



ASIC
Australian Securities &
Investments Commission



INFRINGEMENT NOTICE

Section 1317DAM of the *Corporations Act 2001 (Cth)*

Date of giving this notice: 7 March 2024

Unique identification code: M01705062

TO: Nicholas Scott Benbow, registered auditor number 345523

1. ASIC gives this infringement notice under section 1317DAM of the *Corporations Act 2001 (Cth)* (the *Corporations Act*).
2. ASIC believes on reasonable grounds that you have contravened a provision that is subject to an infringement notice as follows:
 - a. For five successive years in the financial years between FY18 and FY22 you were the lead auditor who signed each of the reports for the audits of the financial report for the financial year, and the reports on the review of the half-year, for A-Cap Energy Limited ACN 104 028 542 (**A-Cap**), a listed company at all relevant times.
 - b. On 9 March 2023, as lead auditor, you signed the report on the review of the HY23 financial report for A-Cap (the **Review**), for a sixth successive year, and by doing so contravened s307A(2) and (4) of the *Corporations Act*, because:
 - i. William Buck Audit (Vic) Pty Ltd ACN 116 151 136, an audit company with registered auditor number 296288, conducted the Review; and
 - ii. You were the lead auditor of the Review who must ensure the Review is conducted in accordance with auditing standards; and
 - iii. You failed to conduct the Review in accordance with Auditing Standard ASA 102 *Compliance with Ethical Requirements when Performing Audits, Reviews and Other Assurance Engagements* (December 2019) (**ASA 102**).
 - c. ASA 102, a standard in force under section 336 of the *Corporations Act*, applies to a review of a half-year report conducted in accordance with the *Corporations Act*.

- d. Paragraph 6 of ASA 102 requires the auditor to comply with relevant ethical requirements, including those pertaining to independence, when performing reviews. Paragraph 5(e) of ASA 102 states the relevant ethical requirements include the applicable requirements of APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)*, issued by the Accounting Professional & Ethical Standards Board Limited, the applicable provisions of the Corporations Act 2001 and other applicable law or regulation.
 - e. Section R540.5 of Part 4A of APES 110 outlines that individuals shall not act in certain roles for a period of more than seven cumulative years when the audit client is a public interest entity, but refers to section 324DA of the Corporations Act which has more restrictive time-on requirements for audit partners of listed entities in Australia.
 - f. Section 324DA(2) of the Corporations Act provides an individual is not eligible to play a significant role in the audit of a listed company for a financial year if, were the individual to do so, the individual would play a significant role in the audit of the company for more than five out of seven successive financial years.
 - g. In the absence of the directors extending the eligibility term under s324DAA of the Corporations Act or ASIC making a declaration under s342A(1)(a) of the Corporations Act, you were not eligible to play a significant role in the Review.
3. The maximum penalty that a court could impose for each contravention, if the provision were contravened is \$13,750.

Amount payable under this notice

4. The amount payable under this notice in relation to the alleged contravention is \$6,875. This amount can be paid using the method detailed in the covering letter accompanying this notice.
5. The payment period for the notice will be 28 days, beginning after the day on which the notice is given, unless the period is extended, an arrangement is made for payment by instalments or the notice is withdrawn.

Consequences of paying the amount payable under this notice

6. If you pay the amount stated in this notice within the payment period then (unless the notice is withdrawn) you are not liable to be prosecuted in a court for the alleged contravention.
7. The payment of the amount is not an admission of guilt or liability.
8. You may, in writing, apply to ASIC to have the period in which to pay the amount extended or for an arrangement to pay the amount by instalments.

Consequences of not paying the amount payable under this notice

9. You may choose not to pay the amount and, if you do, you may be prosecuted in a court for the alleged contravention.

Withdrawal of the notice

10. You may, within 28 days after the infringement notice is given to you, make written representations to ASIC seeking the withdrawal of the notice. In deciding whether or not to withdraw the notice, ASIC must take into account your written representations. If ASIC decides to withdraw the notice, ASIC will give you a withdrawal notice. ASIC may also withdraw the notice on ASIC's own initiative.
11. If the notice is withdrawn, you may be prosecuted in a court for the alleged contravention.

Signature of delegate giving the notice

A handwritten signature in blue ink, appearing to be 'CR', is written over a faint circular stamp.

Chris Rowe
as a delegate of the Australian Securities and Investments Commission

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