

Explanatory memorandum

Section 202 B request for disclosure of Directors remuneration Take 2

Several CPA members have concerns that the section 202 B disclosure of Directors remuneration released earlier this year was deficient in several ways.

1. The first document released on 30 May 2017 (the day Tyrone resigned) did not include the 2 foreign subsidiaries.

2. Tyrone resigned on the same day the first document was released. It could just be a coincidence. This first section 202B disclosure only contained the amounts that had already been disclosed in the financial statements. Yet it took 32 days to prepare the disclosure and on the day it was approved the President resigns.

Accountant's who approach their work with professional scepticism would find these circumstances cause for taking a closer look.

3. An email from CPA Australia to the AFR stated that the disclosure did not need to include payments made to Directors in a capacity other than being Director. This is not correct, it needs to disclose all payments to the Director regardless of capacity.

Around 7 June an email from CPA Australia to the AFR in response to questions about the section 202 B disclosure stated:

"All executive directors (CPA Australia staff) of the Malaysian and Shanghai subsidiaries received zero remuneration for these roles. A non-staff director of the Malaysian subsidiary was paid a nominal amount of 5,000RM, or approximately \$1,600."

Which is incorrect because Directors of subsidiaries are included and payments in all capacities are included. Thus implying that the 30 May disclosure did not include payments to Directors in capacities other than Director.

4. When finally on 30 June the second section 202B disclosure was made it was a supplementary disclosure rather than a corrected document. Whilst CPA Australia did combine the numbers that was not in the audited section.

If the original disclosure plus the second disclosure was the complete information there would have been no cost saving in separating it. In fact they have combined the amounts but the auditor did not express an opinion on the combined numbers.

Thus we have 2 separate disclosures, with 2 differently worded basis of preparation and 2 differently worded audit opinions.

The corporations law does not allow this to be released as 2 separate documents. Not to mention the playing around with the wordings.

End result:

The end result is that the disclosure may exclude payments made to Directors of the Australian entities in a capacity other than Director. It may exclude payments made to the

Directors of the Australian entities from the foreign subsidiaries and possibly other payments.

Request for different auditors

Considering the following questionable actions of the existing auditor we request the board to use a different auditor:

- * Failure to disclose the substantial equity contribution to CPA Advice in the 2016 financial statements related party disclosure, hiding the extent of the losses.
- * Failure to pick up the incorrect reference to how the payments are made to Directors in the CPA Australia Advice financial statements.
- * Failure to list Suzanne Haddan amongst the KPM in the CPA Australia 2016 financial statements.
- * Failure to alert members to the fact that some Directors were paid amounts in excess of the limits in Article 45 of the constitution. Ever though both sets of financial statements stated the Directors were paid under that section.
- * Failure to pick up the fact that the first section 202B disclosure released on 30 May excluded 2 subsidiaries or knowing this restricting their audit to the basis of preparation which did not satisfy the requirements of section 202B, in full knowledge that the document was to be used as a complete satisfaction of the requirements of section 202B.

Request:

For these technical failings and ethically questionable actions of the Auditor and CPA Australia we request that the section 202B disclosure be redone correctly by the new Board of Directors and audited by a new Auditor.

CPA members have the right to the information and deserve much better than what has been given to us considering the above.

Correspondence with CPA Australia re Second S202B Request

----- Forwarded Message -----

Subject:Fwd: Re: 202B Response

Date:Wed, 29 Nov 2017 16:04:51 +1100

From:Andrew North <andrewnorth64@gmail.com>

Organization:North Financial Advisors Pty Ltd

To:peter.s.wilson@cpaaustralia.com.au, Andrew.Kaynes@cpaaustralia.com.au

CC:Glen Hasselman <glen@freeaccountingsoftware.com.au>, Jen Dalitz <jen@jendalitz.com>, robert@druh.com, willcamphin@gmail.com, hutcheson.john@bigpond.com, john@hutchesonjohn.com, mail@bencollins.com.au, ramanbhalla22@yahoo.com, artchan@tpg.com.au, peter@bizintel.com.au, 'Brett Stevenson' <bstevenson100@gmail.com>

Peter Wilson and Andrew Kaynes,

It is only fair this e-mail from Glen Hasselman is sent to Peter Wilson considering Peter was the original addressee of the latest section 202B request.

I now add my comments.

Glen makes pertinent points that are blindingly obvious and logical. Yet the outcome is obstruction, denial, prevarication, procrastination. And maybe a whiff of cover up. Not least compliance with Corps Act.

