

IN THE MATTER of an Application by the Australian Securities and Investments Commission to the Companies Auditors Disciplinary Board pursuant to section 1292 of the Corporations Act 2001

MATTER NO: 01/VIC21
Medium Neutral Citation: [2025] CADB 2

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION (ASIC)
Applicant

SIMON CHRISTOPHER TRIVETT
Respondent

NOTICE OF DECISION AND REASONS
in relation to exercise by CADB of its powers under s1292 of the Corporations Act.

The Notice of Decision and Reasons will be given to the Respondent under s1296(1)(a) of the Act and lodged with ASIC under s1296(1)(b) of the Corporations Act.

30 June 2025

Panel:

Maria McCrossin (Panel Chairperson) (*prior to 3 March 2024*)

Tony Marks (Business Member)

Ann-Maree Robertson (Accounting Member)

Hearing 6-9 December 2022, 26 November 2024

Counsel and instructors:

Ms. Rachelle Seiden SC and *Mr. Ian Fullerton* instructed by *Australian Government Solicitor* for the Applicant

Mr. Jonathan Evans KC and *Mr. J Strong* instructed by *Maddocks* for the Respondent

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NOTICE OF DECISION

Simon Christopher TRIVETT

Corporations Act 2001 (Cth)

SECTION 1296(1)

Following a hearing held pursuant to section 1294 of the *Corporations Act 2001 (Cth)* (**Corporations Act**) on 26 November 2024, a Panel of the Companies Auditors Disciplinary Board (**the Board**) decided that it was satisfied, on an Application by the Australian Securities and Investments Commission, that **Simon Christopher TRIVETT**, a registered auditor, failed, within the meaning of S 1292(1)(d)(ii) of the Corporations Act, to carry out or perform adequately and properly the duties or functions required by Australian law to be carried out or performed by a registered company auditor in connection with the audit of the financial report of the consolidated entity comprising iSignthis Limited and its subsidiaries, and decided to exercise its powers by making the following orders:

1. Pursuant to ss 1292(9)(a) of the *Corporations Act 2001 (Cth)* (**Corporations Act**), Simon Christopher Trivett is admonished in relation to the audit by Grant Thornton of the financial report of iSignthis Limited and its subsidiaries (ISX) for the year ended 30 June 2018 (FY18 Audit), in so far as he failed to carry out or perform adequately and properly duties or functions as Review Auditor for the FY18 Audit, while having regard to the fact that, in accordance with an undertaking given by Mr Trivett to the Federal Court of Australia on 26 October 2023, Mr Trivett agreed not to perform the duties of a registered company auditor in the period 1 November 2023 to 31 October 2024.
2. Pursuant to ss 1292(9)(b) and (c) of the Corporations Act, within 7 days of the date of this order, Mr Trivett provide to the Australian Securities and Investments Commission undertakings in the form attached as Schedule 1 to the Reasons for Decision.
3. Pursuant to s 223 of the *Australian Securities and Investments Commission Act 2001 (Cth)*, Mr Trivett pay the Applicant's costs in the fixed sum of \$490,000 within 28 days of the date of this order.

Dated: 30 June 2025

Kathy Vaiano

Registrar

REASONS FOR DECISION

Introduction and Outline of Application

1. This is an application by the Australian Securities and Investments Commission (ASIC) for order/s under S 1292 with respect to the registration as a company auditor of Mr. Simon Christopher Trivett (Mr. Trivett) (Application).
2. Mr. Trivett has been registered as a company auditor since 19 July 2002 (registration #000220954). His registered address is Grant Thornton Audit Pty Ltd, Grant Thornton Tower 5 Level 22, 727 Collins St Docklands, Victoria 3008 (Grant Thornton).
3. Pursuant to S 324AF(2) Corporations Act (the Act) and paragraph 220(7)(c) of the Australian Auditing Standards (ASA) Mr. Trivett was the Review Auditor and the Engagement Quality Control Reviewer respectively (Review Auditor), for the audit by Grant Thornton of the financial report of iSignthis Limited and its subsidiaries (ISX) for the year ended 30 June 2018 (FY18 Audit). Details of those provisions are set out in paragraphs [10](#) and [11](#).
4. In support of the Application ASIC alleges, based on four contentions outlined in a Further Amended Concise Outline filed in these proceedings, that Mr. Trivett has, within the meaning of S 1292(1)(d)(ii) of the Act, failed to carry out or perform adequately and properly duties or functions as Review Auditor for the FY18 Audit.
5. This matter was initially heard in Melbourne over four days from 6-9 December 2022. Ms. Rachelle Seiden SC and Mr. Ian Fullerton appeared on behalf of ASIC and Mr. Jonathan Evans KC and Mr. Strong appeared on behalf of Mr. Trivett.
6. Thereafter, the proceedings before the Board were substantially delayed. The history of the matter since the December 2022 hearing is as follows:
 - a. The Panel Determination, upholding the basis for the Application was made and delivered to the parties on 7 September 2023;
 - b. That Determination is set out in paragraphs 1-5 and 7-361 of these Reasons. In that Determination, the original Panel recorded that they were satisfied that Mr. Trivett had, within the meaning of S 1292(1)(d)(ii) of the Act, failed to carry out or perform adequately and properly duties or functions of an auditor for the FY18 Audit;
 - c. On 6 October 2023, the Respondent commenced proceedings against the Board and ASIC in the Federal Court of Australia, challenging the validity of the Panel's decision on the basis of lack of jurisdiction and seeking to

restrain the Board from taking any further action based upon the Determination;

- d. The Board entered a submitting appearance in the Federal Court proceedings, with ASIC undertaking the active defence in the proceedings;
- e. On 22 April 2024, Justice Rofe of the Federal Court of Australia handed down her decision, dismissing the Respondent's application;
- f. On 3 July 2024, the Board contacted the parties requesting the availability of the parties for a pre-hearing conference to discuss the further conduct of the CADB proceedings and noting that one of the Panel Members, Ms Maria McCrossin, was no longer a member of the Board;
- g. The parties requested a pre-hearing conference on 12 August 2024;
- h. The pre-hearing conference was conducted on 12 August 2024 and the parties requested that the matter proceed to a sanctions hearing with the two remaining members of the Panel, in accordance with s 210A of the ASIC Act;
- i. The matter was subsequently set down for a Sanctions Hearing on the earliest mutually available date of 26 November 2024;
- j. The Sanctions Hearing took place on 26 November 2024, before the remaining members of the Panel, Mr Tony Marks (Business member) and Ms Ann-Maree Robertson (Accounting Member). Mr Marks acted as the Chairperson of the Panel, in the absence of the original Chairperson.

The Board's jurisdiction under s1292(1)(d)(ii)

Application of S 1292(2)(d)(ii) to a Review Auditor

7. Section 1292 (1)(d)(ii) of the Act provides:

The Board may, if it is satisfied on an application by ASIC or APRA for a person who is registered as an auditor to be dealt with under this section that, before, at or after the commencement of this section:

(d) The person has failed, whether in or outside this jurisdiction, to carry out or perform adequately and properly:

....

(ii) Any duties or functions required by an Australian law to be carried out or performed by a registered company auditor.

....

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

8. Section 9 of the Act defines 'Board' when used in this provision to mean the Companies Auditors Disciplinary Board (CADB or Board herein). The expression Australian law is defined in Section 9 as a law of the Commonwealth or of a State or Territory.
9. The Auditing Standards are issued by the Australian Auditing Standards Board (AUASB) and have the force of law by the operation of Section 336 of the Act.
10. S 324AF (2) of the Act, pursuant to which Mr. Trivett was appointed Review Auditor provides:

If an individual auditor, audit firm or audit company conducts an audit of a company or registered scheme, the review auditor for the audit is the registered company auditor (if any) who is primarily responsible to the individual auditor, the audit firm, or the audit company for reviewing the conduct of the audit.
11. Mr. Trivett as Review Auditor was also the Engagement Quality Control Reviewer defined in paragraph 7(c) of ASA 220 as:

'Engagement quality control reviewer means a partner, other person in the firm, suitably qualified external person, or a team made up of such individuals, none of whom is part of the engagement team, with sufficient and appropriate experience and authority to objectively evaluate the significant judgements the engagement team made and the conclusions it reached in formulating the auditor's report'.
12. In this decision we refer to the Engagement Quality Control Review as the EQC Review.
13. The statutory question is whether the Panel of the Board who heard this matter (The Panel, we) are satisfied that within the meaning of S 1292(1)(d)(ii) Mr. Trivett as Review Auditor failed to carry out or perform adequately and properly the duties and functions of Review Auditor in the FY18 Audit.

Preliminary jurisdictional questions raised by the parties' submissions

14. It is convenient to first address the preliminary jurisdictional matters raised by the parties' submissions before considering the specific contentions. Those submissions raised the following issues:
 - a. Whether the relevant duties or functions that applied to Mr. Trivett as Review Auditor in the FY18 Audit were confined to those outlined in the Auditing Standards (ASA220) because d(ii) refers to '*duties.... required by an Australian law...*'
 - b. The nature of the Board's jurisdiction in S 1292(1)(d) and how it arises.

First jurisdictional issue - Were Mr. Trivett's duties as Review Auditor in the FY18 Audit confined to those enumerated in ASA220

15. ASIC's specific contentions in this matter referred to duties outlined in ASA220, and to other relevant duties contained in the Grant Thornton Audit Manual, November 2017 Edition (Grant Thornton Audit Manual) which it was alleged Mr. Trivett as Review Auditor in the FY18 Audit, had failed to carry out or perform adequately and properly.
16. It was submitted on behalf of Mr. Trivett that the relevant duties or functions that applied to him as Review Auditor in the FY18 Audit were confined to those in ASA220 because S 1292(1)(d)(ii) referred to '*duties.... required by an Australian law...*' Accordingly, to the extent ASIC's contentions allege non-performance of requirements referred to in the Grant Thornton Audit Manual, it was submitted they were unmaintainable as requirements having no legislative force. (Transcript (T) 101.6-12)
17. This question of the construction of (1)(d)(ii) and whether the word 'duties' is properly interpreted as confined to duties 'required by an Australian law'. was considered by CALDB as it then was, in its determination in ASIC and Dean-Willcocks (2005)¹ in which the Board expressed the view that the words '*required by an Australian law*' in (d)(ii) do *not* confine the meaning of the word '*duties*' in the sub-paragraph, but rather serve to identify the relevant duties and functions as being those which attach to an office (in that case an Administrator) required by an Australian law to be performed and observed by a registered liquidator. It was held that the duties and functions are those which the Administrator must carry out to perform that office, and it was not essential to identify a specific statutory provision as the source of such duty.
18. The Board's decision was considered and upheld on appeal by Tamberlin J in Dean-Willcocks.²
19. On appeal, it was contended by Mr. Dean-Willcocks that the Board had wrongly interpreted S 1292(2)(d)(ii) and that professional standards were irrelevant to its consideration of an application under sub-paragraph (2)(d)(ii) because such standards are not '*duties or functions required by an Australian law to be carried out by a registered liquidator*', but guideline views with no legislative force. It was contended that ASIC must point to a particular legislative provision imposing the duties and obligations by reference to which there had been a failure to perform, as the term Australian law in section (2)(d)(ii) must be read as a reference to a legislative instrument.

¹ ASIC and Dean-Willcocks. Decision of the Board 12 April 2006 (unpublished).

² Dean-Willcocks v CALDB (2006) 59ACSR 698.

20. In upholding the Board's decision, his Honour Mr. Justice Tamberlin observed about S 1292(2)(d)(ii) [which has now been repealed but was in the same terms as S 1292(1)(d)(ii)] that:

[24] The language of S 1292(2)(d)(ii) directs attention to the question of whether there has been a failure to *adequately* and *properly* carry out or perform the duties or functions required to be performed by a registered liquidator. The emphasis is on the adequacy level or sufficiency of performance of the function or role by the registered liquidator. In this case, the function to be performed is that of an administrator. To evaluate the level of performance is a question of fact and degree which calls for the application of a standard. *It is not a qualitative consideration whether there has been performance, but rather calls for consideration as to the sufficiency of the acts or omissions of the administration.* This is a task which calls for some acquaintance with professional standards applicable to the role of an administrator.

[25] *Upon and after accepting appointment to the office of an administrator, the liquidator must perform the functions and tasks of that office in a proper and adequate way. This obligation to meet a standard is attracted by the terms of S 1292(2)(d) itself. It is not necessary, in my view, to identify a specific legislative duty independently imposed by legislation. When a person assumes the office of an administrator, he or she is then bound to perform adequately and properly the functions of the office. The focus of the provision concerns the sufficiency and quality of the performance of the office that must be carried out by a registered liquidator. The expression 'registered liquidator' is expressly used in S 1292(2)(d)(ii) in contradistinction to the reference in S 1292(2)(d)(i).*

[26] *'There is nothing in the language of S 1292(2)(d)(ii) which excludes regard to professional standards and codes when deciding whether the performance is a proper and adequate exercise of the office. The reference to 'proper' and 'adequate' invites the testing of performance against a relevant standard or benchmark of performance. The interpretation advanced for the applicant, in my view, is too narrow in requiring the identification of a specific duty directly imposed by legislation. The level of performance called for is that of 'adequacy'. The standard is that the duty must be performed 'properly'. The provision is designed to enable a Board representative of the commercial and accounting communities to consider whether the function has been adequately and properly*

carried out. To assess this, it is permissible, in my view, to have regard to the standards operative in the relevant sphere of activity. [emphasis added].

21. In the Dean-Willcocks decision Tamberlin J referred to previous authority supporting the construction of S 1292(2)(d)(ii) as not limiting duties to those required by an Australian law, including:

- a. In *John Vouris Re: Epromotions Australia Pty Ltd and Relectric-Remech Pty Ltd (in liq) (Vouris)*³ in which Campbell J considered that the duties or functions required by an Australian law to be carried out or performed by a registered liquidator within section 1292 were intended to be those duties and functions connected with being an administrator. At [100] Campbell J said:

[100] 'It is possible for someone to fail to carry out or perform adequately and properly the duties and functions of being at administrator, even if it is not possible to point to some particular statutory provision which has been breached.'

- b. In *Goodman v ASIC*⁴ (Goodman) the question considered was whether a requirement of the Auditing Standards, which at the time did *not* have the force of law, was relevant to determining the relevant professional standard. Her Honour Branson J wrote:

[26-27] 'The question of whether the applicant failed to carry out or perform adequately and properly that duty or function is not a pure question of law. The words 'adequately' and 'properly' incorporate notions of judgement. The relevant judgements call for consideration to be given to accepted professional standards... The task of determining the relevant professional standards may be found by the Board to be set by or alternatively reflected in, published Auditing Standards – notwithstanding that the Auditing Standards have no direct statutory significance.'

For the above reasons I reject the contention of the Applicant that in considering whether the Applicant carried out or performed adequately and properly the duty or function of reviewing TSG's Financial Report for the half year ended 31 December 1999, the Board is not entitled to consider Auditing Standards.'

22. Based on the relevant case law discussed above we regard it as settled that S 1292(1)(d)(ii) is to be read as referring to *duties* independently of the words '*functions required by an Australian law to be carried out by a registered company auditor.*' Such a construction does not therefore

³ [2003] 47 ACSR 155 at [100]

⁴ [2004] FCA 1000 at [26] - [27]

confine the meaning of the word '*duties*' to those required by an Australian law and permits as relevant the testing of performance against relevant professional standards and codes that do not have legislative force.

23. It follows from our conclusion that we reject the basis of the Respondent's submission that a Review Auditor's professional responsibility is limited to carrying out the duties enumerated in ASA220. As well as the Auditing Standards and other relevant legislative provisions, non-legislative material, such as the Grant Thornton Audit Manual is relevant to identify duties within the meaning of S 1292(1)(d)(ii) that Mr. Trivett as Review Auditor may have failed to carry out or perform adequately and properly.

Second jurisdictional issue – Nature of the Board's jurisdiction and how it arises.

24. This issue was raised by the parties' submissions concerning proposed requirements for a hypothetical 'Benchmark Review Auditor' (Benchmark Review Auditor) as the benchmark for evaluating Mr. Trivett's performance of duties and functions.
25. To give appropriate context to our views on the Benchmark Review Auditor proposed by the parties from which our conclusions about their submissions flow, we first describe the parameters within which the Panel's task under S 1292(1)(d)(ii) proceeds, based on the relevant legal precedent about the scope of the Board's jurisdiction.
26. We agree with the submissions made by ASIC about the Board's jurisdiction, including its evaluative nature. Whether a registered auditor has performed duties and functions adequately and properly within S 1292(1)(d)(ii) '*is to be judged by [the Panel] ...making an evaluative or subjective determination.*'⁵ The benchmark against which the relevant conduct is to be tested is '*proper professional practice*'⁶ and '*professional standards*'.⁷ In the circumstances of each case, it is for the Panel to assess what the relevant professional practice or professional standards are and whether they have been met.⁸ The composition of the Board reflects that statutory duty.⁹ In *Albarran* - High Court, Kirby J who agreed with the plurality said:

⁵ *Albarran and Another v Members of the Companies Auditors and Liquidators Disciplinary Board and Others* (2006) 151 FCR 466 (*Albarran* – Full Federal Court) per the Court at [45], see also the comments of the majority of the High Court in *Albarran* 231 CLR 350 at [29] (*Albarran* – High Court).

⁶ *Vouris* at [100]

⁷ *Goodman* at [26]

⁸ *Albarran* – Full Federal Court at [48]; cited with approval by the majority in *Albarran* – High Court at [29]

⁹ *Albarran* – High Court at [19], [20] and [21].

[52] ‘Self-evidently, the object of constituting the Board in this way was to ensure that the body determining the contentions of ASIC, presented by its applications to the Board, could do so with full knowledge of ordinary practice and with sensitivity to proper professional standards. Inferentially, the object included the avoidance of the necessity to prove all the details of such practice and standards that might have been required in the case of a non-expert generalist court.

27. For the reasons we have already discussed in paragraphs [15-23](#) a Panel may, in making its determination, have regard not only to relevant statutory duties of the registered auditor, but also to ‘standards’ other than those legislated that are ‘operative in the relevant sphere of activity’.¹⁰
28. The weight to be given to any matter in the Board’s evaluation is a matter for the Board’s discretion and it is not necessary that the matters to which the Board may have regard are all the subject of evidence in the proceedings as the Board ‘can be taken to be imbued with knowledge of professional standards or proper professional practice.’¹¹ In the judgment of the Full Federal Court in Albarran at [45], (affirmed by the High Court) the Board’s jurisdiction was described in the following terms:

‘The exercise of power under S 1292(2)(d) does not turn on the Board being satisfied as to a legal standard. It may be that the failure to carry out and perform a relevant duty or function is an offence. However, that is not what the Board is called upon to determine by the terms of S1292. The question of the adequacy and propriety of the carrying out or performance is to be judged by the Board by making an evaluative or subjective determination. Having made that evaluative or subjective determination, the Board will consider whether the rights of the registered liquidator as to the future are to be changed by the exercise of the power under S 1292(2), in the light of all the considerations before it that are considered relevant.’

29. The words ‘adequate’ and ‘proper’ in S 1292(1)(d) were explained by the dictum of Tamberlin J at [24] in Dean Willcocks¹² as the two matters for evaluation by a Panel when considering whether conduct has failed to meet the professional standard within the meaning of S 1292(1)(d). If the auditor’s conduct fails to meet or exceed the professional standard either because of the adequacy or level of performance or the propriety or standard of performance, CADB’s jurisdiction may arise.

¹⁰ Dean Willcocks 59 ACSR 698 (Dean Willcocks) at [26] – [31] (endorsed in Albarran – High Court at [20]).

¹¹ Albarran – High Court at [29].

¹² See paragraph [20](#) hereof.

Adequate

30. Whether performance of duties and functions has been adequate, which Tamberlin J in Dean-Willcocks identified as the level or sufficiency of performance is, he said '*a question of fact and degree which calls for the application of a standard. It is not a qualitative consideration whether there has been performance, but rather calls for consideration as to the sufficiency of the acts or omissions of the administration*'.¹³ This dictum identifies the Board's evaluation as to whether conduct has been adequate as an objective comparison between the sufficiency or extent of performance of the duties/function by reference to the facts established and the minimum level of performance of the duties/function reflected by the relevant professional standard.
31. To the extent the Auditing Standards, other legislation or audit firm quality control procedures mandated by laws [such as in this matter the Grant Thornton Audit Manual], identify duties and/or duties or functions of registered auditors, their terms, either by themselves or in combination if they address the same or similar subject matter, will also reflect or indicate the professional standard for adequate performance, or the level of performance necessary within the meaning of S 1292(1)(d).
32. To be relevant indicators of the professional standard in terms of a Panel's evaluation, whether they apply to the registered auditor directly would not necessarily be a relevant consideration. For example, the quality control standard ASQC1 [September 2017 compilation] '*Quality Control for Firms that Perform Audits and Reviews of Financial Reports and other financial information, other Assurance Engagements and Related Services Engagements*' applies to audit firms and requires audit firms to establish policies and processes about the duties of a Review Auditor. Although it does not apply directly to a Review Auditor, its provisions are relevant to indicating or reflecting the professional standard for performance of the duties and the function of the role of a Review Auditor and so are relevant to the panel's evaluation.
33. That view aligns with the legal authorities that are clear about the Board's role as not one that involves or requires a Panel to make a finding about a contravention of an Auditing Standard or any other laws. This was recognised by the plurality in Albarran - High Court¹⁴, who referred with approval to the conclusion in Albarran - Full Federal Court¹⁵ in which their Honours said:

¹³ Dean Willcocks at [24]

¹⁴ Albarran High Court [21]

¹⁵ Albarran Full Federal Court [50]

[21] ‘The function of the Board is not, as was submitted, to find (as an exercise of deciding present rights and obligations in the above sense) whether an offence has been committed and, if so, to inflict a punishment therefor. It is, as we have said, to assess whether someone should continue to occupy a statutory position involving skill and probity, in circumstances where (not merely because) the Board is satisfied that the person has failed in the performance of his or her professional duties in the past. Messrs Gould and Albarran say that punishment or a penal or harmful consequence is finally inflicted on the person consequent upon the finding of the committal of an offence prescribed by law. That is not what S 1292(2) says the function of the Board is. It is not, in substance, what the Board does.’

34. The dictum of Hill J in Davies¹⁶ aligns with the evaluation of adequacy being an objective exercise by a Panel, as identified by Tamberlin J’s dictum mentioned in paragraph 30 above and lends support to the view that the words ‘failed’ and ‘adequately’ import no pre-requisite of reasonableness or bona fides to determining whether there has been a failure before the Board’s jurisdiction arises. (Federal Court) Hill J said:

[at 240] ‘All of these matters, as well as the fact that the auditor bona fide believed he was not required to audit the three balances in question or to advert to the failure to keep records in relation to those balances (if the Tribunal [AAT] reached such a conclusion) would clearly be relevant both to the Tribunal [AAT] determining not to proceed to impose any penalty as well as to the Tribunal [AAT] proceeding under S 1292(9). However, in my view, there was no error on the part of the Tribunal [AAT] in the approach it took in taking no account of reasonableness and bona fides in determining whether there had been a failure of the auditor adequately and properly to perform the duties and functions of which S 1292(1)(d) speaks’.

35. The Board’s jurisdiction is protective. It makes sense and the public is entitled to expect that Australia’s laws will be consistently observed and applied by registered auditors and consistently observed by this Board as reflective of minimum professional standards for performance of duties and functions. This approach to evaluating the adequacy of an auditor’s conduct is aligned with the ‘not qualitative’ approach identified by Tamberlin J. in Dean-Willcocks¹⁷.
36. A Panel’s evaluation of adequacy therefore involves identifying the professional standard for performance of the duty and/or function in question identified by the contentions. These may be reflected by the

¹⁶ Davies v ASC 1995 59 FCR 221

¹⁷ n13

provisions of a specific Auditing Standard or by the interplay of obligations from various sources, such as was identified by the contentions in this matter which included reference to the Grant Thornton Audit Manual, considering the facts which are established and evaluating whether the conduct those facts evidence failed to meet the minimum professional standard for performance by reference to what the professional standard required be done.

Proper

37. Whether conduct was proper, which is the other matter identified by S 1292(1)(d) by which a registered auditor's is to be evaluated involves an evaluation of the quality of the performance of relevant conduct and whether its manner of performance exhibits the range of attributes and behaviours that meet or exceed '*proper professional practice*'.
38. That evaluation invites a broader and more nuanced consideration of what proper professional practice required of the registered auditor in given circumstances to meet the professional standard, and in contrast to evaluating whether conduct was adequate, may involve subjective considerations including what aspect of the professional standard the conduct was insufficient to meet. This too is a logical aspect of the Board's jurisdiction given its role to uphold standards of integrity and competence.¹⁸
39. Evaluating whether conduct has been proper, while not precluded if a Panel is satisfied there has not been adequate performance of duties and/or duties and functions, would not be a necessary consideration for jurisdiction to arise, although it would be usual to form a view on whether conduct was also not proper, because of its relevance to the significance of the failures and therefore the appropriate sanction.
40. While conduct that is found not to be adequate within S 1292(1)(d) will mean that our jurisdiction arises because inadequate performance can never amount to proper professional practice, the converse is not true. A Respondent may be found to have performed all the duties of the function of Review Auditor identified by ASIC adequately yet still not in the Panel's evaluation, have performed his role (or function) as Review Auditor properly, or those specific duties properly.
41. Evidence for example that establishes a registered auditor who performed a duty to review a document that met all the requirements specified for that review but was unaware of incorrect information in the audit work paper due to a lack of knowledge, would involve a Panel's evaluation of what the registered auditor should reasonably have known

¹⁸ Albarran – High Court, Kirby J at [100]

by reference to the professional standard. The relevant professional standard is that of 'proper professional practice' that sets the expectation as a registered auditor competently and diligently performing their duties. This is not a matter of evidence, but within the Board's evaluative jurisdiction and, to the extent behaviours and judgements are relevant, would involve a Panel's subjective evaluation.

42. While specific duties will differ depending on the role or function being performed under sub-paragraph (d)(ii), the relevant competency standard applying to 'proper' performance within (d)(ii) will be equivalent to that applied to duties within (d)(i). This makes sense given both sub-sections apply to registered company auditors and means that to meet the standard of proper professional practice for the performance of duties within (d)(i) or duties and functions within (d)(ii), a registered auditor must have brought to bear on that performance the professional competence, due care and probity expected of a registered company auditor. That standard, and whether it has been met, are both matters within the Board's remit to evaluate.
43. The Board considers the professional standard applying for proper performance of duties and duties and functions is high. The community relies on registered auditors to serve as independent and objective professionals who provide assurance on the accuracy and reliability of a company's financial reporting. Maintaining the public's trust that registered company auditors will perform their duties and functions consistently and to the high professional standards to which the profession commits is essential to fostering confidence in Australia's capital markets.
44. To the extent previous Board determinations have referred to a benchmark auditor in the position of a respondent, that reference was intended to refer to a registered auditor who carries out their duties or duties/functions to the appropriate professional standard, both in terms of adequacy and propriety.
45. Whether duties and/or functions have been performed properly involves considering whether they have been performed thoroughly, accurately, correctly and in accordance with those professional standards that enumerate the range of attributes and behaviours that demonstrate effective and competent performance, and a benchmark auditor is simply a means of personifying that professional standard by expressing the standard in terms of a 'benchmark auditor' performing the same function or duty at the same time, as a respondent.
46. The Board has also referred to the professional standard applicable as the 'Relevant Benchmark,' in recent previous decisions. That term is simply a descriptor to refer collectively to the various statutory duties, the

common law and 'standards' representing sources a Panel may draw upon to consider what the professional standard was at the relevant time, and whether it has been met. Sources of reference material within the Relevant Benchmark identified in this decision and previous Board decisions are not necessarily exhaustive, and what falls within the Relevant Benchmark changes and evolves over time and may or may not have relevance in a specific matter depending on the facts.

47. As to matters that are relevant and included within the Relevant Benchmark when evaluating whether performance has been proper, the concepts of professional competence and due care identify the expectation that registered auditors must consistently apply the knowledge, skills, and expertise necessary for continuing to be eligible to be registered under the Act.
48. Due care emphasises the need for registered auditors to exercise diligence, thoroughness, and professional scepticism in carrying out their responsibilities. This will involve critically assessing information, performing appropriate procedures depending on the role or function being performed, and documenting work done in a clear and comprehensive manner and in accordance with the provisions of the Auditing Standards, all of which are integral to proper performance.
49. The concepts of professional judgement and professional scepticism, while under the umbrella of due care and diligence, are also addressed by specific Auditing Standards in ASA200, that includes guidance on their application by an auditor. These concepts, and whether they have been appropriately applied by reference to the Auditing Standards and guidance provided, are important considerations to a Panel's evaluation.
50. The Grant Thornton Audit Manual, for example provided indicative guidance as to applying professional scepticism in paragraph 2.41 at the time of the FY18 Audit. It stated that professionals should approach every audit engagement with an attitude of professional scepticism, described as an attitude that includes a questioning mind and a critical assessment of audit evidence. The Grant Thornton Audit Manual further stated that auditors must objectively evaluate observed conditions and audit evidence and follow up on any potentially material negative indicators to determine whether the financial statements are free of material misstatement, whether by error or by fraud. While these matters did not specifically apply to a Review Auditor, they are indicative of what proper professional practice required of a registered auditor, and for the reasons identified in paragraph [42](#), could have relevance to evaluating whether the duties of the Review Auditor have been carried out properly.

Parties' submissions on the Benchmark Review Auditor

51. Turning now to the parties' submissions, the Benchmark Review Auditor proposed by ASIC would assess it was submitted, whether Mr. Trivett acted in accordance with an appropriate standard of professional practice for a Review Auditor attributed with Mr. Trivett's actual knowledge, and from documents he read, or was required to read.
52. Mr. Trivett's counsel submitted ASIC's Benchmark Review Auditor was subject to the following qualifications:
 - a. The Panel is not permitted to use hindsight in considering what the Benchmark Review Auditor could or may have known beyond what the evidence shows Mr. Trivett knew, save insofar as that knowledge may have been derived by the Benchmark Review Auditor in performing those functions of Review Auditor as required by ASA 220.
 - b. The Panel is not permitted to impute the benefit of any knowledge which Mr. Trivett might have acquired performing the EQC Review but did not. In other words, the Benchmark Review Auditor is only entitled to the knowledge Mr. Trivett acquired during the EQC Review, but not the benefit of knowledge which Mr. Trivett might have acquired but did not, unless it was knowledge acquired through the review of any document Mr. Trivett was required to review for the purpose of performing the evaluation mandated by ASA 220.20 and ASA 220.21.1.
 - c. The Panel is not permitted to impute to the Benchmark Review Auditor knowledge or information acquired through a review of any document which ASA 220 did not require them to review, even if Mr. Trivett in fact reviewed such a document, save for any knowledge which Mr. Trivett acquired from that review.
 - d. The Panel must consider the limitations Mr. Trivett faced when accessing documents in the FY18 Audit File.
53. Mr. Trivett's counsel further submitted that the relevant test for the Board's jurisdiction under S 1292(1)(d) arising is whether Mr. Trivett failed to do something mandated by ASA220 that another Review Auditor in Mr. Trivett's circumstances would have done, and that ASIC must prove the counterfactual that a Benchmark Review Auditor in Mr. Trivett's circumstances would have done something that Mr. Trivett did not.
54. Dealing first with the Benchmark Review Auditor submitted by ASIC, we have discussed the reference in previous decisions of the Board to a benchmark auditor and the Relevant Benchmark in paragraphs [44-50](#)

above. That discussion seeks to clarify that to the extent the Board may previously have referred to a benchmark auditor, or a reasonably competent registered auditor, or the Relevant Benchmark in the context of comparing conduct to the professional standard applying, it was not to establish tests or intended as a reference to technical term/s, or to represent an alternative formulation of the process for the Panel's evaluation, or to propose these matters are necessary for ASIC to establish, but was the means for expressing the result of the Panel's evaluation.

