



OFFICIAL

DECISION RECORD

AGENT	Shiju Mathews
COMPLAINT NUMBER/S	CMP-46628
DECISION	Suspension – 3 years
DATE OF DECISION	23 January 2024
TERMS USED FOR REFERENCE	Refer Appendix A

JURISDICTION

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

Relevant Legislation

3. The functions of the Authority under the Act include:
 - to investigate complaints in relation to the provision of immigration assistance by registered migration agents (paragraph 316(1)(c)); and
 - to take appropriate disciplinary action against registered migration agents (paragraph 316(1)(d)).
4. The Authority may decide to cancel the registration of a registered migration agent by removing his or her name from the Register, or suspend his or her registration, or caution him or her under subsection 303(1), if it is satisfied that:
 - the agent's application for registration was known by the agent to be false or misleading in a material particular (paragraph 303(1)(d)); or
 - the agent becomes bankrupt (paragraph 303(1)(e)); or
 - the agent is not a person of integrity, or is otherwise not a fit and proper person to give immigration assistance (paragraph 303(1)(f)); or

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- an individual related by employment to the agent is not a person of integrity (paragraph 303(1)(g); or
 - the agent has not complied with the Code prescribed under subsection 314(1) of the Act (paragraph 303(1)(h)).
5. Subsection 314(2) of the Act provides that the regulations may prescribe a Code of Conduct for migration agents. A registered migration agent must conduct himself or herself in accordance with the prescribed Code of Conduct: section 314(2) of the Act.
 6. The Code of Conduct for registered migration agents in force at the time of the conduct that is the subject of this decision was the Code of Conduct current from 18 April 2017 (Former Code).
 7. A copy of the former Code is provided at **Attachment A**.
 8. A copy of the relevant legislation is set out in **Attachment B**.

AGENT BACKGROUND

Agent Registration

9. The Agent was first registered as a migration agent on 7 August 2006 and was allocated the MARN 0637656. The Agent's registration had been renewed annually to date, with the most recent registration commencing on 6 August 2022.
10. The Register lists the Agent's current business name as AiCademy. AiCademy is a business name of the registered entity AICA International Pty Ltd (AICA International) with the Australian Business Number (ABN) 63 121 574 552.
11. AICA International also holds three other business names, AiCash (from 16 June 2021), AiCare International (from 16 June 2021) and AICA Migration (from 30 July 2014).
12. The Authority's records show that the Agent declared he provided immigration assistance through his business Emigrate International Pty Ltd (Emigrate) with the ABN 40 633 834 250 between 24 September 2021 and 21 February 2023. Records also show the Agent was the director of this business.

Prior disciplinary action

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

ALLEGATIONS – THE AUTHORITY'S INVESTIGATION

14. The Authority received two complaints about the Agent's conduct as a migration agent from the Department of Home Affairs (the Department) on 29 August 2019 and 18 August 2020 (CMP-46628).
15. Following an investigation into the Agent's conduct, it was alleged that the Agent:
 - made statements in support of an application under the Act or the *Migration Regulations 1994* (the Regulations), or encouraged the making of statements, which he knew or believed to be misleading and inaccurate contrary to clause 2.9 of the former Code.
 - misled or deceived the Authority in communicating with, or otherwise providing information to the Authority contrary to clause 2.9A of the former Code.

16. Further, it was alleged that the Agent's actions demonstrated he was not a person of integrity or not a fit and proper person to provide immigration assistance.

First allegation dated 29 August 2019 - CMP-46628

17. On 29 August 2019, the Authority received a complaint about the Agent's conduct as a migration agent from the Department.
18. It was alleged that:
- a. The Department received three employer-sponsored applications on behalf of CMG Pty Ltd (CM), as follows:
 - A subclass 457 nomination application for Ms LA in the occupation of Registered Nurse (Medical Practice), lodged on 18 August 2017¹.
 - A subclass 457 nomination application for Ms AJM in the occupation of Residential Care Officer, lodged on 29 August 2017².
 - A subclass 187 Regional Sponsored Migration Scheme (RSMS) nomination application for Ms SBH in the occupation of Health Practice Manager, lodged on 18 December 2017³.
 - b. These nomination applications were submitted by registered migration agent (RMA), Ms BSM (Ms M). Ms M also lodged the related visa applications in respect of each nominee.
 - c. The Authority's records indicate that Ms M is an RMA who was previously employed at AI and E Pty Ltd (formerly EI Pty Ltd) to provide immigration assistance. The Agent is a director of both of these companies.
 - d. In support of each nomination application, Ms M submitted employment contracts which indicated that each of the three nominees were offered employment with CM. The Agent signed each of the employment contracts in his capacity as director of CM.
 - e. It was alleged that at the time of signing the above mentioned employment contracts, the Agent did not hold the position of director of CM. As such, it was also alleged that in signing the employment contracts, the Agent made statements in support of the nomination applications under the Migration Act which he knew or believed to be misleading or inaccurate. Conduct of this nature is contrary to section 2.9 of the former Code.

Notice under section 308 of the Act

19. On 30 June 2021, the Authority published the first complaint to the Agent (**Attachment C**).
20. Pursuant to section 308 of the Act, the Authority requested the Agent to address the allegations that he had signed employment contracts in the capacity of a director for CM Group while not having the authority to do so.

¹ PRN: 1XXXX9, TRN: EGXXX4

³ PRN: 1XXX3, TRN: EGXXXXY

² PRN: 1XXX1, TRN: EGXXXXV

21. The Agent was also requested to explain his association with CM and to provide any other information and documents relevant to the allegations.
22. On 14 July 2021, the Agent provided a response (**Attachment D**). In summary the Agent made the following relevant submissions:
- He has been practicing as a Registered Migration Agent since 2006 and has also been a member of 'CPA'⁴ since 2009.
 - In the past 15 years, he assisted numerous medical practitioners with their registration, Medicare and immigration enquiries. CM, managed by Mr SS, was one of the organisations he assisted.
 - On 3 August 2018, he was appointed as one of the directors of CM but later realised that his position appeared 'within ASIC' (Australian Securities and Investments Commission) as company secretary. Nonetheless, the Agent contended that he was employed by CM as a director and he used his position to promote better healthcare services to West Australians.
 - There is no prohibition in the Corporations Act 2001 on a person acting both as director and secretary of a company. Thus, the Agent stated that he was acting as both the secretary and general counsel to the company.
 - The Agent tendered his resignation after the standard business sponsorship application for CM was refused on 27 April 2018.
 - The Agent acted in the best interest of the company. He was active in the development of the business with Mr S 'who was looking at developing the businesses into rural areas of WA'.
 - The three nominees were given employment contracts under the plans of setting up a business in Vass (sic) and the employment contracts were signed while the Agent was an officeholder of CM.
23. In support of his submission, the Agent provided:
- Exhibit 3.1 - a table showing the details of the different medical centres operating as part of CM; including the names of the partners and staff. The Agent's name does not appear in this table.
 - Exhibit 3.2 - a table listing the different services delivered by the CM and the locations in which the services are provided.
 - Exhibit 4.1 - an ASIC current and historical company extract dated 18 October 2017 showing that the Agent was appointed as a secretary of CM on 3 August 2017 while Mr S has held the position of director since 25 October 2012.
 - Exhibit 4.2 - an ASIC current and historical company extract dated 4 July 2021 showing that Mr S had been appointed as both the secretary and director of CM and he had held these positions since 25 October 2012. The Agent is not listed as either a current or previous officeholder in Exhibit 4.2.

⁴ Taken to be CPA Australia

- An extract of a case study taken from the *Australian Institute of Company Directors* website.⁵ The case study refers to a qualified lawyer who was the 'company secretary and general counsel' of an organisation. According to the Agent, the case study demonstrates that he acted as both general counsel and company secretary of CM.

