Residuals category, she thought that there might be a risk that the applications would be out of time. Despite having been involved in presentations to Pacific community groups about the PAC Residuals category (as discussed in Appendix J), Ms Thompson told me that she did not recall specifically when the closing date under this category was. However, she felt that if the applications were out of time there would not be any great problem; the applications would simply be rejected.

85 Ms Thompson told me that she saw that her family members were having difficulty in filling out the forms. She told me that she thought about the situation carefully but could see no alternative but to assist them. Once she had started assisting them she realised that the form required her to declare herself as the person assisting. She said that she felt that she had placed herself in a difficult position and took some time to consider the ramifications of her signing the forms as the assisting person. In the end however she decided she had no option but to do so as she had assisted and to do otherwise would be dishonest. She noted that immigration forms were frequently received by NZIS that had the names of very senior officials or politicians on them, and the system needed to deal with those applications impartially and on their merits.

- 86 She also found that her nephew was proposing to pay the application fee by cash –she considered this impractical and provided her personal cheque for the payment.
- 87 I note that when Ms Thompson provided me with the above account I was not yet aware that Ms Thompson had signed as person assisting on three previous immigration forms for her relatives (work permit; extended visitor visa and PAC Residency Ballot). The records show that for the PAC Residual category applications she declared herself as person assisting with medical and chest x-ray forms on 29 October 2005, and again for the actual residency application forms on 14 November 2005.
- 88 Ms Thompson understood that her husband was intending to take the forms into the Immigration office at Wellington, and she assumed the forms would be directed from there to the appropriate processing office. On 16 November 2005 the application was date stamped and entered onto the AMS, by the Immigration Manager at the Manukau Pacific Branch office (“the Immigration Manager”). The Immigration Manager had been handed this particular application by the Branch Manager of the Manukau Pacific Branch (“the Branch Manager”).
- 89 The Branch Manager saw how late this application was when she first reviewed it. She also noticed that Ms Thompson had signed as the person assisting.
- 90 The Branch Manager told me that on reviewing the application, she felt it was a strong one, as it was completely filled in and had all the documents required. While she was aware that the cut off date for accepting applications under the PAC Residuals category had long since passed, she said she believed that she had delegated authority to accept late applications. She was also very aware of the emphasis from NZIS National Office at the time to fill available quotas, and that she considered that there was a shortage of good applications available to fill the PAC Residual (Kiribati) quota. The Branch Manager said she accordingly determined to accept the application as a late application. She told me that in coming to that decision she was not influenced by the fact that Ms Thompson had signed the application form.
- 91 Evidently the Branch Manager gave the application promptly to the Immigration Manager in order for her to be able to enter the application into the AMS on 16 November 2005. The Immigration Manager recalls being asked by the Branch Manager to lodge the applications. She says she objected to lodging the application as she felt it was out of time and should be rejected. However, her evidence is that the Branch Manager told her that the application could be lodged as an exceptional case and it was within her discretion to accept it.
- 92 The Immigration Manager had serious concerns about what to do with the application after she received it in November 2005. She told me that the application sat on her desk for a period because she wasn’t sure what to do about it. She was not only concerned about how late it was, she also believed that there were already sufficient applications on hand to fill the PAC Residual quota for Kiribati applicants.
- 93 I note that the Immigration Manager raised her concerns about the matter and sought advice from an experienced Immigration Branch Manager who managed another NZIS branch and who she had worked with previously. The Immigration Branch Manager’s advice was that she should carefully note any situation where she felt she was being instructed to do something improper or unusual. This advice was followed.
- 94 The AMS notes show the residence application was first raised on 19 December 2005 under the “2004 PAC Quota (Kiribas)”, by the Immigration Manager with the words “as

instructed”. This was an incorrect entry, as the application was made under the 2005 PAC Residual quota, not under the 2004 Ballot quota.

- 95 The Branch Manager told me about a discussion with the Immigration Manager shortly after the Immigration Manager tried to lodge the application under the 2004 Ballot quota. The Branch Manager recalls the Immigration Manager raising concerns with her about the lateness of the application, and also about the fact that Ms Thompson had signed the application form and paid the application fee by personal cheque. The Branch Manager recalls the Immigration Manager suggesting that the application form be returned to have Ms Thompson’s signature removed and that the cheque be changed for cash. The Branch Manager’s evidence was she felt that the Immigration Manager was trying to get the application “in under the radar” and she said that she told the Immigration Manager that there was no need to take any such steps, and that the Immigration Manager should go ahead and enter the application as a late application under the PAC Residuals category. She recalls the Immigration Manager responding that she would enter the application on the system and specify that this was “as instructed” by the Branch Manager.
- 96 The Immigration Manager refutes that she was in any way trying to conceal any detail of the application, and she told me that the entry of the application under the 2004 PAC Quota was simply a data entry error.
- 97 Further relevant evidence is provided by the Verification Officer at the Manukau Pacific Branch (“the Verification Officer”). The Verification Officer told me about being called into the Branch Manager’s office, and, with the door closed, the Branch manager asking the Verification Officer about how the Branch Manager might go about accepting an application where there might be problems with fitting it within applicable policy. The Verification Officer asked to see the file in question, and was provided the application from Ms Thompson’s relatives. While the Verification Officer was looking through it the Branch Manager said that the application related to Ms Thompson’s family, that it had come direct from Wellington and that she wanted to find a way to process the application.
- 98 The Verification Officer took the passport information away for a closer look, and also checked on the AMS system. The Verification Officer swiftly came to the view that the application was far too late to even be considered. Later the same day the Verification Officer took the application back to the Branch Manager and told her that there was no way the application could be considered and that internal audit processes would almost certainly pick up the application if there was any attempt to accept it. The Verification Officer was also conscious of the acute conflict of interest issues with the application, but did not feel confident about raising those with the Branch Manager. In any event, the Verification Officer felt that the Branch Manager had accepted the advice provided. The Verification Officer thought that would be the end of the matter.
- 99 The Verification Officer’s clear recollection is that the discussion with the Branch Manager and access of the AMS records occurred prior to Christmas 2005. The AMS records for the relevant applicants do show the Verification Officer accessing the AMS records on 5 October 2005 (though this is prior to the date of completion on the application forms). It is possible that a further access prior to Christmas 2005 was not captured by the AMS system.
- 100 The Branch Manager denies that any such conversation took place with the Verification Officer.
- 101 There are also conflicts of evidence around the extent to which other senior managers may have been involved in the processing of this application. The Immigration Manager

told me that there was an occasion where she again raised her concerns with the application with the Branch Manager, and that the Branch Manager responded by saying that she would call National Office about the application, commenting that she would check with the Group Manager, SI and the Director.

- 102 The Branch Manager does not recall telling the Immigration Manager that she would speak to managers at the National Office, and she told me that she did not communicate with those managers about this application.
- 103 The Immigration Manager further advised me that soon after her discussion with the Branch Manager, the Director visited the branch and told her to raise the applications under the PAC Residuals quota, and stood by the Immigration Manager's desk while she entered the application into that category. The Immigration Manager advises that she told the Director that that quota was closed, but the Director insisted that there were places still available and that she should enter the application under the residual category. The Immigration Manager said that she did this but she added the words "as instructed" when the Director was no longer watching. The AMS records that this application was re-raised under the PAC Residual category by the Immigration Manager on 20 January 2006.
- 104 The Director does not recall this incident and says that if it did occur she would expect to recall it. She also says that the incident as described would be out of character for her, and she denies any suggestion that she would have acted to assist the application just because it involved Ms Thompson's relatives. Travel records held by the NZIS do not place the Director in Auckland at the relevant times, although these cannot be considered to be definitive and it is possible that the date of the alleged discussion with the Director does not match the AMS records.
- 105 The Immigration Manager's account of the incident with the Branch Manager and the Director receives limited support from the Verification Officer, who was sitting next to the Immigration Manager when she had a discussion with the Branch Manager and Director. The Verification Officer was wearing headphones at this time and did not catch any detail of this discussion, but said that the Immigration Manager said shortly afterward during a break that she was being pressured to accept the application from Ms Thompson's family. The Verification Officer was surprised by this, as in light of the previous discussion with the Branch Manager the Verification Officer did not think it was going to be taken any further.
- 106 Shortly after the re-entry of the application into the system on 20 January 2006 under the PAC Residual category the Immigration Manager referred the file to the Processing Immigration Officer. That officer's role was to process the applications once they had been entered into the system by the Immigration Manager. The Processing Immigration Officer raised with the Immigration Manager her surprise at the late nature of the application, and the fact that there had been some delay after receipt of the application. Once she started reviewing the application, she also realised that it had been signed by Ms Thompson as person assisting. She felt that that gave rise to a possible conflict of interest situation, if it was the same Ms Thompson as the head of NZIS. She accordingly gave the file back to the Immigration Manager, asking her to consider that issue. She told me that the Immigration Manager took the file back for a period, but then returned it to her and asked her to process it as normal. The Processing Immigration Officer said that she did not expect to receive the file back as she thought it likely that it would be transferred to another area. However, when the file was returned to her, she assumed that the application was in order for her to process.

