

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:02/VIC20

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Applicant

RONALD CHARLES BRAY

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)

DECISION

1. This is an administrative Application brought by ASIC with respect to Ronald Charles Bray, Registered Company Auditor #9709 (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 took reasonable steps to bring the existence of these proceedings to the notice of the Respondent.
4. The **Panel** is also satisfied that reasonable time was provided to ensure the Respondent Mr Bray 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. On 13 November 2020, ASIC received correspondence from Mrs Leanna Bray, who identified herself as Mr Bray's wife and Attorney. Mrs Bray's letter stated that Mr Bray suffered a serious stroke in 2013, is very incapacitated, has been assessed as legally blind and has been a resident at an aged care facility in Victoria since 2013. Mrs Bray asked that Mr Bray's registration as an auditor be cancelled.
6. Mr Crawford responded to Mrs Bray's letter on 23 December 2020 and explained that cancellation of Mr Bray's registration as an auditor could be arranged by completing the ASIC Form 905 which was enclosed with the letter and that this step would enable ASIC to withdraw these proceedings.
7. There has been no response to ASIC's letter dated 23 December 2020 nor the correspondence CADB has sent to the Respondent and his representative and no steps have been taken by the Respondent or his representative to appear in the proceedings.
8. With consent of the Applicant, the **Panel** therefore proceeded to consider the Application on the basis of the papers filed, that included ASIC's Application, submissions and relevant documentary evidence, on 19 March 2021.
9. The Applicant's contention is that the Respondent, within the meaning of

ss1292(1)(a)(i) of **The Act**, contravened s1287A of **The Act** on seven 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 s 1287A of **The Act** (**The Contention**).

10. 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 Bray or his representative, the **Panel** re-convened to make final orders on the papers filed by ASIC on 5 May 2021

Facts

11. 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 17 February 1983.
 - (ii) After 1 July 2004 the Respondent was required to lodge an **Annual Statement** by 16 March each year.
 - (iii) As of 4 September 2020, when this Application was filed, the Respondent had not lodged an **Annual Statement** for the following years:
 - (a) 17 February 2013 to 16 February 2014 (due for lodgement by 16 March 2014).
 - (b) 17 February 2014 to 16 February 2015 (due for lodgement by 16 March 2015).
 - (c) 17 February 2015 to 16 February 2016 (due for lodgement by 16 March 2016).
 - (d) 17 February 2016 to 16 February 2017 (due for lodgement by 16 March 2017).
 - (e) 17 February 2017 to 16 February 2018 (due for lodgement by 16 March 2018).
 - (f) 17 February 2018 to 16 February 2019 (due for lodgement by 16 March 2019).

- (g) 17 February 2019 to 16 February 2020 (due for lodgement by 16 March 2020).
12. The Applicant's evidence was that there were numerous emails and letters to the Respondent between 19 May 2014 and 26 February 2020 reminding the Respondent of his obligation to file the outstanding Annual Statements.
13. The Applicant's evidence was that a staff member conducted a search of the Applicant's database on 4 September 2020 and that search confirmed that the Applicant did not receive any response from the Respondent to any letters or emails it had sent to the Respondent between 5 February 2015 and 9 September 2020.

Legislative Framework

14. 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.*
15. S1287A of **The Act** has been in effect since 1 July 2004 and may be satisfied by a registered company auditor (**RCA**) lodging an **Annual Statement** within the time prescribed.
16. S1287A of **The Act** has been in effect since 1 July 2004 and may be satisfied by a registered company auditor (**RCA**) lodging an **Annual Statement** within the time prescribed.
17. 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 s1287A.*

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

18. The prescribed form for a registered Company Auditor 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 is otherwise unable to cancel the registration of a Company Auditor without a **CADB** order, although recent amendments to **The Act** have conferred power on ASIC to suspend or cancel an **RCA** in limited circumstances.¹

Panel Finding

19. 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 **The Contention** is established.
20. The **Panel** is therefore empowered to make orders under ss1292(1) of **The Act**.

CADB's function when exercising its sanctions power

21. 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*² 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.'*
22. Further, in **CADB's** decision in McVeigh³ 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

23. On the basis of **The Contention** established, **ASIC** is seeking an order cancelling the Respondent's registration as a Company Auditor.

¹ See s1291 of **The Act**

² (2000) 34 ACSR 425 [80]

³ Determination of the Board, Matter No 10/VIC08 at 12.7

24. 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**.
25. The Respondent nor his Attorney have made contact with the **CADB** since the Determination in this matter was issued to the parties. Despite the Respondent's attorney making a request in November 2020 that the Respondent's registration as a Company Auditor be cancelled, the relevant paperwork to effect cancellation of Mr Bray's registration as a Company Auditor, was not returned to ASIC, leaving the Applicant with no option but to continue its application to CADB to seek an order for cancelling Mr Bray's registration, that being the only alternative course open to it besides legal proceedings.
26. The Applicant submitted that the Respondent has been reminded 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 2014.
27. The timely lodgement of an **Annual Statement** by all **RCAs** is an important statutory requirement designed to ensure transparency of compliance by **RCAs** with their key statutory obligations.
28. In the **Panel's** view the circumstances that have led to the Panel to conclude that **The Contention** has been established, provide an appropriate basis on which to order cancellation of Mr Bray's registration as a Company Auditor, 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**.
29. 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 ensuring ASIC has 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 it to take further action if an **RCA's** response raises any "red flags". Failure to lodge the **Annual Statement** in a timely way obstructs the utility of this tool with significant attendant risks to the public that audits may be conducted by RCAs who no longer meet the requirements of registration prescribed by **The Act**.

30. There is no evidence that Mr Bray continues to carry on business as an **RCA**. An order cancelling the registration of a Company Auditor of over 35 years standing may be perceived as punitive when the evidence is that Mr Bray suffered the sudden onset of severe illness in 2013 that has prevented him from complying with his obligation to file an **Annual Statement** in the years since, however the **Panel** does not make this order with that objective in mind. The principles set out in paragraph 22 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 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

31. The Panel orders that the registration of Mr Ronald Charles Bray as a Company Auditor be cancelled with immediate effect.

Notice

32. 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

7 May 2021