First Notice under section 309 of the Act

24. On 12 November 2021, the Authority sent to the Agent a Notice pursuant to section 309(2) of the Act (first section 309 notice), advising the Agent that it was considering cautioning him, or suspending or cancelling the Agent's registration under section 303(1) of the Act.
25. The Agent was notified that having regard to the information before the Authority, it was open to the delegate to be satisfied that the Agent had engaged in conduct that breached the Agent's obligations under clauses 2.9 and 2.9A of the former Code.
26. Pursuant to section 309(2) of the Act, the Authority invited the Agent to provide written submissions on the matter (**Attachment E**) by 4 January 2022.
27. On 4 January 2022, the Authority received correspondence from the Agent requesting an extension of time to respond to the notice. The Authority agreed to an extension until 25 January 2022.
28. On 25 January 2022, the Agent provided a response by written argument (**Attachment F**). In summary the Agent made the following submissions:
 - While the Agent now accepted that he was not the director of CM at the time of signing the relevant employment contracts, he had an 'honest and genuine belief' that he was the director of the company at that time. This was due to representations made to the Agent by Mr S. The Agent referred to two emails in support of this contention:
 - Email dated 14 August 2017 sent from Mr S to Ms KP, a specialist at the BQL about SDC's financials. The Agent has been copied in the email, which refers to him as being part of 'Axxx's marketing and technology division' and 'the other director'.
 - Email dated 28 August 2017 sent by the Agent to Ms P and copied to Mr S. In this email, the Agent has referred to himself as being a director of CM alongside two other directors, Mr S and Mr SK.
 - The Agent stated that he had reviewed the ASIC historical company extracts submitted with his section 308 response (exhibits 4.1 and 4.2). According to the Agent, exhibit 4.1 showed as follows:
 - He was appointed as secretary of CM as per the lodgement of document number 5xxx6xxx5;
 - Document 5xxx6xxx9 confirmed the appointment of Mr K as a director;
 - Document 5xxx6xxx8 varied the shareholdings of members; and
 - Document 5xxx0xxx0 removed Mr K as a director.
 - The Agent acknowledged that B Partners had made four requests to withdraw a lodged document with ASIC on 6 November 2017, as per Exhibit 4.2. However, the Agent did

⁵ www.aicd.com.au

not accept that the documents were withdrawn because his appointment as a secretary of CM had been reported in error. Instead, the Agent claimed that the withdrawal requests all contained the same explanatory statement that the change of company details were lodged for CM when they should have been lodged for another company, CD and D Pty Ltd. No evidence of the explanatory statement accompanied the Agent's submission.

- The Agent argued that the explanation provided by B Partners could not have been correct. He stated that there was no such company as CD and D Pty Ltd, however a trading name previously existed for 'CD and D' and the name was held by CM. The Agent provided copies of a business name extract for CD and D from ASIC's database to show that CM had held the trading name 'CD and D' between 13 May 2017 and 20 September 2018.
- The Agent explained that Mr S was a friend whose business model was based on leasing medical and dental practices and then entering into an agreement with the doctors to take a percentage of fees from their practice. Mr S informed the Agent that he was struggling with his business model and asked for the Agent's assistance.
- The Agent stated that Mr S is a qualified pharmacist while the Agent, in addition to being a registered migration agent, is also a qualified CPA.
- The Agent stated that he was assisting Mr S to consolidate CM by amalgamating small practices into one group. The Agent also assisted in developing the business in regions such as Karratha and Bunbury.
- The Agent stated that he had originally intended to find investors and shareholders in order to develop CM's business, but his plans were abandoned because 'unfortunately government regulations changed in relation to bringing in doctors and nurses'.
- The Agent stated that when he provided his response to the section 308 notice, he was stuck in India and he had intermittent internet service. The Agent was unable to access relevant documents and relied on his memory to provide a response. Later, after reviewing the ASIC documents, the Agent realised that he 'did not resign and that the record was changed by B Partners on behalf of Mr S by withdrawing lodged documents'.
- The Agent believed Mr S took this action after he realised that the development of the company could not go ahead as planned, due to the change in government regulations.
- The Agent claimed that at the time when he signed the employment contracts with the three nominees, there was an intention to employ the nominees by CM. The Agent reiterated that he had no intention to mislead the Department in relation to the signed employment contracts and Mr S's actions caused the confusion.
- The Agent also claimed that someone else in the company had prepared the employment contracts, so he did not notice that he was signing them as director of the company.
- The Agent claimed to have received legal advice that he would not have been entitled to sign the employment contracts as a company director unless the company had made a resolution granting him that authority. The Agent stated that he mistakenly believed that as a company secretary, he did have authority to sign employment contracts on behalf of the company.

- The Agent said that he had no intention to mislead the Authority in relation to his response to the section 308 notice. He reiterated that he honestly believed that he had been appointed as an officeholder within CM and was entitled to sign the contracts.
- The Agent accepted that he 'made errors in relation to the signing of the contracts' but stated that Mr S had led him to believe that he had the authority to do so, which led to the misunderstanding.

Second allegation dated 18 August 2020

29. On 18 August 2020, the Department received another allegation that a company owned and operated by the Agent, AEY Pty Ltd (AEY) was engaged in the exploitation of foreign workers and had used unlicensed employees to perform electrical work in Western Australia. It was also alleged that the Agent had previously owned and operated another company, AEG Pty Ltd (AEG), which had gone into external administration.
30. In response to the allegation, the Australian Border Force Sponsored Monitoring Unit (ABF SMU) conducted monitoring activities on companies for which the Agent was an officeholder and where standard business sponsorship (SBS) agreements were in place. The companies included AEY, AEG, AI and C Pty Ltd (C).
31. All four companies were found to have breached sponsorship obligations. Consequently, the ABF SMU either cancelled the SBS agreements attached to these entities or placed a bar on the entity from sponsoring further visa applicants as follows:
 - AEY – cancelled on 25 January 2022 - failure to comply with regulations 2.79, 2.83, 2.86, 2.90 and 2.91.
 - AEG – cancelled on 15 July 2021 - failure to comply with regulations 2.84 and 2.91.
 - AI – barred on 29 September 2021 until 29 March 2022 - failure to comply with regulations 2.84, 2.90 and 2.91.
 - C – cancelled on 16 July 2021 - failure to comply with regulations 2.84 and 2.91.
32. At the time the ABF SMU made decisions on the SBS agreements (pursuant to section 140M of the Act) Australian Securities Investment Commission (ASIC) records showed that the Agent was a director in all four entities and a shareholder in three. Notably, AI is also the primary business through which the Agent provides immigration assistance.
33. As a result of the adverse findings by the ABF SMU, the Department alleged:
 - a. The Agent exerted control and influence over the businesses that were found to have breached their sponsorship obligations.
 - b. The Agent's failure to deal with his sponsored employees fairly and to comply with his sponsorship obligations within the Temporary Work visa program reflected on his fitness and suitability to provide immigration assistance.
 - c. AEY failed to declare adverse information in its standard business sponsorship application⁶, eight TSS nomination applications⁷ and two Employer Nomination Scheme

⁶ PRN: 49XXX8

⁷ PRNs: 6XXXX3, 8XXXX4, 8XXXX6, 4XXXXX0, 9XXXXX1, 1XXXXXX5, 1XXXXX3, 9XXXX5

(ENS) applications⁸ by not disclosing that an associated entity (AEG) had been in liquidation since 13 March 2019.

- d. AI failed to declare adverse information in a nomination application⁹ by not disclosing that an associated entity (AEG) had been in liquidation since 13 March 2019.

Second Notice under section 309 of the Act

34. On 20 July 2023, the Authority sent to the Agent a second Notice pursuant to section 309(2) of the Act (second section 309 notice), advising him that it was considering cautioning him, or suspending or cancelling the his registration under section 303(1) of the Act.
35. The Agent was notified that having regard to the information before the Authority, it was open to the delegate to be satisfied that the Agent had engaged in conduct that breached the Agent's obligations under clauses 2.9 of the former Code and that he was not a person of integrity or otherwise not a fit and proper person to provide immigration assistance.
36. Pursuant to section 309(2) of the Act, the Authority invited the Agent to provide written submissions on the matter (**Attachment G**) by 17 August 2023.
37. On 17 August 2023, the Authority received correspondence from the Agent requesting an extension of time to respond to the notice. The Authority agreed to an extension until 31 August 2023.
38. On 31 August 2023, the Agent provided a response by written argument (**Attachment H**). In summary the Agent made the following submissions:
- The Agent refuted the allegation that he was not a person of integrity or fit and proper person to provide immigration assistance. He stated that he had been working in the 'legal industry' for more than 20 years, 'holding both a MARA and CPA license (sic) in this period'. He also stated that he made unintended errors of judgement due to circumstances which were beyond his control.
 - The Agent concurred that he was a director or a co-director of AEY, AEG, AI and C Pty Ltd.
 - He stated that he set up AI to provide immigration support to other migrants like himself who found it difficult to navigate Australia's immigration laws and regulations.
 - AEG was set up with the Agent's brother, who is an electrical engineer by profession, to operate in the ever growing renewable energy (solar and storage) industry. Both the Agent and his brother were co-directors of AEG, however the Agent's brother was also a licensed electrician and he oversaw all the engineering works performed by the company.
 - The Agent claimed that AEG supported the Australian economy and provided employment, training and internships to hundreds of people. He also claimed that many employees had set up their own engineering businesses after learning their trade from AEG.
 - The Agent and his brother also set up C to provide more affordable packages to clients.