55. ASIC's Benchmark Review Auditor, and the Respondent's additional prescriptions, can only be relevant to the Panel's evaluation if the conditions those submissions enumerate are aligned with the scope and nature of the jurisdiction conferred by S 1292(1)(d). In our view, neither party's submissions find support from the principles to be found in the legal authorities we have discussed, or in the words of S 1292(1)(d)(ii).
56. The Board's jurisdiction is concerned with evaluating what the evidence shows about the ways in which Mr. Trivett may have failed to meet aspects of the professional standard and what that standard was at the relevant time.
57. If what it may have been reasonable to expect a benchmark auditor would have done is considered by a Panel as part of that evaluation, the authorities make clear that it is the objective benchmark of the prevailing professional standards that are the important yardstick. Mr. Trivett's personal circumstances have limited relevance to that consideration beyond objective factors such as when and what duties or functions were being performed and therefore what the prevailing relevant professional standards were.
58. ASIC's Benchmark Review Auditor, if attributed with Mr. Trivett's actual knowledge and knowledge from documents he was required to read would only be relevant to evaluating the adequacy of performance within S 1292(1)(d). We therefore reject ASIC's submission to the extent it was intended as representative of the full scope of the evaluation within S 1292(1)(d) and for the same reasons we also reject the Respondent's submissions in paragraphs 51(a)-(d).
59. As to the Respondent's submissions in paragraph [52](#), they are also not correct. The authorities we have discussed make clear that ASIC does not bear the burden of proof for matters within the Board's remit for evaluation, including the professional standard.¹⁹ Further, this Panel's determination does not involve or require us to make a finding about a contravention of ASA220(20) or any other law or Auditing Standard, as

¹⁹ n9 and paragraph [28](#).

we have discussed in paragraph [33](#).

Panel's approach to determining contentions

60. Our approach to determining whether the contentions have been established in this matter, based on our views and findings above is:
- a. To determine whether the facts alleged in support of ASIC's application to the Board for orders under S 1292(1) occurred and whether we are satisfied they identify relevant conduct with respect to the duties and function of the role of a Review Auditor within the meaning of sub-paragraph (d)(ii). The burden of proof will be ASIC's and a Panel must be comfortably satisfied, on the balance of probabilities, that the matters alleged occurred.
 - b. If there is relevant conduct established, to evaluate its adequacy (level of performance) and, whether it was proper (standard of performance) within the meaning of S 1292(1)(d).
 - c. The weight to be given to any matter in the Board's evaluation is a matter for the Board's discretion and it is not necessary that the matters to which the Board may have regard are all the subject of evidence in the proceedings as the Board '*can be taken to be imbued with knowledge of professional standards or professional practice*'.²¹

Preliminary – Meaning of 'Significant Matter'.

61. The phrase 'significant matters' is used in the ASA 220(20)(a)²⁰ and the Grant Thornton Audit Manual and is not defined, although the relevance of the Performance Shares to revenue recognition in the FY18 Audit as a significant matter in the FY18 Audit was not in issue.
62. Before considering the evidence and specific contentions we address the parties' submissions on the meaning of 'significant matter' for the industry guidance it may provide.
63. Both parties accepted that the guidance provided by the definition of the term '*significance*' in the 2009 and 2018 versions of the Glossary issued by the Australian Auditing and Assurance Board (AUASB) (Glossaries) was, in the absence of a definition of the term '*significant matter*' in ASA 220, instructive of what will constitute a significant matter for the purposes of that Auditing Standard. We agree.
64. That definition was:

²⁰ ASA 22(20)(a) is set out in paragraph [211](#).

‘Significance means the relative importance of a matter, taken in context. The significance of a matter is judged by the practitioner in the context in which it is being considered. This might include, for example, the reasonable prospect of its changing or influencing the decisions of intended users of the practitioner’s report; or, as another example, where the context is a judgement about whether to report a matter to those charged with governance, whether the matter would be regarded as important by them in relation to their duties. Significance can be considered in the context of quantitative and qualitative factors, such as relative magnitude, the nature and effect on the subject matter and the expressed interests of intended users or recipients.

65. Mr. Trivett’s counsel, referring to the words *‘judged by the practitioner in the context in which it is being considered’* in the above definition, submitted that whether a particular matter is significant in terms of ASA 220 will involve a subjective judgement by the Review Auditor.
66. We clarify that the judgement required in this context would be a professional judgement and carries with it the responsibility to consider objectively relevant matters referable to the context in which the judgement is to be made, and to be exercised in accordance with ASA200(16) and the guidance on professional judgement that was outlined at the time in A25-A29 of ASA200. The first example referred to in the definition extracted above demonstrates that point.
67. ASIC submitted that the following further considerations were relevant to concluding that the existence and terms of issue of the Performance Shares were ‘significant matters’ in the FY18 Audit:
 - a. Based on the relevant statutory provisions [we were referred to S 234(2) ASIC Act 2001(Cth) and s15AA of the Acts Interpretation Act 1901(Cth), read with s 13(1) of the Legislation Act 2003(Cth) applicable to interpreting the Auditing Standards, that a construction that promotes a purpose or object of the (Auditing) Standard is to be preferred to a construction that would not promote that purpose or object.
 - b. The purpose or object of ASA 220 was therefore relevant to consider when interpreting ASA220 20(a) and the meaning of the term *‘significant matters’*.
 - c. The objective of ASA220 is set out in ASA220.6 as follows:

The objective of the auditor is to implement quality control procedures at the engagement level that provide the auditor with reasonable assurance that:

 - a. *The audit complies with Australian Auditing Standards,*

relevant ethical requirements, and applicable legal and regulatory requirements; and

b. The auditor's report issued is appropriate in the circumstances.

d. As the appointment of a Review Auditor for the audit of the financial report of a listed entity is a 'quality control procedure' specifically contemplated by ASA 220, the objective of the role of a Review Auditor must be consistent with contributing to meeting the objectives referred to in ASA220(6), namely to the obtaining of reasonable assurance that the audit complies with the Australian Auditing Standards (and other ethical, legal and regulatory requirements) and that the auditor's report is appropriate in the circumstances.

e. A matter would be significant in an audit if it was significant in relation to the objectives of ASA220 and the Review Auditor's obligation to '*perform an objective evaluation of the significant judgements made by the engagement team, and the conclusions reached in formulating the auditor's report*' would also be relevant to determining whether a matter is 'significant' for the purpose of paragraph 20(a) of ASA 220 because it obliges the Review Auditor to review both the '*significant judgements*' made by the Engagement Team and the '*conclusions reached in formulating the auditor's report*'.

f. Paragraph A29 of ASA 220 makes clear that those conclusions include determining:

- 1) The key audit matters to be included in the auditor's report.
- 2) The key audit matters that will not be communicated in the auditor's report in accordance with paragraph 14 of ASA 701, if any; and
- 3) If applicable, depending on the facts and circumstances of the entity and the audit, that there are no key audit matters to communicate in the auditor's report.
- 4) And goes on to state:

In addition, the review of the proposed auditor's report in accordance with paragraph 20(b) includes consideration of the proposed wording to be included in the Key Audit Matters section.

g. Given the scope and content of the Review Auditor's task as set out in paragraph 20 of ASA 220.20(a) and explained in paragraph A29 of ASA 220, a matter will be a 'significant matter' in terms of

ASA220 if it is significant to obtaining reasonable assurance (that is, a high but not absolute level of assurance) that the audit has been performed in accordance with the Auditing Standards (and other ethical, legal and regulatory requirements), and/or is significant to the appropriateness of the Auditor's report in the circumstances.

- h. It follows that the natural meaning of the term '*significant matter*' in paragraph 20 of ASA 220 is a matter that is '*significant*' in relation to the '*significant judgements*' that the engagement team made or is '*significant*' in relation to the conclusions reached in formulating the auditor's report, including the determination of the key audit matters (KAMs) to be included in the auditor's report and the proposed wording to be included in the auditor's report.
- i. That meaning is supported by the requirement in S 234A (2) read with paragraphs (b) and (c) of S 224 of the ASIC Act that a construction that would promote a purpose or object of the standard is to be preferred to a construction that would not promote that purpose or object. In order to promote the reduction of the cost of capital of Australian companies and maintain investor confidence in the Australian economy²¹ (including its capital markets), an audit of a financial report of a public company must address audit risk factors that arise from matters that are specific to that company and must have regard to matters that are of particular importance to users of the financial report and matters of that nature will be '*significant matters*' for the purposes of paragraph 20(a) of ASA 220.
- j. The existence and terms of issue of the Performance Shares were objectively '*significant matters*' within paragraph 20(a) of ASA 220, not only for their relevance to revenue recognition in the FY18 Audit, but because of their relevance to identifying and responding to the risk of fraud because of the executives and directors of ISX who had indirect interests in the Performance Shares and because three ISX directors (Messrs Karantzis, Minehane and Hart) were responsible, under S 295(1)(4)(d) and (5) of the Act, for declaring, as part of the FY18 Financial Report, that in their joint opinion the financial statements and notes to the financial statements complied with the Accounting Standards and gave a true and fair view.
- k. To satisfy the objectives of ASA 220 of obtaining reasonable assurance that the FY18 Audit complied with the Australian Auditing Standards (and other ethical, legal and regulatory

²¹ See main objectives of Auditing Standards in s244 ASIC Act

requirements) and ensuring the auditor's report was appropriate in the circumstances, the Review Auditor needed to ensure that the judgements made by the engagement team in the planning and execution of the audit adequately identified and addressed the risks of material misstatement at the assertion level and at the financial report level arising from the terms of issue of the Performance Shares.

68. We agree that the existence and terms of issue of the Performance Shares were significant matters in the FY18 Audit. They were significant:
- a. To the recognition of revenue in the FY18 audit and therefore in relation to the 'significant judgements' that the engagement team had made.
 - b. For their relevance to identifying and responding to the risk of fraud in the audit for the reasons submitted by ASIC.
 - c. To the conclusions reached in formulating the auditor's report, including the determination of the KAMs to be included in the auditor's report and the proposed wording to be included in the auditor's report.
 - d. Because of the reasonable prospect that their existence and terms would change or influence the decisions of intended users of the practitioner's report given their dilutionary impact on existing shareholders of ISX.
69. In addition to ASIC's submissions, we note the relevance of references in ASA 230 to the meaning of the term 'significant matters', in the context of documentation requirements with respect to significant matters covered by that standard. A8, which was in the guidance was headed 'Documentation of Significant Matters and Related Professional Judgements'. It stated:

A8: significance of a matter requires an objective analysis of the facts and circumstances. Examples of significant matters include:

- *Matters that give rise to significant risks (as defined in ASA 315).*
- *Results of audit procedures Indicating (a) that the financial report could be materially misstated, or (b) a need to revise the auditor's previous assessment of the risks of material misstatement and the auditor's responses to those risks.*
- *Circumstances that cause the auditor significant difficulty in applying necessary audit procedures.*

- *Findings that could result in a modification to the audit opinion or the inclusion of an Emphasis of Matter paragraph in the auditor's report.*

A9: An Important factor in determining the form, content, and extent of audit documentation of significant matters is the extent of professional judgement exercised in performing the work and evaluating the results. Documentation of the professional judgements made, where significant, serves to explain the auditor's conclusions and to reinforce the quality of the judgement. Such matters are of particular interest to those responsible for reviewing audit documentation, including those carrying out subsequent audits when reviewing matters of continuing significance (for example, when performing a retrospective review of accounting estimates).

A10 provides further guidance by way of examples of circumstances where it is appropriate to prepare audit documentation relating to the use of professional judgement in relation to significant matters and judgements and A11 refers to the desirability of a 'completion memorandum' describing significant matters identified and how they were addressed.

70. ASA 230 is within the Relevant Benchmark and in this matter is a relevant consideration to evaluating the professional standard and the level of performance in relation to it, of the duty of the Review Auditor to carry out discussion about significant matters in an audit. A specific additional purpose identified by ASA230(3) for audit documentation was that it was to enable the conduct of quality control reviews and inspections in accordance with ASQC1. ASA230 (8) required the auditor to prepare audit documentation sufficient to enable an experienced auditor having no previous connection with the audit to understand: (c) significant matters arising during the audit, the conclusions reached thereon, and significant professional judgments made in reaching those conclusions. As we have discussed in paragraph [42](#), the competency standard applying to registered auditors with respect to conduct falling within sub-paragraph (d)(i) and (d)(ii) is the same. That standard assumes knowledge of the requirements of the Auditing Standards. As Review Auditor Mr. Trivett's duty to discuss significant matters should have involved identifying what was recorded on the GT audit file for the FY18 Audit about significant matters as a starting point for carrying out his duties with respect to the discussion of significant matters. Proper performance of that duty would also have involved following up with the audit team about the adequacy of that documentation to the extent it was deficient having regard to the provisions and guidance in ASA230.

Evidence

Outline of Evidence

71. The statement of Agreed Facts filed by the parties is included below.
72. Mr. Trivett filed a written statement and was cross examined at the hearing. His evidence, including our observations on aspects of that evidence relevant to CADB's jurisdiction, is presented chronologically within this section.
73. Each party filed a statement from an expert they retained to opine on issues in dispute, as discussed further below.
74. There was a statement filed on behalf ASIC to which several documents were attached, including excerpts of the transcript of section 19 compulsory examinations of Mr. Trivett, Mr. Taylor the engagement partner in the FY18 Audit (Engagement Partner) and Mr. Krafft, an auditor employed by Grant Thornton who was manager on the FY18 Audit. We have referred to details of this evidence in the context of our consideration of the evidence on the specific contentions where relevant.
75. The GT audit file for the FY18 Audit (FY18 Audit File) was tendered as an exhibit at the hearing.
76. Neither party called any other witnesses to provide evidence in these proceedings.

Expert opinions – comments

77. As noted, there were two experts' statements filed and both experts were cross-examined at the hearing.
78. The report of Mr. Denis Thorn, who was retained by ASIC, was filed in the proceedings on 24 June 2021.
79. The report of Mr. Christopher Westworth, who was retained by the Respondent was filed on 14 December 2021.
80. As well as their individual statements, the two experts authored a joint report filed on 8 March 2022, which addressed their responses to 13 questions formulated jointly by the parties. This was also filed in the proceedings.
81. We are satisfied that both experts are persons of relevant expertise and experience. Both were subject to cross-examination on aspects of their reports on which they differed, and which were the subject of submissions by the parties.
82. We have considered and are guided by the views of the experts in our evaluation of whether Mr. Trivett has carried out his duties and functions

as Review auditor adequately and properly. Their opinion is a factor to be considered, not the only matter of relevance. As we have discussed, the legal precedent is well settled that the task of determining the relevant professional standard under S 1292(1)(d) is a task within the expertise of the Board²² and the assessment to be made as to whether Mr. Trivett has failed to perform or carry out adequately and properly the role of the Review Auditor in the FY18 Audit is a matter within the scope of the jurisdiction of the Board.

Agreed Facts

83. As noted, ASIC and Mr. Trivett reached agreement on some objective facts in this matter for the purposes of these proceedings. These provide relevant background information as to the establishment of ISX as a business listed on the Australian Stock Exchange (ASX), the structure of ISX, including its various subsidiaries and Grant Thornton's and Mr. Trivett's involvement with ISX as auditors of its financial statements, from 2015 as follows.

Agreed Facts – GT's Audit role for ISX

84. On 30 November 2015, the members of ISX appointed Grant Thornton as the auditor of ISX's financial reports.
85. On 26 June 2018 Grant Thornton issued an engagement letter, signed by the Engagement Partner a director of Grant Thornton, to Todd Richards (Mr. Richards), Chief Financial Officer of ISX, for the audit of the financial report of ISX for FY18 (the FY18 Audit).
86. The letter named Mr. Taylor as the Engagement Partner and Lead Auditor under S 324AF (1) of the Act for the FY18 Audit.
87. GT appointed Mr. Trivett as Review Auditor for the FY18 Audit in accordance with ASA 220: *Quality Control for an Audit of a Financial Report and Other Historical Financial Information* (ASA220) and under S 324AF(2) of the Act.
88. On 28 August 2018, the Engagement Partner signed an audit report (the FY18 Audit Report) which contained no qualification and expressed the opinion that the financial report to which the FY18 Audit Report related (the FY18 Financial Report) was in accordance with the Act, including:
 - a. Giving a true and fair view of the consolidated entity's financial position as of 30 June 2018 and of its performance for the year ended on that date; and
 - b. Complying with Australian Accounting Standards and the

²² Albarran - High Court per Kirby J [52]

Corporations Regulations 2001.

89. The FY18 Audit was the third annual audit of the financial report of the ISX consolidated entity by GT in which Mr. Trivett had acted as Review Auditor

Agreed facts - ISX and its subsidiaries

90. At all material times, ISX was registered under S 112 of the Act as a public company limited by shares and was listed on both the ASX and the Frankfurt Stock Exchange.
91. Throughout FY18, Mr. N J (John) Karantzis (Mr. Karantzis) was the Managing Director and Chief Executive Officer of ISX and Mr. Richards was the Chief Financial Officer and Company Secretary of ISX.
92. During FY18, ISX had an ownership interest of 100% in the following entities:

Name	Place of incorporation
Authenticate Pty Limited	Australia
iSignthis eMoney (Au) Pty Ltd (incorporated on 2 March 2018)	Australia
Authenticate BV	Netherlands
iSignthis BV	Netherlands
ISX IP Ltd	British Virgin Islands (BVI)
iSignthis eMoney Ltd	Cyprus
iSignthis Inc	United States of America
iSignthis (IOM) Ltd	Isle of Man
iSignthis (UK) Ltd	United Kingdom

Agreed Facts - the FY18 Annual Report

93. ISX was required under Part 2M.3 of the Act to prepare a financial report for FY18 and have that report audited.
94. The FY18 Annual Report was dated 28 August 2018 and filed with the ASX on 29 August 2018. It included the following:
- A Letter from the Managing Director signed by Mr. Karantzis (the Managing Director's Letter).
 - A Directors' Report signed by Mr. Karantzis (FY18 Directors' Report).
 - Financial statements for ISX and its subsidiaries (referred to as 'the consolidated entity') for FY18, including notes to the financial statements (i.e., the FY18 Financial Report) – such information comprising the financial report of ISX for FY18 for the purposes of

Chapter 2M of the Act.

- d. The FY18 Audit Report signed by the Engagement Partner and Grant Thornton; and
- e. A section headed 'Shareholder information'.
- f. The business of ISX was described as follows in the FY18 Directors' Report:

ISX Ltd is an Australian headquartered business with patented technology used to significantly enhance online payment security and to electronically verify identities by way of a dynamic, digital, and automated system. The system assists obligated entities under Anti Money Laundering ("AML") and Counter Terrorism Funding ("CTF") legislation to meet their compliance requirements and to ensure rapid and convenient on boarding of their customers. ISX also assists online merchants with mitigating Card Not Present ("CNP") fraud and providing CNP liability shift, within the framework of the card scheme rules and applicable regulatory regimes.

- g. The 'Statement of profit or loss and other comprehensive income' for the consolidated entity in the FY18 Financial Report indicated that the consolidated entity had a loss before income tax of \$5,532,177 compared with a loss before income tax of \$5,700,062 in the previous financial year (i.e. a reduction of \$167,885); revenue of \$6,338,969 compared with revenue of \$1,371,192 in the previous financial year (i.e. an increase of 4,967,777, or 362%); and operating costs of \$4,957,592 compared with operating costs of \$768,611 in the previous financial year (i.e. an increase of \$4,118,981 or 545%).
- h. Note 4: 'Operating segments' and 'Note 5: Revenue' in the FY18 Financial Report indicated that the consolidated entity's revenue from 'Sales to customers' or 'Fees' amounted to \$5,800,846 compared with \$666,305 for the previous financial year (an increase of \$5,134,541 or 770.6%).
- i. Note 6: Expenses in the FY18 Financial Report indicated that the consolidated entity's 'Cost of sales' for FY18 was \$4,363,097, compared with \$263,252 for the previous financial year (an increase of \$4,099,845 or 1,557%).

Agreed Facts – ISX - new revenue sources in FY18

- 95. Authenticate BV was a subsidiary of ISX incorporated in the Netherlands. Authenticate BV entered into an agreement dated 27 October 2017 with OT Markets Pty Ltd (OT Markets Agreement) to provide transaction processing services to OT Markets Pty Ltd (OT Markets). That

agreement was varied by a letter dated 7 December 2017.

96. Fee income of \$871,160.93 (in a single receipt) was recorded by ISX Group on 31 March 2018 in relation to the varied agreement. A further 65 amounts equalling \$304,924 were recorded as receipts from OT Capital during the year.
97. Authenticate BV entered into an agreement with Nona Marketing Pty Ltd (Nona) dated 11 December 2017 to provide marketing services to Nona, a company registered in the Marshall Islands (Nona Marketing Agreement). Fee income of \$385,210.23 (\$234,615.38 + \$150,594.85)¹¹ was recorded by ISX in April and May 2018 in relation to this agreement.
98. In May and June 2018, Authenticate BV entered the following contracts:
 - a. Three contracts for the provision of software and certain related services to customers and
 - b. Contracts with third parties to supply the software and provide certain related services to the customers, (The Project Management Services Contracts) as summarised below:

Customer	Date of unsigned customer contract	Supplier
Corp Destination Pty Ltd (CorpDestination), a company incorporated in Australia	15 May 2018, varied on 7 June 2018	Fino Software Technologies Ltd (Fino Software), a company incorporated in Cyprus
FCorp Services Ltd (FCorp Services), a company incorporated in the Marshall Islands	30 May 2018	Fino Software
IIMMO Servis Group (IMMO), a company incorporated in the Czech Republic	6 June 2018	Gibi Tech Ltd (Gibi Tech), a company incorporated in the Seychelles

99. The following amounts of revenue and expenses were included in the FY18 Financial Report in relation to the Project Management Services Contracts:

Customer	Revenue	Related expenses
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	EU	AUD	EU	AUD
Corp Destination	526,525	810,038	489,100	752,462
FCorp Services	478,500	736,154	442,000	680,000
IMMO	900,000	1,384,615	884,000	1,360,000
Totals	1,905,025	2,930,808	1,815,100	2,792,462

100. The net of the revenue and expenses summarised above is \$138,346 which represents a margin of less than 5% of the revenue from the three contracts.
101. The revenue of \$2,930,808 from the Project Management Services Contracts listed above constituted 53% of the revenue of the ISX consolidated entity in the six-month period to 30 June 2018. The revenue from the Project Management Services Contracts together with the receipt of \$871,161 under the varied OT Markets Agreement and the two receipts amounting to \$385,210 under the Nona Marketing Agreement amounted to \$4,187,179 (76%) of the revenue of the ISX consolidated entity for the six- month period to 30 June 2018.

Agreed facts -The Performance Shares

i) The issuing of the Performance Shares

102. ISX was previously named Otis Energy Ltd (Otis). On 16 March 2015, Otis, a company that was listed on the ASX, acquired the issued capital in ISX BV and ISX IP Ltd under an arrangement described in a prospectus issued and lodged with ASIC on 22 December 2014 (the Prospectus) and a supplementary prospectus dated 29 January 2015 (the Supplementary Prospectus).
103. The acquisition of ISX BV and ISX IP Ltd by Otis was a 'reverse acquisition' as it resulted in the former owner of the shares in ISX BV and ISX IP Ltd owning a majority of the shares in Otis (the listed entity). Immediately after that acquisition, the name of the listed entity was changed to ISX Limited.
104. A condition of the acquisition of ISX BV and ISX IP Ltd by Otis was that Otis (subsequently renamed ISX Ltd) would issue 336,666,667 'performance shares' (the Performance Shares) to the entity named in the Prospectus as 'the Vendor'. The Prospectus identified the 'Vendor'

as ISX BVI but did not indicate its place of incorporation. A Supplementary Prospectus identified the Vendor as a company incorporated in the British Virgin Islands. That entity is referred to below as ISX(BVI).

105. Grant Thornton did not audit ISX(BVI), as that entity did not form part of the Group.
106. The 336,666,667 Performance Shares were issued on the following terms:
 - a. 112,222,222 Class A Performance Shares would convert into fully paid ordinary shares on a one for one basis if the revenue of ISX was at least \$2.5 million in any six-monthly reporting period (being a period ending on 30 June or 31 December) up to 30 June 2018 (the 'Expiry Date').
 - b. 112,222,222 Class B Performance Shares would convert into fully paid ordinary shares on a one for one basis if the revenue of ISX was at least \$3.75 million in any six-monthly reporting period (being a period ending on 30 June or 31 December) up to the Expiry Date; and
 - c. 112,222,223 Class C Performance Shares would convert into fully paid ordinary shares on a one for one basis if the revenue of ISX was at least \$5.0 million in any six-monthly reporting period (being a period ending on 30 June or 31 December) up to the Expiry Date.
 - d. If the milestone for the conversion of a particular class of Performance Shares was not met, then all the Performance Shares of that class would consolidate and convert into just one ordinary share after the 'Expiry Date'. If the milestones for the conversion of all three classes of Performance Shares were met in the six-month period ending 30 June 2018, then, after the issue of the new ordinary shares, the new ordinary shares would constitute approximately 33% of the issued ordinary shares of ISX.

ii) Ownership interests in the Performance Shares

107. The Prospectus indicated that:
 - a. Mr. Karantzis and Mr. Richards were shareholders of the Vendor (iSignthis BVI).
 - b. Mr. Scott Minehane and Mr. Timothy Hart [who were directors of iSignthis at the time of the FY18 Audit] were shareholders of the Vendor.
 - c. Mr. Karantzis was a director of the Vendor; and

- d. Mr. Karantzis held an interest of more than 20% in the Vendor and Mr. Karantzis would have a “relevant interest” in:
- e. ordinary shares and Performance Shares issued to the Vendor on the acquisition of iSignthis BV and ISX IP Ltd, and
- f. any ordinary shares that may be issued to the Vendor on the conversion of the Performance Shares.

iii) Achievement of Targets for conversion of the Performance Shares

- 108. None of the milestones for the conversion of Performance Shares were met in the six-month periods ending 30 June 2015, 31 December 2015, 30 June 2016, 31 December 2016, 30 June 2017, or 31 December 2017.
- 109. On 30 August 2017, ISX reported to the ASX that its revenue for the financial year ending 30 June 2017 was \$666,305.
- 110. On 28 February 2018, ISX reported to the ASX that its revenue for the first half of the FY18 year (i.e., the six-month period ending 31 December 2017) was \$799,499. [This does not include interest income of \$27,413. Total reported revenue for the half year was \$826,912].
- 111. ISX made the following announcements to the ASX regarding its revenue in the second half of FY18:
 - a. On 26 April 2018, the company announced that its revenue for the third quarter (i.e., 1 January 2018 to 31 March 2018) was \$1.48 million and year-to-date was \$2.28 million.
 - b. On 22 June 2018, the company announced to the ASX that: Cash receipts for Half Two (H2) are more than Three Million Seven Hundred and Fifty Dollars (\$3,750,000). Subject to audit, the receipts will satisfy the Milestone A and Milestone B requirements for issue of Class A and Class B Performance Rights under Section 14.2 of the ISX Ltd Prospectus dated 22 December 2014.
 - c. On 31 July 2018, the company issued a quarterly announcement to the ASX stating that its unaudited consolidated revenue for the six-month period ending 30 June 2018 was more than \$5.5 million. The announcement also stated that: ‘Based on the unaudited revenue of the 6 months from 1st January 2018 to 30 June 2018, estimated as being more than the A\$5.0m Target Milestone, it will meet the requirements of Tranche 1, 2 and 3 of the Performance Rights. On this basis, 336,666,667 Ordinary shares will be issued in the September quarter period, taking the total number of shares on issue for the Company to 1,004,832,159’.
 - d. The 336,666,667 ordinary shares to be issued on conversion of the Performance Shares represented 33.5% of the share capital in ISX

immediately after the issuing of the shares.

- e. In the 6-month period ending 30 June 2018:
 - i. The OT Markets Agreement (as varied) contributed \$871,161 to revenue.
 - ii. The Nona Marketing Agreement contributed \$385,210 to revenue.
 - iii. The Three Services Agreements contributed \$2,930,808 to revenue.
 - iv. In the 6-month period ending 30 June 2018 ISX revenue amounted to \$5,512,057.
 - v. The milestones for the conversion of the Class A, Class B and Class C Performance Shares were achieved.

General observations on our approach to evaluating Mr. Trivett's evidence

- 112. There were several findings that Mr. Trivett's counsel submitted were not open to the Board to make, because the question had not been asked of Mr. Trivett in cross-examination. We are cognisant of the rule in *Brown v Dunn*²³, although it has limited application where parties are required to exchange witness statements, as occurred in this matter. Because of the effect of the jurisdictional matters we have discussed, factual findings relevant to establishing what a benchmark Review Auditor would have done are not necessary and we do not treat the expert views presented as involving findings on our part necessary for our jurisdiction within S 1292(1)(d) to arise for the reasons we have already discussed.
- 113. There was limited s19 compulsory examination evidence from Mr. Taylor and Mr. Krafft to which we have had regard in the context of each contention and noted if relevant. No members of the Engagement Team in the FY18 Audit were called to corroborate Mr. Trivett's evidence.
- 114. To the extent the contemporaneous documentary evidence is not conclusive and accepting Mr. Trivett's version of events requires inferences to be drawn, the rule in *Jones v Dunkel*²⁴ may be a relevant consideration in forming our view on the weight of the available evidence.
- 115. We were concerned by aspects of the evidence given by Mr. Trivett because of its inconsistency and limitations which reduced its

²³ (1893) 6 R 67 at 70,76

²⁴ [1959] HCA 8,101 CLR 298

credibility. In some instances, we have rejected the evidence or decided not to place weight on it in the absence of other corroborating evidence, as indicated by the comments we have made within this section as well as in the context of considering the contentions. In particular:

- a. Mr. Trivett's statement of evidence lacked specific details about several relevant facts.
 - b. His recollection in cross-examination was inconsistent and very limited about what he had read and been told about the Performance Shares.
 - c. The lack of explanation about why he did not read relevant information in documents that he had read or reviewed added to our impression that his evidence about not knowing about their relevance to the FY18 Audit lacked credibility.
 - d. In contrast to Mr. Trivett's lack of recall about details of the Performance Shares his recall of other matters was quite detailed, such as the specific pages of the draft financial report he had read when performing the review of the FY18 Financial Report on 23 August 2018 [T122.17] and what he recalled about the specific limits of his knowledge about the Performance Shares. The inconsistency of Mr. Trivett's ability to recall some details and not others caused us to conclude that his evidence that he did not know and had not been told about the relevance of the Performance Shares to revenue recognition in the FY 18 Audit was not reliable and lacked credibility.
116. Set out below, generally in chronological order, is Mr. Trivett's relevant evidence and the documentary evidence relevant to the contentions. Where indicated the relevant factual matters are considered in the context of the specific contentions. We have included findings on Mr. Trivett's evidence if pertinent to the level and standard of performance of his duties as Review Auditor in the FY18 Audit and included our reasons. There is nothing in the words of S 1292(1)(d) that constrains us from considering the evidence before us and making such findings if we are so satisfied. Indeed, it is consistent with the scope of our jurisdiction as we have discussed.

Outline of Evidence from Mr. Trivett and Documentary Evidence

117. Mr. Trivett's statement recorded that:
- a. He performed the role of Review Auditor for the first audit of the financial report of ISX undertaken by GT on 30 November 2015,

which was for the results for the 6-month period ending 31 December 2015 and subsequently performed that role for the ISX annual audits in FY16,17 and 18.

- b. As part of his first engagement as Review Auditor for ISX Mr. Trivett said he familiarised himself generally with the company (SCT Statement HB15 at [12]) and could recall numerous briefing discussions in which the Engagement Partner outlined to him the business activities of ISX. He said it was not his practice to review previous company reports if they exist.

118. In cross-examination Mr. Trivett said, of his knowledge of ISX, [T134:9 - 137:13] that:

- a. He was aware that ISX had originally been a publicly listed company called Otis Energy which publicly issued shares, and with the proceeds acquired two companies, iSignthis and ISX IP Ltd.
- b. The vendor was iSignthis, which he did not know was a company registered in the British Virgin Islands (ISXBVI).
- c. He knew that consideration for the acquisition of the two ISX companies was that Otis Energy issued some shares to the Vendor, including performance shares and ordinary shares, but he did not know the number and he knew this had taken place in the context of a reverse takeover.
- d. He did not read the Prospectus as part of his initial review of ISX before he performed the first EQC Review in 2016. They were documents that he had access to if he had thought they were worth looking at. (T121.13)

119. A step commonly taken by the GT audit team is to include a summary of ASX announcements for the relevant company in the audit file and there was such a summary included in the FY18 Audit File (ASX Announcements Summary). Mr. Trivett said that was the primary source of information he received in relation to market announcements made by ISX.