Completely unprofessional behaviour.

What is there to hide?

Wouldn't it be quite funny if the IRP made a real finding that the above behaviour was conducted by the old board, and now conducted by the new board and at all times has been conducted before and after by the executive. Ironic.

Change should start with you - Peter Wilson. Take responsibility now and comply with corporations law.

Andrew, I realise you are being directed by persons who have previously been involved in this debacle and are responsible for making this mess. Messrs Laughton and Awty.

I understand you report to one or both of these persons, both of whom were responsible for the late lodgement of the CPA Advice S388 that sought to deny members proper disclosure of the mess in CPA Advice. I put it to you there is a conflict of interest in these two persons directing your actions to effectively cover up previous wrong doings.

I do not absolve you of the professional responsibility to sort this mess out. You personally I would expect better from being a legal practitioner. You and Peter need to look at APES 110

and consider your actions with regard to independence, conflict of interest and public interest.

I'm seriously disappointed with the activities of CPA Australia evidenced by the executive with some of the worst form involved in this issue still influencing the outcome of policy and non-disclosures.

Members are becoming increasingly concerned that Peter Wilson is continuing where the previous executive and board left off.

What has changed? With regard to ignoring members concerns nothing.

I am very very disappointed but will not give up this is going further.

Regards
Andrew North

----- Forwarded Message -----

Subject:Re: 202B Response

Date:Tue, 28 Nov 2017 16:43:53 +1100

From:Glen Hasselman <glen@freeaccountingsoftware.com.au>

To:Robert Czernkowski <robert@druh.com>, Andrew

Kaynes <Andrew.Kaynes@cpaaustralia.com.au>

CC:willcamphin@gmail.com <willcamphin@gmail.com>, John Hutchenson

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Hutcheson <john@hutchesonjohn.com>, Ben Collins <mail@bencollins.com.au>,

Raman Bhalla <ramanbhalla22@yahoo.com>, Arthur Chan <artchan@tpg.com.au>,

Andrew North <andrewnorth64@gmail.com>, Peter

Polgar <peter@bizintel.com.au>, Brett Stevenson <bstevenson100@gmail.com>

Andrew Kaynes,

As you would understand the letter you have attached from your lawyers dated 8 November 2017 does not contain any legal opinion that states CPA Australia did comply with the section 202B request. What it does state is that if CPA Australia did comply with the first request then it would not need to do it again.

Even that opinion is not a literal reading of the act and considering the circumstances in which the previous management have been discredited, with all the previous Directors resigning and the previous CEO terminated, it's understandable that members would want this section 202B request done again.

There were many issues raised with the original one and you have not responded to all of those concerns. See attached.

Even in your letter you can only say that all Directors were included not that all payments to all Directors were disclosed. I put it to you that the first section 202B disclosure did not include all payments to Directors and only included payments to Directors in their capacity as Director. This is evidenced by an email from CPA Australia to the AFR around 7th June in

which CPA Australia stated their opinion that it was not necessary to include payments in other capacities.

“All executive directors (CPA Australia staff) of the Malaysian and Shanghai subsidiaries received zero remuneration for these roles. A non-staff director of the Malaysian subsidiary was paid a nominal amount of 5,000RM, or approximately \$1,600.”

Therefore I presume the legal advice that you refer to is dated after 7th June. Unfortunately the first section 202B disclosure was released on 30 May at a time when CPA Australia was of the opinion that they did not need to include payments in other capacities.

Recently we learned about benefits such as Australian open tickets.

Your boss, Adam Awty was involved in this at the time. Is this the person who has asked you to forward this letter today?

I am aware that in your discussion with Andrew this morning, and in your letter, you undertook to provide the legal advice that you had received on this matter. Please forward the legal advice that you have received which presumably states that CPA Australia did comply with the section 202B request earlier this year. I really cannot understand why it would be so difficult to forward the document, unless of course it does not exist or the lawyers expressed some concerns.

Regards,

Glen Hasselman

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----- Email Message -----

Subject:202B Response

Date:Tue, 28 Nov 2017 02:48:00 +0000

From:Andrew Kaynes <Andrew.Kaynes@cpaustralia.com.au>

To:Andrew Kaynes <Andrew.Kaynes@cpaustralia.com.au>

Dear Members,

I am writing to you as the Company Secretary of CPA Australia and I am instructed to send a copy of the letter and legal advice that I have sent to Andrew North this morning, as you were all signatories to the request for a further 202B response from CPA Australia.