⁸ PRN: 14XXXXX8, 7XXXXX1

⁹ PRN: 2XXXXXX6

- The Agent claimed that AEG was placed under external administration through no fault of its own. He stated that baseless allegations were made against AEG by a Chinese supplier, P. He claimed that the parties who took AEG to Court were now insolvent and had filed for bankruptcy; and the liquidators, PricewaterhouseCoopers (PwC), were now themselves 'trying to prove their integrity in the international court!'
- The Agent stated that he set up AEY after AEG was placed under external administration. He stated that the motivation in setting up AEY was to honour the promises he had made to his customers.
- As for the reason why the four businesses sponsored overseas workers, the Agent stated that 'Each of the entities were approached by our employees asking for help to get Australian visas and so we applied for the SBS to help our staff and their families'.
- The Agent accepted that AEY and AI had failed to declare adverse information in multiple applications by not disclosing that an associated entity, AEG, had been in liquidation since 13 March 2019.
- However, the Agent also claimed that he did not knowingly provide misleading and inaccurate application declarations and he had no intention to mislead the Department. He stated that he did not declare the adverse information about AEG because he believed that the accusations against the company were false and he assumed 'since the cases were not proved (sic), it wasn't an issue'. He also stated that the external administrator at PwC led him to believe that the issues leading up to AEG's external administration could be resolved quickly.
- The Agent did not dispute the finding that he was the sole director, secretary and shareholder of EI Pty Ltd (E); or that he had employed Ms M as a RMA agent through E. However he claimed that his company lawyer and accountant had advised him 'to operate under a new entity and brand' when AEG was placed under external administration. The Agent did not elaborate on why he had received this advice, however he conceded that he was E's sole director, secretary and shareholder. He claimed that he continued to fulfil these roles because 'the anointed person wasn't able to take charge of the operation'.
- The Agent acknowledged that the ABF SMU cancelled the SBS agreements attached to AEY, AEG and C and placed a bar on AI from sponsoring further visa applicants for a period of 6 months. However, he also argued that he 'responded with a submission of any wrongdoing from the companies point view (sic)'.
- The Agent also acknowledged that he failed to notify the Department that C was deregistered on 14 June 2020; or that AEG had gone into external administration.
- The Agent accepted that C and AEG failed to meet sponsorship obligations because this information was not provided to the Department. He apologised for the oversight and stated that he was under too much pressure at the time because he was preoccupied with addressing multiple 'issues from P, customers, FWO (Fair Work Ombudsman), sanctions and notices coming from various departments'.

DECISION: FINDINGS ON MATERIAL QUESTIONS OF FACT

39. In reaching the findings of fact discussed in this decision record, the Authority considered the following evidence:
- Documentation contained in the Authority's complaint files;
 - Information held by the Authority in relation to the Agent;
 - The Agent's response to the Authority's section 308 notice; and
 - The Agent's responses to the Authority's two section 309 notices.
40. Having considered the information before me, I am satisfied the Agent:
- has engaged in conduct in breach of the Agents obligations under clauses 2.9 and 2.9A of the former Code.
 - is not a person of integrity or otherwise a fit and proper person to provide immigration assistance as per paragraph 303(1)(f) of the Act.
41. My findings and full reasons for the decision are set out below.

Making statements in support of an application under the Migration Act or Migration Regulations which the Agent knows or believes to be misleading or inaccurate

42. Under clause 2.9 of the former Code, a registered migration agent must not make statements in support of an application under the Migration Act or Migration Regulations, or encourage the making of statements, which he or she knows or believes to be misleading or inaccurate.
43. For the reasons set out below, I have found that the Agent has knowingly made misleading statements to the Department and therefore has breached clause 2.9 of the former Code.

Nomination applications for CM

44. Between 18 August 2017 and 18 December 2017, the Department received three employer-sponsored nomination applications on behalf of CM.
45. Each nomination application was accompanied by an employment contract signed by the Agent as the purported director of CM.
46. The details of these documents are as follows:
- On 19 July 2017, the Agent signed an employment contract offering Ms A the position of Registered Nurse at CM, located at [address removed].
 - On 7 December 2017, the Agent signed the employment contract offering Ms M the position of Primary Care Health Officer at CM, located at [address removed].
 - On 21 December 2017, the Agent signed the employment contract offering Ms H the position of Health Practice Manager at CM, located at [address removed].
47. The nominations were lodged by Ms M, a RMA who was employed by the Agent at the time through his migration business, AI. While I acknowledge that Ms M lodged the nominations, I consider that as an employee of AI she was acting under the Agent's direction given the Agent's connection to CM.

48. The Agent does not dispute that he signed the employment contracts as the purported director of CM. However, contrary to the evidence submitted in support of the nomination applications, ASIC company extracts show that the Agent has never been a director of CM. Despite this, the Agent has provided various explanations for why he signed the employment contracts as the director of CM.
49. In his response to the Authority's section 308 notice, the Agent argued that he was in fact appointed as one of the directors of CM Pty Ltd, but later realised ASIC records showed his position to be the company's secretary. To illustrate this point, the Agent provided exhibits 3.1, 3.2, 4.1 and 4.2.
50. Exhibit 3.1 is a table showing the details of the different medical centres operating as part of CM; including the names of the partners and staff. The Agent's name does not appear in this table.
51. Exhibit 3.2 is a table listing the different services delivered by the CM (i.e. Medical, Dental, Pharmacy and Allied services) and the locations in which the services are provided. The Agent's name does not appear in this table.
52. Exhibits 3.1 and 3.2 are not official documents, nor do they illustrate that the Agent was or is an officeholder of CM. I therefore give very little weight to exhibits 3.1 and 3.2.
53. Exhibit 4.1 is an ASIC company extract dated 18 October 2017. This document indicates that a Form 484 'Change to Company Details' (document no 5xxx6xxx8) was lodged with ASIC to report the Agent's appointment as secretary of CM on 3 August 2017.
54. While Exhibit 4.1 may explain why the Agent was under the impression that he had been appointed as a secretary of CM on 3 August 2017, it does not explain why the Agent thought he was a director. Further, it does not explain why Ms A's employment contract was signed on 19 July 2017 before the Agent's purported date of appointment on 3 August 2017.
55. Exhibit 4.2 is an ASIC company extract dated 4 July 2021. This extract post-dates the earlier extract dated 18 October 2017, however the Agent is not listed as either a current or a previous secretary or director of CM.
56. In his section 308 response, the Agent argued that he was employed by CM as a director, even if this appointment was not reflected within the ASIC extracts. He claimed that he used his position to help develop the business into rural areas and to promote better healthcare services to West Australians, however he failed to provide any evidence to support such claims.
57. The Agent stated that he could act as both director and secretary of a company because he was not prohibited from doing so under the *Corporations Act 2011*. The Agent also provided a case study from the Australian Institute of Company Directors website to support his assertion that he was acting as both the secretary and 'general counsel' of CM.
58. I have considered the case study, however I have disregarded the comparisons the Agent has made. This is because the case study refers to a High Court judgement in which a qualified lawyer was found to hold responsibilities as both the company secretary and general counsel of a listed public company. An important distinction is that the lawyer in the case study was qualified to provide legal advice, while the Agent has not provided any evidence that he is a qualified legal practitioner. Further, the roles of a director and a general counsel are not the same. A general counsel specialises in the provision of legal advice while a company director is responsible for overseeing the affairs of a company.