120. At the time of the FY18 Audit Mr. Trivett said that he knew the nature of the business ISX conducted, the identity of some of its larger customers, its push into overseas markets and that ISX had a banking licence in Cyprus. He said he knew this from audit work papers he had reviewed from the previous ISX audits for which he had also performed the role of Review Auditor, and from his conversations with members of the audit engagement team including the Audit Engagement Partner, during the previous audits.

121. Mr. Trivett did not explain in his evidence why his usual practice as Review Auditor was not to read previous company reports if they exist or why he did not read the Prospectus that was available to him when he first performed the role of Review Auditor for ISX. It would have been helpful had Mr. Trivett provided an insight into the rationale for his practice of not reading such documents, although no explanation was offered, and the only relevance of this evidence seemed to be to support Mr. Trivett's defence to Contention One that he was unaware of the significance of the Performance Shares to the FY18 Audit.
122. The Grant Thornton Manual in 19.87 identified a Review Auditor's role as being to perform an objective review and in 19.86 emphasised that the Review Auditor should be knowledgeable about specialised industry practises, as well as applicable rules and regulations. The Panel considers the practice of reading documents such as a company's previous year's annual report or a prospectus if available in the case of a new audit client as being aligned with the responsibilities and objectives of the Review Auditor's role and necessary in order to be able to perform the objective evaluation required by ASA220(20)(a), as an objective evaluation is not possible without information and knowledge gained independently of the audit team.
123. The audit engagement team for the FY18 Audit comprised Mr. Taylor as lead auditor and Engagement Partner, Mr. Krafft as Manager, Niall McDonald, and Steve Zaharis (together the Audit Engagement Team).
124. On 25 May 2018 there was an audit planning meeting for the FY18 Audit. Mr. Trivett did not attend.

Evidence on Minutes of Audit Planning meeting 25 May

125. The minutes of this meeting (JM29) were entitled '*2018 Audit Engagement team discussion*' (Minutes). They noted Messrs Taylor, Krafft Zaharis and McDonald as attendees. The discussion recorded as to revenue was '*range of different customers each having different contract terms - is important as an audit team to gain an understanding of each revenue stream at the planning stage, understanding the terms of each underlying contract and the impact this has with regard to revenue recognition etc. As more of these contracts are integrated and go live, sales revenue will start to increase. Audit notes each contract is likely to be at a different phase in the implementation process. Audit to formulate a strategy from which to assess this, possibly using a similar approach to last year with the use of a contract register as a basis from which to perform our testing.*' Under the heading Materiality the benchmark noted was EBT – [loss] Benchmark % - 5%. Under the heading Equity, '*Performance shares, due for decision on 30 June 2018*'

was noted. Under the heading '*Risk factors identified*' - '*lack of profitability or quality earnings*' was noted and under *Reasonably Possible Risks Identified, Revenue – existence/occurrence* and *Equity - completeness (RPR)* were identified. The Minutes also noted there was a fraud discussion led by the Engagement Partner and it was noted the team was reminded to maintain professional scepticism throughout the audit.

126. In cross examination Mr. Trivett confirmed that when he reviewed the Minutes, which he said he did during the review he conducted on 30 July 2018 discussed further below, he read the words '*Performance shares due for decision on 30 June 2018*' under the heading *Equity* and the words on the next page under '*reasonably possible risks identified*' – *Revenue - Existence/Occurrence*. [T130.18]

New revenue streams for ISX in last two months of 2018

127. On the 20 June 2018 the Engagement Partner sent Mr. Trivett an email which stated that he was reviewing planning and '*we are going to need to catch up before you get into it as we need to explain the revenue streams as they may do your head in. Guys have done a great job documenting them but there is a lot of information*'.
128. On 26 June 2018 there was a meeting between Mr. Trivett and Mr. McDonald to discuss revenue streams. Mr. Trivett said that in the meeting Mr. McDonald identified the project revenue streams, but not specific customers or contracts, as a separate revenue stream for the company.
129. Mr. Trivett confirmed during cross examination that Mr. McDonald had physical copies of work paper xC100 and work paper xC100A at this meeting (T144.1-12).
130. Audit workpaper Xc100A (AWP XC100A) was entitled *Online Walkthrough and ISX Revenue Services - revenue streams*. XC100A listed 5 revenue streams including *Project Management Services*.
131. Audit workpaper Xc100 was entitled *Revenue Understanding and Walkthrough* and included the following information:
- a. Its stated objective was: *To document our understanding of each of the client's revenue streams and the associated process and controls in relation to each of these through documentation of prior year knowledge and discussions and walkthroughs held with management.*
 - b. It described the work performed as: *Discussions with Todd Richards (CFO) to gain an understanding of each of ISX's key revenue streams. For each of these revenue streams, we*

understood the processes in place with regard to the initiation and recording of revenue, and the associated controls around these. We then sat with the relevant personnel in order to observe these controls in action and ensure that they were operating effectively. Any deficiencies were noted for our audit findings and considered in formulating our revenue testing approach at field work.

- c. Under the heading - *A new revenue stream was introduced in 2018*, the following was noted: 4) **Project management services** - *In May 2018, ISX commenced a new revenue stream through which it provides license, software, development, integration, maintenance, and technical support to customers over a period of time. These services fall under the scope of 'Project management services'. Per discussions with Todd Richards (CFO), the commercial rationale behind the introduction of this service is that it will engage new customers with the view to providing KYC, payment processing and card settlement services to them in the future. Customers are typically FX brokers and are engaged through iSignthis eMoney Ltd and Authenticate BV. Typically, two separate service agreements exist between iSignthis and the merchant in respect of project management services: one stipulating the services provided by iSignthis...and the others stipulating the services provided by the merchant to iSignthis.... Per discussion with Todd, the project management services are typically provided over the course of one to two months. Per review of an example services agreements (with FCorp Services limited) iSignthis will typically make a small profit margin across the two underlying agreements. This new revenue stream is currently in its infancy with three to four customers contracted to the service at 12 June 2018. As detailed in our processes and controls section below, the billing of fees for the service is not currently always in line with the stage of completion of the underlying project, for which we will need to gain comfort over appropriate recognition/cut off at year end.*
- d. Xc100 Further noted: A further **new revenue stream** was announced to the market in June 2018 and recorded: *On 4 June 2018 ISX announced to the market the provision of a new service and subsequent revenue stream through its Cypress entity, iSignthis E Money Ltd. This is a tailored business to business. EUR based transactional banking service, aimed at providing a service to ISX's AML regulated customer base and affiliate networks. EMA allows merchants to retain funds on deposit with ISX, utilising those funds to make payments to 'suppliers' including affiliates, sub affiliates, personnel etc. These 'suppliers' are in turn AML screened*

by ISX. This will target customers in AML regulated sector business, including FX/CFD brokers and the gaming industry where retail banking facilities do not provide reasonable operating solutions. The business model is based upon ISX charging a percentage fee on all inflow of monies, and a fixed fee for outflow via SEPA and SWIFT. OCT is charged as a combination of fixed and percentage fees for payments outbound. As of 12 June 2018, two clients had been contracted to the new facility (Hoch Capital Limited and Royal Forex Limited) with other merchants under negotiation. It should be noted that both Hoch Capital and Royal Forex are existing card settlement merchants for ISX E-Money Limited. Clients are contracted in the range of 100 bps to 450 bps against fund inflows. EMA funds inflow is expected to be in the region of euro 2-5 million month against current contracts. With these figures in mind, we would not anticipate this to be a significant revenue stream for ISX at 30 June 2018. However, it should be noted that funds are being processed through this EMA service. It should be noted that ISX will typically provide more than one of the above services to one customer the terms of which are usually covered within one underlying agreement e.g., one customer contract could cover the provision of both identity verification and payment processing services. This is particularly the case in respect of identity verification, payment processing and card settlement, each of which rely on the same client in-house Payidentity platform. As such, the process through which customers are taken on and billed is largely similar across each of the above revenue streams. We have documented our walkthrough of this process below, highlighting any processes and controls that are specific to certain revenue streams.

- e. Finally at the end of document XC100 a matter that was noted under the heading *Billing under Process and Controls* was: *Billing operates differently for project management services. Customers are billed in line with the billing terms on the underlying service agreement between ISX and the customer. Once a billing milestone is hit an invoice will be raised and issued. Revenue from this service is currently recognised in line with the billing process i.e., when an invoice has been raised. Given that the progress of the project is not typically in line with the billing (e.g., a significant portion of the billing is usually upfront upon signing of an agreement) revenue does not appear to be recognised in accordance with stage of completion per AASB 15.*

- 132. During cross-examination, Mr. Trivett confirmed that he was made aware at the meeting with Mr. McDonald on 26 June 2018 that Project

Management Services as noted in XC100 was a new revenue stream for ISX and he said he was aware of the eMoney account and the new service through the Cyprus entity of ISX eMoney Ltd noted at point 5 of xC100 and that 2 clients were identified in the AWP as having been contracted to the new facility (T144.26-146.17). Mr. Trivett was taken to the final page of XC100, and he confirmed that AASB15 was not the correct Accounting Standard that applied and agreed that AASB111 was the correct one although both were to the same effect insofar as revenue was to be recognised at the stage of completion of the project (T147.1-28).

Mr. Trivett's involvement in Audit Planning in July 2022

133. On 11 July 2018. Mr. McDonald emailed Mr. Trivett to let him know that the planning file was available on the network for his review. That email noted that Mr. McDonald was in the process of finalising the draft audit plan. Mr. Trivett diarised time for that review on 26 July 2018.
134. On 16 July 2018 Mr. Krafft sent an email to Mr. Trivett and Mr. Taylor. It attached a revised draft of the Audit Planning Report for ISX (SCT3) (Draft Audit Planning Report) for Mr. Taylor's comments and asked Mr. Trivett if he would have time to review the audit planning file the following week.
135. Mr. Trivett said he reviewed the Draft Audit Planning Report that was attached to Mr. Krafft's email for Mr. Taylor's review when he received that email. He said he noted Mr. Taylor was yet to review it and that he (Mr. Trivett) had time scheduled on 26 July 2018 in the following week to review the Audit file.
136. JM23 the final Audit Planning Report, was a 12-page document dated 20 July 2018. It referred to revenue recognition as a focus area and designated it a 'significant risk'. It identified materiality based on annualised loss before tax and the normal range as 5%. About revenue recognition, it noted 2018 YTD revenue as \$2,506,000 compared to prior year as \$1,371,000, next to the words *management judgement* it noted 'yes' and next to new or existing risk it stated 'existing'. Under the heading 'Details' it was noted:

Revenue has grown significantly in the year, with the group continuing to expand its operations across identity verification, payment processing, card settlement and project management services. Each of these revenue streams are based on underlying agreements with customers, which outline both the nature of the work to be performed and the associated fees. It is important for management to understand the different elements of these contracts, particularly in light of the new revenue standard, AASB 15 'revenue from contracts with customers'

which will be applicable from periods commencing 1 January 2019. Contractual agreements with customers require significant judgement from management in ensuring revenue is recognised appropriately. As such, we have identified a significant risk around revenue recognition.

Under the heading 'Planned Procedures' the Audit Planning Report noted:

Our planned audit procedures will include, amongst others:

- Document our understanding of each revenue stream through inspection of contracts and discussion with management, ensuring these are in compliance with AASB 118: Revenue.*
- Select a sample of sale transactions to the contracts with customers and verifying that the revenue under these contracts has been recognised in accordance with the Group's revenue recognition policies.*
- Review sales transactions around reporting date to assess the timing of recognition.*
- Analytically assess movements in revenue balances and obtain explanations and corroborating evidence from management for fluctuations outside of our expectations.*
- Reviewing management's determination on the potential impact of the new revenue standard AASB 15 Revenue from Contracts with Customers.*
- Assessing the adequacy of the group's disclosures within the financial statements.*

Page 10 of the report was headed Fraud Risk. Under the heading 'How our Audit plan has been designed to address the risk of fraud' there were the following points:

- Consider conditions present that increase the risk of fraud.*
- Conduct planning, discussions with management regarding the risk or existence of fraud policies and procedures in place to prevent and detect fraud.*
- Plan the nature and extent of our audit tests having regard to the risk of fraud, noting revenue recognition is required to be an assumed risk of fraud.*
- Review accounting estimates for management bias.*
- Evaluate the business rationale for unusual transactions.*

- *Maintain professional scepticism throughout the audit.*
- *Review the appropriateness of journal entries and year end accounting adjustments.*
- *Evaluate if any identified audit misstatements are indicative of fraud.*
- *Incorporate unpredictable audit procedures into our audit plan and testing.*

Under the heading 'Fraud Risk Assessment' there were the following points:

- *Management has performed a fraud risk assessment during the period, which has included providing documented response to Grant Thornton's fraud risk summary evaluation.*
- *Management has assessed the risk of fraud to be low. Management has not identified any major deficiencies in the company's control environment to prevent or detect any instances of fraud that could cause material misstatement to the financial report.*
- *Grant Thornton will report to the audit committee/Board by exceptions noted from our audit testing.*

137. On 17 July 2018 Mr. Taylor responded to Mr. Krafft's 16 July email on the Draft Audit Planning Report saying '*Overall looks OK, however in the share-based payment section we refer to it as a KAM, however we do not in the summary section. I don't believe it is a KAM so please change the wording in the share-based payments section*'. This email was copied to Mr. Trivett.
138. Mr. Trivett said in his statement that the final Audit Planning Report (JM23) was not an audit workpaper that was signed off by him as having been reviewed in the FY18 Audit but that he had reviewed the Draft Audit Planning Report on 16 July 2018. [SCT 68.6] The audit file record is important and the Audit Planning memo a document that was identified by 19.91 of the Grant Thornton Audit Manual, an outline of which is included in paragraph [257](#), as one that required review and therefore one about which the audit record should have reflected that review by the Review Auditor had occurred. Mr. Trivett's explanation does not reflect an understanding of the importance of ensuring the audit record properly reflects the performance of duties identified by ASA 220 (25)(a).
139. There is no documentary or other evidence that Mr. Trivett made any comment on the draft Audit Planning Report at the time he said he reviewed it, and in our view, it is reasonable to conclude that he did not.

140. Having regard to the scope of the function of a Review Auditor identified by the Grant Thornton Audit Manual, including to challenge the judgements and decisions of the Engagement Partner, to apply professional scepticism^{24a}, and to provide an additional level of review in an audit, there were aspects of the contents of the Audit Planning Report that following initial review by the Review Auditor, should have generated further discussion. For example, as to the materiality benchmark selected which was based on annualised loss before tax and the normal range of 5%.
141. The Grant Thornton Manual included a chapter addressing how materiality was to be assigned in audits. It stated in 7.01 that the audit team's consideration of materiality requires professional judgement and is to consider the needs of users of the financial report. It stated in 7.13 that the audit team must document the considerations that result in the selection of a benchmark and in 7.14 stated that because the selection of a suitable benchmark involves professional judgement and has a significant impact on the audit, the audit team is encouraged to consult, as appropriate. In 7.16 it was again stated that the most important criteria used to determine appropriate percentage is the users of the financial statements and cited as an example that for listed entities, relatively small percentage changes in a financial statement element might be considered significant to shareholders. In 7.17 the Grant Thornton Audit Manual identified the relationship between the measurement percentage and the chosen benchmark and 7.18 stated that the challenge is to set materiality at the level where audit effort and the needs of users are in balance, which can only be achieved with experience and consideration of what a reasonable person who has the same knowledge and understanding about the entity would consider material.
142. At 7.20 the Grant Thornton Manual stated that Reviewers and third parties should be able to understand the rationale for the materiality judgements made by the audit team from the audit documentation. A table described as 'guidance for all the benchmarks and measurement percentage ranges now available in Voyager' was included at 7.22 which included 12 potential benchmarks, when to use them, the suggested range and guidance notes against each. None of these benchmarks identified by the Grant Thornton Manual were 'annualised loss before tax' which the Audit Planning Report included as the benchmark selected in the FY18 Audit.
143. Mr. Thorn's view was that the audit team should have used revenue as the basis for establishing materiality. In his experience, it was unusual to use a loss as the basis for its calculation. He agreed this was subject to

^{24a} See Paragraph [50](#)

the auditor's professional judgement but that using a loss as the basis for establishing materiality was very questionable even if loss was open to an auditor to adopt. [T247] He noted GT's guidelines were to use profit before tax as a benchmark for materiality and if there was no profit, revenue should be used. This approach he said would be in line with his experience of how materiality is to be calculated.

144. Mr. Westworth's view on materiality did not consider the provisions of the Grant Thornton Audit Manual.
145. We agree, as the Grant Thornton Manual identified, that selection of the materiality benchmark has a significant impact on the audit. In our view carrying out the function of Review Auditor to a proper professional standard involves ensuring materiality has been set by the Audit team appropriately. This would have involved ensuring alignment between the relevant matters identified in the Grant Thornton Audit Manual that indicated what needs to be considered and reviewing and being satisfied that the judgements of the audit team that resulted in the materiality benchmark selected were appropriate, and had been documented appropriately and if necessary, challenging the judgements and decisions of the Engagement Partner.
146. Mr. Trivett made no comment on the materiality benchmark noted in the Audit Planning Report. In our view the failure to comment and the failure to record his review on the FY18 Audit File) failed to meet a proper professional standard, within the meaning of s1292(1)(d)(ii), having regard to the importance of setting materiality in an audit.
147. On 23 July 2018, Mr. Trivett was copied on another email from Mr. Krafft to Mr. Taylor attaching the draft KAM assessment form for ISX for the year ended 30 June 2018 (Initial Draft KAM). Mr. Krafft asked Mr. Taylor to *'take a pass through it and let me know if any comments.'* Mr. Trivett said he opened the attachment and reviewed the Initial Draft KAM when he received this email (SCT5). The differences between this draft and the later draft KAM Assessment Form Mr. Trivett said he reviewed on 14 August 2018 are referred to in paragraph [179](#).
148. Mr. Trivett was cross examined on the Draft KAM he looked at on 23 July 2018 (T152.16). This is discussed in the context of Contention 4.

Mr. Trivett's review of audit planning on 30 July 2018

149. On 26 July 2018 Mr. Trivett received an email link to the FY18 Audit File on the Voyager System from Mr. McDonald.
150. Mr. Trivett's emails show he downloaded file on Monday 30 July 2018 at 1.32pm and he put it back on the network at 4:40pm that day at the same time noting in an email to Mr. McDonald that there were *'a couple of*

minor review notes in planning’.

151. As to the review of the Audit File conducted by Mr. Trivett on 30 July 2018, his evidence was:
 - a. The file contained several documents including: the Minutes (JM29) (see paragraphs [125-126](#) above); the Audit Planning Report (JM23) (see paragraph [136](#)); the Fraud Memo (JM28) (see paragraphs [266-271](#) below) and the ASX Announcements Summary (see paragraphs [159-162](#) below).
 - b. His focus when he reviewed the Minutes given that he had not attended the audit planning meeting they recorded, was to ensure that he was aware of any risks identified by the team.
 - c. He also reviewed the planned audit approach.
 - d. Based on what was provided to him by the audit team, he said that the issue for him in considering the appropriateness of the audit planning was one of revenue recognition and whether it was appropriate for it to be recorded in the year ended 30 June 2018.
152. As fraud was a presumed risk for revenue recognition Mr. Trivett as Review Auditor should also have focused on fraud as an issue when he reviewed the appropriateness of the audit planning. There was no evidence Mr. Trivett considered this aspect of the audit and how the planned audit procedures addressed the risk of fraud, and it was not evident from the documents he reviewed. In our view the failure to comment or otherwise circle back to the Engagement Partner about how the revenue recognition procedures would also specifically address the issue of fraud, and note that on the audit file, failed to meet a proper professional standard for performance of the role of Review Auditor, within the meaning of S 1292(1)(d)(ii).
153. At the time Mr. Trivett reviewed the audit planning on 30 July 2018, he said he was not aware of the dollar value of the project management services that had generated the additional revenue in the last two months of FY 2018 and was not aware of specific high value contracts. He said his understanding was that when the audit planning took place and at the time he reviewed it on 30 July 2018, the audit engagement team did not have details of the service agreements with FCorp Services Limited, IMMO Service group and Corp Destination Pty Ltd (the Revenue Contracts). He said he understood the audit planning which was done in May 2018 was based on the 30 April 2018 year to date numbers provided by ISX and those numbers did not include all the project management revenue that was recognised in the final two months of the financial year. He said he first became aware of specific contracts and details making up the project management revenue when he did his second review of

the FY18 Audit file on 23 August 2018 (SCT 37).

154. The accuracy of Mr. Trivett's evidence is called into question by the contemporaneous documentary evidence that that we are satisfied Mr. Trivett had read or discussed, that identified a significant increase in revenue had occurred in the last two months of the FY18 financial year and that identified that there were at least three revenue 'streams' including the 'project management revenue stream' identified as new. This included:
- a. Mr. Taylor's email to Mr. Trivett on 20 June 2018 flagging to Mr. Trivett that *'we are going to need to catch up before you get into it as we need to explain the revenue streams as they may do your head in. Guys have done a great job documenting them but there is a lot of information...'*
 - b. The commencement of the project management revenue stream that was part of what was discussed with Mr. Trivett by Mr. McDonald on 26 June 2018 and in which the FCorp contract was identified to Mr. Trivett. Mr. Trivett confirmed Audit workpapers Xc100 and Xc100A were available in hard copy at his meeting with Mr. McDonald on 26 June 2018 which referred to new revenue streams and provided details of some new clients signed up to contracts and included details about the management process for making agreements. The document Xc100 [see paragraph [131\(d\)](#)] referred to an ASX announcement dated 4 June 2018 about the announcement of a new revenue stream and provided detail about this new revenue stream including the identity of clients.
 - c. The draft KAM Mr. Trivett said he had read on 23 July 2018 that referred to the *'introduction of significant new revenue streams in the current period - notably an expansion into project management revenue.'*
 - d. The audit planning report Mr. Trivett said he reviewed on 16 July 2018 that referred to the *'introduction of significant new revenue streams in the current period - notably an expansion into project management revenue.'* in connection with the identified issue of revenue recognition and which recorded figures indicating management's estimate of a doubling in revenue from the year prior.
155. Based on this evidence we conclude that by 30 July 2018 Mr. Trivett knew or ought to have known:
- a. About ISX managements' view that revenues had at least doubled from the previous year (although we note that the final revenue figures were higher again).

- b. About the introduction of new revenue streams including the project management revenue streams and their significance as a proportion of overall revenue.
 - c. The identity of new clients including at least one of the project management clients, before 23 August 2018 and by mid-July 2018 at the latest.
- 156. To the extent Mr. Trivett's evidence in paragraph [153](#) is inconsistent with the documentary records as discussed in paragraph [154](#), we do not give weight to it.

Fraud Memo

- 157. The other document Mr. Trivett specifically referred to in his statement as having been reviewed by him on 30 July 2018 was the Fraud Memo [JM28] (Fraud Memo) although he did not further address this document or his review of it in his statement of evidence. He was cross-examined about it and confirmed that he did not require any amendments before signing off on this Fraud Memo. (T152.8).
- 158. Details of the Fraud Memo and Mr. Trivett's evidence in relation to it is discussed in Contention 2.

ASX announcements work-paper

- 159. The ASX Announcements Summary was an audit workpaper from the FY18 Audit File that recorded a summary of ASX announcements made by ISX. A physical copy of the Announcements Summary was tendered at the hearing.
- 160. Mr. Trivett said in his statement and at the hearing that this was the primary source of information that he received in relation to market announcements by ISX [SCT 12]. In cross-examination he said it was his practice to look at the ASX Announcements Summary. (T130.3-4)
- 161. The ASX Announcements Summary was headed '*ASX Announcement Review*' and its objective was noted as '*gain an understanding of the entities (sic) activities since December 2017 (date of last update from audit) and identify contingent matters*'. Information in the document was recorded under the headings: *Date*; *Description*; *Findings*; *Audit Impact*. Mr. Trivett confirmed he reviewed this document on 30 July 2018.
- 162. The Announcements Summary referred to 14 announcements issued to the market by ISX between 4 June 2018 and 23 August 2018 of which three were the subject of further evidence in the proceedings. They were:
 - a. The ASX announcement recorded as dated 4 June 2018 (4 June Announcement) that was described as '*Interim Update*'. Under '*Findings*' it noted: *Unaudited revenue will be reported in (sic) 30*

June 2018 Appendix 4C, which will provide guidance to outcome of performance share issue.' Under Audit impact, the AWP noted; *'Noted for performance share testing at year end'*.

- b. The ASX announcement recorded as dated 22 June 2018. The description of the announcement was *'cash receipts - performance rights*. Under *findings* it noted – *'cash receipts now in excess of \$3.75m for H2 17/18 – subject to audit the receipts satisfy Class A and Class B performance rights under section 1.4.2 of ISX prospectus 22 December 2014...company not yet in position to provide guidance on Milestone C target of \$5m audited target revenue.'* Under the heading *Audit Impact*, the AWP recorded – *'noted for Share Based Payments'*.
 - c. The ASX announcement recorded as dated 31 July referred to by Mr. Trivett in his statement was described as *Appendix 4C Quarterly*. Under *Findings* it noted *'Management Accounts and business Update for period to 30 June 2018.'* Under Audit Impact the AWP recorded *'No issues noted'*.
163. Mr. Trivett's evidence about the whether he read details of the above announcements when he reviewed the Announcements Summary was:
- a. When asked in cross examination whether he read the 4 June ASX Announcement (T 131.9) Mr. Trivett said he did not specifically remember reading the words *'unaudited revenue will be reported in (sic) 30 June 2018 Appendix 4C, which will provide guidance to outcome of performance share issue'* but if he did, he said he certainly did not make the link to revenue at the time. (T131.25-27).
 - b. He said in his statement that he did not see the 22nd of June announcement when he reviewed the FY18 Audit File on 30th July and that based on his review of the FY18 Audit File, he understood that the ASX summary document had been prepared on 18 June 2018 and signed off by Krafft on 19 June 2018, prior to the 22 June 2018 announcement.
 - c. He said in his statement that the 31 July 2018 ASX announcement was released after the Audit Plan was finalised and after his review on 30th July [SCT45].
164. Mr. Trivett's evidence was that it was his practice to read ASX announcement summaries. We agree that it is within the responsibility of a Review Auditor of a listed company to ensure they are apprised of and have a relevant understanding about information disclosed to the ASX by a company within an audit period and which includes market sensitive information. Such a review would form part of the information base enabling the objective review contemplated by ASA220(20) and 19.87 of

the Grant Thornton Audit Manual and would be relevant as an information source to be knowledgeable of relevant specialised industry practices as identified by 19.86 of the Grant Thornton Audit Manual.

165. Mr. Trivett's evidence in effect is that he performed a review of the ASX Announcements Summary, as Review Auditor that did not result in him gaining an understanding that its contents included information that, if he did not have knowledge of the relevance of the Performance Shares to revenue recognition in the FY18 already, provided clear clues about the connection.
166. His further evidence was that if he did read the part of the announcement in italics in paragraph [162\(a\)](#) that he did not make the link to revenues at the time. We do not find that explanation convincing or credible, particularly given the knowledge of new revenue streams Mr. Trivett had by the time he reviewed the ASX Announcements Summary on 30 July 2018 and the specificity of the link it identified. The 4 June announcement referred to information which directly challenged what Mr. Trivett's evidence asserted was his then current understanding of no link between increasing revenues at ISX and the Performance Shares being due for decision on 30 June 2018.
167. Our view of the evidence discussed leads us to the conclusion that Mr. Trivett performed a review of the Announcements Summary that did not involve reading it in detail.
168. As we have noted, the task of that review was a duty within Mr. Trivett's role as Review Auditor within the meaning of S 1292(1)(d)(ii) and we are satisfied that Mr. Trivett failed to perform a proper review reflecting the professional standard of an effective and competent review of the document because he did not identify and failed to therefore act upon the relevant and significant information it contained.
169. Mr. Trivett's evidence was that when he performed his review of the ASX Announcements Summary workpaper on 30 July 2018 it included no announcements after 4 June 2018. That evidence, as an explanation for not reading or knowing about those announcements, was premised on the basis that as Review Auditor his responsibility did not extend beyond evaluating the records on the FY18 Audit File. We do not agree that a Review Auditor's role is limited in that way. As we have said, the Review Auditor needs a sufficient information base to enable the objective review contemplated by ASA220(20) and 19.87 of the Grant Thornton Audit Manual and if information on the audit file appears insufficient or is out of date, proper professional performance extends to follow-up action that identifies and ensures the potential information hiatus is understood. In the case of the ASX announcements, this could have quickly been done by cross-checking on either the company's website or the ASX website

for example. There had been two ASX announcements by ISX on 4 June 2018, both of which were relevant to revenues and one of which had been specifically referred to in the documents discussed with Mr. Trivett by Mr. McDonald in their 26 June meeting.

170. Had Mr. Trivett's review of the ASX Announcements Summary resulted in him reading and understanding the 4 June announcements, or had he read the documents provided to him in the meeting of 26 June 2018, the fact there was a further ASX announcement by the time of his review on 30 July 2018 which was an obvious inference from the contents of those documents, would have been apparent to him.
171. For the same reasons we have referred to in paragraph [166](#), and because Mr. Trivett failed to take into account other information he had been told and should have read about with respect to the FY18 Audit by the time he reviewed the ASX Announcements Summary, our view is that these facts also demonstrate Mr. Trivett's failure to properly review the ASX Announcements Summary and properly carry out his role as Review Auditor, within the meaning of S 1292(1)(d)(ii).
172. In relation to ASX announcement made on the 31 July 2018, it is mentioned in the final version of the ASX Announcements workpaper on the audit file. Mr. Trivett's evidence gives no explanation about why he did not further review that summary or otherwise check what further announcements the company may have made during the audit. That the announcement had not been made when Mr. Trivett conducted the audit planning review on 30 July 2018 is not an adequate explanation as to why, as Review Auditor he remained unaware of it during the FY18 Audit and again the evidence he gave was focussed on supporting his defence of contention one that was based on his lack of knowledge about the relevance of the Performance Shares.
173. The above matters cause us to evaluate Mr. Trivett's explanations about not seeing or reading the relevant ASX announcements cautiously due to its lack of objectivity and plausibility which in our view significantly reduced its credibility.

FY18 Audit

174. Audit work commenced in early August 2018. In his statement, Mr. Trivett said regarding communication with audit team members and his approach to performing his role as Review Auditor that:
 - a. His methods of inquiry included in person and telephone conversations with audit team members as well as raising review points in the FY18 Audit File.
 - b. He recalled conversations with the Engagement Partner, mostly

informal, during which he would obtain quick updates.

- c. He also received informal updates mostly from Mr. Krafft.
- d. He did not record time or make file notes of these discussions.
- e. One focus he had was to review the audit team's judgement as to the cut-off dates for revenue attributable to project management services and another was whether the revenue was in fact real.
- f. He was satisfied, based on his enquiries of the audit team that the appropriate inquiries were being made and he was satisfied, based on a conversation with Mr. Taylor that there was a commercial explanation for ISX entering contracts with low margins. That explanation was that ISX thought setting up the customers should secure a good future revenue stream from them which would have improved margins in the future.
- g. Mr. Trivett said he was not concerned that the low margin contracts were an indicator of fraud or market misrepresentation as the commercial explanation made sense to him. [SCT50,51]. Mr. Trivett's evidence that he accepted the Engagement Partner's explanation, at face value, on the basis it made sense to him, indicated he applied professional judgement to reach a conclusion that these low margin contracts were not an indicator of fraud or market misrepresentation. His evidence however disclosed no objective basis for accepting the Engagement Partner's explanation. The Grant Thornton Manual specifically referred to the Review Auditor's role as one that included the responsibility to test and challenge the Engagement Partner's judgements. There was no evidence this occurred or that Mr. Trivett examined the plausibility of the explanation provided, even though revenue recognition was the subject of a significant judgement by the audit team, fraud was a deemed risk, and his role required him to apply professional scepticism. We are satisfied this evidence demonstrates a failure to properly carry out his function as Review Auditor. Seeking additional details from the Engagement Partner to validate the rationale for the company's explanation, particularly the pathway between the one-off, short term revenues being generated by the contracts [e.g. Document Xc100, discussed with Mr. Trivett in the 26 June meeting, referred to the project management services being typically provided over the course of one to two months and 'improved margins in the future']²⁵, would have been one way to approach this.
- h. As to the documentation confirming receipt of the project

²⁵ See paragraph [131\(c\)](#)

management revenue, Mr. Trivett's evidence was that he understood that the customers under the revenue contracts were based abroad, and he therefore considered that a certificate of practical completion was an appropriate way to verify delivery of the contract services. Mr. Trivett said he was not told by the audit team that in this case they were sent to the audit team by ISX rather than received directly from the customer. As Review Auditor, Mr. Trivett said he does not usually read actual certificates, and as part of this audit, did not read the certificates obtained by the audit engagement team in relation to the revenue contracts. We have commented on this evidence in the context of our consideration of Contention Two.