Kind regards

Andrew

Andrew Kaynes | Company Secretary | CPA Australia

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-----Email Message -----

Subject:RE: Record of phone call 20112017 Re new section 202B

Date:Mon, 27 Nov 2017 23:51:25 +0000

From:Andrew Kaynes <Andrew.Kaynes@cpaaustralia.com.au>

To:'Andrew North' <andrewnorth64@gmail.com>

Hi Andrew,

My apologies for my tardy response to your email.

Please find attached the CPA Australia response letter to the 202B request (along with the King Wood Mallesons advice on the issue).

In the interests of transparency, I will be arranging for the attached letter and the advice to be sent to all the signatories to the 202B request.

Kind regards

Andrew

Andrew Kaynes | Company Secretary | CPA Australia

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-----Email Message -----

From: Andrew North [mailto:andrewnorth64@gmail.com]

Sent: Monday, 27 November 2017 4:41 PM

To: Andrew Kaynes <Andrew.Kaynes@cpaaustralia.com.au>; Peter S. Wilson <peter.s.wilson@cpaaustralia.com.au>

Cc: Glen Hasselman <glen@freeaccountingsoftware.com.au>; Jen Dalitz <jen@jendalitz.com>

Subject: Re: Record of phone call 20112017 Re new section 202B

Hi Andrew, I don't have a record of your response to me email of 20/11/2017.

Can I please have an update?

Regards
Andrew

-----Email Message -----

On 20/11/2017 2:02 PM, Andrew North wrote:

Hi Andrew, (Kaynes)

Thank you for your phone call this morning, 20 November 2017, on behalf of Peter Wilson, to whom the original request was issued.

Given the importance of the phone call it is appropriate for me to give you notes as to my understanding of our conversation. If any of these notes are incorrect please advise me soonest.

My understanding of our call was:

You have acknowledged receipt of a compliant section 202B request on 25/10/2017.

Because a compliant financial year 2016 section 202B has been requested by 141 members of CPA Australia, and has been facilitated by Jen Dalitz and Glen Hasselman, who I CC on this correspondence, it is imperative we are able to send an update as to the status of the request.

You advised a new section 202B is not required. You have legal advice obtained at some point in the past stating the previous section 202B request was complied with.

You do not have legal advice that this new request is not required to be complied with.

I asked you who obtained the legal advice. I asserted it was the old board and Adam Awty.

I advised I found it in comprehensible that proper legal advice purports to conclude what has transpired complies with corporations law.

I advised this request is being made to the new board and it will be their duty to comply with the corporations law. (I suggest CPA don't rely on the actions and legal advice of the discredited old board).

Whether it does or doesn't members have been served badly because of modified basis of preparation and incorrect audit opinion wording. Adam Awty advised me in writing the first section 202B was deficient.

You stated the alternative, preparing a new section 202B and having it audited would be too costly in preparation and distribution to members.

I pointed out the work of gathering the financial information should already have been done correctly. How hard can it be to request figures from ledgers? The work should already have been done if it was done properly. The additional work then is

to prepare a single compliant section 202B. And have this document audited. Without modifications or limitations.

I gave you a brief history of the 1st deficient attempt at a section 202B, which was issued by the old board. It was not signed and dated. Nobody took responsibility because it was deficient.

It was issued the same date the previous chair Tyrone Carlin resigned.

I explained why the 1st attempt at the section 202B was deficient. Primarily domestic directors disclosures were not made relative to international activities either as a director or in another capacity eg contractor/supplier/consultant/author. Other emoluments for any other purpose must be included.

I explained the 2nd attempt at the section 202B uncovered previously undisclosed director payments. Further discrediting the 1st section 202B.

The two attempts were in different formats, with differing basis of preparation and different audit opinions.

How can 2 different documents ever make a whole?

Adam Awty himself (in writing) has confirmed the 1st attempt at the section 202B was deficient. He agreed that the 1st attempt missed all the international aspects. He failed to acknowledge the other pertinent deficiencies.

I have advised you that the 1st attempt at the section 202B had a modified basis of preparation and a modified audit report, such that what was produced was never to be considered a section 202B response. In response Deloitte modified the audit report and omitted mention of the document even being a section 202B document.

I have advised you that the 2nd attempt at the section 202B was itself deficient, on the basis that it was designed with a modified basis of preparation as a bolt on to the 1st section 202B. Under no circumstances should the deficient 1st section 202B and a bolt on 2nd section 202B ever comprise a whole compliant section 202B.

