

IN THE MATTER OF an Application by the Australian Securities and Investments Commission (**ASIC**) to the Companies Auditors Disciplinary Board (**CADB**) pursuant to s1292 of the Corporations Act 2001(Cth) (**The Act**) (**Application**).

MATTER NO:01/QLD20

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Applicant

GRAHAM WILLIAM LITCHFIELD

Respondent

DECISION of **CADB** to exercise its powers under s1292 of **The Act**.
Notice of this decision will be sent to the Respondent under ss1296(1)(a) of **The Act** and a copy of that notice will be lodged with ASIC under ss1296(1)(b) of **The Act**.

FINAL DECISION AND REASONS (DECISION)

07 May 2021

CADB Member Panel (**Panel**):

Maria McCrossin (Chairperson)

Kerrie Howard (Business Member)

Tony Brain (Accounting Member)

Companies Auditors Disciplinary Board
Level 5, 100 Market Street, Sydney NSW 2000
Tel: (02) 9911 2970

DECISION

1. This is an administrative **Application** brought by ASIC with respect to Graham William Litchfield, Registered Company Auditor #4100 (Respondent) seeking:
 - (i) An order under s1292 of **The Act** cancelling registration of the Respondent as a Company Auditor.
 - (ii) An order that the Respondent pay the Applicant's costs.
2. A **Panel** was convened in accordance with s210A of the Australian Securities and Investments Commission Act (2001) (Cth) (ASIC Act) to determine this Application. There was no appearance by the Respondent in these proceedings.
3. The **Panel** is satisfied that ASIC has taken reasonable steps to bring the existence of these proceedings to the notice of the Respondent. On the basis of the evidence filed by ASIC, the Panel is satisfied that Mr Litchfield, who is 75 years old, is no longer practising as a Registered Company Auditor (**RCA**).
4. The **Panel** is also satisfied that reasonable time has been provided to ensure the Respondent has had a sufficient opportunity to prepare and lodge any submissions or adduce evidence in response to ASIC's Application, should he have wished to.
5. The Respondent has taken no steps to appear in the proceedings despite correspondence to him from **CADB** outlining that process. With consent of the Applicant, the **Panel** therefore proceeded to consider this Application on the basis of the papers filed, that included ASIC's Application, submissions and relevant documentary evidence, on 19 March 2021.
6. The Applicant's contention is that the Respondent, within the meaning of ss 1292(1)(a)(i) of **The Act**, contravened s1287A of **The Act** on eight occasions, in that he failed to lodge with ASIC by the stipulated time annually, a statement in the prescribed form, being a Form 912 pertaining to the preceding 12-month period (Annual Statement) as required under s1287A of **The Act** (**The Contention**).
7. A copy of the **Panel's** Determination dated 23 March 2021 (**Determination**), which included details of the **Panel's** proposed orders, was sent to the Respondent's address. Further time was allowed, as notified in the **Determination**, for any submissions or evidence for the **Panel's** consideration and the option of appearing before the **Panel** for a final hearing was provided to the parties. As there was no response by Mr Litchfield within the time specified, the **Panel** re-convened to make final orders based on the papers filed by ASIC on 05 May 2021.

Facts

8. On the basis of the documentary evidence filed in the proceedings the **Panel** is satisfied that the following facts are established:
- (i) The Respondent has been registered as a Company Auditor continuously since 20 May 1986.
 - (ii) After 1 July 2004 the Respondent was required to lodge an **Annual Statement** by 20 June each year.
 - (iii) As of 9 September 2020, when this Application was filed, the Respondent had not lodged an **Annual Statement** for the following years:
 - (a) 20 May 2012 to 20 May 2013 (due for lodgement by 20 June 2013).
 - (b) 20 May 2013 to 20 May 2014 (due for lodgement by 20 June 2014).
 - (c) 20 May 2014 to 20 May 2015 (due for lodgement by 20 June 2015).
 - (d) 20 May 2015 to 20 May 2016 (due for lodgement by 20 June 2016).
 - (e) 20 May 2016 to 20 May 2017 (due for lodgement by 20 June 2017).
 - (f) 20 May 2017 to 20 May 2018 (due for lodgement by 20 June 2018).
 - (g) 20 May 2018 to 20 May 2019 (due for lodgement by 20 June 2019).
 - (h) 20 May 2019 to 20 May 2020 (due for lodgement by 20 June 2020).
9. The Applicant's evidence was that there were numerous emails and letters to the Respondent between 5 February 2015 and 26 February 2020 reminding the Respondent of his obligation to file the outstanding **Annual Statements**.