175. Mr. Trivett commented in his evidence that as Review Auditor he was dependent to a significant extent on the documents and information given to him by the audit team. He said he considered the audit team to be capable and diligent and his preference when performing the Review Auditor function is to look at the final Draft Audit Report together with the final or near final version of the company's financial statements. Our view is that the function of Review Auditor is not dependent on the audit team in that way. In our view and in order to properly fulfil the objectives of the function of Review Auditor to a proper professional standard within the meaning of S 1292(1)(d)(ii), which includes providing an additional level of review in an audit, and in order to be able to perform an objective review, independent access to the audit file record is necessary and we do not regard those responsibilities as capable of being obviated.
176. On 14 August 2018, Mr. Krafft sent Mr. Trivett and Mr. Taylor an email attaching an updated KAM assessment form (Final Draft KAM). In that email Mr. Krafft said he wanted to '*get on the front foot*' to avoid any '*scrambling*' at the end of the month. He said in the email it would be valuable to look at the KAM form in tandem with the Annual Report on the Voyager File in the EQC Review scheduled for later that week. Mr. Trivett's evidence was that he reviewed the Final Draft KAM at the time he received that email.
177. The reason identified for the Revenue Recognition KAM in the Final Draft KAM was recorded as: '*The Group's revenue has primarily consisted of software as a service in previous periods, which we note to be inherently complex. However, given the group is in an early state in its lifecycle, we note revenue has not been significant in prior periods. Revenue has grown significantly in the current year, with the client continuing to expand its operations across a variety of different service types. This growth is a combination of sales from existing streams as well as the introduction of significant new revenue streams in the current period -*

notably, an expansion into 'project management revenue', occurred this year, for which revenue is being recognised on a percentage completion basis. Each revenue stream is based on underlying agreements with customers, which outline both the nature of the work to be performed and the associated fees.' The reason recorded as above was the same as had been recorded in the Initial Draft KAM, which we have outlined in paragraph [147](#).

178. The next page was entitled 'Draft of KAM point'. There was a note at the top of the page that stated: *'Limiting the use of highly technical auditing terms helps enable intended users without a reasonable knowledge of auditing to understand the basis for the auditors focus on particular matters during the audit.'* The first draft KAM point (there were two and the second was not relevant to this decision) was described as *"The Group derives revenue through the rendering of services which are performed under a combination of individual agreements and contractual agreements. Under the next heading 'Follow up with explanation.', it stated: 'Determining the appropriate revenue recognition methods for multiple contractual agreements can be complex and involves management judgement, which include determination of each performance obligation within contracts and identifying when performance obligations are satisfied so revenue can be recognised. And concluded: 'We have determined the occurrence of revenue to be a KAM due to the inherent audit risk associated with revenue from multiple different contractual agreements.'* Finally, under the heading *'Explain Audit work performed to address the risk.'* was listed the following:

- *performing work walkthroughs for each revenue stream understand and assess the reasonableness of policies and procedures in place regarding revenue recognition in accordance with Accounting Standards AASB 118, Revenue and 111, Construction Contracts.*
- *Testing a sample of revenue transactions recognised to contracts with customers to assess whether revenue is being recognised in accordance with the Group's revenue recognition policies.*
- *Reviewing key conditions and terms of agreement in individual agreements to test the appropriateness of revenue recognised in accordance with the related accounting standards.*
- *For revenue recorded under a AASB111- assessing management's estimate of the stage of completion of each project on 30 June 2018 through corroboration to underlying supporting documentation and performing a recalculation of the*

percentage of completion for each significant contract.

- *Performing analytical procedures over revenue during the year and investigating unusual fluctuations.*
- *Assessing the adequacy of the group's disclosures within the financial statements.*

179. The relevant differences between the KAM point procedures described in Initial Draft KAM point and the Final draft KAM point as outlined above were that the Initial draft KAM point did not include any explanation as the Final Draft KAM did, and, instead of the second dot point procedure above, it included this procedure: '*Selecting a sample of revenue and agreeing them to supporting documentation to verify the occurrence of the transaction*'.

Mr. Trivett's review 23 August 2018

180. Mr. Trivett said in his statement that he reviewed the draft FY18 Financial Report sent to him by Mr. McDonald during his review on 23 August 2018. [SCT75]
181. Mr. McDonald's email to Mr. Trivett on 23 August informed him of a meeting to take place that afternoon between the Audit team and ISX.

Mr. Trivett's review of the FY18 final draft financial report

182. Mr. Trivett said in his statement that the Class A, B & C Performance Shares were referred to in Note 30, at page 52 of the draft of the annual report that he reviewed on 23 August 2018 recording that the milestones had been met and the performance rights would therefore convert and be issued as fully paid ordinary shares in accordance with the prospectus dated December 2014. He accepted that the note identified that the Performance Shares had been triggered by specific revenue milestones being achieved but observed that the KAM of revenue recognition was linked to notes other than Note 30, which was only linked to the financial statements under entries for share based payments.
183. Mr. Trivett was cross-examined about which pages of the FY18 Financial Report (JM49) he read when he reviewed the document on 23 August 2018. His answers were as follows [T122.17]:
- a. The letter from the Managing Director? Answer- no.
 - b. Page 11 (Information on directors)? Answer - no.
 - c. Note 24 re: related party transactions on page 45 of the financial report? Answer - no.
 - d. The remuneration report, did you read all pages 14 -19? Answer:

Yes. [T123.24].

- e. Mr. Trivett was then asked to look at the additional disclosures relating to key management personnel on page 18 within the remuneration report. In answer to the question whether he had read that section he first responded that he did not read the report line by line because he was interested in the key disclosures as they pertained to what was being signed off on in the audit report and then clarified that his answer was that no he did not read the additional disclosures section on page 18 [T123.21-124.10].
- f. Mr. Trivett was taken to the note on page 18 headed '*Additional disclosures relating to key management personnel*'. That note set out the number of shares in the company held during the financial year by each director and other members of key management personnel of the consolidated entity. Beside the names of four of the Directors, Mr. Hart, Mr. Karantzis, Mr. Minahan and Mr. Richards there was an asterisk referencing a footnote which disclosed as follows:

'During the 2015 financial year, iSignthis Ltd ('the acquiree') completed the acquisition of iSignthis B.V and ISX IP Ltd (together known as 'iSignthis') ('acquirer'). The acquiree (iSignthis Ltd) issued a total of 311,703,933 fully paid ordinary shares to the acquirer as consideration for the transaction. These members (excluding Mr. Barnaby Egerton-Warburton) of the Key Management personnel hold an interest in the acquirer.'
- g. Mr. Trivett agreed that these shares were issued to the entity that sold the two companies and the reference to 'acquirer' in the note should have been a reference to 'vendor' (T125.3-9). When asked again if it was possible that he had read this note during his review. He said: *'It's possible. I don't recollect that, and I certainly did not make a link between that sentence and anything to do with the Performance Shares.'*
- h. Page 23 - Mr. Trivett was asked whether he read that the company's revenue in 2018 was over \$6 million and it was nevertheless still in a significant loss position? Answer: Yes
- i. Note 5 – Revenue. Mr. Trivett read this page in 2018 and the reference to contracted service fees of \$5.7 million. Under the heading on the page. Revenue, it stated '*Accounting Policy for Revenue Recognition - revenue is recognised when it is probable that the economic benefit will flow to the consolidated entity. The revenue can be reliably measured at the fair value of the consideration received or receivable.*' Mr. Trivett's evidence was

that he understood that this statement was not correct for the project management services fees, which was as outlined in the KAM that referred to AASB 111 that required revenue to be recognised at the stage of completion. Mr. Trivett accepted that the note on page 23 did not refer to the Project management fees at all. He said he was aware of the significance of the project management fees to the recognition of revenue (T126.22-127.2).

- j. Mr. Trivett was taken to Note 30-page 52 entitled *'Share based payments*. This note included the statement:

'As part of the part consideration for the acquisition of 100% of the issued capital of ISX BV and ISX IP Ltd, the vendor also issued this should have read 'would issue'] 336,666,667 performance shares (on a post consolidation basis) based on achievement of the following milestones within (3) [years] of completing the transaction:

- 1) *112,222,222, Class A Performance Shares – on achievement of revenue of at least \$5,000,000. Annual revenue will be calculated on annualised basis over a six-month reporting period. Class A Performance Shares will expire if unconverted within three years of completing the transaction.*
- 2) *112,222,222, Class B Performance Shares – on achievement of revenue of at least \$7,500,000. Annual revenue will be calculated on annualised basis over a six-month reporting period. Class B Performance Shares will expire if unconverted within three years of completing the transaction; and*
- 3) *112,222,223 Class C Performance Shares – on achievement of revenue of at least \$10,000,000. Annual revenue will be calculated on annualised basis over a six-month reporting period. Class C Performance Shares will expire if unconverted within three years of completing the transaction.*

As at the date of this audited report, all three milestones have been met. The Performance Rights will therefore convert and be issued as fully paid ordinary shares as per the terms outlined in the Prospectus dated December 2014 as soon as practically possible.

Mr. Trivett did not recall reading the above information in Note 30. He said that if he read it, he certainly did not understand its significance. When asked if it was possible that he had read it, he said he did not think it was. (T127.9-12).

- k. Page 56 - page 2 of Independent Auditor's Report entitled *'Key Audit Matter. Revenue Recognition – Note 5'* Answer: Yes. This note included a general description of revenue as being derived

through the rendering of services which are formed under a combination of individual contractual agreements. It stated that determining appropriate revenue recognition methods for multiple contractual agreements can be complex and involves management judgement which include determination of each performance obligation within contracts and identifying when performance obligations are satisfied so revenue can be recognised. We have determined the occurrence of revenue to be a KAM due to the application of judgement, due to the complexity and customised nature of the arrangements entered with customers.

I. Page 58 - Shareholder information. Answer: No.

184. As to Mr. Trivett's evidence about Note 30 in paragraph [182](#) that he did not read Note 30 because it was not linked by the audit team to the KAM of revenue recognition it aligns with the submissions made on his behalf in these proceedings that his duties as Review Auditor were limited to those enumerated by ASA220(20). Based on that view it was argued that as Review Auditor Mr. Trivett was not required to read the whole of the draft FY18 Financial Report, but only those parts relevant to the significant judgements and the auditor's conclusions.
185. Mr. Trivett's explanation in cross-examination (paragraph [183\(i\)](#) above) that if he had read Note 30, he did not understand its significance was both inconsistent with his statement evidence and in our view lacks plausibility given the specificity of the contents of Note 30. This explanation was another example of Mr. Trivett providing evidence that was not relevant other than to support the assertion he was ignorant of the significance of the Performance Shares to the FY18 Audit and therefore its relevance to discharging his function as Review Auditor.
186. In our view, in the context outlined, the most logical view of the evidence based on the comments we have made, is that when Mr. Trivett reviewed the FY18 Audit Report he did not read Note 30 because it was not linked to the KAM of revenue recognition and he did not regard the function of Review Auditor as involving reading the whole of the draft FY18 Financial Report.

Review of draft audit findings

187. Mr. Trivett said that the independent auditor's report was not included as part of the version of the company's annual report provided to him by Mr. McDonald on 23 August 2018 and nor was it on the Voyager file at the time of his review on 23 August 2018.
188. In cross-examination Mr. Trivett confirmed he read page 56 of the draft FY18 Financial Report, which was page 2 of the Independent Auditor's

Report (Outlined in paragraph 183k).

189. Mr. Trivett said he reviewed the Audit Findings Report that was attached to Mr. McDonald's email to him on 23 August 2018, although it was not the statutory report, which is the Independent Auditor's Report, it included the KAMs. [SCT 76].
190. He said he was aware from enquiry that the National Assurance Quality Team had approved the proposed KAMs on 23 August 2018.
191. Mr. Trivett's statement explained that as he had reviewed the Final Draft KAM on 14 August 2018, and the terms of the Independent Auditor's report are standard, apart from the KAMs [SCT85], he signed off on 25 September 2018, that he had read the Independent Auditor's report.
192. The draft KAM on which Mr. Trivett based his sign off on the Independent Auditor's Report is outlined in paragraphs [177-179](#) and is discussed further in the context of Contention 4.

Review of x17 and x110 audit workpapers on 23 August 2018

193. The Voyager software programme indicates that Mr. Trivett performed a preliminary review of work paper X110 Project Management Revenue and a final review of X17 on 23 August 2018. No final review of the X110 work paper by Mr. Trivett is recorded on the Voyager software system. Mr. Trivett's evidence was that he performed a review of X110 on 23 August 2018.
194. A summary of the X17, X110 and X110a workpapers follows. We have discussed Mr. Trivett's evidence and our views on it in Contention 2.

X110 Description of Document

195. Audit workpaper X110 recorded audit work in relation to the project services revenue as follows. We have also included some comments on our views on this audit work that would have been relevant for a Review Auditor to consider:
 - a. In a box in the top right-hand corner of the workpaper materiality was noted as \$244,000; tolerable error \$183,000; de minimis \$12,200. Our view is that applying materiality on a net basis was incorrect and undermined the stated objective of the workpaper outlined in the next sub-paragraph. We have discussed aspects of the Review Auditor's duties with respect to materiality in paragraphs [140-146](#). Mr. Trivett as Review Auditor should have identified and acted upon the way in which this workpaper dealt with materiality by raising it with the Mr. Krafft or the Engagement Partner.

- b. The objective of the work paper was recorded as *'to ensure ISX project management services revenue has occurred and is not materially misstated; to ensure that ISX project management services revenue has been recognised appropriately in accordance with AASB111'*.
- c. Beside the heading 'work performed' - *'As outlined in our revenue walkthrough at XC100, ISX has commenced a new revenue stream in the period through which it provides licence, software development, integration, maintenance, and technical support to customers over a period of time. These services fall under the scope of project management services. Agreements are in place with customers as to the provision of these services on 30 June 2018. The relevant agreements are similar in structure with regard to the type of services provided, fee schedule and associated payment terms and can be found at XI10.12 to XI10.4 respectively'*.
- d. The four stages of the project management services were a. trading platform licence per agreed specification b. training c. end licensee support d. CRM maintenance and there was a brief description included for each stage.
- e. Revenue for three customers FCorp, IMMO and Corporate Destination had been tested separately utilising the terms per the contracts to note start dates, payment milestones, and details of any associated invoicing schedule. Receipt of funds to bank had been tested at XI10A to gain comfort over the occurrence of revenue.
- f. For trading platform licence fees, management was satisfied that the work had been performed and completed by ISX as at 30 June 2018 and as such any associated revenue could be recognised in full in FY 2018 and noted that to gain comfort over this, audit had requested copies of signed correspondence from each customer confirming that ISX had completed its work in relation to the project.
- g. For the third and fourth steps - end licensee support and CRM maintenance, audit performed a recalculation of the revenue they would expect to be recognised, and any associated deferral of income as at 30 June 2018.
- h. Under the heading 'Results' - *'See below for summary of PAJES (referred to in transcript as 'potential adjusting journal entries' [PAJE]) & MLPs (management letter points) raised.'* The MLPs noted were that copies of each of the three project management agreements provided for FCorp, IMMO and Corporate Destination were unsigned by both ISX and the Merchant at the date of testing

and recommended that in future agreements be signed by all parties to help ensure that such contracts are legally binding.

- i. The second MLP noted in relation to FCorp, and Corporate Destination was that the fees per Appendix A of the respective reports did not sum to the total commitment disclosed within the same agreement and upon which revenue was invoiced. The recommendation was that the schedules, per draft agreements be reviewed thoroughly before execution to ensure terms are correct and potential resultant disputes over payment from merchants does not arise.
- j. There were two PAJEs noted. The first recorded a debit to revenue and a corresponding credit to deferred revenue of \$101,538 and a debit to accrued expenses and a corresponding credit to cost of sales of \$96,000. The first PAJE was described as *'being adjustment to recognise deferred element of six-month maintenance and support fees'* and noted *'above PAJE includes a corresponding entry in relation to the costs ISX has incurred in relation to maintenance and support fees - see work performed at XI7'* (which workpaper we note had been prepared by the client).
- k. The second PAJE recorded a debit to revenue and a corresponding credit to deferred revenue of \$769,423 and a debit to accrued expenses and a corresponding credit to cost of sales of \$726,962 and noted *'above PAJE includes a corresponding entry in relation to the costs ISX has incurred in relation to project revenue-see work performed at XI7'* (which workpaper we note had been prepared by the client).
- l. *'Net profit effect of PAJEs raised - 48,000 - below TE (tolerable error) maintained as PAJE for audit findings'*. This meant its effect was there would be no adjustment to revenue and the audit report would not be qualified. In our view as discussed in paragraph [196\(a\)](#), it was not appropriate to treat the profit effect of the PAJEs on a net basis and this was a matter that as Review Auditor Mr. Trivett should have identified and acted upon following his review of this document.
- m. Testing *'see below for testing performed in respect of revenue recognition - note we have performed our work around agreeing receipt of funds to bank'* at XI10a. We note that the audit work in XI10a was based on payees identified by ISX and we accept ASIC's submission about XI10a that all it verified was that money had come in from someone into one of two ISX bank accounts (one of which was the transactional banking facility, the e-money account) and until all the cash was in it was not possible to

ascertain from where and for what it had been received.

- n. *'Total project revenue recognised per review of ISX revenue GLs (general ledger) at x13.4' as \$2,930,808 compared to 'per testing below \$2,793,269 and a variance of \$137,538.*
- o. A note described the variance between the GL and the customer per contract, for FCorp it was recorded as \$68,615, for IMMO as \$308 and for Corporate Destination \$68,615 and then for FCorp and Corporate Destination there was a further cross reference to Note 1a stated: *'We have noted that for the agreements in place with FCorp and Corporate Destination at XI10.1 and XI10.3/4 respectively, there is variance between the total fees per the fee schedule in the agreement and the 'total commitment' (i.e. total fee) figure within the same document. Per discussions with Todd Richards, (CFO) this is a result of an error in the drafting of the agreements for which the fees for trading platform licence integration work were not correctly stated in the fee schedule per the agreement. Per our work around receipt of payment, we are satisfied that ISX's customers are paying based on the (higher) total commitment figure. We are therefore satisfied that this additional revenue has occurred and does not result in an adjustment being required. However, an MLP has been raised in respect of the need to ensure such schedules are reviewed thoroughly by management prior to execution to avoid possible disputes with customers over fees receivable moving forward'.*
- p. Details of the audit work for the two customers FCorp and IMMO included certificates of completion embedded in the work paper. There were two project management streams for IMMO noted as covered by the certificate. XI10 recorded the Project management revenue fees for each IMMO project (which were for the same amount and covered by one agreement) as IMMO Brand A and IMMO Brand B and the revenue expected to be recognised at 30 June 2018 was \$1,295,385.
- q. Details of the audit work for Corporate Destination, a main focus of the evidence at the hearing because there was no certificate of completion at the time Mr. Trivett reviewed this workpaper on 23 August 2018, and the record for which was structured as for IMMO and FCorp was as follows: The first heading was summary of the customer agreement (xl10.3) and the variation letter (xl10.4) and noted effective date of 15/05/2018. Fees earned from the 4 phases of the project services of AUD 459,846 and additional fees per the variation letter of AUD281,577 were noted underneath. Then payment milestones of 85% of fees for the trading platform licence,

training, and end licensee support services within 7 days of execution, 15% upon end user going live and maintenance and support fees monthly in arrears were listed.

- r. GT work recorded was 1. Revenue recurrence which was cross-referenced to x110a 2. Revenue recognition which recorded notes pertaining to each of the four project services under the first heading of *a) trading Platform license per agreed Specification - 'At the date of testing, we were unable to obtain a certificate of practical completion from Corporate Destination verifying that the work required in relation to the project had been completed at 30 June 2018. While our revenue occurrence work at X110a provides some evidence that work has been completed in the form of cash receipt (sic). However, the difficulty in allocating cash receipts to specific projects, as documented further at X110a, means that we cannot obtain sufficient comfort that payments received for project work performed are specifically in relation to work conducted by ISX relating to the Corporate Destination project. We have also taken into consideration the costs ISX have incurred in relation to this project, which are based on ISX's separate agreements with suppliers. We have also taken into consideration the corresponding costs of these projects to ISX in considering stage of completion upon which we have performed our testing procedures in X17. While the costs have been recorded in the general ledger, these have been accrued for rather than paid at year end, and ISX's payment for these costs remains outstanding at the date of testing. With this in mind, we cannot rely solely on costs incurred to conclude that the Corporate Destination project has been completed at 30 June 2018. Audit has therefore deemed it appropriate to raise an error in respect of the recognition of this revenue amount. Note that if we are to raise an adjustment in respect of recognition of revenue for Corporate Destination, a corresponding error should be raised for the expense side of the transaction. Given the net profit effect of these adjustments would only represent the margin amount, which is below our tolerable error figure, it has been considered appropriate to classify this as a PAJE in our audit findings'.*
- s. A summary of the adjusting entry as a debit to revenue and corresponding credit to deferred revenue of \$769,423 and a debit to accrued expenses and a corresponding credit to cost of sales of \$726,962 and net profit effect as \$42,462 with notation *'Below tolerable error, PAJE raised'.*
- t. The next heading was Training and noted *'per discussions with*

Todd Richards, CFO, this training was provided as part of the platform integration work detailed above. This forms part of the unadjusted error we have raised above. c) End licensee support (6 months) - Based on the terms of the agreement, we expect this service to be recognised over the six months from June to October 2018. GT expectation of revenue to be recognised in FY 2018 \$3385 GT Expectation of revenue to be deferred at 30 June 2018 \$16,923. d) CRM maintenance six months. Based on the terms of the agreement, we expect this service to be recognised over the six months from June to October 2018. GT expectation of revenue to be recognised in FY 2018 \$3385. GT expectation of revenue to be deferred at 30 June 20 \$1816.

XI10a - Description of Document

196. The aim of work Paper XI10A 'Revenue Occurrence' was to gain comfort that project revenue has occurred and was not materially misstated. It recorded:

- a. Materiality details as for workpaper XI10.
- b. In terms of the work performed, it noted a schedule had been obtained from ISX in relation to project management revenue services and recorded that each payment was verified through to receipt in the bank statement to gain comfort that the underlying services are being rendered and revenue has occurred.
- c. It noted the following resulting from performance of the audit procedures:

1) While some of the cash is received through ISX standard bank accounts, payment for these services can also be made via ISX's EMA (e-money account) service, a transactional banking facility through which the merchants can deposit funds. This functions however, we are still able to track these payments to the Kobenhavns Andelskasse accounts through which ISX operate this facility.

2) The structure of ISX's agreements with its customers are such that payments received are not always directly from the merchant themselves, but often by their customers. Based on our understanding of the business and its operations, this is not considered unusual, but does place an additional responsibility upon management to ensure that from an accounts receivable standpoint, their communication with these merchants is sufficient to track these payments and allocate them to the correct merchant. Given we have not identified any issues in respect of this from our work performed, no deficiencies have been raised in this regard,

although as the number of merchants expand moving forward, it will be important that a formalised controls procedure is put in place here.

3) per discussion with Todd Richards, CFO, each of the three merchants with which ISX generate project management revenue have an arrangement in place through which one merchant may pay on behalf of another. As such, management cannot allocate a receipt of payment to a specific project and instead can only track receipt of payment on a holistic basis. We have therefore performed our work around occurrence of the project revenue as a whole rather than on a customer-by-customer basis. Despite this, we are satisfied work performed both here and at XI10 has provided us with sufficient comfort over the occurrence and indeed recognition of project revenue for ISX.

- d. XI10a then in a table identified the payees (provided by ISX) and the record of work by GT tracing the funds and recorded the total received as \$2,169,462 of total project service revenue per GL of \$2,930,808 being 74% with notation '*as at the date of testing ISX has received the majority of cash due from project revenue customers, who appear to be paying largely in line with the payment terms set out in the agreements*'. There was then noted: *Amount outstanding at 20 August 2018 - \$761,346 Amount outstanding at 30 June 2018 – \$981,374.*
- e. Note 1 Project Revenue receivable per receivables ledger \$972,404 (*amounts receivable from IMMO, FCorp and Corp Destination (AUD) per receivables ledger at x15*). Note 1 was entitled: *Consideration of the occurrence and recognition of project revenue receivable. From our testing to bank performed above, we have noted that approximately 75% of fees in relation to project management services had been received as at 30 June 2018. Given each of these projects commenced in May/June of this year, this represents a significant portion of the overall fee commitments per the underlying agreements with the respective customers and indicates that merchants are generally paying in line with the payment schedules included within the aforementioned agreements. Based on our work performed above and indeed around the agreements themselves at XI10, we have gained comfort over the existence of the associated receivable for project revenue at year end. Audit has also taken into consideration the valuation (net) risk around the receivable balance at year end, particularly given these customers, by definition of the work performed by ISX on their behalf, are largely in their infancy, coupled with the fact that some payments remain outstanding at*

the year end. Based on the payment milestones set out in each of the project revenue agreements (see XI10 for summary), ISX are due fees of 15% to 25% upon the end user i.e., the merchant going live. Per discussions with management and indeed the signed confirmations we have received from the merchants themselves while ISX's work in relation to the setup and integration of these projects has been completed at 30 June 2018 and as such revenue in relation to this can be recognised, the projects themselves have yet to go live. The decision to go live is ultimately at the discretion of the merchant themselves and may take many months to execute. With this in mind, we would not necessarily expect this 15% to 25% element of the total fee commitment to be received at the date of the testing. Given approximately 25% of fees are outstanding as at the date of the testing, this would appear reasonable given the setup of the aforementioned payment terms. And as such, a provision in relation to these at 30 June 2018 is not considered necessary. With this in mind, we are satisfied that the valuation (net) of the project revenue receivable balance at year end is appropriate.

XI7 Description of Document

197. The Voyager software programme indicates that Mr. Trivett performed a final review of XI7 cost of goods sold work paper on 23 August 2018.
198. XI7 was a record of work connected with assurances about revenue. The aim of the Cost of Sales workpaper was noted as *to gain comfort that cost of sales recorded for the year is appropriate and not materially misstated*. It was marked PBC standing for 'prepared by client'. It represented work that gave comfort because work on each of the projects the subject of the project management contracts had been outsourced and the fact costs of sales had been incurred gave comfort that revenue had been received, insofar as if it could only be accounted for on project completion, one way to identify completion was to see if the work had been paid for and the work therefore done. XI7 recorded:
 - a. The materiality was as noted per XI10 and XI10A.
 - b. Under the heading 'Background' there was the following commentary: *Cost of sales for ISX primarily relate to project management activities undertaken during the year. As outlined in our revenue walkthrough at XC100, ISX have commenced a new revenue stream in the period through which it provides licence software development, integration, maintenance, and technical support to customers over a period of time. These services fall under the scope of project management services. In providing*

these activities, ISX will typically engage an external supplier with which they will have an underlying agreement outlining the work to be performed, costs of the project. This is separate to the agreement ISX have with the merchant, which forms the basis for the project management revenue ISX will receive. We have performed our procedures around revenue occurrence and recognition for these activities at XI10. This work paper aims to ensure that the corresponding costs recorded in relation to these activities are appropriate, focussing on the cost of sales in relation to one of the three projects ISX provided in the year. While our work here primarily focuses on cost of sales relating to project management activities in the year, we have tested any other key cost of sales items identified per review of the COS GLs, these being those above our tolerable error figure of \$203,000, in order to gain comfort over these expenses and to ensure they have been appropriately classified as costs of sales - the residual cost of sales balance is below tolerable error as per our reconciliation at Tab 3.

- c. *Under the heading 'Work Performed', the following was noted. Agreed the TB balances for cost of sales to GL. Reconciled the PBC (prepared by client) schedule total for project management service expenses to the GL for completeness, any items that were included in the GL but not PBC (prepared by client) schedule were discussed with client and any significant balances tested separately (see testing of Medinova expenses at Tab 3). Accuracy Checked the PBC (prepared by client) schedule for project management expenditure. Selected one customer from project management services and accuracy tested all invoices and accruals associated with the projects platform by checking the underlying contract with the provider. Assessed cut off is appropriate with Project Management services expenditure. *Audit Notes all PBCs have been given in Euro, therefore all work is denoted in Euro in terms of testing with total balance translated to AUD at conclusion.*
- d. *XI7 then recorded details of two accounts with cross references to testing records.*
- e. *The next heading was 'Results'. It noted Per Tab 2, Audit has selected the contract in terms of revenue (900K Euro) and associated project expenditure (884K Euro) with customer IMMO Servis Group for two platform integrations. The platform expenditure for IMMO Servis Group has been agreed with Gibi Tech Limited whereby upon inspection of the contract two platforms brand A and Brand B have been established. Audit then*

extracted data from PBC (prepared by client) Schedule for IMMO as the customer selected and summarised the services provided by IMMO to Gibi Tech Ltd and associated fees for each stage of the project management services a) Trading platform licence b) Training (per brand) c) Integration support d) end licence support (per month, total 6 months) e) CRM maintenance (per month total 6 months), noting the total agreement with GibiTech for \$884,000, which it was noted agrees to total cost for IMMO total. There was a note stating **Audit notes per agreement with Gibi Tech, the trading platform licence fees may be allocated to Media Nova (up to \$100,000) for Media SEO and Intergration Services and Wideplain Ltd for system set up and integration services from the contract. The work paper noted that Audit has summarised the terms sighted from the contract with Gibi Tech as 50% of fees due for a) b) c) within seven days of each brand purchase order, 25% upon installation to services (by 30 June 2018) 25% upon end user licensee 'go live' (subject to end user dates) Maintenance and support fees for d) and e) due monthly in arrears. Go live by early July for brand 1 and mid-July for brand 2. e) and f) are non-refundable and payable in advance. Audit has determined that the total expense related to this project must be taken up either as an expense from invoices received or as accrual, as both brand 1 and brand 2 billing and receipts been tested at XI10. XI7 then noted: Audit extracted invoices accruals per GL Tab 3 related to IMMO below: Two amounts were listed. The first was dated 20 June 2018 to Media Nova Limited for 172,811 Euro. It was noted that audit cited invoice number 0510 dated 20 June 2018 and agreed total balance €172,811. The second was an accrual for €711,189 – the audit notes beside this were - appears reasonable per review of the costs included within the contract - note the invoice was not billed until after 30 June 2018 and in red it recorded agrees to GT expected expense for FY18.*

- f. The conclusion noted was *based on the work performed, we are satisfied that the cost of sales balance is appropriate and not materially misstated for FY 2018. Any PAJEs identified in relation to cost of sales have been raised as part of our project revenue work at XI10.*
- g. The next page of the work paper was entitled PBC (prepared by client) Cost of Sales Euro - Retrieved from Todd Richards, CFO. It referred to capital projects, Corporate Destination, IMMO Brand A and B and FCorp Services and it recorded some payments for the IMMO projects and FCorp and no payments for Corporate Destination.

August 23 Review further observations

199. The Voyager file audit signoffs record that on 23 August 2023 Mr. Trivett signed off audit step 4 *'Discuss significant accounting, auditing, and financial reporting matters with the engagement partner. I responded: Briefing with BT, BK, NM to cover off issues surrounding revenue streams and management estimates.'*
200. Besides the above sign off dated 23 August 2018 indicating a discussion had taken place prior to that date with Messrs. Taylor, Krafft and McDonald there was no specific evidence in these proceedings about any meeting having taken place about significant matters between Messrs. Taylor, or Mr. Krafft or them both and Mr. Trivett, which we find notable particularly as the evidence was that it was not until 23 August 2018 that Mr. Trivett accessed and reviewed the FY18 Financial Statements.
201. Mr. Trivett said the audit findings report that he reviewed on the 23 August 2018 included a PAJE schedule, but it was in a summary form showing only the net profit impact. It did not show the gross revenue and the gross COGS (costs of goods sold) entries for the Corporate Destination adjustment, although he noted work paper XI10, which he had reviewed, did show this.
202. Mr. Trivett's evidence was that he sent an email to Mr. McDonald at 11.51pm on 23 August 2018 letting him know the file was partially reviewed and back on the network, noting one main query regarding describing functional/reporting currency, which he said was addressed by Mr. Krafft on 28 August 2018. Mr. Trivett's evidence was that as he had noted the file was partially reviewed, he expected it to be returned to him for final review.