- 107 The Processing Immigration Officer continued with the processing of the application. She found that the application was complete apart from the statutory declaration section of the form.
- 108 Despite the fact that part of the form needed to be completed, a note on the immigration file by the Processing Immigration Officer states that the residence application was approved, and that “page 17/18 of residence for is (sic) to be completed at AIP stage”. A letter was sent by the Processing Immigration Officer on 3 February 2006 to Ms Thompson’s nephew informing him that the application for a residence permit had been approved in principle, but that a migrant levy of \$450 was payable. This levy appears to have been paid on 7 February 2006.
- 109 The Processing Immigration Officer sent a further letter to Ms Thompson’s nephew on 7 February 2006 stating “[b]efore we can proceed further with your application we require some additional information” and asked him to “[p]lease complete page 18 and return to me.”
- 110 I note that copies of the original application form on the Immigration file support the conclusion that the application form did not have a declaration completed on page 17 and was not signed on page 18.
- 111 Ms Thompson became aware of this correspondence. She told me that about this time she had a discussion with the Group Manager SI about a number of complaints that had been received about documents going missing after having been sent to NZIS. Ms Thompson thought that there may have been a problem with “DocSec” (the NZIS document handling section). She told the Group Manager SI that this wasn’t a theoretical problem; she had encountered it first hand with the loss of part of a relative’s application. Her evidence to me was that she was sure that the application had been fully completed, and the missing page must have been lost by DocSec. She also told me that she did not intend the Group Manager SI to do anything about this personal experience, she was simply using the case as a first hand example of the problem.
- 112 The Group Manager SI also recalled Ms Thompson referring to her relative’s application in discussion with him, although his recollection was that the discussion was around delays in processing (rather than documents getting lost), and that in that context she ‘alerted’ him to her relative’s application and the delays she was experiencing. He clearly felt that direct action on this was required and he promptly raised the issue with the Director.
- 113 The Director’s evidence on this point was consistent with that of the Group Manager, SI. She said that he approached her and advised that Ms Thompson had spoken to him about the application having been sent in and nothing had been heard about it since then. She rang the Processing Immigration Officer, and she recalled that officer telling her that the application couldn’t be found. I think it likely that the Processing Immigration Officer actually said that the statutory declaration section of the application form could not be found. This is supported by notes entered in the AMS, which show that on 23 and 24 February 2006 the Processing Immigration Officer was following up the whereabouts of the completed Statutory Declaration section “*following urgent enquiry from NATO*”. (NATO is the NZIS National Office, and the entry doubtless refers to the call from the Director).
- 114 Emails were then exchanged between the Director and the Processing Immigration Officer. During this exchange, the Director urged staff at the Pacific Manukau branch (some emails were copied to the Immigration Manager and/or to the Branch Manager) to do all they could to locate and process the application, on 27 February she wrote:

“I hope we find it cos its not looking very good from our end – regardless of whether we were responsible for the document getting lost in the mail or not.”

115 However, the Director also told me that she felt uncomfortable with the fact that the Group Manager SI had raised the query about the application, given the link to Ms Thompson, and that she cautioned him about that. She said that she did not want the processing officers to make the link between the enquiries and Ms Thompson.

116 The Group Manager SI recalls the Director raising these concerns with him. He also told me that (after he initially raised it with the Director as a matter to be looked into), she got back to him and advised that there was an issue with the application being late and there was a question as to whether it should be accepted. The Group Manager SI stated in evidence to me:

“..I recall making the decision to accept the late application based on the facts that we were still trying to reach our targets for residuals and that the application was a strong one. My decision related only to accepting the late application but it was for Auckland to make the decision based on the merits of the application.”

117 The Group Manager SI advised me subsequently that he never saw the application himself, but that he relied on advice from the Branch Manager that there were still available places for the Kiribati residual category, and that the application was considered to be a strong one. For her part, the Branch Manager told me in evidence that she did not recall having any contact with senior managers at Head Office in relation to this application, but when I subsequently referred to her the Group Manager SI’s comments in this regard she responded that while she could not specifically recall this, she accepted that if the Group Manager SI said he had such a conversation, then in all probability it had occurred.

118 The Group Manager SI advised me at interview that he confirmed this decision verbally to the Director and that he commonly did this for particular cases that his managers would approach him about. The Director does not recall this exchange at all. I note that the Group Manager SI’s evidence on this point is difficult to reconcile with the evidence that by the time Ms Thompson made him aware of this application, it had already been accepted as a late application and indeed had already been approved in principle. There are also questions regarding the Group Manager SI’s ability to make such decisions which I return to later in this report.

119 In terms of finally completing the application, unsuccessful efforts were made to locate replacement pages in response to the Director’s queries, but the AMS notes confirm that the necessary pages were completed and received at the Wellington branch on 2 March 2006 and then faxed to Manukau the same day.

120 The Immigration Manager had been asked to confirm the preliminary decision to approve the application. This confirmation would have included completing the required quality checks and, more importantly, authorising that the residence be granted in accordance with policy. The Immigration Manager told me that she refused to do so due to her reservations about the application. The Branch Manager ultimately confirmed the decision on 2 March 2006 to grant residence. Residence permits were issued and sent to the applicants at Ms Thompson’s home address.

121 Once the decision to grant residence had been made and the Director was informed that the necessary documents had been provided and the residence permits had been issued on 2 March 2006, she emailed the Processing Immigration Officer to close the loop on the previous exchanges on missing documentation as follows:

“I know its hard and I know your trying your best so please don’t be under any illusion that I think anything other than that. I will however continue to ask you to be better than you are and if you just bear in mind that – its my job to require you to lift the bar and be better than you are – even though I know – that I couldn’t ask for a more committed, self motivated and hardworking team. Its when we are pushing out the edges and things start to feel uncomfortable where real growth happens.”

Departmental Investigation of the Residency Applications

- 122 In March 2007 the Department’s Internal Audit officers commenced an audit of the Pacific Manukau branch. When that audit commenced, the Immigration Manager took the opportunity to bring the late PAC Residual category application to the attention of the auditors. Internal Audit quickly moved to undertake a preliminary investigation of events surrounding the application. This investigation identified in broad terms many of the matters referred to above, including the visa waivers.
- 123 Given the potential issues related to a Deputy Secretary of the Department, the investigation was promptly escalated (via the Deputy Secretary, Corporate) to Mr Buwalda. In a meeting on or about 7 March 2007 Mr Buwalda was briefed and he sought clarification of a number of points, including whether the assurance given by the Group Manager, SI in May 2005 about the visa waivers ought to be questioned. The answer to this question was provided in the Preliminary Investigation Report dated 3 April 2007: “[y]es it should. Inconsistencies in processing continued after that time.”
- 124 After taking advice from the Deputy Secretary Legal, Mr Buwalda decided to appoint an independent investigator. The Deputy Secretary Legal assisted in preparing the Terms of Reference (ToR) for the investigation.
- 125 Mr Buwalda also raised some of these matters with the State Services Commission at about this time, and also spoke to external members of the Department of Labour’s Audit Committee.
- 126 Before finalising the ToR, Mr Buwalda had met with Ms Thompson and had told her that he was going to commission an independent investigation into the granting of the residency permits for the members of her family. Ms Thompson confirmed to Mr Buwalda that she had signed the residency application as person assisting. Mr Buwalda made it clear to Ms Thompson that this was a serious matter, and she gave him an assurance that she had had no further involvement after signing as the assisting person and had not at any time become involved in or attempted to influence the decision making process. It was clear from Ms Thompson’s evidence to me that she fully appreciated at the time of this discussion how serious this matter could prove to be.
- 127 The final ToR required Mr Oughton to:
- determine whether the granting of the residency permits was lawful;
 - identify who was responsible for making the decisions, and their authorities to do so;
 - determine the basis on which the decision was made;
 - comment on how consideration of the application and the decision complied with the Government Residence Policy;
 - identify any irregularities in the decision making process;

- highlight issues relating to the decision or processes for further consideration by the Chief Executive.