The 1st board, (old board), has breached corporations law and I have complained to ASIC and Deloitte on these matters.

The 2nd board, (new board), have received a properly constructed section 202B request and now have the opportunity to comply with corporations law at the 1st instance.

In our phone call, in the interests of members, you and I agreed any further breaches of corporations law are to be avoided.

I made it very clear to you on the phone it is in the best interests of members to have a new section 202B completed and audited. This should be done as soon as possible.

You advised me that a voluntary section 202B will be provided by the board for the financial year 2017.

My view was that this potentially a good step.

Of course you are assuming it is a single section 202B document, using the correct basis of preparation and having this audited with an appropriate audit opinion. This being completely unlike the financial year 2016 debacle.

You advised you will undertake further enquiries regarding the matter, you will make your own decision, but yet you are still under direction from others as to the ultimate course of action.

You advised you wanted to act in the best interests of members first and foremost. We both agreed this was appropriate.

After the call ended, I considered the new information that directors have received other entitlements in FY 2016- á la the VIP Australian Open tennis packages that members had no knowledge until Peter Wilson's email of last week, and that these were obviously benefits accrued to past Directors and Executives (FY 2016). These should have been on a compliant section 202B request as payments received for another purpose.

FBT legislation would dictate this should have been reported so they should have the benefit readily to hand to add in to the new section 202B.

These disclosures were missing on all previous section 202B documents.

I await your further advice.

--

Regards
Andrew

Check out my new website: www.northfinancialplanning.com.au

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27 November 2017

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Andrew North
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By email: andrewnorth64@gmail.com

Dear Andrew,

I refer to our phone conversation of 20 November 2017 concerning your email of 23 October 2017 and attached section 202B directive seeking disclosure of the CPA Australia group's directors' remuneration for the year ended 31 December 2016.

I have further considered the request and reiterate the advice provided to you in our phone conversation that CPA Australia has already provided audited statements of the CPA Australia group's directors' remuneration for the year ended 31 December 2016 in response to an earlier section 202B directive issued in April 2017.

CPA Australia's response to that earlier request was prepared and sent to all persons entitled to receive notice of CPA Australia general meetings. As such, CPA Australia has already discharged its obligations under S 202B (1) of the Corporations Act 2001 (Cth) in relation to the year ended 31 December 2016 in preparing and issuing the 2016 Remuneration Statements. The 2016 Remuneration statements continue to be available to all members, and the public, at CPA Australia's website and are a complete response to your request.

In our phone conversation, in the interests of transparency, I offered to make available to you a copy of CPA Australia's external legal advice on this matter. For the record, I note that you were dismissive of the advice as it differed from your position. I will again offer to make the advice available to you and the signatories to your 202B request if you are interested in understanding the CPA Australia position on this matter.

Finally, I advise that CPA Australia is committed to proactively disclosing on its website the CPA Australia group's directors' remuneration for the year ended 31 December 2017 as soon as practicable in early 2018.

Kind regards
Andrew



Andrew Kaynes
Company Secretary

Duplicative section 202B directive

8 November 2017

To Craig Laughton, General Counsel, CPA Australia Ltd

From Will Heath, King & Wood Mallesons

STRICTLY CONFIDENTIAL AND PRIVILEGED

1 Background

October directive under section 202B

On 23 October 2017, Mr Andrew North sent CPA Australia Ltd (**CPA**) a copy of a directive issued by certain CPA members under section 202B of the *Corporations Act 2001* (Cth) (**Act**) seeking disclosure of the CPA group's directors' remuneration for the last financial year ended 31 December 2016 (the **October Directive**).

CPA has already provided audited statements of the CPA group's directors' remuneration for the last financial year ended 31 December 2016 (**2016 Remuneration Statements**) in response to an earlier section 202B directive issued on 28 April 2017 (the **April Directive**).

Copies of the 2016 Remuneration Statements were sent to CPA members in accordance with section 202B of the Act, and electronic copies of the 2016 Remuneration Statements are available at <https://www.cpaaustralia.com.au/~//media/corporate/allfiles/document/announcements/s2028b-combined-doc.pdf?la=en>.

You have asked us to consider CPA's options in relation to the October Directive.

2 Summary

October Directive is duplicative of April Directive

The October Directive is in substance the same as the April Directive and we understand the 2016 Remuneration Statements are a complete response to the October Directive, as they were and remain a complete response to the April Directive.