Events between 24 August 2018-25 September 2018

203. On 24 August 2018 Mr. Trivett's evidence was that Messrs Krafft and McDonald asked him whether he had any changes to the draft financial statements following the 23 August review and he confirmed he had no changes. As Mr. Trivett knew, this occurred the day after the audit team had met with ISX to discuss the Audit Findings Report. Mr. Trivett recalled asking Mr. Krafft at that time whether the financial statements had been reviewed by the National Quality Assurance Area [of Grant Thornton] for appropriate disclosures. His evidence was he subsequently became aware the financial statements had been reviewed by a director in that area 16th of August 2018.
204. There was evidence about a further discussion that took place on 27 August between Mr. Trivett, Mr. Taylor, and Mr. MacDonald about the

Corporate Destination revenue that we refer to in paragraph [343](#).

205. Mr. Trivett's evidence was that he was not aware that the FY18 Financial Statements [including the Independent Auditor's Report] were issued by ISX on 28 August 2018. Based on Mr. Trivett's email to Mr. Krafft dated 23 August informing him he had partially reviewed the file, and because the draft Independent Auditor's Report had not been submitted to him, he said he thought the file would come back to him before the FY18 Audit was finalised [SCT84].
206. Mr. Trivett's further evidence was that as he had reviewed the working papers on which the KAM was based including the KAM assessment form, which detailed the exact wording and judgements on why the KAM had been determined to exist to be included in the final report, and because the wording of an Independent Auditors Report is otherwise standard apart from the KAMS, having reviewed and been satisfied with the KAMs, it followed he said that he was also satisfied with the Independent Auditors Report [SCT85].
207. When Mr. Trivett reviewed the Independent Auditor's report at the time of archiving the file on 25 September 2018, he said he was satisfied that it was consistent with his overall understanding of the results of the FY18 Audit, and the Audit Findings Report presented to the Board, and while he did not have an opportunity to complete the EQC Review before the FY18 Financial Statements were issued, he had reviewed the working papers on which the Audit Findings were based, including the KAM assessment form of 14 August 2018, which detailed the exact wording and judgements on why a KAM had been determined to exist.
208. We comment on these aspects of Mr. Trivett's evidence in Contention 4.

The Contentions

209. There were four contentions advanced by ASIC in support of its application that Mr. Trivett failed, within the meaning of S 1292(1)(d) of the Act, to carry out or perform adequately and properly the duties or functions required by Australian law to be carried out or performed by a registered company auditor. The sub-paragraph relied on by ASIC was (d)(ii). They were that Mr. Trivett failed to:
 - a. Discuss the Performance Shares with the Engagement Partner as part of his evaluation of the significant judgements made by the audit engagement team and the conclusions reached in formulating the auditor's report (Contention One).
 - b. Review specified documentation in the FY18 Audit File relating to the significant judgements that the audit engagement team made and the conclusions it reached (Contention Two).

- c. Perform a review of the FY18 Financial Report before it was issued, and in this regard failed to adequately perform procedures required by Grant Thornton's policies on engagement quality control review. Contention 3 was not pressed by ASIC except to the extent it alleged that Mr. Trivett did not adequately review the disclosure in the 2018 Financial Report as to the Performance Shares, which was Note 30. (Contention Three)
- d. Perform an evaluation of whether the proposed FY18 Audit Report was appropriate. (Contention Four).

Contention One

Details of Relevant Auditing Standards and GT Guidelines

210. The professional standards referenced by Contention One as identifying duties and functions of the role of a Review Auditor within d(ii) that it was alleged demonstrated Mr. Trivett failed to carry out or perform his duties adequately and properly were those in paragraph 20(a) and 25(a) of ASA 220, together with the requirements in 19.90 of the Grant Thornton Audit Manual.

211. ASA220 is entitled - *Quality Control for an Audit of a Financial Report and Other Historical Financial Information* and the relevant sub-paragraphs stated as follows:

Paragraph 20(a):

20. The engagement quality control reviewer shall perform an objective evaluation of the significant judgements made by the engagement team, and the conclusions reached in formulating the auditor's report. This evaluation shall involve:

(a) Discussion of significant matters with the engagement partner.

Paragraph 25(a):

25. The engagement quality control reviewer shall document, for the audit engagement reviewed, that:

(a) The procedures required by the firm's policies on engagement quality control review have been performed.

212. By way of context, we note that at the time of the FY18 Audit, paragraph 19.87 of the Grant Thornton Audit Manual described the general responsibility of the 'Quality Control Review Partner for Listed Entity Engagements' - the Review Auditor - as follows:

' . . . The Quality Control Partner's responsibility is to perform an objective review of the significant auditing, accounting and financial

reporting matters and to conclude, based on all the relevant facts and circumstances of which he or she has knowledge, that no matters that have come to his or her attention that would cause him or her to believe that the client's financial statements covered by our auditor's report are not in conformity, in all material respects with Australian Accounting Standards Board (sic) or that the audit was not conducted in accordance with Australian and, where applicable, International Auditing Standards. Further, the Quality Control Partner's responsibility is to provide additional assurance to the firm that audit risk has been reduced to an acceptably low level'.

213. Paragraphs 19.89 to 19.94 of the Grant Thornton Audit Manual described the specific responsibilities of the Quality Control Review Partner and paragraph 19.90 of the Grant Thornton Audit Manual identified the scope of the EQC Review to include reviewing draft financial statements, the audit report and relevant documentation and provided that to determine the extent of the documentation to be reviewed the Review Auditor should obtain a draft of the financial statements and discuss the engagement with the Engagement Partner and/or manager, and identified the discussion should provide information on four areas including: *'areas with significant auditing, accounting, and financial reporting matters'; 'unusual auditing, accounting, and financial reporting matters'; audit procedures and conclusions related to high risk transactions and account balances and the existence of significant unresolved matters.'*
214. The Grant Thornton Audit Manual represented the policy and procedures document that all audit firms were (and continue to be) required to implement pursuant to Auditing Standard ASQC1.
215. ASQC1 [September 2017 compilation] was entitled *'Quality Control for Firms that Perform Audits and Reviews of Financial Reports and other financial information, other Assurance Engagements and Related Services Engagements'*.
216. By way of overview of ASQC1:
 - a. Its objective [paragraph 11] *'is to establish and maintain a system of quality control to provide it [i.e., the firm] with reasonable assurance that (a) the firm and its personnel comply with AUASB Standards, relevant ethical requirements, and applicable legal and regulatory requirements; and (b) reports issued by the firm or engagement partners are appropriate in the circumstances.'*
 - b. Paragraph 16 required the audit firm to establish and maintain a system of quality control that includes policies and procedures that address each of the elements of (a) leadership

responsibilities within the firm (b) Relevant ethical requirements (c) Acceptance and continuance of client relationships and specific engagements (d) human resources (e) Engagement Performance and (f) monitoring.

- c. Paragraph 18 required the firm to *'establish policies and procedures designed to promote an internal culture recognising that quality is essential in performing engagements.'*
- d. In relation to EQC Reviews paragraphs 37(a)-(d) outlined requirements for audit firms to establish procedures to ensure the EQC Review of audits included discussion of significant matters between the Review Auditor and the Engagement Partner; review of the financial report or other subject matter information and the proposed report; review of selected engagement documentation relating to significant judgements the engagement team made and the conclusions it reached and evaluation of the conclusions reached in formulating the report and consideration of whether the proposed report is appropriate.
- e. It further provided relevantly in paragraphs 35-44 that the audit firm must establish policies and processes:
 - i. About the appointment of the Review Auditor, including their eligibility.
 - ii. About the degree to which a Review Auditor can be consulted on the engagement without compromising the reviewer's objectivity.
 - iii. Designed to maintain the objectivity of the Review Auditor and to provide for their replacement where their ability to perform an objective review may be impaired.
 - iv. That required documentation that the firm's procedures on EQC Review have been performed.
 - v. That the EQC Review has been completed on or before the date of the report.
 - vi. That confirm the Review Auditor is not aware of any unresolved matters that would cause the Review Auditor to believe that the significant judgements the engagement team made and the conclusions it reached were not appropriate.

Panel's approach to addressing the issues raised by Contention One

217. Before considering the evidence and determining Contention One, we first discuss the parties' relevant further submissions and clarify application of the Board's jurisdiction to Contention One.
218. The parties' submissions also addressed the meaning of the term 'significant matters' in ASA 220(20)(a). These are discussed in paragraphs [61-67](#). We agree that the existence and terms of issue of the Performance Shares were significant matters in the FY18 Audit and refer to our comments in paragraphs [68-70](#).
219. We have considered the views of the experts retained by the parties relevant to Contention One in evaluating both what ASA220(20)(a) indicated and the level and standard of Mr. Trivett's performance of the duty to discuss significant matters. We refer to our paragraph [82](#) as to the role and relevance of the expert evidence within the Board's jurisdiction. In relation to Contention One that evidence suffered the limitation that it was focussed on the requirement in ASA220(20)(a) when the scope of the relevant duty under (d)(ii) is broader and encompassed the matters identified by the Grant Thornton Audit Manual as well as ASA 220(25)(a).
220. We evaluate the scope of the duty of a Review Auditor to discuss significant matters within the meaning of S 1292(1)(d), consider the relevant evidence as to whether Mr. Trivett's performance failed to meet the professional standard within the meaning of S 1292(1)(d)(ii).

Clarification of the Board's jurisdiction.

Terms of Grant Thornton Audit Manual applicable/responsibility of Review auditor not confined to ASA220.

221. We have already discussed²⁶, the reasons why the requirements of the Grant Thornton Audit Manual, together with ASA220(20) and ASA 220(25)(a) are significant as reflective of the relevant professional standard to be met by a registered company auditor performing the function of Review Auditor against which Mr. Trivett's performance may be evaluated by the Panel.
222. The Grant Thornton Audit Manual identified components of the duty of a Review Auditor to discuss significant matters relevant to evaluating the scope of that duty and whether Mr. Trivett performed it adequately and properly.
223. The Respondent's submission that the requirements in the Grant

²⁶ See paragraphs [15-23](#)

Thornton Audit Manual were not so applicable and not appropriate for this Board to consider in relation to the Contention One was based on an incorrect interpretation of the scope and operation of the Board's jurisdiction that we have outlined and discussed in paragraphs [14-59](#), and we reject it.

224. The other aspect of the Respondent's submission was that features of the drafting of ASA220, such as overall responsibility for quality control remaining with the Engagement Partner and that the Review Auditor is responsible under ASA 220 to the firm and the Engagement Partner for performance of the function supported the view that the role of Review Auditor was a confined one that carried with it only those specific responsibilities referred to in ASA220.
225. We do not agree this interpretation is correct as it is also based on the incorrect premise that duties within d(ii) must have a legislative basis. Neither was it consistent with the principles of statutory interpretation the subject of ASIC's submissions in the context of the meaning of significant matters in sub-paragraphs [67](#)(a), (c), (d), (e), (f), (j) and (k) with which we agree.

ASIC's burden of proof in s1292(1)(d) proceedings

226. The Respondent submitted that if the Panel accepts Mr. Trivett's evidence that he did not know about the relevance of the Performance Shares to revenue recognition in the FY18 Audit, ASIC must establish a counterfactual set of circumstances that any Review Auditor exercising reasonable care and skill would have identified the significance of the Performance Shares to revenue recognition and the risk of it potentially being falsified before the Board's jurisdiction could arise (T74.16).
227. We have considered this submission and for the reasons outlined in paragraph [59](#) reject it. Even if the Board accepts the evidence Mr. Trivett did not know about that connection, which fact is in issue, it would not mean ASIC must prove anything further. What the professional standard for performance of duties and the functions is and whether what the facts establish Mr. Trivett did to perform the duty were sufficient to meet both aspects of that standard, are matters within the Board's remit for evaluation under the jurisdiction conferred by S 1292(1)(d)(ii).

Contravention of ASA 220(20)(a) not the Board's task

228. The Respondent submitted that in circumstances where the audit engagement team did not identify the significance of the Performance Shares to Mr. Trivett as Review Auditor, and they were not the subject of a significant judgement in the FY18 Audit, Mr. Trivett could not have been expected to have identified them as a significant matter in the FY18

Audit, particularly as there is nothing in paragraph 20 of ASA220 which would mean that the failure to identify those matters himself in the specific context of the information available to him, could amount to a contravention of ASA220(20). (T61).

229. We reject this submission. This Panel's determination does not involve or require us to make a finding about a contravention of ASA220(20) or any other law or Auditing Standard, as we have discussed in paragraph [33](#).

Review Auditor's duty to discuss significant matters in the FY18 Audit

230. The requirements referred to by ASIC in Contention One are relevant to the Board's evaluation of Mr. Trivett's performance and the professional standard for performance because together they identify or reflect:
- a. A duty or duties of the function or role of a Review Auditor within the meaning of S 1292(1)(d)(ii).
 - b. Reflect or identify what the minimum professional standard for performance of the duties identified were, and against which it is relevant for the Board to evaluate Mr. Trivett's performance of those duties.
231. We have discussed in paragraphs [29-50](#) the basis of our approach to evaluating whether performance was adequate and proper.
232. The relevant specific duties identified by Contention One reflective of the professional standard for discussing significant matters at the time of the FY18 Audit were:
- a. To discuss significant matters:
 - 1) With the Engagement Partner, in the context of the Review Auditor's objective evaluation of the significant judgements made by the engagement team, and the conclusions reached in formulating the auditor's report.
 - 2) With the Engagement Partner and/or Manager including: '*areas with significant auditing, accounting, and financial reporting matters*'; '*unusual auditing, accounting, and financial reporting matters*' and *audit procedures and conclusions related to high-risk transactions and account balances*' to determine the extent of the documentation to be reviewed. Paragraph 19.90 of the Grant Thornton Audit Manual referred to the Review Auditor obtaining a copy of the draft financial statements in the context of that discussion taking place.

- b. To document the discussion in a.2), which was a procedure required by the firm's policies on engagement quality control review.
233. Having regard to the Review Auditor's responsibility and the objectives of that role, our view is that the duty to discuss significant matters with the Engagement Partner is one that requires sufficient independent knowledge about the scope and detail of the relevant audit to enable the Review Auditor to challenge the judgements of the audit team and the information on which those judgements are based. The way the duty is identified and described in the Grant Thornton Audit Manual is consistent with the view that it is to involve active engagement with the Engagement Partner/audit manager, in contrast to the passive receipt of information about significant matters already identified.
234. Based on the terms of ASQC1, the provisions of the Grant Thornton Audit Manual we have identified, ASA220(20)(a) and the related guidance, and the objectives of the role of the Review Auditor, our view is that meeting the professional standard for discussing significant matters would involve discussion to between the Review Auditor and the Engagement Partner at two points at least in the audit - the planning stage, with or without the draft financial statements depending on their availability and when the company's final draft financial report is available. While the obligation to initiate those discussions does not fall to the Review Auditor, he/she may initiate them and if they are not otherwise initiated in expected timeframes the benchmark for adequate performance by a Review Auditor involves the obligation to participate however they may need to be instigated, and proper performance involves satisfying the objective of the Review Auditor being apprised of those that have been identified, knowledge of possibly significant matters and knowledge of the other matters identified in paragraph 19.90 of the Grant Thornton Audit Manual as requiring discussion, which discussion would likely identify to an appropriately knowledgeable Review Auditor, whether there are other matters which may be significant matters about which one function of their role would be to question and challenge the Engagement Partner.
235. Having regard to the objectives of the Review Auditor's role and the provisions of the Auditing Standards, discussion about significant matters should be specifically designated as such and cover those matters referred to in paragraph 234 above. For the reasons we discussed in paragraphs [69](#) and [70](#), the Review Auditor's responsibility would, by the end of the audit, include identifying to the audit team any documentation deficiencies in relation to the record of 'significant matters' on the audit file that may need to be addressed, having regard

to the requirements of ASA230.

Evidence relevant to Contention One

236. The agreed facts set out in paragraphs [84-111](#) particularly those relevant to the Performance Shares mentioned in paragraphs [102-106](#) provide relevant contextual background and details of the relevant terms of the Performance Shares.

S19 evidence Mr. Krafft – FY18 Audit Manager

237. There was relevant evidence of Mr. Bradley Krafft recorded in the transcript of the compulsory s19 examination he undertook about the FY18 Audit made available to us in these proceedings in redacted form. That evidence was that *‘the team, we all knew’* that there were performance rights that were based on certain revenue milestones being met by 3 (sic) June 2018 and that Mr. Krafft and the others were aware of the significance of the revenue item that was going to be reported for the company for FY18, particularly the second half of FY18 because of the Performance Shares. Mr. Krafft said it was something the team had spoken about amongst themselves, and it was something they knew because *‘it was disclosed in the accounts every year, so we understood, we understood the terms of the KPIs.’* Mr. Krafft’s evidence was that he knew the number of performance rights that were on the line for each milestone and the significance of their potential vesting in terms of their number and financial value.

Mr. Trivett’s evidence and relevant documentary evidence

238. Mr. Trivett’s evidence was that he did not recall whether anyone in the audit team had a discussion with him about the Performance Shares during the audit planning for or during the FY18 Audit [SCT 36]. His evidence was that he did not know their benchmarks for conversion or that they converted on revenue rather than profit and he said that this was not brought to his attention by the audit team at any time in the FY18 Audit and that he did not know that any of the ISX management team stood to gain from the conversion of those shares [SCT 35]. He accepted that objectively, they were a significant matter, and if he had known about their relevance, they should have been discussed.
239. Mr. Trivett’s evidence that he did not know about their relevance was challenged on the basis that he ought to have known about their potential significance from his involvement as Review Auditor for ISX since it listed via a reverse takeover of Otis Energy in Ltd in 2015, the references to the terms of the Performance Shares in the two previous annual financial reports for which he had acted as Review Auditor, and the references in

what he had read and reviewed as Review Auditor in the FY18 Audit that identified their relevance as a potentially significant matter and his evidence in cross-examination in response was:

- a. That he did not recall reading the Prospectus or the Supplementary Prospectus in the first year of GT's audit engagement for ISX or in any subsequent year. The agreed facts identified that the Prospectus contained the details of the terms of the Performance Shares. Mr. Trivett's evidence confirmed it was available to him at the time he first performed the role of Review Auditor for ISX. He said in his statement that his practice when performing a first-time audit was to read more widely about the activities of the company involved to familiarise himself with their operations.
- b. He did not recall reading any of the relevant notes and references to the Performance Shares when performing the role of Review Auditor in the previous audits of ISX performed by Grant Thornton.
- c. He confirmed he knew ISX had no profit in 2018 and had a large amount of revenue in that year. He agreed as a general proposition, that Performance Shares are issued to persons who are interested in the performance of the company. (T 137:4) He said he did not turn his mind to what the Performance Shares converted on (T137.7), or speculate on their terms, but was aware they were due to expire on 30 June 2018 (T136.6).
- d. It was not his practice to read the previous year's financial report of a subject company when he performed the role of Review Auditor.

Other evidence

240. The documentary evidence outlined in paragraphs [199](#) and [200](#) establishes that to the extent there was discussion about significant matters in the FY18 Audit, it occurred on or prior to Mr. Trivett obtaining and reviewing the draft Financial Report on 23 August 2018. The only evidence of discussion with the audit team on 23 August was between Mr. Trivett and Mr. McDonald. Even if that discussion was about significant matters, it would not have satisfied the requirements of the professional standard as Mr. McDonald was not the Engagement Partner or Manager in the FY18 Audit.

Comments and conclusions about Mr. Trivett's evidence

241. Mr. Trivett's evidence about not knowing about the relevance of the Performance Shares and their link to revenue in the FY18 Audit hinged on not having read, nor recalling having read, or not having understood the significance of, any information about them that was available to him

from when he first became involved with ISX, and that identified their terms or highlighted their significance and connection to revenue recognition in the FY18 Audit.

242. Mr. Trivett's evidence in that regard did not align with other available evidence, nor support his lack of knowledge as a basis for demonstrating that he had not failed to perform the duty to discuss significant matters in the FY18 Audit as follows:
- a. Mr. Krafft's s19 evidence outlined in paragraph [237](#), which while limited was relevant contemporaneous evidence from another person involved in the audit and was consistent with knowledge and recognition amongst the audit team about the significance of revenue recognition in the FY18 Audit to the Performance Shares being triggered²⁷ because they were based on revenue milestones the final date for achieving of which was 30 June 2018.
 - b. The references to the Performance Shares in the Audit planning Meeting Minutes (JM29) and the notation next to the 4 June announcement in the ASX Announcements Summary, both reviewed by Mr. Trivett on 30 July 2018, are also consistent with recognition by the audit team of their significance to the audit.
 - c. The ASX Announcements Summary²⁸ contained the 4 June announcement that linked the Performance Shares to 30 June 2018 unaudited revenues. We have commented on this evidence in paragraphs [163-167](#) and set out there the reasons for concluding that Mr. Trivett's explanations about not seeing or reading the relevant ASX announcements did not seem plausible.
 - d. The Audit Planning Meeting Minutes (JM29) are set out in paragraph [125](#). Mr. Trivett confirmed when he reviewed those Minutes on 30 July 2023 that he read the words '*Performance Shares due for decision 30 June 2018*' and did not provide any evidence explaining why those words were not meaningful. Given the responsibilities of the role Mr. Trivett was performing and the purpose of the review he conducted, that evidence did not assist him in relation to the allegation in Contention One.
 - e. The evidence we have already outlined in paragraphs [127-132](#) showed that substantive details about the significance of the new revenue streams to ISX's overall revenue position had been communicated to Mr. Trivett in June and July 2018, although Mr. Trivett's evidence in our view sought to downplay this. We refer to

²⁷ Relevant terms of the Performance Shares were set out in Note 30 of the FY18 Financial Report extracted in paragraph [183\(i\)](#)

²⁸ set out in paragraphs [161](#) and [162](#).

our comments on that evidence in paragraph [154](#) and note our conclusions and findings in paragraphs [155-156](#).

- f. Our views on Mr. Trivett's evidence that it was not his practice to read the previous year's financial report are set out in paragraphs [121-122](#). Given the objectives and responsibilities of the role Mr. Trivett was performing and the purpose of the review he conducted, that evidence did not assist him in relation to the allegation in Contention One.
 - g. Mr. Trivett's evidence was that he knew about the Performance Shares and that they were due to expire on 30 June 2018, In the context of his role and responsibilities as Review Auditor, his further evidence that he never speculated about their terms, or what their performance hurdles were based on, having reviewed the Audit Planning Meeting Minutes and the other documents that referred to them, and knowing the company had not made a profit in FY18, and having regard to the fact that the audit team's significant judgement in the FY18 Audit was as to revenue recognition, and even though details of their terms had been included in the company's two previous annual financial reports in respect of which Mr. Trivett had performed the role of Review Auditor, did not in our view assist him given the responsibilities of the role he was performing and the scope of his duty in relation to the allegation in Contention One.
243. Our conclusion, based on the matters we have identified, is that Mr. Trivett's evidence that he did not know about the significance of the Performance Shares to the FY18 Audit did not provide a plausible or cogent basis for concluding that Mr. Trivett had not failed, within the meaning of S 1292(1)(d)(ii) to perform his duty to discuss significant matters in the FY18 Audit, which was what Mr. Trivett's response to Contention One effectively asked the Board to do.

Panel conclusions on Contention One

244. We refer to the scope of the duty to discuss significant matters we have outlined in paragraphs [233-235](#).
245. The relevance of the Performance Shares to revenue in the FY18 Audit was accepted by the parties as an objectively significant matter. As we have discussed and consistent with the scope of the duty identified, the Review Auditor's duty involved discussing significant matters with the Engagement Partner. That duty involves the exercise of independent responsibility by the Review Auditor to identify and follow up on information about potentially significant matters contained in material reviewed as part of properly carrying out the function of Review Auditor.

We are satisfied based on these matters and the considerations we have discussed in paragraphs [29-50](#) and specifically paragraphs [30](#), [31](#), [34-36](#) and [40](#) as to 'adequate' and 'proper' within the meaning of S 1292(1)(d) that Mr. Trivett did not carry out the duty to discuss significant matters adequately.

246. As to Mr. Trivett's evidence discussed above that he did not discuss the Performance Shares with the Engagement Partner because he did not know about their significance, we are satisfied it demonstrated that to the extent Mr. Trivett may have lacked knowledge about their significance in the FY18 Audit, it was substantially attributable to his failure to identify or follow up on relevant references to them in material he had reviewed. Neither the documents we have discussed, nor Mr. Krafft's evidence support a conclusion that Mr. Trivett would not have known about the significance of the Performance Shares had he performed his duty to discuss significant matters in accordance with what the Auditing Standards and the provisions of the Grant Thornton Audit Manual identified was involved. We are satisfied therefore that Mr. Trivett also failed to perform the duty to discuss significant matters properly within the meaning of S 1292(1)(d)(ii).
247. Further, to the extent there was any discussion between Mr. Trivett and the audit team about significant matters in the FY18 Audit, it occurred, according to the evidence²⁹ before Mr. Trivett first obtained the draft Financial Report on 23 August 2018 on which date he also signed off as having discussed significant matters with the audit team. We are satisfied this evidence further indicates that Mr. Trivett did not perform the duty to discuss significant matters properly in the FY18 Audit. As we have said, the objective perspective necessary to properly carry out the function of the role of a Review Auditor requires knowledge about the subject matter of the audit gained independently of the audit team. The requirement in paragraph 19.90 of the Grant Thornton Audit Manual identified, in connection with the duty to discuss significant matters that to determine the extent of the documentation to be reviewed, the Review Auditor should obtain a draft of the financial statements and discuss the engagement with the Engagement Partner and/or Manager including: *'areas with significant auditing, accounting, and financial reporting matters'*; *'unusual auditing, accounting, and financial reporting matters'* and *'audit procedures and conclusions related to high risk transactions and account balances'*, is aligned with obtaining information that facilitates gaining information needed in order to provide the Review Auditor with objectively obtained information, as does the discussion of significant matters required by ASA220(20)(a), rather than information

²⁹ See paragraphs [199](#) and [200](#).

based on conclusions the audit team has already drawn. In our view, meeting the professional standard involved reading the draft financial report before concluding the duty to discuss significant matters in the Audit. Mr. Trivett did not perform this aspect of the duty adequately or properly.

248. Finally, adequate performance of the duty to discuss significant matters would also have involved an audit record of the discussion of significant matters, as indicated by the documentation requirement in ASA 220(25)(a) and ASA 230. The records on the Audit file corroborating the details of discussions held were scant. There was the signoff we have identified in paragraph [199](#). Otherwise, there was no audit record of the details of any discussion which took place about significant matters, despite the duty reflected by ASA 220(25)(a) to document the performance of the firm's procedures on engagement quality control review and despite the requirement of ASA 230.
249. We are satisfied that the absence of documentation on the FY18 Audit File recording the substance of discussion which took place about significant matters in the FY18 Audit was also a failure to adequately perform the duty to discuss significant matters within the meaning of S 1292(1)(d)(ii).
250. We are satisfied based on the evidence and for the reasons discussed above that Contention One has been established.

Contention Two

251. ASIC contended that Mr. Trivett failed to perform an adequate and proper review of the documentation on the FY18 Audit File relating to the significant judgements that the audit engagement team made and the conclusions it reached.
252. We refer to the agreed facts set out in paragraphs [84-111](#) particularly those relevant to revenue sources in paragraphs [95-101](#) and hurdles for the Performance Shares in paragraph [106](#).
253. The documents ASIC alleged Mr. Trivett was obliged to review and did not properly review were the Fraud Memo (JM28), XI7 Cost of Sales Summary first 4 sheets and XI10-Project Services Revenue.

Relevant identifiers of scope of the duty within d(ii)

254. Contention Two identified duties of a Review Auditor within S 1292(1)(d)(ii) indicated by paragraphs 20(c), and 25(a) of ASA 220 read with the procedures in paragraphs 19.91, 19.92 and 19.94 of the Grant Thornton Audit Manual.

255. ASA 220(20)(c) specifies that the Review Auditor's evaluation of significant judgements made by the engagement team and the conclusions reached in formulating the auditor's report, shall involve the review of selected documentation relating to the significant judgements the engagement team made and the conclusions it reached.
256. ASA 220(25)(a), set out in paragraph [211](#), indicates the Review Auditor's obligation to document the procedures by the Grant Thornton Audit Manual have been performed.
257. The provisions identified by the Grant Thornton Audit Manual procedures included:
- a. 19.91 - ...At a minimum, quality control reviewers should review & sign off (as evidence of their review):
 - The audit plan and risk assessment work papers - it may also be appropriate to review Voyager tailoring logs.
 - The summary of Significant Matters (SSM) and the related work papers - if the audit team raises issues that are not included in the SSM, the Quality Control Reviewer should request the audit team to revise their documentation.
 - Audit adjustments.
 - The summary of unrecorded misstatements, including missing disclosures.
 - The summary of control deficiencies, including documentation of the audit team's evaluations of the severity of deficiencies in the Design Effectiveness Tools.
 - Important tax work papers and memos.
 - The Financial Statement Disclosure Questionnaire.
 - Key work papers (based on the discussion with the Partner and Manager) and any other significant areas selected by the reviewer. This may include the key work papers related to reasonably possible risks, procedures performed in response to specific risks work papers supporting financial statement amounts or disclosures or summaries related to the internal control audit. Ordinarily, these areas and the related work papers will be identified in the SSM the 'Quality Control Review Programme'.
 - b. 19.92 - In addition, the Quality Control Reviewer should fulfil his or her responsibilities by:
 - Review significant areas of the audit and related work papers

(see below).

- c. 19.94 provided relevant context and stated – Other than the work papers necessary to complete the quality control review responsibilities, the firm does not expect that the Quality Control Reviewer will perform detailed reviews of other work papers. The responsibility for gathering sufficient evidential matter and sufficient documentation to support the audit opinion rests with the partner, with the assistance of other team members. In circumstances where the Quality Control Reviewer believes it is necessary to perform a detailed review of other work papers, they should include a memo in the 'Quality Control Review' audit programme within Voyager explaining reason for examining additional work papers.
258. For the reasons we have already discussed in paragraphs [15-23](#) and [221-225](#) our view is that the Grant Thornton Audit Manual procedures as well as those referred to by the Auditing Standards identify duties within the meaning of S 1292(1)(d)(ii), compliance with which identified the minimum adequate standard for performance.

Scope of duty within (d)(ii) to is to Perform a Detailed Review

259. Having regard to the above standards reflective of what the Review Auditor's duty to review significant work papers entailed our view is that the duty within (d)(ii) involved a detailed review of workpapers related to significant areas of the audit that would include a thorough reading of the document to assess its various elements and form a view about its quality, accuracy and effectiveness within its relevant context, which in this contention included the objective evaluation to be done pursuant to ASA 220 (20). The review of documents required by ASA 220 (c) is one aspect of a Review Auditor's role enabling performance of the objective evaluation required by ASA220 that involves critically assessing the significant judgements and the audit conclusions, based on an unbiased analysis and by reference to objective information.

Fraud Memo

260. To provide context for the Fraud Memo, the provisions of ASA 240 addressed the auditors' responsibilities relating to fraud in an audit of a financial report. Relevant provisions included:
- a. Paragraph 3 identified the auditor is concerned with fraud that causes a material misstatement in the financial report and the two types of intentional misstatements relevant to the auditor are those resulting from fraudulent financial reporting and those resulting from the misappropriation of assets.

