

## CPA Australia meeting with “Spill team” 11 December 2017

### Meeting notes

#### Attendees

Peter Wilson – Chair of board of Directors  
Merran Kelsall – Deputy Chair of board of Directors  
Craig Laughton – Legal Counsel

Jen Dalitz - “Spill team”  
Andrew North - “Spill team”  
Glen Hasselman - “Spill team”

Glenn Ahern (Pre meeting) Requested not to record the meeting.

Post meeting comment by GH This was probably raised because we had expressed a preference to record the meeting so that it could be shared with other CPAs that are interested in it. I have compiled these notes from my hand written notes in the meeting and memory. It will be circulated to others in attendance for comment. I guess these remain GH's notes.

Peter Apologised that it had taken so long to organise the meeting. It was just about availability. However, meeting at this time will have the advantage that he is more familiar with the issues and can have a more in depth discussion.  
  
Peter began discussion by referencing Jen's letter of 6<sup>th</sup> December 2017 re Alex Malley 2GB session and declared he has not spoken with Alex Malley for 16 months and he does not have conflict of interest.

Jen Dalitz Raised the issues reported in the AFR this morning about Peter's AHRI's (which Peter also chairs) involvement with CPA.

Peter Wilson AHRI consulted with about 20 people in relation to strategy around the area of professional certification of the AHRI members and Alex Malley was just one of them.  
  
Peter stated he has no relationship personal or professional with Alex Malley. He has not seen Alex Malley for 16 months.  
  
AHRI alliance with CPA Australia has ended. The alliance was confirmed as ended once Peter and John joined the board.  
  
AHRI and CPA Australia did joint research and each association managed their own membership lists. They shared the output of the research and when it came time to publish CPA Australia

decided not to publish, so AHRI published the results on their own. The cooperation effectively ended at that point.

Peter confirmed prior to his appointment as Director of CPA Australia that the cooperative agreement has ended.

Jen Members have concerns because we thought we were getting an independent new board and now we are questioning your independence as we find out you have had a relationship with the old board.

Peter “That’s your issue”  
Also stated Andrew of having a “very naive” understanding of relationships.

Andrew and Glen Posed some further questions about the AHRI and CPA. In particular GH. E.g. is this just the same as the previous situation where Graeme Wade being chair of the NBL had a sponsorship from CPA Australia

Peter Wilson and Craig Laughton No there was never a commercial relationship. It was an MOU no money changed hands. Peter referred to the arrangement as an “informal MOU”

Post meeting comment It has to be said that from the first response from Peter the tone was confrontational, with all parties talking over the top of each other.  
To the point that I would expect that most normal people would not continue to give feedback and simply walk away. Jen, Andrew and myself seem to not be normal people as we continued with it.  
Further questioning was met with even more intense responses. Upon reflection the questions are valid and Peter seems to have accepted this by his actions of declaring that the MOU with AHRI has ended. We were unaware that it had ended and asserted that this was not announced anywhere. We had to be almost apologetic for merely asking the question!

Action item Jen requested that details be provided to CPA Australia members as to when the arrangement ceased. Craig undertook to advise.  
- Has transpired by various communications

Glen I suggested that Peter was being very confrontational and there was little “In good faith” about the meeting.

Also suggest that Peter may not be the best person to scrutinise the actions of the old board.

- Peter Peter gave an example of how he had taken action against a fellow employee
- Jen Dalitz Explained how members felt about the past year and our reputation being trashed by the actions of the old board.
- Andrew North Take the old board to court for professional negligence and uncommercial activity relative to the Alex Malley termination payment
- Peter I refer you to the independent panel there is no basis for claiming the money from Alex Malley
- Andrew and Jen Peter you have misunderstood our response to the IRP report. We are not talking about claiming the money from Malley. We are talking about the directors and officers claim against the old board on the basis of failing to take reasonable care.
- Jen Dalitz Did Alex Malley sign a deed of release. Referred to his appearances on 2GB radio.
- Craig Laughton Yes. A pretty standard deed of release.
- Andrew North Why has legal action not been taken. An injunction should be sought.
- Craig When you take legal action you need to have a material breach and a good chance of success. Craig is satisfied that legal action is not appropriate at this stage.
- Post meeting comment The above may not be the exact terminology but basically even though technically there may be a breach it's not at the level that would warrant legal action.
- Merran Expressed concern that legal action may even simply give Alex Malley more air time
- Glen Said that CPA Australia seemed to concerned with managing the way they look rather than doing the right thing. But perhaps this particular example is not the best example of that.