128 It may be noted that the ToR focussed specifically upon the granting of residency permits; that is that there was no explicit scope to investigate the visa waivers (including the assurance about them provided by the Group Manager, SI), the work permit application or visitor visa extension. While Mr Buwalda was concerned to learn for the first time about the December 2004 visa waivers, his view was that the visa waiver issue had been dealt with, whereas the residency permit matters were entirely new. He also considered that the granting of residency permits potentially outside of Departmental authority were much more serious than the visa waiver issue, given the permanent effects of the decision.

129 Mr Buwalda's evidence to me was that he particularly wanted Mr Oughton to confirm whether or not Ms Thompson had had any subsequent contact or involvement in the processing and decision making around the applications. Once he had that information, Mr Buwalda intended to consider the appropriate outcome for Ms Thompson. Regardless of what Mr Oughton found, Mr Buwalda was aware that the issue of Ms Thompson's signing the application would need to be dealt with.

130 Mr Buwalda received an interim report from David Oughton on 15 May 2007. On review of those findings, Mr Buwalda obtained advice from the Deputy Secretary Legal and then decided that the investigation should be proceeded with as an employment investigation. At that stage notice was given to relevant employees that this was now an employment investigation, and they were given appropriate notification of their right to counsel and/or support people at interview.

131 Mr Buwalda had tendered his resignation as chief executive on 21 February 2007 and left the Department on 21 May 2007 (very shortly after receiving Mr Oughton's interim report). Mr Fortune started on 22 May 2007, with his term concluding on 22 October 2007. The newly appointed permanent chief executive, Mr Blake, took up his position on 23 October 2007.

132 Mr Buwalda provided Mr Fortune with a briefing note of matters that he wished to highlight for the acting chief executive which confirmed Mr Buwalda's willingness to discuss informally any of the matters contained in the note, and which included a brief reference to Mr Oughton's investigation:

"When we last met, I indicated that I was investigating a potential mis-use of immigration decision-making authority. I have retained David Oughton to carry out this investigation. On the basis of David's interim report, I have directed David to manage the rest of the investigation in a way that recognises employment/disciplinary considerations. The investigation is being kept confidential. [The Deputy Secretary Legal] has been assisting me with managing this investigation, and is holding the file on your behalf."

133 Mr Buwalda believed that Mr Fortune would obtain the necessary additional background detail by being briefed by the Deputy Secretary Legal and by reading the investigation file held by him. There was no other communication or discussion between Mr Buwalda and Mr Fortune about Mr Oughton's investigation. For his part Mr Fortune considered that in his note Mr Buwalda had provided him with the information that he [Mr Buwalda] considered relevant in regard to the investigation.

134 Mr Oughton provided his final report on 27 July 2007. In his covering letter to Mr Fortune of the same date, Mr Oughton set out a summary of his conclusions and outlined three further issues which he considered were worthy of further consideration.

135 The interim and final reports reflected the issues Mr Oughton had been called upon to investigate in accordance with the ToR. Mr Oughton found that “the residency permits granted to the particular family from Kiribati did not qualify in terms of then current policies”. From his investigation he found that the branch manager concerned had processed the applications outside of policy, that the branch manager had claimed sole responsibility for doing so and that there was no or insufficient evidence to find that any more senior officer employee was involved. He reported in his covering letter that

“the Deputy Secretary (Workforce), after assisting the applicant to complete the form (and signing it accordingly) did not in any way become involved or attempt to influence the treatment of the application before the decision was taken to grant residency. At that stage her subsequent involvement was merely to facilitate the return of a signed form which had been delayed by the applicant.”

136 Mr Oughton also noted that the Branch Manager rejected any suggestion that her decision to have the late application processed was in any way influenced by Ms Thompson’s signature appearing on the form. While Mr Oughton told me that he had some remaining concerns that no reasonable alternative explanation for the decisions were offered, he did not consider that he had sufficient evidence to reject the Branch Manager’s account.

137 Other than a brief discussion on the street regarding Mr Oughton’s investigation, Mr Fortune did not formally meet with or discuss the report in any detail with Mr Oughton. He accepted the report in its entirety and obtained advice from the Deputy Secretary Legal on how to proceed. He then moved to discipline the Branch Manager who Mr Oughton found to have approved the residency applications outside of Departmental policy and lawful delegation. Mr Fortune wrote to two other employees who had been involved in the investigation, but about whom the report had not attributed any wrongdoing, advising them of the outcome of the investigation. One of these was Ms Thompson.

138 In his letter to Ms Thompson of 24 August 2007, Mr Fortune attached copies of Mr Oughton’s reports and advised Ms Thompson that it had been found that she had not been “*in any way*” further involved or had attempted to influence the treatment of the application, after initially signing it. He then commented on the signing of the application form as the assisting person as follows:

“Nonetheless given your position, your initial involvement in their application was unwise and has had consequences.

For you personally there is a strong lesson in this – matters relating to personal interests or relationships are not only about personal advantage, but also about perceptions. Even though you have said you had no intention to influence anyone, the risk, once your name was on the record, is that staff could perceive it as an attempt to influence them or see it as a risk to themselves to act other than favourably towards the application. The even bigger risk is that they then portray it outside the Department, or others outside the Department see it, as an attempt to influence.

You must therefore actively distance yourself from any personal involvement in any immigration requests, so that such perceptions are impossible to arise. A future action of this sort would be unlikely to be deemed simply as unwise.”

139 Mr Fortune then set out three areas where he expected Ms Thompson to consider what systemic changes or improvements could be made. I discuss these further below.

140 Ms Thompson told me that she considered that this letter concluded the matter. She agreed that she had acted unwisely by assisting her family to fill out the application form.

- 141 Mr Fortune believed that his formal letter to Ms Thompson put her on notice that her action in signing the residency application form did not meet the standards expected of her, and that this was an appropriate outcome for Ms Thompson in the circumstances as he understood them to be. This letter was not a formal written warning (in a disciplinary sense). In Mr Fortune's view, an employment outcome of that type was not justified and he considered that this view was consistent with advice from the Deputy Secretary Legal.
- 142 Mr Fortune in his ongoing interactions with Ms Thompson and his other senior managers clearly communicated his expectations around dealing with and managing conflict of interest issues. He described to me how he took the opportunity at the very first SLT meeting to discuss conflicts of interest, using his personal experience as an example. He recalled speaking to Ms Thompson about conflict issues during their performance review meeting that took place shortly before Mr Oughton provided his final report. Ms Thompson confirmed to me that Mr Fortune was very clear with her about his views on appropriate behaviours and management of conflict issues, and she commented that he raised this with her during many of the meetings they had together.