- b. Paragraph 8 stated that when obtaining reasonable assurance, the auditor is responsible for maintaining professional scepticism throughout the audit, considering the potential for management override of controls, and recognising the fact that audit procedures that are effective for detecting error may not be effective in detecting fraud.
 - c. Paragraph 12 stated the auditor shall maintain professional scepticism throughout the audit. Recognising the possibility that a material misstatement due to fraud could exist, notwithstanding the auditor's experience of the honesty and integrity of the entity's management and those charged with governance.
 - d. Paragraph 16 mandated the auditor perform the procedures in ASA 240(17)-(24) to obtain an understanding of the entity as required by ASA315 and to obtain information for use in identifying the risks of material misstatement due to fraud.
 - e. Paragraph 26 of ASA 240 provided that the risk of material misstatement of revenue because of fraud is a presumed risk and based on that presumption it specified that part of the process of identifying and assessing the risks of material misstatement due to fraud, involved evaluating which types of revenue transactions or assertions give rise to such risks.
261. Mr. Trivett reviewed the significant risk workbook (JM 31) on 30 July 2018 (SCT statement at 31 and Appendix A, page 21). The workbook identified – *'Recorded revenues and receivables not valid [due to error or fraud]'* as a *'significant risk'*.
262. As risk of revenue being misstated was a presumed risk and recognised as a significant risk by the audit engagement team and required special audit consideration, judgements made by the audit team in relation to the accuracy and disclosure of reported revenue generally in the FY18 Financial Report were significant judgements.
263. Mr. Thorn and Mr. Westworth were asked whether for the purpose of discharging the responsibility under paragraph 20(c) of ASA 220, a Review Auditor for the FY18 audit would have considered they were required to review the Fraud Memo. Both experts agreed that the Fraud Memo was an important document. In their view it was a matter for the Review Auditor's judgement as to whether review was required by ASA 220(20)(c). As we have discussed, ASA220(20)(c) is not the only consideration to evaluating whether Mr. Trivett's duty within (d)(ii) extended to reviewing the Fraud Memo and we refer to the outline of the scope of the duty in paragraph [259](#).
264. It was not in issue that Mr. Trivett reviewed the Fraud Memo on 30 July

2018, and we are satisfied it was within the scope of his duty within S 1292(1)(d)(ii) to review the Fraud Memo.

Mr. Trivett's Evidence on Fraud Memo

265. The Fraud Memo is an undated 41/2-page document. Mr. Trivett was asked about it in cross examination.
266. On page 2 of the document, was question 12: *Is it possible that misstatement could occur because of fraud related to revenue recognition?* The answer recorded was: *the audit team concludes that this risk does not exist in the period under audit as they have recorded no revenue associated with contracts. The only revenue recorded is due to interest income for cash and cash equivalents.* Mr. Trivett accepted the answer recorded was incorrect. When asked whether at the time he reviewed the document it was wrong to his knowledge he said it was not, because he was not aware then of the quantum of project management revenues (T149.16-150.1). He agreed that on the information he had about new revenue streams from the meeting with Mr. McDonald he had attended on 26 June 2018 (outlined in paragraphs [127-132](#)) that the answer at 12 in the Fraud Memo was incorrect.
267. We note that by 30 July when Mr. Trivett reviewed the Fraud Memo he had opened and read the draft KAM sent to Mr. Taylor by Mr. Krafft on 23 July 2018 and copied to him. This document referred to ISX revenues having grown significantly in the current year and identified as notable the expansion into project management revenue that had occurred in the audit year.
268. On Page 3 of the Fraud Memo paragraph 7 recorded: *Material misstatement due to Fraud related to revenue recognition.* The answer recorded on the following page 4 was – *'The group has generated revenue during the period; however, it is still in the early stage of business, therefore fraud risk and revenue recognition is not seen to be a risk.'* In answer to the question of whether he was aware that there was a jump in revenue at this point Mr. Trivett answered that the revenue had been increasing as per the April 2018 numbers (T150.25) and he agreed this answer recorded in the Fraud Memo was also incorrect.
269. On page 4 at paragraph 8 of the Fraud Memo, the third line from the bottom recorded: *Activity in foreign operations is minimal in the current year.* Mr. Trivett was asked whether he was aware of the activity of the Cyprus entity, the e-money account (T151.8) and he answered that he was not aware of the quantum when reviewing the planning. In our observation, Mr. Trivett did not answer the question that was asked and, based on the agreed facts as well as the information in XC100 the statement in line 2 above is incorrect.

270. Page 4 under the heading *Incentive Pressure* it was noted: *As the company has no reliable source of income, funds other than raising capital for the period under audit* and further, under *Opportunity* in the second last line on the same page it was *noted: No revenue was recorded during the period, other than interest income*. Mr. Trivett agreed these statements were both wrong. (T151.23)
271. Mr. Trivett confirmed he did not require any amendments before signing off as having reviewed this document in the FY18 Audit File. (T152.8).

Panel Conclusions

Comments on Mr. Trivett's evidence

272. We have concerns about the inconsistencies in Mr. Trivett's recollection of his review of the Fraud Memo similar to those we expressed about the evidence Mr. Trivett provided in relation to Contention One. Mr. Trivett's recall of the detail was poor, for example at the time he reviewed the Fraud Memo he either did not recall, or did not in his review of it take account of, the details of the meeting with Mr. McDonald he attended on 26 June 2018 about the new revenue streams that we have outlined in paragraphs [127-132](#), nor what he had read in the draft KAM the week before about revenue having grown significantly and the specific notation of the expansion into project management revenues. Further, he did not recall the relevance of the 26 June meeting when answering the questions put to him in cross-examination about the details recorded in the Fraud Memo such that his initial response, as identified in paragraph [266](#), was that he did not know about the new revenue streams.
273. As we have said the reliability of Mr. Trivett's evidence was reduced and affected its credibility and cogency and to the extent it is not aligned with other evidence, we do not place weight on it.

Parties' submissions on requirement to review Fraud Memo

274. It was submitted on behalf of Mr. Trivett that both experts agreed that while it was an important document, the Fraud Memo was not a document a Review Auditor was required to review as part of the objective evaluation contemplated by ASA220(20)(c) and there is therefore no relevant standard to apply under any Australian law to Mr. Trivett's review of the Fraud Memo.
275. As to that submission our view is that it did not accurately interpret the experts' conclusion on the question of whether the Fraud Memo was a document that required review, as they were responding to the question of whether it was required by ASA220(c) based on the drafting. As the experts opined, what required review pursuant to the duty reflected by

ASA220(20)(c) involved a judgement by the Review Auditor and the objective question by reference to which that professional judgement was required, is whether the Fraud Memo was audit documentation relating to the significant judgements made by the audit engagement team and the audit conclusions reached, as per paragraph 20(c) of ASA220. In our view it was.

- 276. The 2015 compilation of ASA200 outlined requirements in relation to professional judgement and professional scepticism in ASA 200(15)(16) and A20-A29 and while they apply to auditors performing audits they are also relevant objective indicators of the standard of performance for the proper application of professional judgement and professional scepticism by registered company auditors performing a function required by an Australian law within d(ii) as we have discussed in paragraph [42](#) and paragraph [50](#). This view makes sense and is aligned both with the objectives of the Auditing Standards and the Act.
- 277. As ASIC submitted fraud in the FY18 audit was not only a deemed risk, the particulars of that risk were also relevant to the audit testing performed and the nature of the audit evidence that might be accepted in the FY18 Audit.

Panel Findings

- 278. We are satisfied the Fraud Memo was a significant audit work paper within the scope of the duty to review within (d)(ii) we have outlined in paragraph [259](#).
- 279. There were four substantively inaccurate responses recorded by the audit team in the Fraud Memo which Mr. Trivett signed off on in the FY18 Audit File as having been reviewed by him on the 30 July 2018.
- 280. The evidence established that Mr. Trivett had knowledge of revenue having grown significantly and the new revenue stream of project management having been established. Mr. Trivett did not apply that knowledge to his review of the Fraud Memo to identify the inaccuracies or ensure they were corrected by the audit team.³⁰
- 281. We are satisfied based on the evidence that Mr. Trivett failed to adequately perform a review of the Fraud Memo in accordance with the professional standard discussed in paragraph [259](#).
- 282. We are also satisfied that Mr. Trivett did not review the Fraud Memo properly, as we conclude based on the evidence that he failed to apply due care, appropriate diligence, or appropriate professional scepticism when he carried out the duty to review that document. That failure subverted the proper performance of the function of Review Auditor

³⁰ See findings in paragraph [155](#) as to Mr. Trivett's relevant knowledge by 30 July 2018

because as a result he did not challenge the basis on which the audit team's assessments, that he acknowledged were inaccurate, had been made. Those assessments were important for the Review Auditor to evaluate at the planning stage of the audit, to be satisfied the audit procedures proposed were both appropriate and sufficiently robust to address the requirements of the Auditing Standards in relation to fraud and to satisfy the objective, referred to in paragraphs [67\(d\)](#) and [212](#) for the function of the Review Auditor to contribute to meeting the objectives referred to in ASA220(6), namely to the obtaining of reasonable assurance, which is a high level of assurance, that the audit complies with the Australian Auditing Standards (and other ethical, legal and regulatory requirements) and that the auditor's report is appropriate in the circumstances.

283. As to the evidence that Mr. Trivett signed off on the FY18 Audit File as having reviewed the Fraud Memo, we note the important aspect of proper professional practice for registered company auditors that involves discharging their duties with integrity. Mr. Trivett failed to meet that standard when he signed off the Fraud Memo in the FY18 Audit File as having been reviewed by him the Fraud Memo in the circumstances identified by the evidence we have discussed.
284. We are satisfied for the above reasons that Mr. Trivett did not review the Fraud Memo either adequately or properly within the meaning of S 1292(1)(d)(ii) having regard to the scope of that duty as outlined in paragraph [259](#).

XI10 Project Management Revenue and XI7 Cost of Sales Summary workpaper reviews.

285. The audit work done in relation to the accuracy of the reported revenue arising from the three Project Management services clients (4 revenue streams) transactions was recorded in the Project Management Revenue Work paper XI10. Details of document XI10 are included in paragraph [195](#).
286. The record of audit work known as XI7 was directly related to providing assurance regarding revenue. Its purpose was to ensure that the costs of sales reported for the year were accurate and not significantly misrepresented. This was important because the projects the subject of the project revenue were outsourced by ISX, and the existence of costs of sales provided reassurance to the audit team that revenue had been generated. To determine project completion, an audit approach was to confirm that the work had been fully paid for, indicating that the work had been completed. Details of the contents of XI7 are included in paragraph [198](#).

287. ASIC contended that Mr. Trivett did not review these workpapers adequately and properly because the project management services revenue was not properly recordable and required at least further audit testing. There were serious flaws in the audit evidence, and the two certificates of Practical Completion that had been received were not sufficient to warrant a conclusion that on an overall basis there was sufficient adequate audit evidence as to the occurrence and accuracy of any of the revenue.
288. The reported revenue from the three project management services projects constituted 53% of the total reported revenue of ISX for FY18. It follows and was not in issue that the judgement made by the audit team as to the occurrence and accuracy of the revenue from the project management services, reflected by the audit work in XI10, was a significant judgement in the FY18 Audit.
289. Work paper XI10 was a document that Mr. Trivett was required to review. Both experts agreed. [Joint Expert Report, HB 19 at 68]. It was a 'key work paper' in terms of paragraph 19.91 of the Grant Thornton Audit Manual [outlined in paragraph [257](#). There is an internal reference from XI10 to cost of sales work paper XI7 making it also a work paper that Mr. Trivett was required to review. Both audit work papers were relevant to being satisfied that the revenue recognition work done by the audit team provided a satisfactory basis to support release of the Independent Auditor's report with the KAM of revenue recognition. Review of those workpapers fell within the scope of reviewing audit documentation relevant to the significant judgements in the audit [ASA220(20(c))], as well as to the conclusions reached in formulating the auditor's report [ASA 220(20)(d)]. We refer to the scope of the duty to review significant workpapers outlined in paragraph [259](#). They were also key workpapers about which the Grant Thornton Audit Manual requirements identified the Review Auditor's duty involved, at a minimum, the performance of a detailed review and sign-off as evidence of their review, as we have discussed in paragraph [257](#).

Mr. Trivett's evidence on XI7 and XI10

290. Mr. Trivett's evidence was that he reviewed both XI7 and XI10 on 23 August 2018. [SCT 68]. The Voyager software programme indicates he performed a final review of XI7 cost of goods sold on 23 August 2018 and a preliminary review of work paper XI10 Project Management Revenue on 23 August 2018. No final review of the latter work paper by Mr. Trivett is recorded on the Voyager software system.
291. Mr. Trivett's statement evidence was:
- a. He read work papers XI7 and XI10 as part of his review of the FY18

Audit File on 23 August 2018. He believed he saw XI7 in the form tendered at the hearing and was aware there were suppliers who had not been paid.

- b. In relation to XI10 which noted the revenue contracts were unsigned:
 - i. In his experience it is not unusual for an auditor to receive unsigned contracts from clients, including listed companies, during an audit and his usual practice was to ask a client to follow up for signed versions which he said would not always be received.
 - ii. He was generally aware of some inconsistencies in the revenue contracts, but in his experience as an auditor, contractual discrepancies of the type identified were not unusual.
 - iii. He did not read the individual revenue contracts.
 - iv. In relation to the note from Mr. McDonald that the parties were paying on behalf of each other, he said he did find this unusual and assumed at the time that these customers must have been related parties, part of the same group or similar. His evidence referred to this being discussed in the file briefing provided by Mr. McDonald on 23 August 2018.
 - v. He recalled discussion with the audit team that the ISX accounting records as to the project management services revenues did not always make it easy to follow a transaction in detail. Mr. Taylor and Mr. Krafft explained that ISX's financial controller was not always across the detail of transaction flows and when queried would need to investigate to respond, and often presented information at a high level. They regarded him as struggling in the role, but not as incompetent or untrustworthy. The result was the audit team had to adapt their approach to testing and bridge the gap including by discussing matters with Leydin Freyer, to which some of ISX's account functions were outsourced. Mr. Trivett regarded this as a reasonable explanation for the approach taken by the audit team.
 - vi. The work papers he reviewed showed the money under all three revenue contracts had been recognised. Much of the revenue was shown as received by the ISX Group prior to 30 June 2018 and there was a balance that was included as a trade receivable. He said ISX was a relatively new business with new ways for payments to occur. He was

aware from his conversations with Mr. McDonald about its new e-money account. When he saw the notation in the work papers that revenue was received via both standard bank accounts and its e money account, he said it was a slight slant on his knowledge but not something he thought was unreasonable. [SCT para 69]

- vii. Based on his review of the work papers, his opinion was that appropriate testing had been performed by the audit team with respect to matters the subject of the financial controller's responses.
- viii. He understood that the customers under the revenue contracts were based abroad. He therefore considered a certificate of practical completion was appropriate to verify delivery of the contract services. He said it is usual for the company being audited to ask its clients to provide these, and for them to be sent to the auditor directly by the customer. He said that he was not told by the audit team that in this case the responses were sent by ISX. Mr. Trivett said he does not usually read the actual certificates when performing an EQC Review, and as part of the FY18 EQC Review, he did not read the certificates that had been obtained by the audit engagement team in relation to the revenue contracts.

292. During cross examination on these documents Mr. Trivett gave the following evidence:

- a. He knew that Project Management Services was a new revenue stream, and he was aware that billing was not always in line with the stage of completion of the project, and the audit team had identified it should be.
- b. He was aware that the e-money account was a new service through ISX's Cyprus entity that allowed merchants to retain funds on deposit with ISX. (T145.19) He understood the e-money account was for customers of ISX generally.
- c. He agreed XI10 was a major work paper on the project management services revenue and that when he reviewed it, he considered the deemed revenue risk due to fraud.
- d. XI10 recorded the following tests performed on the four stages of the project management work identified as follows:
 - 1) Trading platform licence - utilised the contracts to verify terms and start date. There were 4 categories/stages of work identified – Trading platform licence, training, end licensee

support and CRM maintenance.

2) Training - tested receipt of funds to bank (recorded in X110a).

3) For end licensee support/CRM stages audit performed a recalculation of deferred income.

- e. In terms of the first area tested by audit, Mr. Trivett was aware there were two management letter points (MLPs) noted. The first was in relation to the contracts being unsigned. While signed contracts were desirable, he said auditors need to use their judgement and determine whether both parties appear to be operating within the contract terms for it to be recognised as valid. [T162.5].
- f. The second MLP related to the fees noted in the schedule to the FCorp and IMMO agreements which did not tally with those in the contract. Mr. Trivett confirmed he was aware of this inconsistency within the agreements. He said this type of information probably indicates the company is administratively lacking, and it would mean looking at what has occurred, and receipt of funds is one aspect of that, and he again referred to the need to use judgement. [T163.3].
- g. He agreed that as the contracts were unsigned, they were no more than a management assertion and that is why it is important to look at its operation and raise an MLP so that management is aware of a control deficiency.
- h. He said he made enquiries of the audit team and noted the MLP was important.
- i. He did not agree the unsigned contracts were not sufficient audit evidence because in his view, it was the transaction flows which were relevant and if consistent with the unsigned agreement, he said we take it that the agreement is in place and operating.
- j. For the second aspect of the project management work identified Mr. Trivett agreed that the payment allocation information was sourced from management, but the fact that Leydin Freyer, a third-party accountant, was involved was in his view relevant to the veracity of the information. He agreed that notwithstanding Leydin Freyer's involvement, management retained responsibility for tracking the payments received and identifying which project management customers they were received from, and to which project they were to be allocated.
- k. Mr. Trivett confirmed he read the notation in X110 of a discussion with Mr. Richards explaining that there was an arrangement in place with the three merchants in receipt of the project

management services whereby anyone could pay for the other. He said that he made an enquiry of Mr. McDonald at the time of his review and was told the parties were related and facilitating payments for different entities in the group. (T170.7-12)

- l. In relation to the third and fourth aspect of the testing identified in XI10, he agreed it was not actually testing as it involved noting management were satisfied. The explanation was that the audit team as a result required higher evidence in the form of signed certificates from each of the project management clients regarding the revenue flows.
- m. Mr. Trivett was aware that two certificates of practical completion had been obtained and one was outstanding at the date of his review. The audit team had noted that they could not obtain sufficient comfort that the payments received for the project work were specifically in relation to work conducted by ISX. He did not necessarily agree that the certificate for completion not being received was the differentiator between recognising the revenue for IMMO and FCorp and not doing so with respect to Corporate Destination. He said when he was reviewing the team's work, he assessed what procedures they performed and looked at the judgements they had made, and he did not know whether the certificate of practical completion or not would have made a difference only that it would add weight. (T173.17-23).
- n. In relation to the notation on the workpaper *'Audit has therefore deemed it appropriate to raise an error in respect of the recognition of this revenue amount'*, Mr. Trivett disagreed with the use of the term error and described it as a PAJE raised for further consideration and said it would not turn into an adjusting journal entry until finally concluded upon.
- o. In relation to the notation on the work paper *'Given the net profit effect of these adjustments would only represent the margin amount, which is below our tolerable error, it has been considered appropriate to classify this as a PAJE in our audit findings'*, Mr. Trivett's view was that it was not the netting off effect that caused it to be classified as a PAJE, despite how it was worded.
- p. When he reviewed the workpaper his understanding was that the certificate would be received, and the PAJE would disappear when that arrived. In answer to the question whether, had he been told that the certificate did not come in, would he have raised an issue with someone, he answered yes, and said he would have told them to wait for it to come in. (T179.11)

- q. In terms of an adjustment had the certificate not come in, Mr. Trivett did not agree that it could not be reported on a net basis, although he agreed that he would want to see that the team had assessed materiality in the context of the gross amounts. By 23 August 2018 he had not made that enquiry because he had not finalised his review.
- r. Mr. Trivett confirmed with respect to XI7, Cost of Sales workpaper that when he reviewed it there were no amounts noted as having been paid to suppliers pertaining to the Corporate Destination project.

Relevant s19 Evidence

293. An excerpt of Mr. Krafft's evidence from the s19 transcript was relevant to the project management services revenue work for the detail about the view held by the audit team that the information they had in relation to the project revenue was not sufficient, and that their suggested approach had been for audit to go direct to the project management services client of ISX using an email address that had been identified, but the approach had been met with anger by ISX. Mr. Krafft was asked ... *'wouldn't that be a red flag to an auditor? Millions of dollars at risk? And the company is fighting you, not wanting you to go directly to their clients, doing an independent check of what would be an innocent, if it's true, would be an innocent thing. It didn't cross your mind or the mind of others to do that? Or that the company opposing it wasn't something that might cause you to rethink?'* He responded by saying that at the time they thought the information, representation they received, and the payment support they had, was sufficient, while he acknowledged that it was ultimately the Engagement Partner's decision.

The Experts' Views

294. We have considered both expert's views on this contention. Mr. Thorn's opinion was more relevant insofar as it took a broader view of the duty that included the context of the FY18 Audit. Mr. Thorn's opinion was firm that there was insufficient audit evidence based on the audit work recorded in XI10 and XI7 for any auditor to be satisfied in the face of an identified significant risk of fraud.
295. Mr. Westworth considered a Review Auditor could be satisfied with the audit evidence, largely premised on the basis that invoices had been sent to suppliers and there had been some payments to suppliers. Mr. Westworth's view does not take account of the requirements in ASA 330 operative at the relevant time, and which should have been a relevant consideration for Mr. Trivett when performing the role of Review Auditor

in the FY18 Audit.

296. Even with a certificate of practical completion, Mr. Thorne's view was that the audit evidence in relation to Corporate Destination, IMMO and FCorp was insufficient and that it was not open to any auditor acting reasonably, to accept it. In saying that, he said he had reviewed the audit file and had regard to the draft contracts, the audit work as to how receivables were in part settled, the two certificates of practical completion received and the information about the related costs of sales.
297. Mr. Thorn's view was that high quality audit evidence that was persuasive was needed before revenue could be recognised because revenue recognition had been identified by the audit team as a significant risk, and these transactions were so late in the financial year. About this he said an important consideration was whether the contracts were genuine [T265] and he noted there was no clearly authenticated third party evidence that they were. He said a straightforward way of doing this would have been to obtain proper authenticated confirmation from the customer. In his view the circumstances of the FY18 Audit demanded a Review Auditor to have the comfort of a relatively high level of audit evidence because their role is not only to review, but to review and challenge the judgements and decisions of the Engagement Partner.
298. Mr. Thorne agreed the PAJE raised in XI10 should have been required both because it was material to revenue alone, which was established as a significant judgement in the audit and because at the time it was raised the auditor was not satisfied by the audit evidence. Asked whether that was even if the materiality benchmark set was by loss, Mr. Thorne answered *'Well, I think it should not have been, but if loss was to be used, Auditing Standard ASA 450 still requires that you break out the significance of audit judgments to individual accounts, rather than a shortcut method of just looking at the effect on the profit or loss.'* [T256]

The Parties submissions

299. Mr. Trivett's counsel made the following submissions:
 - a. Relevant to Mr. Trivett's review of these workpapers was his evidence that he had not gained a sense from the audit partner that the FCorp and IMMO revenue ought not be recognised. The Panel must consider that Mr. Trivett was entitled to have regard to the additional evidence when finalising the review of the FY18 Audit on 25 September 2018, and the Panel was referred to Mr. Thorn's evidence that it was a question of judgement as to whether regard may be had by a benchmark EQC Reviewer to the subsequent receipt of the certificate in relation to Corporate Destination. We do not agree that whether Mr. Trivett gained a 'sense' as referred to in

the submission is relevant to our consideration of whether Mr. Trivett reviewed audit workpapers XI7 and XI10 adequately and properly having regard to the duty of a Review Auditor within (d)(ii) to review key workpapers as outlined in paragraph [259](#) the requirement for objectivity identified by ASA220(20), and the need for professional judgements to be made having regard to relevant and appropriate considerations. We otherwise refer to our conclusions on Contention Four.

- b. In relation to workpaper XI7, based on Mr. Thorn's view that this was not a document which a Review Auditor was required to have reviewed in the objective evaluation contemplated by ASA 220(20)(c), there is no relevant standard to apply under any law to Mr. Trivett's review of this document. This submission is incorrect for the reasons we have already discussed as to the Board's jurisdiction³¹ and the scope of the duty outlined in paragraph [260](#).
- c. Following the hearing, the 'Merchant Funds' workpaper was submitted on behalf of the Respondent as a document relevant to the soundness of the audit team's judgements in XI10 and XI10A as to the sufficiency of evidence on which they accepted receipt of EMA funds from IMMO to the bank. There is no evidence Mr. Trivett reviewed this workpaper and it is not relevant to the question in Contention Two of whether he reviewed audit workpapers XI7 and XI10 adequately and properly having regard to the duty of a Review Auditor within (d)(ii) to review key workpapers as outlined in paragraph [259](#). As an aside, we note that the data in the Merchant Funds work paper also relied heavily on management assertions.

300. ASIC submitted:

- a. Mr. Trivett's review of XI10 and XI7 was not adequate and proper within the meaning of S 1292(1)(d)(ii) because there was insufficient audit evidence identified for an EQC Reviewer to be satisfied of revenue occurrence. None of the project management services revenue was properly recordable and would have required at least further audit testing.
- b. There were serious flaws in the audit evidence other than the certificates of practical completion. The two certificates of practical completion that were received were not sufficient to warrant a conclusion that on an overall basis, there was sufficient adequate audit evidence as to the occurrence and accuracy of any of the revenue. Not least, XI10 was supported almost entirely by management assertions.

³¹ See paragraphs [14-59](#)

- c. Mr. Trivett did not require changes or further work to be done on workpaper XI7. On its face, XI7 did not show there was sufficient audit evidence of appropriate audit work having been done.
- d. Relevant to the adequacy of his review of workpaper XI10, Mr. Trivett's evidence included that he was expecting the final certificate of practical completion to be received, which would have removed the PAJE associated with the revenue and expenses for that customer. However, the subsequent receipt of that certificate did not justify taking no further steps at that time as part of the review of XI7 and XI10.
- e. Workpaper XI10 showed that no adjustment was required for the identified misstatements of almost \$800,000 of revenue because after netting off the revenue misstatement against the misstatement of costs of sales, the net effect was only \$48,000, which was below the tolerable error. That approach was not in accordance with the Accounting Standards - both experts agreed that it was necessary to look at the effect of potential misstatements on individual accounts. Irrespective of whether the certificate of practical completion was expected, the netting off approach was not justifiable because a revenue misstatement of \$800,000 was significant - either with or without the Performance Shares, and so the correct approach would have been for the misstatement either to be recorded, or not if there was sufficient audit evidence. Either way the netting off was not appropriate.
- f. Mr. Trivett's review of the audit team's significant judgements recorded in work paper XI10 should have been done based on the work paper as written and not based on a possibility that may or may not have eventuated. Further, Mr. Trivett said that if he had known this certificate had not come in, he would have told the audit engagement team to wait on the audit report.
- g. Mr. Trivett had a duty to challenge the basis of the judgements relating to the treatment of the identified misstatements as recorded on workpaper XI10 and he did not perform that duty adequately and properly. At the very least, if the Review Auditor's approval of the work paper was contingent on receipt of the certificates and removal of the adjustment, that should have been reflected in writing and would have gone some way to ensuring that an unqualified audit report would not issue unless and until the certificate was received.

301. We agree with ASIC's submissions and have commented further below.

Panel findings and comments

302. Based on the record provided by XI10 and XI7 and having considered Mr. Trivett's evidence we are satisfied about the following matters relevant to Contention Two and comment on our views where relevant as to Mr. Trivett's duty to adequately and properly review these workpapers pursuant to the professional standard for that duty outlined in paragraph [259](#).

- a. While Mr. Trivett's evidence was that he reviewed XI10 on 23 August 2018, it was signed off in the audit file as having been partially reviewed. Properly performing the role of Review Auditor involves ensuring that record is accurate as to the status of the reviews that have been performed. We have referred to ASA 230 which is relevant to identifying that duty as is ASA 220(25)(a).
- b. There is no record on the audit file of Mr. Trivett raising any concerns with the audit team about the audit work recorded in the audit paper, including that he did not raise a query in relation to either workpaper when he returned the file to the system at 11.51pm on 23 August 2018.
- c. There was evidence about a discussion on 27 August 2018 between Mr. Trivett and Mr. Taylor concerning the anticipated receipt of the Corporate Destination certificate of completion.³²
- d. The four project management services contracts against which the project management work being performed was validated were unsigned and contained inconsistent terms. We are satisfied based on the evidence in workpaper XI10 that those contracts did not amount to more than management assertions.
- e. The third-party evidence as to the source and existence of payments pursuant to the project management contracts and details of the invoicing arrangements, was scant. The schedule containing details of the payments received for the project management services was generated by ISX management. Without validating objective evidence that schedule did not amount to more than a management assertion. There were some payments from IMMO and FCorp recorded and none for Corporate Destination, which had been accrued. We agree with ASIC's submission that more substantial independent evidence as to the source and existence of those payments, together with details supporting the invoicing arrangements was required before the work evidenced by XI10 disclosed sufficiently validated information

³² As to details of this evidence see paragraph [341](#).

for a Review Auditor to be objectively satisfied about the audit conclusions, having regard to what the scope of the duty within (d)(ii) we have outlined in paragraph [259](#) required.

- f. Information provided by management was that in some instances:
 - 1) Project management clients as noted above paid on each other's behalf.
 - 2) Customers of the project management client paid the amounts to ISX directly.
- g. Mr. Richards, the CFO had allocated payments received to the invoices, for which management's explanation was that was necessary because the three project management services customers had arrangements in place between them which allowed each to pay for one of the others and the payments were received into two different bank accounts one of which, the e money account could also hold funds of unrelated third-party customers.
- h. Based on e. above, the record of audit work was evidence of no more than that moneys were received to the e-money account. In our view substantive validating evidence as to the basis for allocating payments, who had paid for what and on what basis, and which payments received into the e-money account could be confirmed as ISX revenue was required before the information in XI10 could satisfy a Review Auditor and the detailed review of XI10 as identified by the duty within (d)(ii) outlined in paragraph [259](#) would have identified this need and should have caused the Review Auditor to raise queries with the audit team about the need for such validating evidence.
- i. There were internal anomalies in the audit work papers consistent with a cursory review by Mr. Trivett that did not involve checking the accuracy of the information in the workpapers, such as what the certificates of completion recorded or what the terms of the contracts were, and therefore there was not a thorough consideration of the evidence and the support it provided for the conclusions presented. The scope of the duty within (d)(ii) outlined in paragraph [259](#) involved this level of review as without that work it would not be possible to identify any apparent anomalies that may need to be clarified with the audit team, or ensure the record provided by the audit paper and on which the Review Auditor has based their conclusion that no queries of the audit team are necessary, is appropriately complete and clear as a record of the sufficiency of what audit work has been done.
- j. There were details of certificates of practical completion received

for two of the three project management clients by the time of Mr. Trivett's review on 23 August 2023. We have outlined this evidence in paragraph [292\(m\)](#). Mr. Trivett did not check these certificates. Mr. Trivett's evidence about what validation the certificates of completion might provide seemed evasive and did not align with the view he expressed about the other certificates of completion, or his answer in cross examination that if he had been advised the Corporate Destination certificate was not received before the audit report was signed, he would have told the audit team to wait for it to come in. In our view the audit evidence Mr. Trivett reviewed did not reveal there was an adequate basis for concluding the audit work recorded was sufficient, and Mr. Trivett's explanation outlined did not provide a cogent or persuasive basis for reconsidering that conclusion.

- k. Mr. Trivett's evidence [see paragraph [292\(q\)](#)] was that had he completed his review and been satisfied after checking that the audit team had assessed the netted off PAJE in the context of the gross amounts, then there would have been an appropriate basis for being satisfied as Review Auditor that it could be properly recorded in the Financial Report on a net basis if the certificate of completion did not arrive. We found this evidence unpersuasive. Mr. Trivett did not explain the relevance of why he would want to have seen that the audit team had assessed the adjustment in the context of the gross amounts or what difference that could have made to how it could be reflected in the FY18 Financial Report. This evidence is hypothetical but, in our view would not provide an appropriate basis for reporting any adjustment on a net basis. Further, we refer to our earlier comments on the importance of appropriately assessing materiality³³ and note that at the audit planning stage Mr. Trivett had not addressed the appropriateness of the materiality that had been set with the audit team even though on the basis of the provisions in the Grant Thornton Audit Manual, the review he did of the audit planning should have alerted him to that need. This further reduces the reliability of Mr Trivett's evidence on this matter.
- l. Mr. Trivett confirmed with respect to XI7, Cost of Sales workpaper that when he reviewed it there were no amounts noted as having been paid to suppliers pertaining to the Corporate Destination project.