Therefore, we recommend CPA respond to Mr North clarifying with him that:

- The October Directive replicates the earlier April Directive.
- The 2016 Remuneration Statements are a complete response to the October Directive, as they were and remain a complete response to the April Directive.
- In response to the April Directive, CPA has already prepared and sent to all persons entitled to receive notice of CPA general meetings the 2016 Remuneration Statements which relate to the financial year ended 31 December 2016.
- CPA has already discharged its obligation under section 202B(1) in relation to the financial year ended 31 December 2016 in preparing and issuing the 2016 Remuneration Statements.
- It is not in CPA's best interests or the interests of its members as a whole for CPA to spend further time and resources re-printing and re-sending the 2016 Remuneration Statements in response to the October Directive.
- This is especially the case where electronic copies of the 2016 Remuneration Statements are available on CPA's website at:

To be sure, while it is possible to argue that, on a literal interpretation of section 202B a company such as CPA should comply with every valid repeated request for a remuneration statement to be prepared in respect of a financial year, we think such a literal interpretation is incorrect as:

- It could result in an absurd and materially adverse administrative and financial outcome for a company that receives multiple requests to prepare and issue to all members the same directors' remuneration statement. The purpose of the Act and section 202B in particular is not to create a mischief for public companies. In CPA's case, responding to a directive requires issuing the statement to over 150,000 members.
- Section 202B(1A) states that an offence based on subsection 202B(1) is a strict liability offence and it would be a capricious result for the Act to require a company to comply with each and every subsequent duplicative request for directors' remuneration statement on pain of committing a strict liability offence if the company has already provided such a statement in respect of the relevant financial year.

Further information in relation to section 202B and other concerns raised in the October Directive are set out below.

3 Further observations on section 202B

The following table summarises CPA's obligations under section 202B.

Summary of CPA's obligations under section 202B of the Act		
	Issue	Overview of CPA's obligation
1	Whose remuneration must be set out in the remuneration statement?	CPA must prepare a statement of the remuneration paid to each director of: <ul style="list-style-type: none"> • CPA, • a subsidiary of CPA, or • any other entity controlled by CPA.
2	When must CPA comply with a valid request under section 202B(1)?	CPA must comply with the directive as soon as practicable.
3	What financial year must be covered?	The remuneration statement must report on the directors' remuneration for the last financial year before the directive was given. For all directives given to CPA on or before the end of 2017, this will be CPA's financial year ended 31 December 2016.
4	Audit	CPA must have the remuneration statement audited.
5	Who is entitled to receive the remuneration statement?	CPA must send a copy of the audited remuneration statement to each person entitled to receive notice of CPA general meetings.

4 Observations on incidental concerns raised in October Directive

The email from Mr North attaching the October Directive states that "[m]any CPA members have concerns that the Section 202B disclosure of Directors remuneration released earlier this year was deficient in several ways".

To substantiate those concerns, Mr North's email attaches a document entitled "*Supporting materials Complaint to ASIC CPA Australia has prepared the S202B incorrectly*" (the **Supporting Material Document**).

In the Supporting Material Document the following specific concerns appear to be raised:

- (a) that the 2016 Remuneration Statements did not disclose remuneration paid to directors of all of CPA's subsidiaries and controlled entities;
- (b) that an incorrect accounting standard was adopted, and no statement of materiality was provided, by the auditors of the 2016 Remuneration Statements; and
- (c) that the 2016 Remuneration Statements are not signed by CPA's directors.

As discussed with you, we think the responses to the concerns in the Supporting Material Document are as follows:

- (a) The 2016 Remuneration Statements disclosed remuneration paid to the directors of all of CPA's subsidiaries and controlled entities, including CPA's Malaysian and Shanghai-based subsidiaries. That is, the Remuneration Statements covered all of CPA's subsidiaries and controlled entities, as required by the Act.
- (b) CPA complied with its obligation to have the 2016 Remuneration Statements audited under section 202B(2)(b) of the Act. The 2016 Remuneration Statements were audited by Deloitte and a report from Deloitte was included in the 2016 Remuneration Statements. In particular, Deloitte's report states that it conducted its audit of the 2016 Remuneration Statements in accordance with the Australian Auditing Standards.
- (c) There is no requirement for CPA's directors to sign the remuneration statements. Under the Act, remuneration statements must be prepared by the company (i.e. CPA) and audited. The auditors of the 2016 Remuneration Statements, Deloitte, signed their audit report.

Will Heath | Partner

King & Wood Mallesons

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