59. The Agent also stated that he tendered his resignation after the standard business sponsorship application for CM Pty Ltd was refused on 27 April 2018. However, the ASIC company extract dated 4 July 2021 (Agent's exhibit 4.2) does not support this statement. The Agent is not listed as either a current or a previous officeholder. If the Agent had ever been appointed as secretary to CM and then resigned, the ASIC company extract would have listed his name as a previous secretary.
60. In his response to the first section 309 notice, the Agent conceded that he was not the director of CM at the time of signing the relevant employment contracts.
61. While the Agent concurred that he was not a director CM, he argued that he had a genuine belief that he was a director, based on representations made to him by Mr S. To support this contention, the Agent provided copies of two emails in his response to the first section 309 notice.
- The first email from Mr S to Ms P is dated 14 August 2017 and it suggests that the Agent was part of 'Axx's marketing and technology division' and 'the other director'. The email makes no direct reference to Agent being a director of CM. As such, the email does not support the Agent's assertions that he was perceived to be a director of CM.
 - The Agent is the author of second email to Ms P on 28 August 2017. In this email, the Agent has referred to himself as being one of the directors of CM. He also signed the email as 'CPA Principal Consultant'.
62. I cannot give much weight to this evidence as the Agent previously accepted that he mistakenly thought he was the director of the company. Correspondence originating from the Agent where he refers to himself as a director is not independent evidence verifying his position, nor is the perception of others about his role in the company.
63. According to the ASIC website, 'To be eligible to be a director of a company, you must be at least 18 years of age and consent to taking on the role and responsibilities of a director. You must provide your signed consent in writing before being appointed as a director. The company must keep this written consent and update ASIC whenever there are key changes to the company, including the appointment of a new director'. The Agent has not provided any evidence to demonstrate that he consented to the role of director in writing. Further, the Agent's purported appointment as a director of CM is not reflected in the ASIC records.
64. I reject the Agent's assertion that he should not be held responsible for believing he had been appointed as a director of CM. I note the Agent claims to be a certified practising accountant since 2009. As an accountant with 14 years' experience, I consider that the Agent would have understood that the role of a director comes with certain responsibilities and legal obligations. I do not accept that the Agent was misled by Mr S into thinking he was a director of CM as he would or should have understood that the appointment of a director comes with significant responsibilities which must be accepted in writing.
65. In respect to the discrepancies noted in the two ASIC company extracts, the Agent has claimed that he identified an error in the records. He continued to assert that his appointment as secretary of CM was reported to ASIC as per document number 5xxx6xxx5 shown in exhibit 4.1.
66. In relation to exhibit 4.2, the Agent claimed that B Partners had made four requests to withdraw a lodged document with ASIC on 6 November 2017, however the accompanying explanation could not be correct. According to the Agent, all of the withdrawal requests contained the same

explanatory statement that the change of company details were for lodged for CM Pty Ltd when they should have been lodged for another company, CD and D Pty Ltd. The Agent did not provide evidence of the explanatory statement he referred to. Hence, I have placed very little weight on this argument.

67. Exhibits 4.1 and 4.2 indicate the following:

- On 3 August 2017, document number 5xxx6xx8 (Form Type '484 Change to Company Details) was submitted with ASIC. This appears to coincide with the Agent's appointment to the position of secretary.
- On 6 November 2017, Document numbers 0xx751xx, 03xx751xx, 0xx1751xx and 0xx1751xx (Form Type '106 Notice of Cancellation or Revocation of a Lodged Document) were submitted with ASIC. This appears to coincide with the correction of ASIC records to reflect that the Agent was not a current or previous officeholder of CM.
- There was no subsequent Form 484 submitted to notify ASIC of the cessation of a company officeholder to coincide with the Agent's alleged resignation as secretary after 27 April 2018.

68. It is noted that the ASIC website states that:

- Form 484 is utilised to notify ASIC of changes to company details, including changes to officeholder details¹⁰.
- Form 106 is utilised to withdraw a previously lodged document. This form allows for a document to be withdrawn if information had been duplicated; or information has been provided on a lodged document that was subsequently found to be incorrect and exceptional circumstances exist to withdraw the document¹¹.

69. Accordingly, the available information suggests that the form to report the Agent's appointment as a secretary of CM was lodged with ASIC in error and there was no intention for the Agent to be the director or secretary of the company. If the Agent had simply ceased in a position he validly held, Form 484 would have been utilised and listed in the ASIC Extract. If this had been the case, the Agent's name would have appeared in the ASIC Extract (exhibit 4.2) under 'previous appointments'.

70. While exhibit 4.1 indicates that the Agent was appointed as a secretary of CM on 3 August 2017, exhibit 4.2 indicates that the Agent was never an officeholder of CM. Notably, exhibit 4.2 indicates that the form submitted to allegedly appoint the Agent to the role of secretary was withdrawn on 6 November 2017. Exhibit 4.2 also indicates that Mr S is the only person who ever held the role of secretary and he was appointed to the role when CM was first registered on 25 October 2012. Additionally, exhibit 4.2 indicates that Mr S was the current director of CM and he was appointed to the role on 25 October 2012. Therefore, I am not satisfied that the Agent was ever validly (or otherwise) appointed as a secretary or director of CM.

71. Accordingly, I place little weight on Exhibits 4.1 and 4.2 as being evidence of the Agent's appointment to the role of director or any other officeholder role within CM.

¹⁰ <https://asic.gov.au/for-business/changes-to-your-company/> (accessed on 6 November 2023)

¹¹ [106 Request to withdraw a lodged document | ASIC.](#)

72. The Agent has maintained that he signed the employment contracts in good faith. He stated that he mistakenly believed that as a company secretary, he did have authority to sign employment contracts on behalf of the company. He also stated that someone else had prepared the employment contracts, so he did not notice that he was signing them as the director of the company.
73. I do not accept the Agent's explanation that he made an innocent mistake when signing the employment contracts as the purported director of CM. At the time of signing the employment contracts, the Agent did not occupy the position of director. The Agent had a responsibility to review the employment contracts carefully before signing them. As an accountant with 14 years' experience, the Agent should have understood the importance of ensuring he had the authority to act before signing the contracts. Valid execution of a document is critical to its enforceability. While the Agent claims he did not notice he was signing the contracts as the director of CM, I note that his signature appears directly above the title of 'Director', which renders his claim to be unlikely. Each contract was signed on a different date and therefore the likelihood of repeating the same mistake unintentionally is greatly reduced in my view.
74. It is also pertinent to note that the Agent signed Ms A's employment contract on 19 July 2017, which is before his claimed date of appointment to the role of director on 3 August 2017. The Agent has not addressed this issue in his response to the Authority.
75. In light of the above, I am satisfied that it is more likely than not that the Agent knew he was not a director of CM at the time he signed the employment contracts in respect of Ms A, Ms M and Ms H.
76. I therefore find that the Agent knowingly provided misleading documents in support of the nomination applications. I therefore find that the Agent breached clauses 2.9 of the former Code in relation to the three nomination applications for CM by making statements in support of the applications which he knew or believed to be misleading or inaccurate.

Nomination application for AI

77. On 27 August 2019, a nomination application for a Temporary Skill Shortage (TSS) visa was lodged for AI¹². The nomination application indicated that the Agent was the authorised contact for the application, as well as being the director of AI.
78. According to ASIC company records extracted on 15 February 2023, the Agent is the sole director and secretary of AI, roles held since 5 September 2006. The Agent is also the sole shareholder of the company. As such, the Agent was the only person authorised to represent and bind the company.
79. At the time of making the nomination application on behalf of AI, the Agent declared that there was no adverse information for departmental consideration. Specifically, the Agent responded 'no' to the following question:

Is there any adverse information to declare about the applicant or a person associated with the applicant, including any information relating to the contravention of Australian laws, insolvency, sponsorship breaches and/or circumstances which might reasonably be considered adverse information?