³³ See discussion in paragraphs [140-146](#)

Additional comments on XI10/7 evidence and the requirement for objectivity

303. Mr. Trivett's recall about the content and context of his review of XI10 and XI7 papers was notably more detailed compared to evidence he gave about his knowledge of the significance of the Performance Shares and the Fraud Memo. It still contained inconsistencies, and frequently lacked cogent explanation and was focused on defending the professional standard at which he performed his duties as Review Auditor in the FY18 Audit.
304. Mr. Trivett's evidence about informal discussions with engagement team members was vague and did not address specific content or reveal how he challenged any of the judgements of the audit team and does not in our view lend any weight to a conclusion that Mr. Trivett performed the duties referred to by Contention Two properly or understood what the scope of the duty within S 1292(1)(d)(ii) required.
305. As the audit team was performing the revenue recognition work based on a presumed risk of fraud, and revenue recognition was a significant judgement, our view is that the review required of workpapers XI10 and XI17 would have resulted in the Review Auditor questioning and challenging the audit team on several matters that would have been evident on a thorough reading and objective evaluation of the information they contained. For example, why the Audit team had not followed up for, or obtained signed copies of the agreements, rather than accepting MLPs as appropriate. Mr. Trivett's evidence was that he usually required this when acting as Auditor. Where conduct or an approach by an audit team to substantive audit work deviates substantively from a Review Auditor's own practice, our view is that understanding the basis for the different approach by the audit team would form part of what is necessary to properly discharge the review obligation.³⁴
306. Assuming, as Mr. Trivett said he did, that the parties paying on behalf of each other must have been related parties, not reading the detail of any of the revenue contracts and accepting the explanation about ISX's financial controller at face value without further inquiry of the audit team to objectively validate the assumptions on which their explanations were based, and accepting the information about money being received into the e-money account as a '*slant on his knowledge but not unreasonable*' without there being any objective evidence to support such conclusion demonstrates an insufficient application of professional scepticism and inadequate professional judgement to performing the review of these papers. In forming that conclusion, we have had regard to the provisions of and the guidance provided by the Auditing Standards in place at the

³⁴ This would also be consistent with the equivalent standard for proper professional practice applying to (d)(i) and (d)(ii) as referred to in paragraph [42](#).

time about these concepts, and to the provisions in the Grant Thornton Manual discussed at paragraph [50](#), that were relevant to indicating what proper professional practise required.

307. Both XI10 and XI7, contained substantial 'prepared by client' notations that indicated significant reliance on management assertions to the conclusions of the audit work they recorded and the comments we have made in the preceding paragraph also apply to Mr. Trivett's acceptance of that information as appropriate. The information recorded in XI10 and XI7 was the validation evidence for the objective evaluation required by ASA220(20). It was therefore integral to the adequate and proper performance of the Review Auditor's duty to performing the duties enumerated by ASA220(20) that the information these documents contained was capable of substantive objective validation. The fact they contained substantial 'prepared by client' information meant that heightened professional scepticism by the Review Auditor was called for. In this matter our view is this would have included:

- a. Checking the terms of the project management agreements and being satisfied that sufficient audit work had been done to establish the identity of the parties involved, their relationships to each other, and the value proposition of the work ISX was providing under the contract terms.
- b. Reviewing the wording of the certificates of practical completion, checking how they had been procured.

If such information was not referenced and available to access via the record provided in the work papers, then the Review Auditor's responsibility is to question and challenge the audit partner, and ultimately to be satisfied that there is sufficient reliable validation evidence available in the audit file to support the conclusions reached before the audit is concluded.

308. To the extent Mr. Trivett provided explanations supporting the views he had formed about the sufficiency and appropriateness of the information presented in XI0 and XI7, our view of those explanations is that they did not demonstrate either an appropriate basis for the professional judgements he made, or the application of appropriate professional scepticism when he reviewed them. We have discussed these aspects of proper professional performance in paragraphs [49-50](#) and [276](#).

309. Mr. Trivett's evidence placed substantial reliance on his 'judgement', including the evidence in his statement that he considered all members of the audit team capable, diligent, and trustworthy and knew them all personally and attested to these matters in his statement of evidence. We question the relevance and appropriateness of placing emphasis on that judgement as influential to performing the role of Review Auditor.

Impartiality and objectivity are required of a Review Auditor. These considerations remove scope for proceeding on assumptions about the capacity, diligence, and trustworthiness of those whose work is being reviewed, as Mr. Trivett's evidence identified he did. The Review Auditor's duty involves ensuring there is appropriate comfort from the existence of objective facts and evidence supporting the judgements made and the conclusions reached and that the audit evidence presented is in accordance with the relevant Auditing Standards and other requirements we have discussed, in this case the requirements of the Grant Thornton Audit Manual. The inherent issue in a Review Auditor placing weight on assumptions or judgements about each audit team member's competency, diligence, and integrity, and this being accepted as appropriate practice within the profession, is the bias it introduces to the process of the quality assurance of an audit which has significant potential to undermine the objectives of the role. It is also not consistent with the objectivity and independence the Auditing Standards identify as crucial for performing the Review Auditor function, nor to achieving their objectives. The audit team's obligation is to have appropriately validated their audit findings and the Review Auditor's role is to confirm that has occurred. In order to do this the Review Auditor must perform a review that is sufficient to identify gaps if they exist. If there is relevant information not referenced and available to access via the audit record, then the Review Auditor's responsibility is to question and challenge the audit partner and ultimately to be satisfied that there is sufficient reliable validation evidence available in the audit file to support the conclusions reached before the audit is concluded. Professional judgement does not bridge validation gaps. Management assertions however couched and for whatever reason are management assertions nevertheless and appropriate professional scepticism, which in this matter was a high level of scepticism, needed to be applied to assessing such material, and evidence that the audit team had investigated or validated management's assertions from several angles was a necessary part of that exercise.

Conclusions

310. We are satisfied that XI10 and XI7 were significant workpapers within the scope of the duty to review within (d)(ii) we have outlined in paragraph [259](#). Mr. Trivett was performing an important function as Review Auditor. Particularly when the individual issues were considered as a whole, work papers XI7 and XI10 identified several anomalies that required him to act.
311. We are satisfied based on the evidence that Mr. Trivett failed to adequately perform a detailed review of XI7 and XI10 based on the

evidence we have outlined and for the reasons we have discussed.

312. We are also satisfied that Mr. Trivett failed to review workpapers XI7 and XI10 properly, as he failed to properly apply professional judgement or appropriate professional scepticism or appropriate due care and diligence to the performance of this duty. That failure subverted achieving the objectives of the function of Review Auditor³⁷ to contribute to meeting the objectives referred to in ASA220(6), namely the obtaining of reasonable assurance, which is a high level of assurance, that the audit complies with the Australian Auditing Standards (and other ethical, legal, and regulatory requirements) and that the auditor's report is appropriate in the circumstances. The audit work recorded in XI10 and XI7 was integral to the quantum of revenue recognised in the FY18 Financial Statements and appropriate evidence validating the quantum of the revenues tested, which represented 53% of the total revenue of ISX in FY18, was not provided by those records.
313. For these reasons, we are satisfied that Mr. Trivett did not review audit workpapers XI7 and XI10 either adequately or properly within the meaning of S 1292(1)(d)(ii) having regard to the scope of that duty as outlined in paragraph [259](#).
314. We are satisfied for the above reasons that Contention Two has been established.

Contention Three

315. Contention Three was that Mr. Trivett did not perform a review of the FY18 Financial Report before it was issued and failed to adequately perform procedures required by GT's policies on engagement quality control review. This contention was based on duties within S 1292(1)(d)(ii) indicated by paragraph 20(b) of ASA 220 and paragraph 25(a) of ASA220 read with the requirements contained in paragraphs 19.90 - 19.92 of the Grant Thornton Audit Manual and the engagement quality control procedures in the Grant Thornton Manual. (Contention Three)
316. Contention 3 was not pressed by ASIC except to the extent that Mr. Trivett did not adequately review the disclosure in the FY18 Financial Report as to the Performance Shares, which was Note 30.

Relevant professional standards identifying the duty

317. Paragraph 20(b) of ASA 220 identified that in the context of performing an objective evaluation of the significant judgements made by the

³⁷ Outlined in paragraphs [67\(d\)](#) and [212](#).

engagement team and the conclusions reached in formulating the audit report the Review Auditor was required to review the financial report and the proposed auditor's report.

318. Clause 19.90 stated that the scope of the Quality Control Review includes reviewing draft financial statements. Clause 19.91 set out what, at a minimum the Review Auditor should review and sign off as evidence of their review and included reference to the financial statement disclosure questionnaire. Clause 19.92 identified the Review Auditor should fulfil his/her responsibilities by, among other things, reading the auditor's report and the financial statements to determine that they comply with the Professional Standards and the firm policies. These procedures were based on the requirement in ASQC1 paragraphs (a)-(d) for audit firms to establish internal procedures that included review of the financial report, or other subject information and the proposed report.
319. ASA220(25)(a) identified a requirement to retain a record of the procedures the Grant Thornton Audit Manual outlined for performance by the Review Auditor.
320. The expert evidence relevant to the scope of Mr. Trivett's duty to review the FY18 Financial Report suffered the limitation previously mentioned, that it was focussed on the requirement in ASA220(20)(b) when the scope of the relevant duty under (d)(ii) was broader and encompassed the matters identified by the Grant Thornton Audit Manual.
321. The experts agreed, that pursuant to ASA220(20)(b) a Review Auditor need only focus on matters that could give rise to a material misstatement [Joint Expert report at 137]. Generally, they said this would mean a focus of the review would be material balances in the balance sheet and the profit and loss account, together with the related party disclosures, in case of their significance and the experts agreed that the related party disclosures were something to which a Review Auditor would look (Note 24) (Joint Expert Report at [136] and [137]). As we have discussed, an objective review requires appropriate factual context. That context would in our view include reading the whole financial report to satisfy ASA 220(20)(b), even if the aspect of the review pursuant to the obligation in ASA220 (20)(b) would focus on those specific areas of the report identified by the experts which we agree are an important aspect of the EQC Review.
322. For the reasons we have already discussed in paragraphs [15-23](#) and [221-225](#), our view is that the Grant Thornton Audit Manual procedures as well as those referred to by the Auditing Standards identify duties within the meaning of section 1292(1)(d)(ii), compliance with which identified the minimum adequate standard for performance.

Scope of Contention Three Duty

323. Having regard to the above standards indicative of the professional standard for the review of the draft financial report by a Review Auditor within (d)(ii), as well as the objectives of the Auditing Standards we have discussed, including that referred to in paragraphs [67\(d\)](#) and [212](#), the duty to review the draft financial report involves performing a detailed review of the report and documenting that procedure on the audit file. The aim of the detailed review is to assess the correctness and accuracy of the draft financial report by reference to the Review Auditor's knowledge of the audit conclusions, based on the proper performance of that role. The duty includes thoroughly reading the draft financial statements to form a view about its completeness, quality, and effectiveness. The review required by ASA 220(20)(b) is one of the planks of the Review Auditor's obligation to perform an objective evaluation, that involves a critical and unbiased analysis of the significant judgements and the audit conclusions, by reference to objective information, of which knowledge of the contents of the whole draft financial report is a critical piece.

The relevant evidence

324. Mr. Trivett's evidence was that he reviewed the draft FY18 Financial Report on 23 August 2018. There was a sign off on the FY18 Audit File relating to that review dated 25 September 2018.
325. We have referred to Mr. Trivett's evidence about what he read when he reviewed the draft FY18 Financial Report in paragraph [183](#) and refer to our comments on that evidence in paragraphs [184](#) and [185](#) and our conclusion in paragraph [186](#) that the most logical view of that evidence is that when Mr. Trivett reviewed the draft FY18 Financial Report he did not read Note 30 because it was not linked to the KAM of revenue recognition and he did not regard the function of Review Auditor as involving fully reading a draft financial report.
326. Mr. Trivett's evidence was that on 24 August 2018 Messrs. Krafft and McDonald asked him whether he had any changes to the draft FY18 Financial Report that he had reviewed on 23 August 2018 and he confirmed he had reviewed it and did not have any changes.
327. Our view of this evidence is that Mr. Trivett conveyed to Messrs. Krafft and McDonald on 24th August 2018 that he had finalised review of the draft FY18 Financial Report.

Panel Findings

328. Based on our views and findings above and having regard to the scope of

the duty to review a draft financial report identified in paragraph [323](#) we are satisfied that Mr. Trivett did not perform an adequate or a proper review of the draft FY18 Financial Report within the meaning of S 1292(1)(d)(ii).

329. We are satisfied Contention 3 has been established.

Contention Four

330. Contention Four alleged Mr. Trivett failed to adequately and properly carry out an evaluation of whether the proposed FY18 Audit Report was appropriate. This contention was based on duties within S 1292(1)(d)(ii) indicated by paragraph 20(d) of ASA 220 and the procedures identified in paragraphs 19.85, 19.91 and 19.92 of the Grant Thornton Audit Manual that ASA220(25)(a) required to be documented by the Review Auditor (Contention Four).

Relevant professional standards identifying the duty

331. ASA 220 (20) (d) (relevantly) provided:

The engagement quality control reviewer shall perform an objective evaluation of the...conclusions reached in formulating the auditor's report. This evaluation shall involve: (d) Evaluation of the conclusions reached in formulating the Auditor's report and consideration of whether the proposed Auditor's report is appropriate.

Scope of the Duty

332. Consideration of whether the proposed auditor's report is appropriate within the meaning of S 1292(1)(d)(ii) would include, in our view:
- a. Considering the conclusions reached in formulating the Auditor's report and whether a proposed unqualified Audit report is appropriate.
 - b. Reading the Auditor's Report to determine it complied with professional standards and firm policies.
 - c. Confirming with the Lead/Engagement Partner that there were no significant unresolved matters.
 - d. Reviewing significant areas of the audit and the related workpapers.
 - e. Performing the minimum reviews and signoffs required by 19.91 of the Grant Thornton Audit Manual.

Evidence

333. In his statement, Mr. Trivett said that on 23 August Mr. McDonald provided him with a verbal summary of how the FY18 Audit had been

conducted before emailing the FY18 Audit File to him at 2.15pm that day. That email referred to attaching the *'AFR [audit findings report] to be presented to the audit committee later this afternoon, as well as the latest draft of the annual report.'*

334. Mr. Trivett's evidence was that he reviewed the draft Audit Findings report attached to Mr. McDonald's email on 23 August 2018. The relevant evidence is set out in paragraphs [187-192](#).
335. There is evidence of a further email from Mr. McDonald at 3.49pm attaching a zip file of the project management revenue contracts *'in case they were not on the audit file'* [Mr. Trivett's evidence was that he did not read these].
336. As to his review of the FY18 Audit File on 23 August 2018 Mr. Trivett's statement evidence was:
 - a. He recalled reviewing XC100.
 - b. He did not review the General Journal Risk Assessment, the Auditing Estimates Workbook, the Discussions with Management Summary, on the basis they had been reviewed by other members of the audit team. Having regard to the general responsibilities of the Review Auditor identified by the Grant Thornton Audit Manual as including *'providing additional assurance to the Firm that audit risk has been reduced to an acceptably low level'* our view is that this was not an appropriate reason for not reviewing those documents.³⁸
 - c. Mr. Trivett did not sign off on the Audit Planning Report. His evidence was that he reviewed it when emailed to him on 16 July 2018. We refer that evidence and to our comments on it in paragraphs [135 -146](#). The scope of Mr. Trivett's duty to review within S 1292(1)(d)(ii) involved observing relevant documentation procedures as we have discussed.
 - d. He looked at the summary of recorded misstatements on 23 August 2023. He said he did not sign off on it then because he said he expected the file to come back to him. He signed it on 25 September 2023.
 - e. He reviewed XI10 and XI7 Revenue cut-off FY18 on 23 August 2018. Both were documents he was required to review. These documents are described in paragraphs [195](#) and [198](#). The evidence relevant to the review of these workpapers is set out in more detail in paragraphs [290-298](#) and we refer to our findings and

³⁸ See paragraphs [67\(d\)](#) and [213](#).

comments in relation to this evidence in paragraphs [302-314](#).

- f. Mr. Trivett reviewed the draft financial statements on 23 August 2018. We have outlined the evidence about what he read in the FY18 Financial Report in paragraphs [182](#) and [183](#) and our comments and conclusion on that evidence follow in paragraphs [184-186](#). It is not clear from that evidence whether he read all the parts he confirmed he read on 23 August or later.
 - g. The draft Independent Auditor's report was not included in the version of the company's annual report provided by Mr. McDonald on the 23 August 2018, and he said it was not on the Voyager file at the time of his review on 23 August 2018.
337. Mr. Trivett's evidence about the review of the Final Draft KAM Assessment Form he performed is set out in paragraphs [176 -178](#). The relevant differences between the Initial Draft KAM Assessment Form and the Final Draft KAM Assessment Form are identified in paragraph [179](#).
338. Mr. Trivett was cross examined on the Final Draft KAM review. His evidence was:
- a. He agreed with the definition of a KAM noted in that document as *'those matters that in the auditor's professional judgement were of most significance in the audit of the financial statements'*.
 - b. He agreed that he was aware that two audit procedures noted in the KAM were (i) to select a sample of revenue and agree to supporting documentation and (ii) For revenue recorded under AASB111, assess management's estimate of the stage of completion of each period through corroboration to underlying supporting documents. Mr. Trivett agreed that the latter referred to objective audit evidence. He said it could include management assertions in conjunction with other corroborating evidence. He agreed that it was the work reflected in XI10 and XI7. He signed off on the KAM on the basis it was consistent with his understanding of what the audit team would do [T191.13].
 - c. He said that by the time he assessed what the audit team had done on 23 August, the only outstanding matter was the Corporate Destination certificate of practical completion. He disagreed that, considering the evidence in XI10 and XI7 that we have discussed in Contention Two, that he could not have been satisfied that the testing done was in accordance with the KAM procedures. He said [T20-24] *the substance of the testing supported the revenue recognition, and this is where the judgement needed to come in. I looked at the judgments the audit team has applied, and I've concurred with them.* In relation to the Corporate Destination

Certificate, he said it was his expectation it would be received, prior to the wording in the audit opinion being issued.

339. On 23 August 2018 Mr. Trivett emailed Mr. McDonald noting the FY18 Audit File was partially reviewed and back on the system and he identified the main outstanding issue as relating to foreign exchange and most of the transactions being in euros.
340. On 24 August 2018 Mr. Trivett confirmed to Messrs. Krafft and McDonald that he had reviewed the financial report and did not have any changes.
341. On 27 of August 2018, Mr. Trivett's evidence was that he had a conversation with Mr. Taylor and Mr. McDonald about the Corporate Destination revenue stream. He said that Mr. Taylor informed him that the audit team expected the Corporate Destination Certificate of Practical Completion would arrive prior to the FY18 Financial Report being issued and in the interim a PAJE had been raised and the net impact on profit before tax had been assessed as not material. Mr. Trivett said the PAJE schedule, the fact that a certificate had not been received from Corporate Destination and whether there ought to be an adjustment to revenue and cost of goods sold relating to the Corporate Destination contract was discussed with him. He said that Mr. Taylor told him that if they did not receive the certificate of practical completion from Corporate Destination in time, the audit team would ensure the management representation letter obtained from ISX addressed that issue.
342. Mr. Trivett's statement then went on to say that:
 - a. Receipt of the Corporate Destination certificate of completion was one of the final matters outstanding prior to finalising the Independent Auditor's Report.
 - b. He was not aware the FY18 Financial statements, including the Independent Auditor's Report, was issued by the company the following day.
 - c. He had no further contact with the audit team until 25 September 2018.
 - d. As to evaluating the conclusions reached in formulating the Auditor's Report and considering whether the proposed Auditor's Report was appropriate, Mr. Trivett relied on his evidence about having reviewed the KAM on 14 August 2018 as the basis for the sign off he recorded on the FY18 Audit File on 25 September 2018. That evidence was that although it was not included in the material provided to him at the time of his 23 August review, he had already reviewed it in substance because he had reviewed the KAM to be included on 14 August 2018, and the working papers on which the KAM was based (subsequently on 23 August 2018) and as the

wording of an Independent Auditors Report is standard apart from KAMs to be included, it followed he would have been satisfied with an Independent Auditors Report that included that KAM.

- e. At the time he signed off as having reviewed the Independent Auditor's report when archiving the file on 25 September 2018, he was satisfied that it was consistent with his overall understanding of the results of the FY18 Audit, and the Audit Findings Report presented to the ISX Board. While he did not have an opportunity to complete the EQC Review before the FY18 Financial Report had been issued, he was satisfied with the Independent Auditor's Report for the reasons referred to in sub-paragraph (d) and the reviews he did as we have outlined in paragraph [336](#).
343. There is evidence of an email to Mr. Trivett from Mr. McDonald dated 24 September 2018, the subject line states *iSignthis Voyager File on Network (archive Prep)* and the email states 'Sorry Simon should have clarified in my original calendar invite that the close down of the file shouldn't take you too long - there is just a couple of responded review notes for you to close. Then we should all be done. Thanks a lot, Niall MacDonald'.
344. The Voyager File sign offs show that Mr. Trivett signed off on audit steps 1,2,3,4,7, and 10 on 23 August 2018 and audit steps 5,6,8,9 and 11 on 25 September 2018.

Panel findings

345. Mr. Trivett's evidence was that:
- a. He had reviewed and was satisfied with the KAM disclosures.
 - b. Confirmed to the audit team no changes to the draft FY18 Financial Report were required following his review on 23 August 2018.
 - c. Had a discussion with Mr. Taylor on 27 August 2018 in which he was told that receipt of the Corporate Destination certificate of practical completion was expected, or that otherwise the audit team would ensure the management letter from ISX addressed the issue.
346. This evidence is consistent with Mr. Taylor having an understanding, that Mr. Trivett did not disabuse, that Mr. Trivett would be satisfied about the issue of the FY18 Audit Report on an unqualified basis upon the certificate of completion being received or a management letter from ISX addressing the issue.
347. If Mr. Trivett had not been satisfied with Mr. Taylor's statement, it is not logical that Mr. Trivett did not communicate that to Mr. Taylor in response to the suggestion of a management letter, given the role he was

performing in the audit.

348. Other evidence supporting this view of the evidence was:
- a. Mr. Trivett's email returning the Voyager file to the system following his 23 August review referred to one main query unassociated with the KAM of revenue recognition and did not indicate any concerns about the audit work recorded in audit work papers XI7 and XI10 which his evidence was that he had reviewed on that date.
 - b. Mr. McDonald's email to Mr. Trivett on 24 September 2018 that did not refer to any irregularity, only to the file close-down process - which appears to have been referring to the process specifically identified in the explanatory guidance in ASA200 A5 that documentation of the Engagement Quality Control Review may be completed after the date of the auditor's report as part of the assembly of the final audit file. (Note ASA 230 (14)-(16) establishes requirements and provides guidance in this regard) – that Mr. McDonald said would not take too long.
349. The alternative view of the evidence proposed by Mr. Trivett that he did not know the FY18 Financial Report was issued the day after his discussions on 27 August 2018, is difficult to accept as plausible. It would involve accepting, in the context of the evidence above, that although Mr. Trivett expected to finish the EQC Review before the FY18 Financial Report was issued and knowing that the audit team's meeting with the client about the audit findings/conclusions had already occurred, and the timeline for the issue of the financial statements was the end of August, that when the file was not re-submitted to him in the days and then weeks following, he did not speculate or query that and when the file was re-submitted to him one month later, that he did not make the record clear that his responsibility as Review Auditor had not been completed before the FY18 Financial Report with the unqualified Audit Report, had been issued.
350. Based on these matters of evidence, our view is that the evidence supports an inference that in the context of the discussions which took place on 24 August 2018 and 27 August 2018, the effect of Mr. Trivett not communicating that he would not be satisfied with an unqualified audit report being issued should a certificate of practical completion for the Corporate Destination revenue not be received, if alternatively a management letter from ISX addressed this issue, was that the audit team's understanding was that Mr. Trivett was satisfied, and to the extent there were outstanding issues following the review he undertook on 23 August 2018, they had been dealt with on 24 and 27 August in the conversations referred to between him and the audit team and on that basis the Engagement Partner dated the FY18 Audit Report on the basis

of an understanding that the EQC Review had, by 28 August 2018 been completed.

351. Both experts agreed that a management representation about the Corporate Destination revenue would not have been sufficient audit evidence without anything further. We agree, having regard to AASB 111 and ASA 580.
352. During cross examination, Mr. Trivett acknowledged this, and said his understanding and expectation was that the Corporate Destination certificate of practical completion was coming in, and if he had been apprised that it had not arrived by the time the Audited Financial Statements were due for issue, he would have told the audit team to wait. Mr. Trivett's evidence on that matter is not relevant to our conclusion on the evidence in paragraph 350 above because had he done that, and that is hypothetical, the audit evidence in XI10 and XI7 did not provide sufficient appropriate audit evidence for the reasons we have discussed in the context of Contention Two.
353. Likewise, whether the Corporate Destination certificate of practical completion was subsequently received following issue of the unqualified FY18 Financial Report would also not be relevant to a conclusion about whether Mr. Trivett adequately and properly performed his duty within S 1292(1)(d)(ii) to objectively evaluate the conclusions reached in formulating the FY18 Audit Report and to consider whether the proposed FY18 Audit Report was appropriate, as that is a matter of evaluating the level and standard of the performance of his duty as Review Auditor. The fact that the Corporate Destination certificate of practical completion was ultimately received does not provide the answer to that question which is to be evaluated by reference to the evidence of what he did in pursuance of the duties he was responsible for carrying out.

Conclusion on Contention Four

354. The question on this contention is whether Mr. Trivett performed his duty adequately and properly within the meaning of S 1292(1)(d)(ii), to evaluate the conclusions reached in formulating the FY18 Audit Report that an unqualified report was appropriate.
355. According to the evidence:
 - a. Mr. Trivett knew few details of and had no idea about the quantum of the new project management revenue streams until 23 August 2018 when he reviewed the relevant workpapers as part of his review of the Voyager File.
 - b. Mr. Trivett reviewed and approved the KAM to be included in the FY18 Audit Report on 14 August 2018 without any significant knowledge of

the project management revenue or detail of the results of the audit work done.

356. This evidence does not reflect an approach consistent with the professional standard identified by ASA220 20(d), which contemplates that the Review Auditor's evaluation of the conclusions reached in formulating the audit report and consideration of whether it was appropriate was to take place in the context of an evaluation of the audit team's significant judgements and the conclusions reached in formulating the auditor's report.
357. This would not have been possible to satisfy at the time Mr. Trivett reviewed the KAM on 14 August 2018 given his limited knowledge. In our view Mr. Trivett as Review Auditor should have understood the risks of and why such an approach did not satisfy either the objectives of his role as Review Auditor, or what the specific duty reflected in the terms of ASA220 (20) (d) required.
358. We refer to and repeat our findings in Contention Two that discuss the way Mr. Trivett's review of the audit work in relation to the Fraud Memo and XI10 and XI7 did not meet the professional standard. We expressed the conclusion that Mr. Trivett's review of XI10 and XI7 on 23 August 2018 was not adequate or proper within the meaning of S 1292(1)(d)(ii), as those audit workpapers did not evidence an appropriate basis to conclude there was sufficient appropriate audit evidence for the audit team to support a conclusion to recognise the revenue from the Project Management Services contracts.
359. Those findings in Contention 2 on the XI10 and XI7 workpapers call into question the appropriateness of the KAM disclosure that was included in the FY18 Audit Report, insofar as much of the audit work, as we have found in Contention 2, was based on management assertions without sufficient appropriate audit evidence to support those assertions. Had Mr. Trivett properly performed the duties of his role as Review Auditor with respect to those key audit papers on revenue recognition discussed in Contention Two, he would have understood that the audit conclusions on which the KAM was based were not supported by sufficient appropriate audit evidence.
360. It was Mr. Trivett's professional obligation, as a registered auditor performing the role of Review Auditor in the FY18 Audit, to have been aware of and ensure he understood and applied the knowledge required of him as a registered company auditor. In this situation, that was knowing that reviewing and evaluating the appropriateness of a KAM Assessment to be included in the Independent Auditor's Report, before having seen or reviewed the draft Financial Statements or any of the workpapers relevant to the significant judgements of the audit team, and

to regard that exercise as sufficient to satisfy the obligations of a Review Auditor in relation to the Independent Auditor's Report reflected by ASA 220(20) Review Auditor was not an adequate or proper discharge of that duty and did not reflect a proper exercise of his role as a Review Auditor.

361. We are satisfied, for these reasons that Mr. Trivett failed to adequately and properly carry out an evaluation of whether the proposed FY18 Audit Report was appropriate, and we are satisfied that Contention 4 has been established.

SANCTIONS

Introduction

362. By reason of the matters set out above, the original Panel decided, on 7 September 2022, that it was satisfied that Mr. Trivett failed, within the meaning of S 1292(1)(d)(ii) of the Act, to carry out or perform adequately and properly the duties or functions required by Australian law to be carried out or performed by a registered company auditor.
363. Section 210A of the ASIC Act provides that where a hearing before the Board in relation to a particular matter has been commenced or completed by a Panel of the Disciplinary Board and before the matter has been determined, one of the members constituting the Panel has ceased to be a member, the hearing and determination, or the determination, of the proceedings may be completed by the Panel constituted by the remaining member or members of the Panel if the parties to the proceedings agree.
364. As stated above, on about 3 March 2024, one of the members of the Panel, Ms Maria McCrossin, ceased to be a member of the Panel.
365. By email to the Board dated 30 August 2024, the Parties informed the Board that they consented to the remaining members of the Panel (namely Business Member Tony Marks and Accounting Member Ann-Maree Robertson) to complete the matter.
366. We, as the remaining Business Member and Accounting Member of the Panel, confirm that we remain satisfied, as at the date of this decision, that Mr. Trivett failed, by reason of the matters referred to above within the meaning of S 1292(1)(d)(ii) of the Act, to carry out or perform adequately and properly the duties or functions required by Australian law to be carried out or performed by a registered company auditor.
367. Where the Board is satisfied that a respondent has failed to carry out or perform adequately and properly the duties or functions required by

Australian law to be carried out or performed by a registered company auditor, s 1292 empowers the Board to:

- 1.1 Cancel, or suspend for a specified period, the registration of the person as an auditor; and
- 1.2 Either in addition to, or in substitution for, the exercise of those powers, to deal with the person in one or more of the following ways:
 - (i) by admonishing or reprimanding the person;
 - (ii) by requiring the person to give an undertaking to engage in, or to refrain from engaging in, specified conduct; and
 - (iii) by requiring the person to give an undertaking to refrain from engaging in specified conduct except on specified conditions;

and, if a person fails to give an undertaking when required to do so under paragraph (ii) or (iii), or contravenes an undertaking given pursuant to a requirement under that paragraph, the Board may, by order, cancel, or suspend for a specified period, the registration of the person as an auditor.

368. In the present case, the parties submitted proposed Consent Orders in the following terms (**Proposed Consent Orders**):

“BY CONSENT, THE BOARD ORDERS:

1. Pursuant to ss 1292(1) of the **Corporations Act 2001** (Cth), the registration of Simon Trivett as a company auditor be suspended for a period of six (6) months from 1 May 2024 to 31 October 2024.
2. Pursuant to ss 1297(1)(a) of the Corporations Act, that the order for suspension in paragraph 1 will come into effect at the end of the day on which the Board gives Mr Trivett a notice of the decision pursuant to ss 1296(1)(a) of the Act.
3. Pursuant to ss 1292(9)(b) and (c) of the Act, within 7 days of the date of this order, Mr Trivett provide to the Australian Securities and Investments Commission undertakings in the form attached as Schedule 1 to these orders.
4. Pursuant to s 223 of the Australian Securities and Investments Commission Act 2001 (Cth), Mr Trivett pay the Applicant’s costs in the fixed sum of \$490,000 within 28 days of the date of this order.”

369. Schedule 1 is attached to this Decision and involves a series of undertakings, including undertakings in relation to professional development and supervision.