Matters for further consideration identified by David Oughton

- 143 In his letter to Mr Fortune of 27 July 2007 enclosing his final report, Mr Oughton outlined three issues he believed required further consideration, which in summary were:
- At the time of reporting, Mr Oughton was aware that there were still applications under the Residual quota scheme that had been made within time and that still had not been processed. As Mr Oughton understood that there were no further places available under that scheme, some applicants may have been disadvantaged by the processing of Ms Thompson's relatives application which was accepted out of time. Accordingly, there needed to be special consideration given to any disadvantaged applicants; and
 - The case evidenced the need for an explicit protocol to be developed and promulgated widely amongst staff that covered applications from persons who have relatives or extended family employed in the Department and for the reporting of this to management. The protocols would need to identify how the application is to be processed in a manner which guarantees the integrity of the system; and
 - The "as instructed ..." entry did not appear to have been an isolated case. The fact that staff feel themselves obliged to make such an entry in order to protect themselves was a matter of concern. Mr Oughton noted that this could be occurring because of doubt about the discretion that could be exercised by managers, in which case training for the staff would likely address the problem. Alternatively it was possible that decisions were being taken outside of policy or delegations, which would clearly be more serious. Mr Oughton noted that the actual situation could only be determined by an in depth examination by experienced personnel.
- 144 In his letter of 24 August 2007 to Ms Thompson, Mr Fortune said in respect of the three issues raised by Mr Oughton:
- That he did not agree with Mr Oughton that other applicants had been disadvantaged, saying that the other applicants were still in exactly the position they would have been in had this not happened, because there were no slots available to them under the relevant policy;

- That as raised by Mr Oughton, more formal protocols should be developed to cover the situation of dealing with applications from relatives or friends. Mr Fortune suggested that the work being undertaken by the [Head of Human Resources] on revising the Department of Labour Code of Conduct could be a suitable vehicle for this;
- It appeared that the extent of delegated powers for residence decision making needed to be reinforced to all NZIS managers and staff. It also seemed (in this particular branch at least) that there was a practice of actions being taken by staff members in contravention of policy, with staff noting in the AMS in such situations the entry “as instructed”. Mr Fortune said of this:

“[i]f managers are properly making exceptions (temporary entry only) or exercising discretion, then they should be recording the reasons for such action and doing so over their own names. If they are not entitled to lawfully make the exceptions, then they should cease the practice forthwith. Continued insistence on unlawful “instructions” should be reported to a higher authority.”

- 145 Mr Fortune concluded “I would like you to consider what systematic changes/improvements can be made in these areas and propose to me how those changes can reasonably be communicated and rolled out, by September 14 2007.”
- 146 I have found no record of any response from Ms Thompson to Mr Fortune on these matters.
- 147 When Mr Blake commenced as chief executive on 23 October 2007 he received a series of departmental briefings, during which he was given broad advice from two of his Deputy Secretaries about the issues relating to the visa waivers and the investigation undertaken by Mr Oughton. This information was provided in the context of being historical matters that had been dealt with by the former chief executives, but were significant matters for him to be aware of. The matters were not identified for Mr Blake as pressing issues with further work remaining to be done. There were many other pressing current issues that were identified for Mr Blake to manage.
- 148 On or about 14 December 2007 an official information request was received by the department. Mr Blake met with the Minister of Immigration to brief him on this issue and was accompanied by the Deputy Secretary Legal who, by virtue of his previous involvement was available to provide background information as appropriate. From his briefings Mr Blake considered it concerned an employment issue and he advised the Minister his understanding of the findings of David Oughton’s report; i.e. that Ms Thompson was not found to have influenced the decision making process.
- 149 During his Christmas vacation break Mr Blake read David Oughton’s report and subsequently obtained copies of the further documentation available that related to the incidents. At that point the significance of the issues and the fact that there were follow up actions for Ms Thompson to complete became clearer to him. Mr Blake met with Ms Thompson on 7 February 2008 and at that meeting he provided her with two letters. In the first letter of 7 February 2008 Mr Blake asked her whether there had been any occasions where she had “personally assisted any immigration application or someone acting on their behalf, whether by sponsoring them, assisting them to make an application, or otherwise, other than those occasions involving the original temporary entry of members of [Ms Thompson’s] family and the subsequent assistance with completion of their residence application which was the subject of the Oughton Report?” Mr Blake also invited Ms Thompson to advise him of any other matters that she knew

about that might affect his confidence in her or that might adversely affect the reputation of the Department.

150 Ms Thompson responded by the same day advising Mr Blake “I have not personally assisted any migration application or someone acting on an applicant’s behalf, or sponsored any people other than the original temporary entry of members of [Ms Thompson’s] family.” Ms Thompson advised Mr Blake that the family “included a [nephew] who returned to Kiribati after five months in New Zealand.”

151 In the second letter provided by Mr Blake to Ms Thompson on 7 February 2008 he asked her to respond no later than 8 February 2008 as to what actions she had taken in regards to Mr Fortune’s directions in his letter to her and when these were taken.

152 Ms Thompson replied to Mr Blake by email the following day advising:

- She had reminded managers in New Zealand of their obligation to understand their delegated legal powers and that she wanted to frame up communications around this message and she expressed concern that some senior staff still did not seem to have the requisite levels of understanding on this issue and that she would complete this work by the end of the month; and
- She had informed all managers in New Zealand of the need to properly record exceptions to policy or discretions and had personally fronted two meetings about this, one of which was attended by Audit. She wrote that she would send out a directive on this by “the end of next week”; and
- She would work on the development of formal protocols to cover the situations of dealing with immigration of family and friends and provide a draft on this by mid March, if that timeframe was not too long away.

153 In a subsequent meeting between Mr Blake and Ms Thompson on 21 February 2008, Mr Blake noted that the third task (development of formal protocols) had not been addressed. He told her that this was critical, that it should have been addressed as required and must be dealt with urgently.

154 Ms Thompson met with the Director of Human Resources on 26 February 2008 to scope a project to develop a set of guidelines on managing conflicts of interest. Ms Thompson informed Mr Blake about this on the same date.

155 In a further meeting on 10 March 2008, Mr Blake reinforced with Ms Thompson the need to progress the development of formal protocols. He also indicated that he would be formally writing to Ms Thompson again about this and also seeking copies of any documentation around clarifying for managers their delegated legal powers and also the proper recording of exceptions to policy or discretions. This appears to have become submerged by other pressing issues at around this time (in particular in responding to a high volume of OIA requests), and I have not been able to obtain any formal documentation relating to the latter points. I note also that in any event simply communicating to staff about these issues falls short of the investigations that Mr Oughton recommended take place into these issues. I agree that further investigations are appropriate, and I return to this in my conclusions and recommendations below.

156 A project team was assembled in March 2008 to develop the revised Guidelines. By early May 2008 a new version of the Guidelines had been approved to take out to selected frontline staff for feedback and gathering of a wider range of examples for inclusion. A User Requirements for an online Conflicts of Interests Register has also been scoped. This register is intended to record Declarations of Interests from new staff,

declarations in relation to the employment of near relatives, declarations of gifts, and declarations in relation to conflicts of interest (potential, actual, or perceived).

- 157 Given the events unfolding by May 2008, Mr Blake asked the project team to suspend the planned organisation wide consultation of the draft guidelines, pending the outcome of the State Services Commissioner's report.
- 158 Mr Blake had continuing wider concerns over the performance of the Pacific Division and decided to conduct a review of the division in February 2008. Mr Blake largely drafted the terms of reference for the review and then proceeded to discuss these with his senior staff, including receiving input from Ms Thompson. The review is currently underway.

Findings

- 159 Ms Thompson had advised of her intention to sponsor family members to New Zealand from Kiribati at an SLT meeting in September 2004, however this was a general indication of intent. While Ms Thompson was entitled to assist her relatives, she was obliged to let her manager (in this case the chief executive) know the specific details of this proposed involvement so that the potential conflict of interest issues could be considered and appropriately managed. Her failure to do this on any occasion meant that the Department was not placed in a position to properly manage the conflict of interest issues.

The Decisions to grant visa waivers

- 160 The granting of visa waivers is a matter of discretion that may be granted by Immigration officers holding the requisite Immigration Warrant. I understand that the Suva branch immigration officers making these particular visa waiver decisions held the appropriate warrant.
- 161 There is no formal written policy detailing how the discretion is to be applied, but clearly visa waivers are a departure from normal entry visa requirements. The discretion to waive standard visa entry requirements is normally only exercised in unusual or special circumstances, for example where it is impossible or impracticable for the applicant to obtain a visa from the usual branch office (in this case, Suva). In the 2004 and 2005 calendar years for example, visa waivers were granted to individuals travelling from Kiribati for urgent medical reasons, or to attend a dying relative in New Zealand. In other cases, visa waivers were provided in response to a request from the Department of Internal Affairs to facilitate the travel of senior leaders and officials from Kiribati to the Pacific Leaders Meeting held in Auckland in 2004.
- 162 None of the usual exceptions applied as a basis for granting visa waivers to Ms Thompson's relatives either in December 2004 or April 2005. Ms Thompson was clear in her evidence to me that the travel arrangements were flexible and flight bookings were made to suit the convenience of her and her husband and their relatives. There was no particular urgency, nor was there any official aspect to the travel.
- 163 Read against the email correspondence between Ms Thompson and the Suva branch office, the reasons set out in the AMS for the grant of visa waivers do not appear correct. As noted above, the reasons recorded in the AMS suggest that the travel arrangements did not allow time for the usual visitor entry visas to be obtained. However, Ms Thompson had not made any travel bookings at the time the option of a visa waiver was offered to her in December 2004, and this was evident from her reply to that offer. When she initiated discussion of arrangements for travel in May 2005, Ms Thompson clearly

stated in her email that she and her husband could “*drive to Suva to get a visitor’s permit*” for her relatives, and there was time available in the travel arrangements made for this to occur.