¹² Permission Request ID: 2XXXXXX6

80. However, at that time AEG was under external administration and a liquidator had been appointed by the Supreme Court on 13 March 2019¹³. As AEG was associated with AI, the Agent should have answered 'yes' to the above question and provided details of the adverse information.
81. In response to the second section 309 notice, the Agent conceded that he should have given details of the adverse information about AEG in the nomination application for AI. He admitted that he was responsible for making the error and explained that this was due to 'assuming the allegation that (sic) from Chinese supplier insurance company was deliberate and baseless where we could find justice. There was no wrongdoing from our end, however similar to any other business that faced challenges doing business with China, we too experienced the hard way'.
82. Regardless, it is irrelevant whether the Agent believed the creditor had made false accusations against AEG. It does not change the fact that AEG, an entity associated with AI, was under external administration at the time when the application declaration was made. I am satisfied that as an experienced RMA and CPA, the Agent would have known this but did not disclose the adverse information in the nomination application.
83. In concealing the adverse information about AEG, I find that the Agent withheld information that was relevant to sub-regulation 2.72(4) of the Migration Regulations. This criterion requires a delegate to be satisfied that there is no adverse information known to the Department about the sponsor who has made the nomination, or a person associated with the sponsor, unless it is reasonable to disregard any such adverse information. This is a decision for the Department to make, not the Agent.
84. An Agent is expected to have a sound working knowledge of the Migration Act, the Migration Regulations and other legislation relating to migration procedure. He has been registered since 2006 and has stated he is an experienced RMA and CPA. As such, I am satisfied the Agent would have understood the meaning of the question and the circumstances for which he was required to declare adverse information.
85. Not only is the Agent an experienced RMA and CPA, he is also the office holder for a number of companies some of which are discussed in this decision. For that reason I am satisfied the Agent has the requisite knowledge and skills to understand the implications of liquidation proceedings and his obligations to declare such to the Department. I do not therefore accept the Agent's reasons for his failure to declare the adverse information about AEG.
86. AEG is an entity over which the Agent had some control, having held the roles of director and secretary of the company since 21 February 2011. He also held these roles when a liquidator was appointed by the Victorian Supreme Court to wind up the company on 13 March 2019. Accordingly, I am satisfied the Agent knew that a liquidator was in control of AEG at the time he made the application declaration. I am also satisfied that the Agent understood his obligations to declare this information to the Department yet deliberately failed to do so.
87. I find that the Agent breached clause 2.9 of the former Code in relation to the nomination application for AI by making a statement in support of the application which he knew to be misleading and inaccurate.

¹³ Court No : Supreme VIC SECI 00xxx of 2019

Sponsorship and nomination applications for AEY

88. On 8 May 2019, an application for a standard business sponsorship agreement was lodged on behalf of AEY by Ms M, a RMA employed by the Agent through EI Pty Ltd (E).
89. The sponsorship application form indicated that the Agent was the Chief Executive Officer (CEO) and the contact person for AEY.
90. An organisational chart submitted with the application also showed the Agent's role to be CEO of AEY. Additionally, Mrs RM (the Agent's spouse) was named as the director and Mr SM (the Agent's brother) the 'CTO'.
91. Between 3 July 2019 and 23 October 2021, eight TSS nomination and two Employer Nomination Scheme (ENS) applications were also lodged for AEY.
92. As with AI, a 'no' response was provided for the adverse information question in all of the sponsorship and nomination applications lodged for AEY between 8 May 2019 and 23 October 2021. Relevantly, there was no information forthcoming that a liquidator had been appointed on 13 March 2019 to wind up an associated entity, AEG.
93. According to ASIC company records for AEY extracted on 16 February 2023:
 - the Agent is the current secretary, a position he held since 10 December 2021;
 - the Agent's brother is the current director, a position he held since 10 December 2021;
 - the Agent and his brother are current equal shareholders in the company, with each holding a 50 percent shareholding since 20 December 2021;
 - the Agent was a previous director from 10 December 2021 to 21 September 2022;
 - the Agent's spouse was the previous director from 27 September 2018 to 10 December 2021;
 - the Agent's spouse was the previous sole shareholder from 10 March 2020 to 20 December 2021; and
 - the Agent was the previous sole shareholder of the company from 27 September 2018 to 10 March 2020.
94. The Agent has agreed that the ASIC company records outlined above correctly reflect his role in AEY, as well as the roles of his spouse and brother. He stated that his spouse was brought in as a 'shadow director while fighting vigorously to prove their innocence'.
95. At the time when the false application declarations were provided, ASIC records indicated that the Agent's spouse was the director of AEY. However, the Agent was the sole owner of the business until 10 March 2020, before the shares were transferred to his spouse. The Agent was also identified as being the Chief Executive Officer (CEO) and the contact person for AEY when the standard business sponsorship application was lodged.
96. As the Agent's employee (Ms M) was the RMA engaged to represent AEY in its standard business sponsorship application, I am satisfied the Agent would have provided instructions for the completion of the application forms. He would therefore have been aware that a 'no' response had been made in relation to the adverse information question in the sponsorship and nomination applications.

97. In response to the second section 309 notice, the Agent stated the reason for his failure to declare adverse information about AEG was his belief that the company should not have been placed under external administration. This Agent justified his stance by claiming that the court case to wind up AEG was 'staged by P and their insurer to recoup money from Australian companies and manufacturers'.
98. The circumstances for the nomination application for AEY are the same as those for AI discussed above, as is the explanation provided by the Agent. The reasons for my findings in regard to these applications are therefore the same. I am satisfied the Agent knew that AEG was under external administration and that a liquidator had been appointed by an order of the Victorian Supreme Court on 13 March 2019.
99. I am also satisfied that he knew the information about AEG should have been declared in the nomination application for AEY yet he failed to do so.
100. Accordingly, I find that the Agent breached clause 2.9 of the former Code in relation to the sponsorship and nomination applications for AEY by making statements in support of the applications which he knew to be misleading and inaccurate.

Misleading or deceiving the Authority

101. The Agent has made a number of contradictory claims in his responses to the Authority, as discussed throughout this decision. In relation to the employment contracts the Agent signed as a director of CM, his explanation to the Authority has been inconsistent and not substantiated by any evidence.
102. Initially, in response to the section 308 notice, the Agent claimed that he was appointed as a director of CM but later realised that his role 'appeared within ASIC as Company Secretary'. The Agent insisted that he performed the role of a director until he resigned.
103. The Agent provided a new version of events when he responded to the first section 309 notice. The Agent stated that he had come to accept that he was not a director of CM when the employment contracts were signed. However, the Agent claimed that Mr S was at fault for the misunderstanding.
104. In response to the first section 309 notice, the Agent explained that he could not accurately respond to the section 308 notice because he was stuck in India and he had intermittent internet service. He explained that he was unable to access documents, including company records and was relying on his memory of events to provide information to the Authority.
105. The Agent argued that he mistakenly believed he had the authority to sign the employment contracts as a company secretary. Additionally, the Agent stated the 'contracts were prepared by someone from my office, not by me, and when I signed them, I did not notice or appreciate that I was signing as director rather than company secretary'. These statements contradict the Agent's earlier statements in which he claimed that he was under the belief that he was a director of CM.
106. In order to explain why the ASIC company extract dated 4 July 2021 (exhibit 4.2) showed that the Agent was neither a director nor a secretary of CM when he signed the employment contracts, the Agent claimed that the ASIC records could not be correct. The Agent referred to an explanatory statement that purportedly accompanied four requests by B Partners to withdraw lodged documents with ASIC on 6 November 2017.

107. The Agent claimed that the explanatory statement could not be correct, however he failed to provide evidence of the explanatory statement. While the Agent claims that the ASIC records dated 4 July 2021 were incorrect, current ASIC company records (**Attachment I**) still show that the Agent is neither a current or previous officeholder of CM. I therefore reject the Agent's claim that the more recent ASIC records are incorrect and unreliable.
108. The Agent maintained in the first section 309 notice that he was an officeholder of CM when he signed the employment contracts in respect of Ms A, Ms M and Ms H. As an experienced CPA, I find it implausible that the Agent did not know whether or not he was an officeholder for CM. To the contrary, as a registered CPA, the Agent would be required to have a sound understanding of the business environment and other business skills.¹⁴ I am therefore satisfied the agent made such statements to the Authority in an attempt to absolve himself of responsibility for his conduct and not because he lacked the relevant knowledge or experience.
109. Accordingly, I am satisfied that the Agent has attempted to mislead the Authority through his responses to the section 308 and the first section 309 notice and in doing so I find that the Agent has breached clause 2.9A of the former Code.

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

110. Section 303(1)(f) of the Act provides that the Authority may take specified disciplinary action if it becomes satisfied that the agent is not a person of integrity or is otherwise not a fit and proper person to give immigration assistance. The Authority's consideration of integrity, fitness and propriety in relation to the duties and obligations of a registered migration agent are set out below.