Legislative Framework

10. S1287A of **The Act** provides:

(1) *A person who is a registered company auditor must, within one month after the end of:*

(a) *the period of 12 months beginning on the day on which the person's registration begins; and*

(b) *each subsequent period of 12 months.*

Lodge with ASIC a statement in respect of that period.

(1A) *A statement under ss. (1):*

(a) *must contain such information as is prescribed in the regulations; and*

(b) *must be in the prescribed form.*

11. S1287A of The Act has been in effect since 1 July 2004 and may be satisfied by an RCA lodging an Annual Statement within the time prescribed.

12. Ss1292(1) of **The Act** provides:

The Board may, if it is satisfied on an application by ASIC for a person who is registered as an auditor to be dealt with under this section that ...

(a) *the person has:*

(i) *contravened s 1287A.*

By order, cancel, or suspend for specified period, the registration of the person as an auditor.

13. The prescribed form for an **RCA** to effect cancellation of their registration was and remains a Form 905 - Notification of ceasing to practise as, or to change details of, an auditor (**Form 905**). ASIC has been otherwise unable to cancel the registration of an **RCA** without a **CADB** order although recent amendments to **The Act** have conferred power on ASIC to suspend or cancel an **RCA** in limited circumstances¹.

Panel Finding

14. The **Panel** is satisfied on the basis of the documents and evidence filed that the Respondent failed to file **Annual Returns** as set out in the Application while he continued to be an **RCA** and the **Panel** finds that **The Contention** is established.

¹ See s1291 of **The Act**

15. The **Panel** is therefore empowered to make orders under ss1292(1) of the Act.

CADB's function when exercising its sanctions power

16. The principle that primarily guides **CADB** in the exercise of its sanction powers is protection of the public. In *Re Young and Companies Auditors and Liquidators Disciplinary Board* the Administrative Appeals Tribunal (**AAT**) said that the jurisdiction created by s1292 of **The Act** is of a protective nature and: *'it seems that the protection of the public should be the principal determinant of a proper order but that this may be achieved by an order affecting registration of the person in question. In other words, deterrence is an element of public protection.'*²

17. Further, in **CADB's** decision in *McVeigh*³ it was said that in exercising its powers:

- (a) The **Panel's** prime concern must be protection of the public.
- (b) The protection of the public includes the maintenance of a system under which the public can be confident that the relevant practitioner and all other practitioners will know that breaches of duty will be appropriately dealt with.
- (c) The personal circumstances of the practitioner are to be given limited consideration.

Appropriate Orders-relevant factors

18. As already noted, the parties were notified when the **Determination** was delivered that the **Panel's** indicative view was that it would make an order cancelling the Respondent's registration subject to seeking to provide the Respondent with a further opportunity either to appear before the **Panel** to make submissions and/or adduce evidence relevant to the **Panel's** exercise of discretion with regard to making any order, or to file written submissions and/or evidence for consideration by the **Panel**.

19. The Respondent has made no contact with CADB

20. The Applicant submitted that the Respondent has sought to remind the Respondent of his obligation to lodge **Annual Returns** while he continued to be an **RCA** and cancellation was appropriate in the circumstances that an **Annual Return** had not been lodged since 2013.

21. The timely lodgement of an Annual Statement by all RCAs is an important statutory requirement designed to ensure regular transparency of compliance by RCAs with their key statutory obligations.