- 164 In his evidence to me, the Suva branch manager did not provide any compelling reason as to why he decided to offer and approve visa waivers for Ms Thompson’s relatives, either in December 2004 or April 2005. He did feel that these particular individuals were “low risk” and easily identifiable because of their relationship to Ms Thompson, and the fact that she was sponsoring them. However he conceded that there was no urgency around the travel, nor was there any official aspect to it. When I asked him about whether or not he saw any conflict of interest issues arising from Ms Thompson’s contact with him and the other Immigration officer at the Suva branch, he advised that he had been reassured by Ms Thompson’s initial comment in her first email to him that she had told Mr Buwalda about sponsoring her nephews. He also considered that any conflict of interest issues were for Ms Thompson to manage.
- 165 In her follow up email of 25 April 2005, Ms Thompson had also referred to the “*certainty*” of her family returning back to Kiribati. By that time, however, the nephew whose wife and child were coming to New Zealand in May 2005 had already applied for and been granted a work permit. That nephew’s evidence to me was that he hadn’t made any final decision to remain in New Zealand permanently but that he wanted to give his wife an opportunity to see the country, and this was a reason for bringing his family to New Zealand. This had been discussed with Ms Thompson. When I asked Ms Thompson why she had referred to the certainty of her family’s return given that context, she said she thought her relatives would stay for a while and then return to Kiribati.
- 166 I conclude that the reason why visa waivers were granted to Ms Thompson’s family members in both December 2004 and April 2005 was for the convenience of Ms Thompson and her family. This is not in keeping with the approach I believe is normally applied to requests for visa waivers. It is difficult to escape the inference that the reason why convenience was considered to be a valid basis for granting visa waivers in these cases was because of Ms Thompson’s very senior position as Deputy Secretary. That is clearly at odds with the expectations I have set out above that public servants (or their relatives) should not be given any preferential treatment because of their position. Visa waivers should not have been granted to Ms Thompson’s relatives in December 2004 or April 2005.
- 167 Ms Thompson had particular reasons for contacting the Suva Branch Manager in the first instance in December 2004. It is clear from the content of her initial email that she was seeking guidance on the visa process and that she also had concerns about protecting her privacy as a sponsor. In the circumstances it was understandable for Ms Thompson to make this contact with the Suva Branch Manager. However, this was a situation where Ms Thompson as a second tier manager was approaching a much lower level officer (5th tier in the organisation) for assistance in a personal matter. Accordingly, this was a situation where she needed to be conscious of the risks of actual or perceived conflict of interest issues arising. Such a risk did arise when the possibility of a visa waiver was raised with her by the Suva Branch Manager. At that point in particular she needed to be careful to ensure that she and her family were being treated in the same way as any other private persons. The risks of preferential treatment were increased in April 2005 when Ms Thompson chose to express her clear preference for visa waivers to be granted to her family.

168 While I have found that there were no good reasons for the visa waivers to be granted on either occasion, they were not unlawful, as the discretion was within the power of the Suva branch manager to apply. I also have found nothing to suggest that Ms Thompson's family members would not have been eligible to obtain visa entry into New Zealand, had they made a visa application. However, the decisions to grant the visa waivers, and the steps that Ms Thompson took in relation to them, do not appear to meet the standards of fairness and impartiality that are expected of public servants generally, and of senior immigration officers in particular.

169 While the decisions of the Suva manager in offering and arranging visa waivers were within his discretion, it was incumbent on him to ensure that Ms Thompson's relatives were treated the same as any other travellers in similar circumstances would have been treated. In this case the expectation would have been that they obtain visas from NZIS office in Suva in the course of their travel to New Zealand.

The Response to the Conflict of Interest Concerns arising out of the Visa Waivers

170 The Service Leader who had concerns about the visa waivers in 2005 was right to raise the issue with the Department of Labour legal advisors, who in turn appropriately escalated the matter to Mr Buwalda.

171 Upon being advised of these concerns, Mr Buwalda spoke with Ms Thompson. The discussion was not formal, or lengthy, but I accept Mr Buwalda's evidence that during the discussion he established that Ms Thompson had made contact with immigration officers directly regarding visa arrangements for her relatives in April 2005; he expressed concern about this and counselled Ms Thompson on his expectations in this area and how she might manage conflicts of interest; and also told her that he required her to take steps to prevent recurrence of this type of issue. He also told her that he would be making further enquiries about the matter, and I accept his evidence that he tasked the Group Manager SI to provide an assessment on whether the visa waivers had been granted on proper grounds.

172 Mr Buwalda was reassured by the email communications that followed this discussion. He saw that Ms Thompson had sent an email to the Group Manager SI requesting that she be isolated from immigration matters involving family members, and he understood from the response that steps were to be put in place to ensure that. He also received from the Group Manager SI, an email that he believed established that the visa waiver decisions had been properly made.

173 At that stage Mr Buwalda believed that he had clearly communicated his concerns to Ms Thompson, that she had properly apprehended his requirements, and she had taken steps to ensure that she would not have any future involvement in any immigration matters involving her family. Mr Buwalda considered it was reasonable for him to accept on face value the answers given to him by Ms Thompson, who was a trusted senior employee. He also believed there was no outstanding problem with any breach of practice or policy arising from the decision to grant visa waivers, based on the assurance provided to him by the Group Manager SI.

174 However, there were very real remaining problems in relation to the visa waivers issue:

- Despite the exchange between Ms Thompson and the Group Manager SI, regarding 'insulation' from immigration matters concerning her family members, in fact it appears that little was actually done to ensure that this occurred;

- Similarly, despite the emailed reassurance from the Group Manager, SI to Mr Buwalda regarding the visa waiver decisions, no serious effort appears to have been made to address the concerns about those decisions;
- An effective assessment of the decision to grant visa waivers should have involved querying the Suva branch manager on the reasons for the decision. That was not done;
- The opinion of an officer with significant experience with visa waiver decisions should also have been sought, and that officer should have been provided with all the relevant facts. That too was not done. Accordingly there was no proper basis for any assurance to be provided to Mr Buwalda about the visa waiver decisions in 2005;
- While the evidence suggests that the discussion between Mr Buwalda and Ms Thompson occurred before the actual travel of her relatives, there was no consideration of action to regularise the visa situation by reversing the waivers and requiring her relatives to obtain visitor visas in the normal way;
- In May 2005 Mr Buwalda was not aware of the previous visa waiver decisions that occurred in December 2004. There was no enquiry or investigation undertaken to determine whether this was an isolated incident;
- Only four weeks before Mr Buwalda's conversation with Ms Thompson she had sponsored one nephew's visitors visa extension, and approximately six weeks prior to that again (i.e. late February) had assisted completion of an application for the other nephew's work permit application, without advising him of that (contrary to departmental policy). Ms Thompson did not volunteer this information to Mr Buwalda. Despite his recent conversation with the Deputy Secretary Legal about either actual or potential conflicts of interest concerning Ms Thompson, Mr Buwalda did not ask Ms Thompson about any other immigration matters that she may have been involved in;
- Despite Mr Buwalda feeling that he had clearly communicated his concerns to Ms Thompson, her evidence in contrast is that she did not feel that there was any significant concern at all, and that the matter was resolved when Mr Buwalda confirmed to her that the visa waivers had been able to be granted. Ms Thompson also notes that she did not receive from Mr Buwalda any written notice of his concerns, and that there was no reference to this matter in her performance review for the relevant period, which was otherwise comprehensive and very positive.