Integrity

111. There is a degree of overlap between 'fit and proper' and 'integrity' to the extent that fitness and propriety includes consideration of the honesty of the actions of an individual.
112. 'Integrity' means 'soundness of moral principle and character, uprightness and honesty'.¹⁵

Fitness and Propriety

113. Whether a person is a 'fit and proper person to give immigration assistance' is an enquiry which looks broadly at three factors – honesty, knowledge and competency.
114. In *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321, Toohey and Gaudron JJ indicated several factors that could be taken into account in determining whether a person was 'fit and proper.' These included, but were not limited to conduct, character and reputation. At 380 their Honours stated:

[D]epending on the nature of the activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides indication of likely

¹⁴ [Skills list requirements | CPA Australia](#)

¹⁵ See *Re Peng and Department of Immigration and Multicultural Affairs* [1998] AATA 12 at paragraph [26].

future conduct) or reputation (because it provides indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question.

115. The formula 'fit and proper' (and 'person of integrity') must be construed in light of the particular legislative context at the registration scheme underpinning the migration advice profession.¹⁶
116. The context in which the reference to 'fit and proper' person occurs in section 303(1)(f) is the person's giving of immigration assistance. The context also includes:
- the Act, which creates offences for misleading statements and advertising, practicing when unregistered and misrepresenting a matter; and
 - section 290(2) of the Act, which provides that in considering whether it is satisfied that an applicant is not fit and proper or not a person of integrity, the Authority must take into account specified matters, including the person's knowledge of migration procedure; and any other matter relevant to the person's fitness to give immigration assistance.
 - the Code which refers to (among other matters) a registered migration agent acting diligently, ethically, honestly and with integrity, treating persons with appropriate respect, and properly managing and maintaining client records and maintaining client confidentiality.
117. Key elements of the fitness test are:
- the honesty of the person (Peng and Department of Immigration and Multicultural Affairs [1998] AATA 12); and
 - the person's knowledge of the migration scheme and ability to fulfil the position of a migration agent (Mottaghi and Migration Agents Registration Authority [2007] AATA 60).
118. The reference in section 303(1)(f) to a registered migration agent not being a 'person of integrity' is not concerned with the person's knowledge of the migration scheme or ability as a migration agent, but is primarily concerned with a person's reputation, moral principle and character, including their honesty (*Tejani and Migration Agents Registration Authority [2009] AATA 240*).
119. Having regard to the body of case law cited above, a consideration of whether the Agent is a fit and proper person or a person of integrity to provide immigration assistance can legitimately include the following:
- that the Agent's past conduct can be an indicator of the likelihood of the improper conduct occurring in the future;
 - the Agent's honesty and competency towards clients, the Department and the Authority;
 - a consideration of the context in which the agent works, for example whether or not the Agent is an employee or owner of the business through which immigration assistance is provided;
 - the Agent's knowledge and competency in immigration law and practice;

¹⁶ See *Cunliffe v Commonwealth* (1994) 182 CLR 272

- the reputation of the Agent as a result of their conduct and the public perception of that conduct; and
- the perception of the conduct by the Agent's 'professional colleagues of good repute and competency'.

Findings in relation to integrity, fitness and propriety

120. The Agent's adherence with the sponsorship compliance framework is a relevant consideration in determining whether the Agent is a fit and proper person to give immigration assistance.
121. The sponsorship compliance framework is designed to:
- protect sponsored persons from exploitation;
 - ensure visas are used for their intended purpose; and
 - ensure the integrity of the sponsored visa programmes is maintained.
122. A person who disregards their obligations as an approved sponsor undermines the integrity of the TSS visa program and cannot be relied upon as an RMA to properly advise future clients on their obligations under the Act and the Regulations.

AEG

123. On 9 December 2020, ABF SMU officers attended [address removed] confirming that AEG was no longer trading at that business address. The ABF also noted the premises were leased to another business.
124. On 15 July 2021, AEG's approval as a standard business sponsor was cancelled. The notice of decision identified that AEG failed to notify the Department it had gone into external administration within 28 calendar days of the event occurring. The failure was considered to be reckless by the authorised ABF SMU officer.
125. The Agent was a director and secretary of AEG when the SMU cancelled AEG's sponsorship agreement. He had held these roles since 21 February 2011.
126. In response to the second section 309 notice, the Agent admitted he should have informed the Department that AEG was under external administration. The Agent cited the tremendous pressure he was under as the reason for the oversight. He stated that AEG was forced to vacate their premises 'as we could not pay rental due to the ongoing cases'. According to the Agent, employees found employment elsewhere and he was 'only doing a few migration cases for survival'.
127. The Agent has been registered since 2006 and claims to be a highly experienced migration agent. Understanding a sponsor's notification obligations is fundamental knowledge and not something an experienced and diligent migration agent would overlook. Given his experience, the Agent's failure to meet those obligations as a business sponsor demonstrates a disregard for those obligations.

C

128. The Agent was appointed as a director of C on 16 March 2016, a position he continued to hold under the company was deregistered on 14 June 2020. The Agent was also an owner of C through a 50 percent shareholding in AEG.

129. On 16 July 2021, C's approval as a standard business sponsor was cancelled. The notice of decision identified that C failed to notify the Department it was deregistered on 14 June 2020. The failure was considered to be reckless by the authorised SMU officer.
130. In response to the second section 309 notice, the Agent admitted he should have informed the Department that C was deregistered. He provided the same reason of feeling pressured and stressed for the oversight due to spending most of his time 'trying to address the issues from P, customers, FWO, sanctions and notices coming from various departments'.
131. The Agent's statement suggests that his company or companies have been investigated for contraventions other than those known to the Authority. The Agent has not divulged the details of investigations by other government departments in his responses to the section 308 and section 309 notices, although it can be inferred from his statement that workplace issues were being addressed by 'FWO'. He also alluded to an investigation by the Clean Energy Regulator in his most recent registration application.
132. Noting the above comments by the Agent, I accept that he may have been feeling pressure on multiple fronts. However, it is concerning that the issues raised by the ABF and the Authority are not isolated instances but rather seem to be a common thread in his business practices.
133. Company directors are responsible for overseeing the affairs of the company and they are obligated to undertake those activities with integrity, care and diligence. However, the Agent's statement about the issues, sanctions and notices he was dealing with are indicative of someone who has not demonstrated such qualities. The Agent has been registered for 17 years and a CPA for 14 years so I am satisfied he has the experience to undertake such activities. However, the Agent has not accepted accountability for his failure to comply with his sponsorship obligations, rather he has endeavoured to direct blame on to others.

AI

134. On 29 September 2021, the ABF SMU imposed a bar on AI (the Agent's migration agency) from sponsoring further employees under its SBS agreement until 29 March 2022.
135. The reasons outlined for imposing the bar included a failure to satisfy a sponsorship obligation; providing false and misleading information; and no longer satisfying the sponsorship application criteria. AI failed to notify the Department that it was trading at a new address [address removed] within 28 calendar days of the event occurring. The failure to satisfy this sponsorship obligation was considered to be a significant contravention by the ABF SMU officer.
136. The Agent is the sole director and secretary of AI and he has held these roles since 5 September 2006. The Agent has also been the sole shareholder of AI since it was registered on 5 September 2006.
137. In response to the second section 309 notice, the Agent admitted that he should have notified the Department that AI had moved to different premises. He stated that he was under tremendous pressure because he was dealing with multiple issues, hence the oversight.
138. The Agent stated that he had travelled to India to support his parents and was dealing with his father's death. At the same time, the Agent had limited access to the internet and phone and was spending a great deal of time addressing 'the issues from P, current and previous customers, FWO, sanctions and notices coming for various departments'.

139. The Agent is the sole director, secretary and owner of AI and was therefore the accountable person for ensuring the business met its sponsorship obligations. As he is also an experienced migration agent, the Agent has the knowledge and expertise to understand what was required to ensure that AI met those obligations. Despite this, he failed to ensure this happened.
140. The Agent also provides immigration assistance through AI. Given his position as a registered migration agent, the bar imposed on AI reflects poorly on the Agent's integrity and competence to provide proper advice to others about their obligations under the Act and the Migration Regulations.