² (2000) 34 ACSR 425 [80]

³ Determination of the Board, Matter No 10/ Vic08@12.7

22. The **Panel** accepts that whilst, it is always important to comply with any statutory obligation to lodge forms, there may be circumstances involving minor failures, or failures resulting from genuine errors or an understandable break down of systems, which may not warrant the making of an order cancelling an **RCA's** registration.
23. We accept the evidence establishes that ASIC has attempted to engage with Mr Litchfield in order to remind him of his statutory obligation to file **Annual Returns**, albeit unsuccessfully. ASIC also attempted to contact Mr Litchfield after the commencement of these proceedings to explain that if the Respondent were to request cancellation of his registration as a Company Auditor by filing a **Form 905**, it could result in the discontinuance of the CADB proceedings if accepted by the Applicant.
24. In the **Panel's** view the circumstances that have led the **Panel** to conclude that **The Contention** has been established, provide an appropriate basis for ordering cancellation of Mr Litchfield's registration as a Company Auditor with immediate effect, as protection of the public must be our primary consideration. The public is entitled to the firm expectation that **RCAs** listed on the public register may be contacted by the Applicant, and that they are capable of carrying out the functions and duties prescribed by **The Act**, including that contained in s1287A of **The Act**.
25. ASIC must be diligent in carrying out its responsibility as the corporate regulator to ensure the register of **RCAs** contains accurate and up to date information as this is the bedrock of the legislative framework under **The Act** for ensuring the maintenance of public confidence in **RCAs**, who play a key role in underpinning the stability of Australia's financial markets. As well as ensuring an **RCA's** contact information is regularly updated, the Annual Statement assists the Applicant to perform its functions under Part 9.2 of **The Act**, in particular providing ASIC with up-to-date information annually to enable it to carry out its monitoring function including:
- i. Whether any disciplinary action has been taken against the **RCA**.
 - ii. Whether any conditions imposed on the registration of the **RCA** have been complied with.
 - iii. Whether the auditor has breached rotation requirements under **The Act**.
 - iv. Details of audit work performed by the **RCA** over the previous 5 years.

Such information provides ASIC with a yearly snapshot, and is a useful regulatory tool enabling ASIC to take further action if an **RCA's** response raises

any “red flags”. Failure to lodge the Annual Statement on time obstructs the functionality of this tool with significant attendant risks to the public that audits may conducted by **RCAs** who do not meet the legislative requirements of registration.

26. There is no evidence that Mr Litchfield continues to carry on business as an **RCA**, although the assumption must be that he can do so at any time while he remains registered. The fact that Mr Litchfield may have retired and failed to attend to the necessary paperwork to enable ASIC to cancel his registration and remove his name from the register of Company Auditors does not in our view provide a basis for the **Panel** to impose a lesser sanction, as the protective nature of **CADB’s** jurisdiction circumscribes that a lesser sanction is only appropriate in circumstances where the **Panel** can be confident the **RCA** could resume fully their duties and obligations under **The Act** following a period of suspension. We have no such evidence before us in this matter.
27. While an order cancelling the registration of a Company Auditor of over 30 years standing may be perceived as punitive, the **Panel** does not make this order with that objective in mind. The principles set out in paragraph 16 acknowledge that when a **Panel** exercises **CADB’s** jurisdiction, the Respondent’s personal circumstances are to be given limited consideration and that the maintenance of a system under which the public is protected and can be confident that the relevant **RCA** and all other **RCAs** will know that breaches of duty will be appropriately dealt with must take precedence. It is these principles that, for the reasons set out above have informed this **Panel’s** decision to order that the Respondent’s registration as a Company Auditor be cancelled.

Order

28. The Panel orders that the registration of Mr Graham William Litchfield as a Company Auditor be cancelled with immediate effect.

Notice

29. Within 14 days of the date hereof, formal notice of this **Decision** will be sent to the **Respondent’s Address** as required by ss1296(1)(a) of **The Act**. A copy of the formal notice of this **Decision** will also be lodged with **ASIC** as required by ss 1296(1)(b) of **The Act** and **CADB** will cause to be published in the Gazette a notice in writing setting out the **Decision** as required by ss1296(1)(c) of **The Act**.

Maria McCrossin



Chairperson of the Panel
07 May 2021.