175 It is evident that Mr Buwalda acted on what he believed was a one-off event and believed that he had dealt with the matter within the possible range of employment options available to him. He considered that he was dealing with a very senior and experienced manager and that a more formal approach was not required.

176 However, even with the incomplete information available to Mr Buwalda as at April 2005, he did have evidence Ms Thompson had made contact with immigration officers directly regarding visa arrangements for her relatives in April 2005, and had expressed a preference for visa waivers to be issued. He was also aware that she had not notified him about those contacts. On that basis, Mr Buwalda could have decided to have taken a more formal, investigatory approach to the issue. An effective investigation (possibly involving Internal Audit) would likely have surfaced the significant issues identified above. This in turn would have placed Mr Buwalda in a much better position to evaluate whether a formal response was required, whether by way of further

disciplinary investigation, formal warning, or otherwise. He also would have been in a better position to consider whether the lessons arising from these matters ought to be circulated to the wider NZIS, in keeping with the approach taken with more junior officers.

Application for Work Permit

- 177 The work permit granted to Ms Thompson's nephew in February 2005 was stated in the AMS records to have been approved under the "Residual PAC Kiribas" policy. No such policy was in effect at that time. Nearly 10 months later (on 19 December 2005), the "Pacific Quotas Residual Places Work Permit Policy" was introduced ("the Residual work permit policy") that relieved the requirements applying to work permit applications for applicants falling within the 'residual' category.
- 178 On further investigation of this issue, it became clear that there was considerable confusion around the application of policy in this area. The Immigration Officer concerned has been able to provide me with a number of other examples of work permit applications that he approved around February 2005 using the same or similar policy wording as was recorded for his decision on Ms Thompson's nephew's work permit application, with the knowledge and agreement of his supervisors. This would indicate that they believed that there was a policy to grant permits in this manner. However I have been unable to determine how this confusion arose. It is apparent that there was no applicable policy prior to December 2005 for such work permits, as the Cabinet paper that proposed the Residual work permit policy on 15 December 2005 noted "*[w]ork permits have been granted to date using discretionary powers because there was no specific policy provision.*"
- 179 It is concerning that this work permit appears to have been granted pursuant to a mistaken understanding of applicable policy. However the existence of other similar mistakes with applications by Kiribati nationals indicates that this error was not related to Ms Thompson's involvement but rather relates to a problem with the interpretation and application of policy under which the work permit was granted. I have referred this issue to the chief executive of the Department of Labour, and to the Auditor-General in the context of his inquiry.
- 180 Nonetheless, there are other issues arising in respect of this application:
- Ms Thompson signed this work permit application form as person assisting. She did not advise her chief executive that she had done this. This was contrary to NZIS standards and expectations;
 - This application was somehow provided to the Director, who instructed a PAC Officer to assist the applicant. Ms Thompson was aware of and allowed the PAC Officer to accompany her nephew. There is evidence that a facilitative approach was adopted by the Pacific Division officers, which sometimes included escorting applicants to the Wellington immigration branch and being on hand to assist them with any communication difficulties. The Director's evidence was that it was this facilitative approach rather than the fact that the applicant in this instance was Ms Thompson's nephew that led to the assistance being provided. While this may be the case, I consider that the way the assistance was provided raised significant risks of perceptions of favourable treatment and conflicts of interest;
 - The Immigration Officer noted his concerns about whether there was a conflict of interest arising from Ms Thompson's evident involvement in the application. This is understandable, particularly given his evidence to me about his awareness of the importance of identifying and managing conflicts of interest. Ms Thompson's

visible involvement with the application, and the way in which the application was handled, begged such questions to be raised.

Comment on the extension to Visitor Permit

- 181 The application to extend Ms Thompson's other nephew's visitor permit appears to have been a routine application, that was properly approved.
- 182 However, the difficulty with this application is that again, Ms Thompson decided to assist the applicant (and signed as person assisting), and in this case also completed a statutory declaration as sponsor for the Applicant. Again, she did not advise Mr Buwalda of her intention to do this beforehand, as I believe NZIS policy required her to do so. The appropriate course for Ms Thompson was to speak to Mr Buwalda prior to completing any such statutory declaration, obtain his approval and agree with him steps to minimise any problems that might arise from her involvement in this application.
- 183 It is evident that the Department of Labour Solicitor who took the statutory declaration felt sufficient concern about the potential conflict of interest issue to raise it with the Deputy Secretary, Legal. It was appropriate for him to do so. The Deputy Secretary Legal does not recall this issue being raised with him, or of raising it in turn with Mr Buwalda, but he believes he did so on the basis of notes he prepared for his meeting with Mr Buwalda on 14 April 2005. Mr Buwalda says that he recalls a general discussion about the potential for conflict of interest issues to arise in relation to Ms Thompson's family, but that no specific issue was brought to his attention.
- 184 It seems unlikely that the Deputy Secretary Legal would choose to have a general discussion with Mr Buwalda, after such a specific issue had been raised with him by the Department of Labour Solicitor. On the other hand, I find it difficult to understand how the issue of a potentially significant breach of relevant codes of conduct by a Deputy Secretary could be the subject of a discussion between the Deputy Secretary Legal and the Chief Executive, with no action resulting. Nonetheless, the fact is that no action was taken, and in particular this issue was never taken up with Ms Thompson. Nor does there appear to have been any subsequent connection made between this issue and the conflict of interest issue of the April 2005 visa waivers brought to the attention of the Deputy Secretary Legal and Mr Buwalda only a couple of weeks later. The result was the Department failed to respond effectively to the issue. No clear record was taken of the discussion or of the nature of the issue, nor does it appear to have been referred back to when the visa waiver concerns arose.

Comment on the Residency Application Decisions

- 185 Ms Thompson signed the residence registration under the Ballot as person assisting. I consider that the applicable NZIS code of conduct and the expectation upon NZIS officers to manage conflicts of interest obliged her to advise her chief executive of this involvement in an immigration process. She did not do so.
- 186 However, I have found no evidence of any difficulty with the processing of the Ballot application. It was unsuccessful.
- 187 Ms Thompson similarly signed the application under the PAC Residuals category as person assisting, and made payment of the application fee by her personal cheque. Ms Thompson relied on the integrity of the NZIS processing system to reject this application if it were out of time. Her view was that her relatives had the same right as anybody else to make a late application, and have that dealt with in the normal way. This approach

failed to take account of the fact that by putting her signature on the application, and by making payment of the fee by personal cheque, her clear involvement with the application had the potential to influence decision making on it. She also again failed to advise her chief executive of this action.

- 188 I find that the conflict of interest issues resulted in substantial problems with the processing of the application under the PAC Residuals category. The application was very late and should not have been accepted for processing. Nor should residency have been granted to the applicants ahead of other individuals who had furnished their applications before the cut off date.
- 189 Alternative explanations were provided to me as to why the PAC Residuals application was accepted late. In particular there was evidence provided to me about the considerable focus and emphasis senior managers in the Pacific Division placed on filling available quotas. It is also clear that there were often real difficulties with many Kiribati applications (it was common for health issues to disqualify them). There is also evidence that there were real practical difficulties in determining the exact numbers available in the PAC Residual category at any one time. Accordingly there is some support for the Branch Manager's evidence that, being relatively new to the role and believing mistakenly that she had the necessary delegation to make decisions to accept applications late on an exceptional basis, she decided to accept this application as a late application, given that it was (largely) complete.
- 190 However I do not accept that explanation as being complete. I think it significant that it was confirmed in the subsequent Internal Audit review of Pacific Manukau branch in 2007 (which looked at all applications submitted after the Residuals Policy closure date) that acceptance of a late application was rare, in fact there were seven other applications accepted late. Notably, in each case where an application was accepted after the closure date there was a clear and documented trail setting out the special reasons for that decision (for example, in one case for humanitarian reasons a father was allowed to add his children he had not declared in an application that had otherwise been provided in time). There were no other applications accepted late because they looked "strong". There is no evidence of a systemic misunderstanding of the scope to accept late applications. This decision was an outlier.
- 191 Furthermore, I think it is clear from the evidence of the various other officers that they in various ways and at various times raised clear concerns about this application, and that it was made quite clear to the Branch Manager that this application should not be accepted. There were no valid special or extraordinary reasons to accept it late. They were experienced immigration officers, and usually their advice would be followed.
- 192 That their advice was not followed in this case was due, in my view, to the fact that Ms Thompson was associated with this application. I find that this association was a major influence on the Branch Manager's decisions, despite her denial of this.
- 193 It is more difficult to determine whether the Branch Manager made an individual decision to accept the application (perhaps because she felt that was what she was expected to do) or whether she acted under instruction or influence from more senior managers.
- 194 The Group Manager SI provided me with evidence of a very direct intervention in this application (albeit again simply on the grounds that this was a 'strong application'). His evidence is not corroborated by the Director, and the Branch Manager does not specifically recall any such intervention by the Group Manager SI, but now admits it as a possibility. As I have already noted, the time frame within which the Group Manager SI

suggests that he directed the application be accepted for consideration cannot be reconciled with the other evidence indicating that this application had already been accepted late and had already been accepted in principle by the time the Group Manager SI became aware of it.