AEY

141. On 25 January 2022, the ABF SMU cancelled AEY's approval as a standard business sponsor for multiple serious failures to satisfy sponsorship obligations.
142. ABF SMU found AEY had failed to ensure equivalent terms and conditions; failed to provide records and information to the Minister; failed to ensure a primary sponsored person works or participates in a nominated occupation; provided false and misleading information; and no longer satisfied the sponsorship application criteria.
143. The Agent was listed as the company CEO and the contact person in the SBS application for AEY that was lodged on 8 May 2019. As already discussed in this decision, the Agent was a director and held a 50 percent shareholding in the company when the Department cancelled AEY's sponsorship agreement. The Agent's spouse was the appointed director and sole shareholder immediately prior to the Agent's appointment as director. At all relevant times the Agent and his wife were persons in control of the entity found in breach of its obligations.
144. In its cancellation decision, the ABF SMU found that:
- sponsored employee, Mr MM (Mr M), worked 988.15 ordinary hours and 249.92 overtime hours throughout the period 29 June 2020 to 10 January 2021, exceeding the National Employment Standards (NES).
 - sponsored employee, Mr AK (Mr K), was underpaid by at least \$2,444.77 for the assessment period 22 June 2020 until 3 January 2021.
 - payslips for three sponsored employees (Mr M, Mr K and Mr ANM) included deductions which could not be validated. No provisions for the deductions formed part of the employment contracts nor was the Agent able to provide evidence to the Department that the deductions were authorised by the employees.
 - all three sponsored employees were found not to be working in their approved and nominated occupation of Electrical Engineering Technician as they did not hold the appropriate licences to perform in the nominated occupation.
 - Mr ANM and Mr M were found not to be working exclusively for AEY or an associated entity.
145. In summary, AEY was found to have failed to ensure:
- Australian equivalent employment conditions for Mr M;
 - Mr K was paid no less than his nominated earnings;
 - records that are required to be kept were provided;

- sponsored employees worked or participated in their nominated occupation, program or activity;
 - application declarations/disclosures did not contain false and misleading information.
146. The Agent's response to the second section 309 notice indicates that he has not accepted the ABF SMU findings regarding AEY's compliance with its sponsorship obligations. The Agent has continued to give his reasoning for why he believes AEY did not breach its sponsorship obligations in relation to the pay and conditions of sponsored workers and the work they were performing.
147. The Agent has repeated the same claims that his employee, Ms M, provided to the ABF SMU after AEY was issued a Notice of Intention to Take Action (NOITTA). This information has already been considered by a delegate of the Minister and it does not change the delegate's findings that AEY failed to meet multiple sponsorship obligations; and the failures were of a serious and reckless nature.
148. The Agent's failure to accept the delegate's findings is an indicator that the improper conduct is likely to reoccur in the future. This is a serious matter in my view, since the identified failures of the sponsorship obligations are an indication that sponsored workers were exploited and visas were not used for their intended purpose.
149. It is also very concerning to note that the Agent has stated in the response to the second section 309 notice that 'Each of the entities were approached by our employees asking for help to get Australian visas and so we applied for the SBS to help our staff and their families'.
150. This statement suggests that positions were created to secure migration outcomes for family members of existing employees. Such arrangements jeopardise the integrity of the TSS visa program which is designed to enable employers to address labour shortages by bringing in genuinely skilled overseas workers where they cannot source an appropriately skilled Australian. The TSS visa program facilitates targeted use of overseas workers to address temporary skill shortages, while ensuring that Australian workers are prioritised. The program is not intended to be used to facilitate the stay of family members and friends in Australia but rather, to fill a genuine vacancy or skill shortage.

Findings

151. Having regard for the totality of the matters discussed within this decision, I am satisfied that the Agent:
- made misleading, deceptive or inaccurate statements and otherwise acted dishonestly;
 - acted recklessly by failing to ensure that sponsorship obligations relevant to work sponsors were satisfied;
 - sought to jeopardise the integrity of the TSS visa program by creating positions to facilitate outcomes for family members of employees; exploiting sponsored workers and not using the visa for its intended purpose;
 - acted without regard for the adverse impact the conduct would have on the reputation of the migration advice industry; and

- acted in a manner not consistent with the principles of integrity nor of a person who is fit and proper to provide immigration assistance.

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

CONSIDERATION OF APPROPRIATE DISCIPLINARY ACTION

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

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

Seriousness of behaviour

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

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

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

- the Agent acted with a blatant disregard for, or a significant degree of indifference to, the migration law and the visa programs in general;
- the Agent's actions demonstrate an intention to undermine, and therefore jeopardise, the integrity of the visa programs;

- the conduct demonstrates repeated breaches of the Code of Conduct, and dishonest or reckless behaviour; and
- the Agent's conduct may cause some reputational damage to the migration advice profession.

Aggravating factors

156. As discussed in this decision, there is a significant amount of adverse information about the Agent's conduct which has been presented to him and for which he has had an opportunity to respond.
157. Despite the seriousness of the allegations and the evidence available to substantiate them, the Agent has not accepted accountability or shown remorse for his actions. Instead the Agent has justified his dishonest behaviour by attempting to blame others.
158. The Agent was complicit in misleading the Department by signing employment contracts as the director of CM Pty Ltd, when he did not have the authority to do so. This gave the perception that the nominees were going to be employees of CM, most likely to achieve visa outcomes for the nominees that they would not otherwise have been entitled to. This is not an isolated incident. There are other instances, discussed in this decision, where the Agent has provided information in support of an application that is false or misleading.
159. The Agent provided false and misleading information on multiple occasions by declaring that there was no adverse information about AI or AEY or a person associated with these organisations in one SBS application, nine TSS nomination and two ENS nomination applications. In making such statements, the Agent concealed information that was relevant to the Department's assessment of the applications.
160. As a director of AEG, C, AI and AEY, the Agent exerted control and influence over these companies. He was responsible for managing the business affairs of these companies including what information was provided or withheld in support of the aforementioned applications. As already discussed, the Agent is also an experienced migration agent and I am satisfied that the omission of this information was not an innocent mistake but rather an attempt to avoid a possibly warranted negative outcome for the applications. As such, the Agent's behaviour reflects poorly on his integrity and honesty.
161. The Agent in his response to the Authority noted he has used businesses to facilitate migration outcomes for family members of employees which is contrary to the intention of the TSS visa program. As already discussed, the TSS visa program is designed to enable employers to address labour shortages. It is not to facilitate visas for individuals seeking to stay in Australia who are not fulfilling a labour shortage. As an experienced migration agent, the Agent would have a fundamental understanding of the purpose of the TSS visa program. Despite this, the Agent has acknowledged facilitating visa applications for these individuals. Such conduct undermines the integrity of the visa program and the migration law.
162. Evidence before me clearly shows the Agent failed to ensure sponsored visa holders at AEY were afforded equivalent terms and conditions of employment; or that they worked in the nominated occupation. Despite this, the Agent has not accepted the ABF's findings or provided any evidence to support his viewpoint other than that already provided and considered by the ABF. I find the Agent's stance to be consistent with his lack of accountability for his actions in relation to the matters discussed in this decision. I cannot therefore be satisfied that the Agent

will take any steps to address the conduct of concern that has been put to him by the Department and the Authority.

163. I also find the Agent's conduct falls well short of the standard expected of a registered migration agent.

Mitigating Factors

164. The Agent has provided the following submissions to be taken into account in making this decision:

- COVID-19 had impacted the Agent's immigration business immensely as he was stranded in India due to lockdowns and border closures.
- He returned to Australia on 6 November 2021 but could not return to his family and business in Western Australia because he was refused G2G passes on ten occasions. In support of this submission, the Agent provided:
 - An email dated 8 November 2021 that he sent to Mr JK, requesting the Western Australia G2G pass permission.
 - A Medical certificate dated 3 November 2021 issued by Txxxxxxx Medical Mission (TMM) in India, indicating that the Agent was suffering from [medical information removed for privacy reasons].
- The Agent maintained that he acted in good faith and did not intend to mislead the Department by providing false application declarations. He stated he was an unfortunate victim who made an innocent mistake.
- The Agent claimed that in last five years there had been a huge impact on his practice, due to changes within the immigration system.
- The Agent stated he went through a tremendous amount of stress, which affected his health. This included the stress of starting renewable energy companies and dealing with financial losses and liquidation proceedings. He also described the challenges of balancing his business and personal commitments.
- The Agent claimed to be in severe financial hardship as a result of having no income from immigration or other business services for the past few years. According to the Agent, to support the post-COVID economy, he invested a substantial amount of time and money to support Australian industries and the economy.
- He was passionate about promoting climate change and contributing to the economic benefit of Australia through his commitment to the clean energy industry but had resigned from all companies and was only concentrating on providing immigration services.
- The Agent stated that he had employees and offices in Australia and overseas and his staff would be severely affected if he could not continue to provide immigration assistance.
- The Agent claimed AI had operated in Australia for the past 16 years and employed four to six people on average. He also claimed that AI worked very closely with state and federal government bodies and had represented Austrade and the Chamber of Commerce 'many times' to promote the Australian economy in ASEAN countries.