Andrew How about we take the old board to court. In relation to the termination payment to Alex Malley.

Craig That would be in relation to the s180 s181 business judgement rule... acting in good faith...

Andrew Is Craig conflicted? Through your involvement the termination of Alex.

Craig As General Counsel of CPA Australia my obligation is to the court. (As opposed to CPA Australia or the Directors)

Post meeting comment This is some legal professional thing where the obligation is not solely or even primarily to the employer.

#### **Section 202B:**

Andrew Initial discussion about the issues with the original section 202B.

Peter Section 202B is done.

Craig From an ASIC perspective this is closed.

Andrew We want a correctly prepared document. The document we got possibly missed payments. The examples given were payments to the Directors of the Australian companies in capacities other than Director and payments to the Directors of the Australian companies from the overseas companies. By splitting the disclosures into 2 documents it potentially excludes some payments.  
The first disclosure was not even audited as a section 202B and the second one should not have been signed off by Deloitte either.

Merran Section 202B disclosures are quite rare and that's why they had trouble with it. Took advice from the auditor, Deloitte on how to prepare it and they did not even know.

Summary After quite a long discussion some agreement was reached that

there may be an issue with the section 202B disclosure. However, the Directors would not agree to redo it and will get back to us.

We explained that because it's been done as 2 documents payments may have been missed. The first document was not even audited as section 202B disclosure. They claimed that it did not matter that it was 2 documents and challenged us to state some examples of what had been missed.

We actually had a couple possible examples, but the point is that we don't know. The section 202B disclosure is supposed to tell us, not us tell them.

Glen If/when redone Deloitte should not audit it. There is a self-review conflict of interest as they were involved in the first one and would be hesitant to find something wrong with the new one.

Andrew/Glen Also requested the original legal advice to CPA Australia that they had complied with first section 202B request.

Andrew Questioned whether the legal advice exists.

Post meeting comment It's unclear if the Directors agreed to give us this. But they did agree to give us their legal advice in relation to "this matter" in a separate letter to Andrew.

Action item for CPAA CPA Australia is to forward their legal advice about how their original two responses complied with the requirements of section 202B.

Action item for CPAA CPA Australia is to advise if they accept that the section 202B disclosure was done incorrectly and if they agree to redo it.

Post meeting comment We may actually have a situation here where the Directors knowing that the law has not been complied with are refusing to give members what they are legally entitled to. I say that because this is not the first time this issue has been raised. Hopefully they will comply with the request to redo the section 202B.

CPA Australia has stated they honestly think they are complying. However, took on board comments from us and are making additional enquiries.

**Former CEO  
Termination**



Post meeting comment

It's probably a really good Christmas card list to be on.

The above is in relation to things Craig has basically had to force the old board or other interactions Craig has had with the old board.

Craig has stated that he is unequivocally here to act in the best interests of the Company and has a legal obligation to the court to do so.

Andrew

Salaries at the levels below executives are too high. The number of people reported in certain salary brackets is very high.

Craig

Peter has taken some direct action to address this. Explained that salaries (including his) have been reduced. Benchmarking etc.

Andrew

Well that is a good news story why did that not get published anywhere?

Craig

It's confidential to those staff members.

Andrew

So I guess we will see that when this next financial report comes out.

#### **IRP:**

Andrew

IRP, restructuring of the election process

Merran

We are reporting to the membership as a whole our Directors response to the IRP report. We are not going to just release information to a sub group of members.

Post meeting comment

I think it's a reasonable approach.

Glen

Discussion about independence of the IRP. GH suggested that they are not independent. This was rejected by the Directors. Examples given were the work the IRP did with the old board on the appointment process of the new board and that Ian McPhee stated in our meeting (with Spillers group) that he would as a standard practice run his findings by the client for feedback before

publishing. Glen made the assertion that in this case the client was not the Directors but rather the members.