- 195 Nor do I believe that he actually has the power to make such a decision in relation to an individual application. He told me that he had the delegated authority to accept the late application, subsequently referring me to the section of the NZIS Operations Manual which states that immigration and visa officers may waive mandatory requirements for which they have the delegated authority to make a special direction. He has also advised me that Ms Thompson had directed him and other group managers that they had the authority to make exceptions to policy and that they should exercise this authority in appropriate situations, which he says lead him reasonably to believe that he had the authorisation to make the decision to accept the late application.
- 196 If the Group Manager SI genuinely held this belief, he was mistaken. The Group Manager SI is not an immigration or visa officer. He does not hold an Immigration Warrant. Even if he did hold the requisite warrant he would not be in a position to verbally direct that a closing date for applications be extended for a particular case. This would be so regardless of any direction received from Ms Thompson (who denies giving the direction claimed by the Group Manager SI). In his position as Group Manager SI he did have the authority to issue a management instruction (which is different from an exercising a delegation). Such instruction could only be applied to all applications rather than a specific case.
- 197 The evidence of the Group Manager SI on this point also raises the question of why there was no reference to any instruction by him in Mr Oughton's report. The Group Manager SI says that when Mr Oughton was investigating the issue, he felt that he should be interviewed, and that he approached Ms Thompson to ask why he was not interviewed by Mr Oughton. He says he did not hear anything back and then Mr Oughton's report came out. He also advised me that he had a discussion about this with the Director, but that it was decided to leave the matter alone.
- 198 The Group Manager SI's evidence as to his involvement is difficult to reconcile with other evidence I have received. The Group Manager SI's evidence is contradicted by other evidence as to the timing of acceptance of the relevant applications. The Director does not recall the Group Manager SI making any specific direction in relation to this application, and while he raised this with her after Mr Oughton's report came out she says she did not agree with him that a specific instruction had been given by him, nor does she agree that there was any decision taken between them to 'leave the matter alone'. In her initial evidence to me the Branch Manager was clear that she did not receive any specific instruction from the Group Manager SI, however when subsequently advised of the Group Manager SI's evidence that he had given a specific instruction she responded that this was probably the case, although she did not actually recall this.
- 199 Accordingly, I am not able to come to any firm conclusions about the Group Manager SI's involvement. I note that if he did issue the instruction he claims, then this evidences a serious misapprehension on his part as to his delegated authority, and suggests a further failure to take appropriate action to manage the conflict of interest presented by the applications.
- 200 When the Director became involved is unclear. The Immigration Manager's evidence is that the Director was directly involved in instructing her to accept the application. There is some support for this account from the evidence of the Verification Officer. The

Director denies this and there is no other direct evidence that favours one account over another. However she was certainly involved in the closing stages of the application, and her emails at that time indicate an intense focus on locating the necessary documentation. The Director has noted that this focus was in the context of her role as manager to ensure a high standard of service and delivery within the Division rather than to assist Ms Thompson. These emails, (copied to a number of the officers dealing with the application) served to deepen the concerns of some of those officers that this was an application that National Office had a particular interest in, despite the Director's stated concerns about precisely that occurring.

201 The Department was not placed in a position where it could manage the processing of this application. The processing officers were effectively asked to reject an application signed by their Deputy Secretary, in circumstances where they might reasonably believe that the Deputy Secretary was aware the application was late, but had allowed it to be sent for processing anyway. This led to significant anxiety and concern for some of the NZIS officers who came into contact with the application. Those officers were right to be concerned. There was no valid reason for accepting it as late. Once accepted, there was no reason to process and grant residency to the applicants prior to other applicants that had been accepted within the time limit. This application was progressed at speed and despite applicable policies, rather than in accordance with them.

Oughton Investigation

202 The decision by Mr Buwalda to have the matter investigated by a senior and experienced external investigator was an appropriate one. It was understandable that Mr Buwalda decided to focus the ToR on the potential illegality of the residency decisions, given his desire to obtain an answer on that issue quickly. However, I consider that such an option needed to be combined with a plan for investigations of the other issues that had been identified in the Internal Audit Preliminary Investigation report, either sequentially or in parallel with the focussed investigation. Given that these other issues raised involved questions of the conduct of very senior managers, there should have been some plan for engagement with those matters. This was not done.

203 The findings of Mr Oughton's report coincide with my own findings relating to the residency application in most material respects. However I was able to place witnesses on oath and I spoke to a wider range of people, largely because the scope of my investigation was wider. From the additional evidence I obtained I would summarise the additional relevant findings from my investigation as follows:

- After being advised of the application being 'accepted in principle' but while it was still being processed, Ms Thompson raised a concern (either about delay or about loss of documentation) with the Group Manager, SI;
- The Group Manager SI then raised this concern with the Director. The Director has provided me with significant detail on this, including her concerns about how the concern came to be raised with her. None of this evidence was provided to Mr Oughton;
- The Director then engaged in a number of email exchanges, principally with the Processing Immigration Officer (but also copied to other officers) urging the officer to locate the necessary documentation to complete the processing of the application;
- The Group Manager SI asserts that he made the decision to accept this application late. I do not believe that he has the authority to make such a decision, and his

evidence is largely inconsistent with that of other persons interviewed. However his evidence and the change in position of the Branch Manager does add to the concern that the Branch Manager may have been influenced by the involvement of other senior managers, rather than acting independently as found by Mr Oughton;

- I consider on balance that the Branch Manager was influenced in some way by the fact that Ms Thompson had signed the form (or was related to the applicants). There is clear evidence which I accept from other officers that this was a very significant factor in the Branch Manager's decision making.

204 Both Mr Oughton and myself have found that the residence permits granted did not qualify in terms of then current policies. This means that the residence permits ought not have been granted in this case. However, this does not make the residency permits unlawful. The permits were lawfully issued in terms of the Immigration Act 1987, and therefore the permit holders have the lawful right to live in New Zealand. Neither Mr Oughton or I found any evidence suggesting that Ms Thompson's family members acted improperly in the application process.

205 Part way through Mr Oughton's investigation, Mr Buwalda left and Mr Fortune took over as acting chief executive. In considering his response to Mr Oughton's investigation, Mr Fortune was unaware of the visa waiver issue, was not advised of the concerns of the Departmental Solicitor around the visitor visa extension declaration, and had not read the Internal Audit Preliminary Investigation report. In particular, Mr Fortune was not aware that further issues identified in the Audit report remained unaddressed. He therefore responded to what he believed was a one-off incident to be dealt with within the confines of the Oughton report's findings.

206 I think this is also reflected in Mr Fortune's response to the three general issues raised by Mr Oughton in the covering letter to his final report. The first of these was the concern Mr Oughton had that other applicants may have been disadvantaged by the decision to grant residency to Ms Thompson's relatives. Mr Fortune's response to that was that no one had been disadvantaged. I believe this view was based on advice that he had received from his officials that the PAC Residual quota had been filled at the time that Ms Thompson's relatives were granted residency – they were granted residency on top of the residual quota, therefore no legitimate applicant missed an opportunity to be granted a residency 'slot'. However, the full picture, as I understand it is somewhat more complex. While the Residual quota may have been oversubscribed at some point, some 50 additional residency places have been allocated by Cabinet to the Residual Quota, in order to address the backlog of applications that continue to be processed (and which the relevant policy does not allow to be lapsed). At the time of writing, I understand that 39 people who had their applications in before 31 March 2005 for the Residual quota remain to be processed. There are 12 places left in that quota (remaining from the 50 additional places). This means that there remains the risk that legitimate applicants will be disadvantaged by the granting of residency to Ms Thompson's relatives. I have recommended to the current chief executive that Cabinet approval be sought for the additional residency places needed to ensure that all applicants who meet the requirements do not miss out.