- According to the Agent, AI had made significant changes to sport and international education through the launch of its AxAxxxxxx; partnerships with educational institutions in India and the Philippines; and by working with the Western Australian state government. The Agent claimed that AI was able to deliver and promote educational services to overseas students from India, Philippines and other ASEAN countries through its efforts.
- The Agent also has a wife and two daughters whose lives would be impacted if he could not continue his practice as a registered migration agent and earn an income.
- The Agent admitted that he made mistakes. However, he has been 'practising migration law' since 2006; was committed to the profession; understood the errors; and would do his best to uphold the law. He stated that his registration is all that he has left after his other business dreams failed.

165. I have considered the Agent's claims that he suffered from health issues due to [medical information removed for privacy reasons]. To support these claims the Agent has provided a copy of:

- a medical certificate dated 3 November 2021 from Dr BMC of the Txxxxxxx Medical Mission Hospital in India.
- an Indian death certificate indicating that [removed for privacy reasons].

166. The medical report from the Txxxxxxx Medical Mission Hospital is dated 3 November 2021. The medical report indicates that the Agent developed [medical information removed for privacy reasons]. The medical report does not indicate how long the Agent had been receiving treatment for [medical information removed for privacy reasons].

167. I appreciate that the Agent felt stressed and pressured due to his separation from his spouse and children during the COVID-19 pandemic. I also accept that his health was impacted, however much of the conduct discussed in this decision occurred well before the Agent was diagnosed with [medical information removed for privacy reasons]. For example:

- The three employment contracts for CM were signed by the Agent between 19 July 2017 to 21 December 2017;
- AEG was placed under external administration from 13 March 2019; and the Agent did not notify the Department within 28 days of the event occurring;
- The misleading application declarations for AEY were made from 8 May 2019, when the SBS application was lodged;
- The misleading application declaration for AI was made on 27 August 2019, when the TSS nomination application was lodged;
- The Federal Court of WA¹⁷ placed C into liquidation on 20 August 2019, before the company was eventually deregistered on 14 June 2020. The Agent did not notify the Department within 28 days of either event occurring.

¹⁷ WAD2xx of 2019

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168. These breaches occurred well before the Agent's diagnosis of [medical information removed for privacy reasons] and are therefore not a relevant consideration in relation to the Agent's culpability.
169. I have also considered the Agent's claims that AI has made significant contributions to sport and international education in Australia. The Agent also claimed that AI collaborated with state and federal government agencies to promote the Australian economy. I give very little weight to the Agent's claims because he has provided no evidence to support them. The claims are inconsistent with the Agent's other admissions that his business dreams failed and he was spending most of his time 'trying to address the issues from P, customers, FWO, sanctions and notices coming from various departments'. Consequently, I do not consider that the interests of Australia would be adversely affected if the Agent was unable to provide immigration assistance.
170. I have considered that the Agent has been registered since 7 August 2006, and no previous disciplinary action has been taken against the Agent. However, I am of the view that this alone does not mitigate the conduct which is the subject of this decision.
171. The Agent has claimed that he is in severe financial hardship and his registration as a migration agent is all he has left. However, the Agent has also made a simultaneous claim that he has held a 'CPA license' for the last 20 years. The Agent has not stated why he is unable to derive an income from his other purported profession. In addition, the Agent has also stated he has launched AxAXxxxx to work in partnership with educational institutions in India and the Philippines to deliver and promote educational services to overseas students. While not stated, it would appear the Agent would also derive an income from that enterprise. Accordingly, I have not afforded very much weight to this argument.
172. The Agent has also claimed that he has derived no income from providing immigration assistance in the past few years; and he is 'only doing a few migration cases for survival'. These statements contradict the Agent's claim that he is heavily reliant on work as a registered migration agent for earnings. It is also in contrast to his statement that he maintains offices and employees in Australia and overseas for the provision of immigration assistance. Given the inconsistencies in the Agent's own statements, I have not afforded them much weight.
173. I accept that any disciplinary decision will have some impact on the Agent's future livelihood. However, I am of the view that any loss in earnings from the provision of immigration assistance is significantly outweighed by the public interest given the seriousness of the Agent's conduct. I consider that the nature of the conduct reflects adversely on the Agent's integrity and on the Agent's fitness to remain in the migration advice industry.

Consumer Protection

174. Consumers of professional services of registered migration agents are often vulnerable and place a high degree of trust in their registered migration agent. Consumers are therefore entitled to a high level of professional service from their registered migration agent.
175. The behaviour demonstrated by the Agent falls short of the standards expected of registered migration agents. I consider that the Agent poses a serious risk not only to consumers but to the integrity of the Department's visa programs that are made available to consumers.
176. I am satisfied that if the Agent were to continue to practice as a registered migration agent, the Agent would not demonstrate the requisite skills expected of a registered migration agent. I therefore consider that a disciplinary decision is warranted to address the conduct the subject

of this decision, in the interests of consumer protection, and in maintaining confidence the integrity of the Australian migration program.

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

DECISION

178. I have turned my mind to the appropriate sanction action to impose on the Agent. I consider that the Agent requires a period of separation from the industry and have not imposed a caution for this reason. I am of the view that a suspension with conditions imposed on the Agent would maintain the interests of consumer protection and the migration program in general.
179. Following consideration of the information before me, I have decided to suspend the Agent from being registered as a migration agent from the date of this decision for a period of 3 years, and until the Agent has met the below conditions.

Conditions

180. The following conditions are to be completed within the period of suspension or no more than five (5) years from the date of suspension.
- a. Evidence that the Agent has completed a total of 10 Continuing Professional Development (CPD) points for each 12 months that the suspension is in force. The CPD activities should cover:
 - Ethics for Migration Agents;
 - Business sponsorship and TSS visas;
 - Employer Nomination Scheme;
 - PIC 4020 and other ban period provisions
 - b. Evidence that the Agent has successfully completed the following private tuition sessions which are conducted by an individual or individuals approved by the Authority and who are accredited immigration law specialists:
 - 3 hours of private tuition in relation to compliance with the Code of Conduct and with specific attention to Ethics and Professional Practice
 - The Agent is not to accrue CPD points from this private tuition.
 - c. Evidence by way of a report from the Accredited Immigration Law Specialist or Specialists who provided the private tuition sessions indicating that:
 - they were provided with a copy of this decision before the sessions were conducted; and
 - the Agent has successfully completed the relevant sessions.
 - d. A statutory declaration in Commonwealth form stating that the Agent has not made immigration representations for a fee, has not advertised the provision of immigration assistance and has not given immigration assistance whilst suspended.

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Office of the Migration Agents Registration Authority
Department of Home Affairs
Date of Decision: 23 January 2024

APPENDIX A: TERMS USED FOR REFERENCE

The following abbreviations may have been used in this decision:

ABF	Australian Border Force
ABN	Australian Business Number
AAT	The Administrative Appeals Tribunal
BVA/B/E	Bridging Visa A, B or E
MARN	Migration Agent Registration Number
Section 308 Notice	Notice issued by the Authority under section 308 of the Act
Section 309 Notice	Notice issued by the Authority under section 309 of the Act
The Act	The <i>Migration Act 1958</i>
The Regulations	<i>Migration Agents Regulations 1998</i>
The Agent	Shiju Mathews
The Authority	The Office of the Migration Agents Registration Authority
The Code	The <i>Migration (Migration Agents Code of Conduct) Regulations 2021</i> prescribed for the purposes of subsection 314(1) of the <i>Migration Act 1958</i>
The former Code	Code of Conduct prescribed for the purposes of subsection 314(1) of the <i>Migration Act 1958</i> by regulation 8 and Schedule 2 of the <i>Migration Agents Regulations 1998 – repealed on 1 March 2022</i>
The Department	The Department of Home Affairs
The Register	Register of migration agents kept under section 287 of the Act
VEVO	Visa Entitlement Verification Online