- Craig Ian McPhee did run the report by Craig in relation to the Alex Malley termination parts to make sure it was not going to cause any legal issues.
- Peter Stated that the IRP did not run any findings by him and he read the report at the same time as any other member.
- Merran Said that the Board – on behalf of members – is the client and it is appropriate on that basis for IRP to confirm findings to the board.
- Glen Suggested that the Directors should do their assessment of the independence of the IRP and include this in their report that gets released to all members.
- Peter Agreed that it was a good idea.
- Glen In relation to the IRP report assessment about the termination payment of Alex Malley there was no documented reason by the old board. They should ask Jim Dickson and Sharon Portelli who are still on the board and report the reason to members.
- Jen Who benefited from the tennis and Rabbitohs sponsorships show us the FBT register. And is this included in the s202B?
- Glen There was a survey that was put out recently and the questions were so bad it would only tell you if members are dissatisfied or extremely dissatisfied. I can't see you getting any useful information from it.
- Peter I disagree I am a statistician and I think we will get a lot of useful information from it.
- Glen One of my pet hates is that advertising is not split between the 3 areas being promoted e.g. promotion of Alex Malley, promotion of CPA Australia in seeking new members and promotion of members and their interests/services.  
There is a question in the survey about whether CPA Australia spends the right amount on advertising. How much does CPA Australia spend on advertising.
- Peter It was broken down in the IRP report.

- Glen The question in the survey just asked if the correct amount is being spent on advertising. Without splitting it out you'll probably get a lot of members saying it's too much but the real answer could be it's the correct amount but being spent on the wrong things. The IRP report came out after the survey so information wasn't available for members to get the breakdown.
- Merran Agreed
- Peter (Some discussion about what the disclosures should be in the financial statements. Along the lines of what do you want to see as the line items in the financial statements)
- Jen We've invested a huge amount of time in working through all the issues and it's not just us. You guys should seek our input to these things.  
Integrated reporting has hidden things like the exec salaries which were staying fairly static but the number of execs went down and this hid the level of increases that certain execs were getting.
- Jen The average member cannot be expected to work through the IRP report to get the advertising expenditure or the integrated report.
- Merran Is there any particular info you would like to see disclosed in the line items of the financial statements.
- Glen Perhaps you could say to people this is what it is going to look like and they could give feedback.

**Section 173**  
**Members register:**

- Glen Earlier in the year Brett requested a members register. However, the members register was deficient in 2 ways. Firstly there was no member status and it did not break down 7 years of data identifying those that left and had joined or deceased
- Craig Stated that member status is not required as it's not in the corporations act. In addition the majority of the Senate enquiry supported that approach in relation to email address.

Glen It's required because the corp act specifies that we get a copy of the members register and the information in the act is the minimum that is required to be on the register. But the constitution states that the member status is recorded on the members register, so when we get a copy of the register it should be on it.

As only approximately 120,000 people are entitled to vote, the register would need to identify how to separate the 40,000 that can't vote, otherwise the register is incorrect.

Craig You have to read the explanatory memorandum to the section of the corp act

All A fair bit of discussion ensued

Glen Asked the Directors to confirm if it was their final position to be communicated to the email list

Peter and Merran Decided to take the question on notice

Glen The second deficiency of the members register is that it did not include the past members of the previous 7 years, or however long is required, and that is a requirement of the corp act.

Peter and Merran Also take that on notice

Andrew They should reissue the members register with the full information provided and a refund of the money funded by members through Brett Stevenson.

Action item for CPAA CPA Australia is to advise if they accept that Member Status (ASA/CPA/FCPA/Life/honorary) should be on the members register when it is provided to the members by a request under the Corporations Act.

CPA Australia to advise if they accept that people who have been members for the last (?) many years need to be included along with the date they left and other details from the Act.

If the above is accepted then I'd expect a refund of the fee paid for the members register is warranted. As these details were not provided.

Glen Will the board facilitate an all member email on behalf of us to get overcome concerns about privacy.

Peter

We will take that on notice

Action item for  
CPAA

CPAA to advise if they will facilitate an all member email