207 Secondly, Mr Oughton recommended that protocols be developed to address circumstances where friends or relatives are involved in applications. Mr Fortune instructed Ms Thompson to progress that work in combination with ongoing work on updating the Department's Code of Conduct. She in turn largely left it up to the Department of Labour Human Resources division to advance this. I note that overall the

necessary standards and protocols in this area are already present in departmental and NZIS codes and policies. Certainly the requirements appear to be well understood by many of the NZIS officers I spoke to. Having said that, there is certainly always scope to improve understanding and education in this area, and perhaps the most critical lesson from this case is the importance of very senior staff translating the requirements into their own situations, even though they may personally not be involved in processing any applications. There is also potential for the Department of Labour SLT team to adopt an approach to recording potential conflicts of interests that is consistent with that taken by many if not all NZIS branch offices.

- 208 For his third and final recommendation, Mr Oughton raised his serious concern about the practice of staff making entries “as instructed ...” and the evidence is that this was not an isolated case. Mr Oughton identified various possibilities as to why this was occurring, including the possibility that decisions were being taken outside of policy or delegations. He felt that this situation merited in depth examination by experienced personnel. Having spoken to many of the same officers as Mr Oughton, I fully agree with all of these points. What Mr Oughton was proposing was for there to be detailed investigation of other cases where staff had felt it necessary to protect themselves in this way.
- 209 Quite a different approach to this issue was taken in Mr Fortune’s letter to Ms Thompson asking her to follow up. Mr Fortune advised Ms Thompson that if managers were exceeding their lawful authority “*then they should cease the practice forthwith*”. The recommendation that past cases be investigated was not addressed, rather the focus was on taking steps to ensure that managers did not exceed their lawful authority in future. I find that Mr Oughton’s recommendation was an appropriate one, and that the Department should have adopted it.

General Findings

- 210 The difficulties arising in this investigation are those that the NZIS policies around managing conflicts of interest are designed to guard against. By following those policies, immigration transactions involving employees and their families can be managed in a way that minimises risks and ensures that no perception of favourable treatment could arise. For example, had Ms Thompson followed applicable policy and disclosed to her chief executive that she had signed the PAC Residual application forms for her relatives as person assisting (and had paid the fee by personal cheque), management strategies could have been adopted to ensure effective and transparent processing of the application. This might have involved ensuring that the application was referred to a very experienced senior immigration officer to consider, with clear instructions to ensure that the application was treated in accordance with the relevant policies. Had that been done, there is little doubt that the application would have swiftly been rejected as out of time.
- 211 This investigation also illustrates the importance of acting effectively and transparently where concerns about conflicts of interest are raised. Staff who raised serious concerns did not see any significant response by the Department. The damaging lesson that staff could take away from this is that there is little or no point in raising concerns with management, as little will be done. I consider it is clear that doubt and loss of trust arising in the minds of the various NZIS officers concerned was having significantly corrosive effects. These impacts would have continued for as long as the issues remained hidden.

- 212 I recognise that chief executives dealing with potential integrity issues involving their most senior managers often face a difficult task. However this does not lessen the importance of dealing with such issues in a robust and effective way. Integrity issues at this level strike at the heart of an organisation.
- 213 If an investigation had surfaced all issues in connection with the visa waivers (and applications signed by Ms Thompson) in April 2005, then I consider that an appropriate and consistent outcome would have involved Mr Buwalda and Ms Thompson reporting to all staff the issue, the outcome and the strategies devised for reducing risk going forward. This would have been entirely in keeping with the sensible approach of learning from mistakes and maintaining transparency about such issues adopted generally within the NZIS, and would have been a powerful demonstration of ‘walking the talk’ to the rest of the organisation.
- 214 I think it important to note that during the course of this investigation I spoke with many NZIS officers who greatly impressed me as being capable people of high integrity. It is apparent to me that they have at times struggled to apply immigration policy that is confusing and impractical (the Residuals Immigration policy in particular appears to have been developed at great speed and had significant problems). They have also sought to maintain their own professionalism, while holding doubts as to why the standards that they consider to be clear and which they expect to strictly abide by appear not to have been enforced at the most senior level of the organisation. It is vital that effective action be taken to address those concerns. My recommendations below are intended to advance that cause.
- 215 Public servants are expected to maintain high standards. They are also expected to raise any concerns where they believe that the required standards are not being met by their colleagues, or their superiors. The reality is that holding genuine and serious concerns about the conduct of one’s manager, or a very senior officer in an organisation is an extremely difficult position for anyone to be put in. The above account has a number of instances where officers had concerns about conflicts of interest and improper actions by their superiors. In only a few cases were these concerns able to be advanced in a way that meant they could be dealt with. Departments need to recognise the inherent difficulties facing staff who have concerns about the actions of their superiors. They also need to make it as clear and straightforward as possible for officers to understand the expectations of them, and the process they should follow to raise such issues. Having an effective and well known Protected Disclosures policy is but one of the important ways a department can ensure that its people have an effective means of raising concerns about serious wrongdoing, and that they have some protection while doing so. I return to this in my recommendations.

Recommendations

- 216 I recommend that the State Services Commissioner refer the following matters to the Chief Executive of the Department of Labour:
- That he gives consideration to systems and processes that may be put in place to ensure that integrity concerns arising in relation to Deputy Secretaries and other senior managers are fully and robustly investigated.
 - That he develops guidelines setting out the principles that inform when it is appropriate to grant visa waivers. While the issuing of visa waivers is discretionary, and every instance of when and how this discretion will be exercised

cannot be prescribed, such guidelines may assist with the consistent application of this discretion across the Department;

- That he takes steps to investigate the apparent systemic issue of work permits being issued under a residual work permit policy many months before this policy came into effect;
- That he takes steps to ensure that no applicant still to be processed under the PAC Residual Quota is disadvantaged by the fact that residency was granted to Ms Thompson's family members contrary to policy;
- That he arranges to undertake the in-depth investigation of the decisions where staff have entered "as instructed" (and other cases where they have refused to comply with requests by their manager to approve applications) that was originally recommended by Mr Oughton;
- That he reviews the action already taken to clarify delegations under immigration policy, and decides upon any additional action that may be required to address that issue;
- The work already commenced on reviewing and amplifying the relevant Code of Conduct expectations relevant to conflicts of interest and integrity matters should recommence, with a focus on clarifying expectations and processes around disclosure of integrity and conflicts of interest (particularly those involving senior staff); expectations in these areas for very senior managers and Strategic Leadership Team members; and confirming the right of Departmental solicitors when acting as witnesses or taking statutory declarations on departmental forms, to satisfy themselves that departmental policies have been complied with, where they perceive there is a risk they have not been.
- The Department has already commenced an independent review of the Protected Disclosures Act policy; this work should continue with consideration given to amendment of the policy if necessary, as well as considering whether work is needed to raise awareness of Departmental staff of the ability to make protected disclosures in certain circumstances and how to go about this.
- This report sets out matters involving the actions and decisions of various NZIS staff. In some cases those actions have reflected high integrity and efforts to do the right thing in difficult circumstances. In other cases the actions may have fallen short of expected standards. It is for the Chief Executive of the Department of Labour to decide if any further action is required in terms of the latter category. I am available to provide him with any briefing he may require to decide on such action.



David Shanks
Chief Legal Advisor
State Services Commission
30 September 2008

Appendices

- A Terms of Reference
- B Letter State Services Commissioner to Chief Legal Advisor, delegating powers
- C List of interviewees
- D Timeline
- E Summary of various codes, policy and guidance
- F Emails regarding visa waivers, December 2004
- G Emails regarding visa waivers, April 2005
- H Emails between Ms Thompson and the Group Manager SI, May 2005
- I Email from Group Manager SI to Mr Buwalda, May 2005
- J Additional detail around the introduction and operation of the ballot system and the PAC Residuals Category