The Parties' Joint Submissions

370. The Parties made submissions to the following effect:

- a. Section 1292(1)(d) of the Corporations Act relevantly provides:
- “The Board may, if it is satisfied on an application by ASIC or APRA for a person who is registered as an auditor to be dealt with under this section that, before, at or after the commencement of this section:
- ... (d) the person has failed, whether in or outside this jurisdiction, to carry out or perform adequately and properly:
- (i) the duties of an auditor; or
- (ii) any duties or functions required by an Australian law to be carried out or performed by a registered company auditor;
- or is otherwise not a fit and proper person to remain registered as an auditor;
- by order, cancel, or suspend for a specified period, the registration of the person as an auditor.”
- b. Further, ss 1292(9) and (10) of the Corporations Act provide:
- “(9) Where, on an application by ASIC or APRA for a person who is registered as an auditor to be dealt with under this section, the Board is satisfied that the person has failed to carry out or perform adequately and properly any of the duties or functions mentioned in paragraph (1)(d), or is otherwise not a fit and proper person to remain registered as an auditor the Board may deal with the person in one or more of the following ways:
- (a) by admonishing or reprimanding the person;
- (b) by requiring the person to give an undertaking to engage in, or to refrain from engaging in, specified conduct;
- (c) by requiring the person to give an undertaking to refrain from engaging in specified conduct except on specified conditions;
- and, if a person fails to give an undertaking when required to do so under paragraph (b) or (c), or contravenes an undertaking given pursuant to a requirement under that paragraph, the Board may, by order, cancel, or suspend for a specified period, the registration of the person as an auditor.
- (10) The Board's powers under subsection (9) may be exercised in addition to, or in substitution for, the exercise of the Board's powers

to cancel or suspend a registration under subsection (1).”

- c. In accordance with the Determination, the Board is satisfied that ASIC’s contentions have been established and that the Board’s jurisdiction under s 1292(1)(d) has therefore been engaged. It remains for the Board to consider whether the penalty proposed by the parties is appropriate.
- d. The Board’s power to cancel or suspend a person’s registration under s 1292(1) is discretionary: *Birdseye v Companies Auditors and Liquidators Disciplinary Board* [2002] FCAFC 284 at [10] (Cooper, Carr and Finkelstein JJ).
- e. The Board’s power to cancel or suspend serves a protective purpose by protecting the public from persons not fit to remain registered and by deterring other auditors from acting in a similar way: *ASIC v McDermott Re Conalpin Pty Ltd (In Liq)* [2016] FCA 1186 at [44] (Moshinsky J). In *ASIC v Walker* (06/VIC07), the Board explained, at [20.7], ‘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’.
- f. One of the principal factors relevant to the Board’s consideration of sanctions is the seriousness of the matters that have been found to be established: *ASIC v McVeigh* (10/VIC08) at [12.7], *Re Young and Companies Auditors and Liquidators Disciplinary Board* (2000) 34 ACSR 425 [82]–[83], [89]; *Walker* at [21.4]
- g. The Board has recognised that an auditor’s failure to comply with the duties or functions of a registered company auditor will always be serious because they ‘perform a vital role in the administration of corporate affairs and ... the financial and wider communities rely on the reports of auditors and are entitled to assume that auditors undertake their statutory functions with adequate skill and care in accordance with applicable auditing standards’: *Walker* at [21.5].
- h. The Board has exercised its powers under s 1292 of the Corporations Act in applications where auditors contravened the applicable professional standards to be met by a registered company auditor. However, as observed by the Board in *Walker* at [21.3], there is a limit to the value of referring to other cases since each turns on its own facts.

- i. A practitioner's recognition of breaches of duty, attitude to compliance with professional standards generally and willingness to improve are relevant matters in the Board's exercise of its power to order sanctions: *Walker* at [21.3]; *ASIC v Fiorentino* (03/NSW13) at [997], [1005].
- j. In exercising its sanctions power, the personal circumstances of the practitioner are to be given limited consideration by the Board: *ASIC v Williams* (01/QLD17) at [1338], [1340]; *Walker* at [20.5], [20.7].
- k. The absence of evidence as to whether any person suffered loss as a result of the auditor's conduct is not relevant to the Board's consideration of sanction: *McVeigh* at [14.8].
- l. In *Dean-Willcocks Pty Ltd v Commissioner of Taxation (No 2)* (2004) 49 ACSR 325, the Supreme Court of NSW said (Austin J) at [27]: There is no general principle preventing a court from being "satisfied" of the matters that it is required by statute to address before making orders, where there is an admission between parties; nor is there any principle requiring a court in those circumstances to undertake its own factual inquiry when the parties invite it to do no more than act upon their consent. That is not to say that the court should simply act on consent orders without any independent thought.
- m. In *Wesse/s* at [23], the Board referred to that judgment and said:

"Accordingly, we accept the parties' submissions that the Board may proceed on the basis of consent orders and an agreed statement of facts. Having said that, the Board's ability to do so may depend on the circumstances. The Board may well be "satisfied" where, for example, agreed facts involve an admission of a straightforward act (such as misappropriation) and an agreement that by reason of this act, the respondent is not a fit and proper person. But where the agreed facts concern conduct which is more nuanced or not so clearly improper, or where the "agreed facts" relate to conclusions of mixed fact and law, (such as whether certain matters constituted a failure to carry out adequately and properly the duties of an auditor), it may be more difficult for the parties to proceed by way of "agreed facts" and consent orders (cf *Legal Services Commissioner v Rushford* [2012] VSC 632 and the decision of the Board in *ASIC v Walker* 22 December 2008 para [7.1(c)])"
- n. However, this is not a situation in which the matters referred to in *Wesse/s* at [23] arise. The Panel has already made findings of fact and has decided, on the basis of those findings, that Mr Trivett failed to carry out his statutory duties

as review auditor for the FY 18 Audit. All that remains is for the Panel to decide on the appropriate orders in respect of sanction, publicity and costs.

- o. ASIC's view as the regulator about the proposed orders is relevant on the question of sanction, particularly regarding the deterrent effect of the order, but not determinative: *Wessels* at [49] – [50]. As observed by the Board, 'ASIC is relevantly a guardian of the public interest, and is in a good position to appraise the practicalities of the matter and what part those practicalities should have among considerations in favour of accepting the agreed outcome': *ASIC v Loke* (16/NSW20) at [105].
- p. The proper approach to civil regulatory orders which are sought on an agreed basis is explained in *Commonwealth v Director, Fair Work Building Industry Inspectorate* (2015) 258 CLR 482 (FWBII). The High Court there reaffirmed the practice of acting upon agreed penalty submissions, as previously explained in *NW Frozen Foods Pty Ltd v ACCC* (1996) 71 FCR 285 and *Minister for Industry, Tourism and Resources v Mobil Oil Australia Pty Ltd* (2004) ATPR 41-993.
- q. The plurality in *FWBII* (French CJ, Kiefel, Bell, Nettle and Gordon JJ) emphasised (at [46]) the 'important public policy involved in promoting predictability of outcome in civil penalty proceedings' which 'assists in avoiding lengthy and complex litigation and thus tends to free the courts to deal with other matters and to free investigating officers to turn to other areas of investigation that await their attention'. Their Honours went on to state at [59]: Subject to the court being sufficiently persuaded of the accuracy of the parties' agreement as to facts and consequences, and that the penalty which the parties propose is an appropriate remedy in the circumstances thus revealed, it is consistent with principle and ... highly desirable in practice for the court to accept the parties' proposal and therefore impose the proposed penalty.
- r. A further reason for courts acting upon such submissions is that they are advanced by a specialist regulator able to offer 'informed submissions as to the effects of contravention on the industry and the level of penalty necessary to achieve compliance', albeit that such submissions will be considered on their merits in the ordinary way: *FWBII* at [60]-[61].
- s. These principles are not confined to agreed submissions on pecuniary penalties but apply equally to agreement on other forms of relief. The High Court's conclusions as to the desirability of acting upon agreed penalty submissions were made in the context of its broader recognition that civil

penalties are but one of numerous forms of relief which regulators could choose to pursue as a civil litigant in civil proceedings, including by making submissions as to that relief: *FWBII* at [107] (Keane J). This is consistent with the long-standing judicial support for agreed positions on declarations, injunctions and the like in civil regulatory proceedings, having regard to the public interest: see *NW Frozen Foods* (1996) 71 FCR 285 at 290 (Burchett and Kiefel JJ); *ACCC v Coles Supermarkets Australia Pty Ltd* [2014] FCA 1405 at [70] (Gordon J); *ASIC v MobiSuper Pty Ltd* [2021] FCA 855 at [37] (Jackson J).

- t. In considering whether the agreed and jointly proposed penalty is an appropriate penalty, it is necessary to bear in mind that there is no single appropriate penalty. Rather, there is a permissible range of penalties within which no particular figure can necessarily be said to be more appropriate than another. The permissible range is determined by all the relevant facts and consequences of the contravention and the contravener's circumstances: *Volkswagen Aktiengesellschaft v ACCC* (2021) 284 FCR 24 at [127]. Where the penalty proposed by the parties is within the permissible range, the court will not depart from the submitted figure "merely because it might otherwise have been disposed to select some other figure": *FWBII* (2015) 258 CLR 482 at [47].
- u. In *Coles Supermarkets* [2014] FCA 1405, Gordon J noted (at [72]) that, once the Court is satisfied that orders are within power and appropriate, it should exercise a degree of restraint when scrutinising the proposed settlement terms, particularly where both parties are legally represented and able to understand and evaluate the desirability of the settlement.

371. The Parties made submissions to the following effect in relation to the application of these principles to the present case:

- a. The key consideration for the Board in determining the appropriate sanction is the seriousness of Mr Trivett's failures to carry out or perform his duties and functions as an auditor. For the reasons set out below, the contraventions are sufficiently serious to warrant the exercise of the Board's power under s 1292, in the manner proposed by the parties.
- b. The requirement to appoint a Review Auditor for the audit of a listed company is a crucial component of providing confidence in the quality of financial reports. This requirement is directed at ensuring that reasonable assurance is obtained that the financial report as a whole is free from material misstatement and that material

deficiencies are addressed or communicated through the audit report.

- c. Each of the contraventions involved a failure to adequately and properly perform the duties and functions of a Review Auditor, bearing in mind both the policy purpose served by a Review Auditor and the importance of maintaining professional scepticism and judgement in performing the duties and functions of any auditor. The Board has previously recognised that the application of professional scepticism and judgement is of central importance to the performance of an audit and its importance cannot be overemphasised: *ASIC v Spagnolo* (01/NSW23) at [95], *Williams* at [169], [1348]
- d. Regarding the first contention, the Panel considered that Mr Trivett's failure to understand the significance of the Performance Shares to revenue recognition in the FY18 Audit was attributable to his failure to investigate the significance of matters that were known to him.
- e. Regarding the second contention, the Panel made findings that Mr Trivett did not approach his review of the Fraud Memo and Audit Workpapers XI10 and XI7 with the necessary degree of professional scepticism.
- f. Regarding the third contention, the Panel considered that to discharge his duty to review the draft FY18 Financial Report, Mr Trivett was required to read and consider Note 30 which disclosed information about the conversion of the Performance Shares, but he did not do so.
- g. Regarding the fourth contention, the Panel considered that Mr Trivett ought to have concluded that there was insufficient appropriate audit evidence to support the issuing of an unqualified audit report. Further, Mr Trivett's review of the KAM section of the audit report fell short of the professional standard.
- h. The following matters weigh against the relative seriousness of Mr Trivett's conduct:
 - i. Mr Trivett's failure to comply with the duties of a registered company auditor did not involve dishonesty or deliberate impropriety: *ASIC v Wessels* (05/QLD13) at [51];
 - ii. As Review Auditor, Mr Trivett did not have primary responsibility for the FY18 Audit. That responsibility lay with the engagement partner (Mr Taylor);
 - iii. Mr Trivett has not previously been the subject of any disciplinary action.

- i. The following factors were also relevant in determining the appropriate sanction:
 - (i) Mr Trivett acknowledges that his review of the FY18 Audit failed to meet professional standards in the respects found by the Panel, and has agreed to undertake specific training and accede to an agreed period of supervision to ensure that he meets professional standards in future.
 - (ii) As no Review Auditor has previously been the subject of any proceedings before the Board under s 1292(1)(d)(ii) of the Corporations Act, the scope of a Review Auditor's duties and the content of a Review Auditor's obligations may arguably have been less clear than they now are, as a result of the decision of the Board in this matter.
 - (iii) By the end of the proposed period of suspension, being 31 October 2024, Mr Trivett will not have practised as a registered company auditor for a period of 12 months. Mr Trivett unsuccessfully sought administrative review of the Determination (*CMW23 v Companies Auditors Disciplinary Board* [2024] FCA 407) and in the course of those proceedings, he provided an undertaking that he would not, from 1 November 2023, perform the duties of a registered company auditor until the proceedings were determined.
- j. Although sanctions imposed in previous matters are generally of limited utility, some recent sanctions are summarised below to provide assurance to the Board that the proposed penalty falls within the permissible range (noting that each of the below related to the performance of the role of auditor, not Review Auditor):
 - (i) *Spagnolo*: 12-month suspension of registration and undertakings including restrictions regarding the auditing of particular clients, audit reviews by a peer reviewer, membership of professional body, continuing professional development (CPD) requirements, and endorsement of applications for registered company auditors.
 - (ii) *ASIC v Mooney* (01/VIC22): undertakings including not to perform the duties of, or to act as, a registered company auditor for a 7-month period, audit reviews by a peer reviewer, membership of professional body and CPD requirements.

- (iii) *Loke*: 12-month suspension of registration and undertakings including audit reviews by a peer reviewer, membership of professional body and CPD requirements.
 - (iv) *Wesse/s*: 3-year suspension of registration and undertakings including audit review by a peer reviewer and CPD requirements.
 - k. The substance of the proposed undertaking is of a type contemplated by s 1292(9).
 - l. The form of the undertakings regarding supervision of future audits and continuing education are similar to undertakings ordered by the Board in the above cases involving auditors not meeting the required professional standards.
 - m. ASIC considers that the proposed order as to the suspension of Mr Trivett's registration is appropriate in the circumstances of the case, and has agreed the proposed orders with Mr Trivett. ASIC considers that the making of the orders sought would be in the public interest.
372. At the hearing, Mr Moore for ASIC, further submitted (without objection from Mr Strong for Mr Trivett) that the proposed consent orders do effectively, three things:
- (i) impose retrospectively a period of suspension of six months, ending the day before Mr Trivett, with ASIC's consent, recommenced performing the duties of a registered company auditor on 1 November 2024;
 - (ii) that Mr Trivett provide ASIC with certain undertakings, and
 - (iii) provide for a payment in respect of ASIC's costs
373. The main issue arising (which was a little unusual), is the parties, by consent, proposing that the Board order a retrospective suspension. The parties submitted that the Board does have that power to make retrospective orders. They noted that in this case, given that Mr Trivett has not in fact practised as a company auditor throughout the entire 12-month period ending on 1 November 2024, the Board would not be making an order which would have the effect of rendering unlawful the doing by Mr Trivett of something which was, at the time he did it, lawful. The parties submitted that to order a suspension retrospectively did have a significant public purpose, by formally recording the Board's conclusion and the parties' agreement that the conduct of Mr Trivett the subject of this proceeding does warrant suspension.
374. In support of the proposition that the Board has the power to order retrospective suspension, the parties relied upon the authorities of *Esso Australia Pty Ltd V The AWU* (2017) 263 CLR 551 and *King Eeducational Service Pty Ltd v CEO of the Australian Schools Quality*

Authority (No.2) [2021] FCA 183. One of the questions the High Court considered in *Esso* was whether the Fair Work Commission had the power to retrospectively vary or revoke one of its previous orders, which would mean that although industrial action at the time it had been undertaken was in breach of an order, the later revoking of that order or the variation of it by the Fair Work Commission would mean that the action was not in breach of any order. That was addressed on page 579 of the plurality's reasons, who, in paragraph 49, second sentence noted:

"The Fair Work Commission has broad powers under s603 of the Fair Work Act to vary or revoke orders, including power to vary or revoke orders retrospectively."

It was submitted it was not because the statute giving the Fair Work Commission power to vary or revoke orders said that there was power to make orders retrospective; it was because the statutory power to make or to vary or revoke orders has been interpreted as including the power to do so retrospectively.

375. At paragraph [49], the plurality continued:

"Thus, although it has been said the court should eschew the exercise of inherent power to vary an order nunc pro tunc where the variation would have the effect of altering the substantive rights of parties, the statutory power accorded by s603 ... That is, the power to vary or revoke orders...is different. As was observed in [another High Court case] *George Hudson* ... in relation to the retrospective operation of the Conciliation and Arbitration Act, the provisions of that Act were not to be read down as if confined to a retrospective operation at the expense of the "great public policy" which the Act embodied, namely that of encouraging and maintaining "industrial peace in the Commonwealth."

376. The parties further submitted that there is a significant public policy purpose in formally recording, via an order, that the conduct warrants suspension, even if, in the unusual circumstances of the case, the suspension is entirely retrospective and has the equivalent effect because the subject of that order has not in fact acted as a registered company auditor for the entire period of the proposed suspension. The parties submitted that public policy was of such significance to warrant not reading down the statutory power of the Board to make an order for suspension so that it can only apply in a prospective way.

377. The parties referred to similar remarks by Justice Wheelahan in *King Educational Service*, concerning whether the power of the Administrative Appeals Tribunal and the court to make an order staying the operation of a decision of the tribunal could be exercised retrospectively. The question was framed in paragraph [30] as follows:

"[30] The present question is whether the power under s 44A(2) of the AAT Act, to make an order staying or otherwise affecting the operation or implementation of a decision the subject of an appeal to this Court, should be construed so that it is limited to a power that has prospective effect only".

378. Justice Wheelahan concluded that the power should not be read as enabling the court to make prospective orders only.

379. And the reasoning given by Justice Wheelahan after reviewing the authorities, including Esso, in particular paragraph 52 on page 17, the last two sentences of that paragraph, Justice Wheelahan said:

“Consistently with the observations of Kiefel CJ, Keane, Nettle and Edelman JJ in *Esso Australia Pty Ltd v Australian Workers’ Union* at [49] –[50] , care must be taken in considering the exercise of any power with retrospective effect, in particular to consider whether there would be any inappropriate or unfair interference with rights. But these considerations go to the exercise of the power, and do not warrant the implication of arbitrary limits on the power itself: *FAI General Insurance Company Ltd v Southern Cross Exploration NL* [1988] HCA 13; (1988) 165 CLR 268 at 283 –284 (Wilson J).”

380. The parties submitted the Board should conclude, both that there is no limit on the statutory power of the Board to make an order suspending registration, and that it is appropriate to exercise the power retrospectively, there being in this case no inappropriate or unfair interference with rights, because the only person who could be detrimentally affected by the retrospective order suspending Mr Trivett's registration as a company auditor is Mr Trivett himself; and he would not be inappropriately or unfairly interfered with in the exercise of any right, because he had not in fact practised as a company auditor, (pursuant to legally enforceable undertakings given to the Federal Court, and then pursuant to agreement with the applicant, ASIC in this case).
381. Mr Strong for Mr Trivett, whilst accepting the matters referred to above, further submitted (without objection by ASIC): with respect to persons who could be affected by a retrospective order, it would not only be Mr Trivett, but could be an entity who needed to have accounts audited by a registered company auditor, (for example, to comply with the Superannuation Industry (Supervision) Act or some other regulatory Act). If then the auditor had had their registration retrospectively suspended, that entity would clearly also be affected by a retrospective order of suspension by the Board. So the category of people who might be affected is broader than the registered company auditor the subject of an order. But in the case of Mr Trivett, because, as a matter of fact he had observed faithfully his undertaking not to practise as a registered company auditor for the period, commencing 26 October 2023 and ending 31 October 2024, there was no such person that would be affected by a retrospective suspension of registration.
382. Mr Strong added with reference to mitigating factors: It was worth observing for emphasis that Mr Trivett was a "review auditor" and there was a significant difference in the way in which the role of the review auditor must be conducted, relative to the role of the lead auditor. The review auditor has no direct contact with the client or its management but rather relies only indirectly on what is conveyed by the lead auditor. He also submitted, that the structure of the relevant auditing standard places the lead auditor first and foremost as responsible for maintaining a system of engagement, quality control, review, and identification of significant matters.

383. In terms of the "in substance" suspension, Mr Strong submitted that the self-imposed restraint, (being an undertaking given by Mr Trivett to the Federal Court that he would refrain from practising or undertaking the duties of a registered company auditor for the period commencing 26 October 2023 and ending on 31 October 2024), was double the length of time which the applicant and respondent has agreed ought to be appropriate as an exercise of Board power under the Act to impose by way of formal sanction, albeit retrospectively imposed.

Consideration

384. As a general matter, we accept that the parties have correctly summarised the principles which apply to the Board's function in determining an appropriate sanction.
385. The Board has recently summarised the principles in the decision in *ASIC v Taylor* 17/VIC20 at [544], drawing upon *Santangelo* as follows:

"Key amongst those principles are:

- (a) The Board's primary function is to assess whether a respondent should continue to occupy a statutory position involving skill and probity, not to impose punishment for an offence: *Albarran v Members of the Companies Auditors and Liquidators Board* (2007) 231 CLR 350; [2007] HCA 23 at [21];
- (b) The longstanding guiding principle adopted by the Board in exercising its powers is "protection of the public", noting that this involves two aspects: first, protection of the public from the actions of a person who is found to have been in breach of duties, and secondly, protection of the public by encouraging other auditors to adhere to proper standards (see the decision of this Board in *ASIC v McVeigh* 10/VIC08 at paragraph [12]; *ASIC v Fernandez* 02/VIC13 at paragraph at [353]); and
- (c) Underpinning the Board's powers is a compelling public interest in the maintenance of a system which recognises that registration as an auditor is a privilege, the continuance of which is conditional upon diligent performance of its attendant duties (cf the statements of Middleton J in *ASIC v Dunner* (2013) 303 ALR 98; [2013] FCA 872 (Dunner) at [219])

[545] In *Santangelo*, the Board cited the summary of the legal principles articulated by the Hon Brian Tamberlin QC DP (as he then was) in *NHPT v Members of the Companies Auditors and Liquidators Disciplinary Board* [2015] AATA 245 at [18] which bears repetition:

- "(a) The principal purpose of the proceedings is protective rather than punitive and the guiding principle is protection of the public;
- (b) The protection of the public includes ensuring that those who are unfit to practise do not continue to hold themselves out as fit to practise;
- (c) The protection of the public includes deterrence;
- (d) It also includes the maintenance of a system under which the public can be confident that practitioners will know that breaches of duty will be appropriately dealt with and that the regulatory regime applicable to auditors is effective in maintaining high standards of professional conduct;
- (e) The impact of the Board's orders on the practitioner is to be given limited consideration, as the prime concern of the Board is the protection of the

public;

(f) Relevant matters include the respondent's recognition and acceptance of the breaches of duty, attitude to compliance generally and willingness to improve. Genuine acceptance of failure, contrition and remorse are necessary requirements to rehabilitation; and

(g) If a respondent is not considered fit and proper, suspension is not appropriate unless the Board can be confident that the respondent would be fit and proper after the period of suspension."

386. The issue facing the Board is whether it is appropriate to make the orders which have been proposed by consent, in particular a novel proposal for the Board to order an entirely retrospective suspension of registration.

387. Where the parties propose consent orders, there are further principles which apply as referred to in the parties' submissions above and also referred to in *Santangelo* at paragraph [315] and following.

388. We generally accept the correctness of the parties' submissions set out in paragraph 370 above. However, we are not convinced by the joint position set out in paragraphs 374-381 proposing an entirely retrospective six-month suspension of registration (on the basis the parties acknowledged that Mr Trivett had effectively been the subject of a 12-month suspension because of his undertaking to the Federal Court not to practise during a period of CADB and court proceedings).

389. The Board accepted that the proposed sanctions, for the reasons set out at paragraph 371, including a six month (retrospective) suspension of registration would fall within the permissible range, whilst noting that the precedents related to the performance of the role of auditor, not Review Auditor as is the case of this matter.

390. The Board agreed with the proposition that an entirely retrospective period of suspension of Mr Trivett's registration as a company auditor, might achieve the purpose(s) of signaling expectations of sanctions in matters such as this to industry. However, the Board was not convinced that:

- a. A retrospective suspension is within its power under s 1292; and
- b. If it is within the Board's power to suspend registration entirely retrospectively, that it is the only (or most effective) means by which to achieve the aims of sanctioning an auditor and signaling the seriousness of misconduct for public policy purposes; and
- c. That the public policy benefit to be achieved by a retrospective suspension order outweighs the general legal presumption against retrospectivity, particularly when other sanctions are available to the Board, such as reprimand or admonishment pursuant to s1292(9).

391. In *Albarran*, where the foundations of CADB are discussed, it was observed that the [CALDB] role was not to determine whether an offence has been committed and, if so, to inflict a punishment but to assess whether someone **should continue** to occupy a statutory position

involving skill and probity, in circumstances where that person failed in the performance of professional duties in the past.

392. We find the circumstances of *Esso Australia Pty Ltd v The AWU* and *King Eeducational Service Pty Ltd v CEO of The Australian Schools Quality Authority* clearly quite different from this matter and that they may not be applicable to the Board's power.
393. The Board also notes that Wheelahan J observed that care must be taken where powers are exercised retrospectively, in particular where harm could arise. The Board is guided by the submissions of the parties that it would only be Mr Trivett or an auditee entity whose rights may be impacted by a retrospective suspension. However, the Board is not convinced there had been a thorough testing of potentially affected parties to give sufficient confidence to create a precedent for the Board to issue retrospective suspensions – if indeed it has to the power to do so.
394. While the Board's task is not limited to simply determining whether a jointly proposed sanction is within the permissible range, this will be a "highly relevant and perhaps determinative consideration" particularly where the public policy consideration of predictability of outcome is delivered by the proposed sanction.
395. In this matter, while the Board considers the overall penalty proposed by the parties as being in the appropriate range, the Board is not convinced by the parties' submissions that it has the requisite power to make a retrospective suspension in these circumstances. The proposition that in the circumstances of this matter that the policy value in the signaling of a six-month period of suspension to industry, and the cases provided in support, do not provide sufficient weight against the presumption at law against retrospectivity.
396. Nonetheless, the fact that the parties have joined in proposing the orders to be made by consent is a powerful consideration when ASIC, which for relevant purposes is a guardian of the public interest, has consented (cf *Re One.Tel Ltd (in liq)*; *ASIC v Rich* (2003) 44 ACSR 682 at [27]). And so upon considering the submissions the Panel requested further submissions to address the following question:
- "In the event that the Panel decides it does not have the power to make a retrospective order for suspension as proposed in Order 1, what order would the parties propose as an alternative?"
397. The parties responded that:
- "Having regard to the fact that Mr Trivett ceased acting as a registered company auditor at the request of ASIC in the period 1 November 2023 to 31 October 2024, there be no further order for the registration of Mr Trivett as a company auditor to be suspended."
398. The Panel considered the seriousness of the proposed consent order originally proposed for a period of six months suspension (albeit

retrospectively), while not being satisfied of the authority for a retrospective application of the Board's suspension powers. In recognition of the seriousness of Mr Trivett's failings, the Panel considered an appropriate substitute order reflecting the seriousness of the originally proposed retrospective suspension should be in the form of admonishment. The Panel notified the parties that this was the order that they proposed to make.

399. The parties responded by proposing a slightly amended form of admonishment, which is the form of admonishment which we proposed to make.
400. Guided by the principles outlined above, we consider that it is appropriate to make the orders and sanctions agreed by the parties, (subject to an order for admonishment in place of the order for retrospective suspension) noting specifically the submissions summarised at paragraph 371.
401. However, we take some consideration of the following matters in weighing the relative seriousness of Mr Trivett's conduct:
- a) Mr Trivett's failure to comply with the duties of a registered company auditor did not involve dishonesty or deliberate impropriety: *ASIC v Wessels* (05/QLD13) at [51];
 - b) As Review Auditor, Mr Trivett did not have primary responsibility for the FY18 Audit. That responsibility lay with the engagement partner;
 - c) Mr Trivett has not previously been the subject of any disciplinary action.
 - d) Mr Trivett acknowledges that his review of the FY18 Audit failed to meet professional standards in the respects found by the Panel, and has agreed to undertake specific training and accede to an agreed period of supervision to ensure that he meets professional standards in future.
 - e) As no Review Auditor has previously been the subject of any proceedings before the Board under s 1292(1)(d)(ii) of the Corporations Act, the scope of a Review Auditor's duties and the content of a Review Auditor's obligations may arguably have been less clear than they now are, as a result of the decision of this Board.
402. For the reasons set out above, we have decided to exercise our powers under s 1292 of the Act by making the orders in paragraph 403(1) and (2) below. We have also decided to make an order for costs under s 223 of the AISC Act as set out in paragraph 403 (3) below.

403. We make the following orders:

1. Pursuant to ss 1292(9)(a) of the *Corporations Act 2001 (Cth)* (**Corporations Act**), Simon Christopher Trivett is admonished in relation to the audit by Grant Thornton of the financial report of iSignthis Limited and its subsidiaries (ISX) for the year ended 30 June 2018 (FY18 Audit), in so far as he failed to carry out or perform adequately and properly duties or functions as Review Auditor for the FY18 Audit, while having regard to the fact that, in accordance with an undertaking given by Mr Trivett to the Federal Court of Australia on 26 October 2023, Mr Trivett agreed not to perform the duties of a registered company auditor in the period 1 November 2023 to 31 October 2024.
2. Pursuant to ss 1292(9)(b) and (c) of the *Corporations Act*, within 7 days of the date of this order, Mr Trivett provide to the Australian Securities and Investments Commission undertakings in the form attached as Schedule 1 to the Reasons for Decision.
3. Pursuant to s 223 of the *Australian Securities and Investments Commission Act 2001 (Cth)*, Mr Trivett pay the Applicant's costs in the fixed sum of \$490,000 within 28 days of the date of this order.

Tony Marks
Panel Member
30 June 2025

Ann-Maree Robertson
Panel Member
30 June 2025

SCHEDULE 1: FORM OF UNDERTAKINGS

Audit reviews by peer

1. From 31 October 2024, I shall engage, at my own cost, a registered company auditor on the terms set out in paragraphs 2-5 below (**Peer Reviewer**). I will make the necessary arrangements to enable the Peer Reviewer to undertake a review of the first 2 company audits (**Audits**) for which I am the review partner or engagement quality reviewer (**Review Auditor**).
2. In order to enable ASIC to consider whether a prospective Peer Reviewer is suitable, I shall, within 30 days from the date upon which I sign this undertaking, provide ASIC with the curriculum vitae of at least one proposed Peer Reviewer together with draft written terms for the proposed engagement of the Peer Reviewer to review the audits.
3. I shall ensure that a term of the retainer with which the Peer Reviewer must agree to comply is that as soon as practicable, and no later than 3 months after I complete each Audit the Peer Reviewer will provide ASIC with an opinion in as to whether my work as Review Auditor on each Audit has in all material respects been conducted in accordance with the standards promulgated by the Auditing and Assurance Standard Board and the Australian Accounting Standards Board (**Peer Reviewer's Statement**). The Peer Reviewer's Statement must include the reasons on which the opinion is based.
4. I acknowledge that the said terms of engagement must be approved in writing by ASIC before the engagement is finalised. I shall not proceed with engaging a Peer Reviewer until I have received approval in writing from ASIC.
5. Should the Peer Reviewer's Statement not conclude that my work as Review Auditor on each of the Audits have been conducted in all material respects in accordance with the relevant standards, I acknowledge that ASIC is entitled to take such action as it thinks fit.

Membership of professional body

6. I shall use reasonable endeavours to retain my membership of the Chartered Accountants Australia and New Zealand (**CAANZ**) until 31 December 2026.

Annual CPD requirement

7. In the period of 12 months from the date upon which I sign this undertaking, I shall complete 10 hours of continuing professional development activity (not including any training I am required to complete to retain my membership of CAANZ) (**CPD Requirement**).
8. The CPD Requirement must include training content covering:
 - (i) quality management of audits of financial reports; and
 - (ii) the concepts of professional scepticism (including in respect of fraud), professional judgment, the gathering of appropriate audit evidence and appropriate audit documentation.

9. The training provider and the training content of the CPD Requirement must be approved in writing in advance by ASIC in accordance with paragraph 12 below no later than 30 days after the date upon which I sign this undertaking.
10. I shall provide ASIC with documentary evidence of satisfactory completion of the CPD Requirement no later than 30 days after I complete the CPD Requirement in accordance with paragraph 12. The documentary evidence to be provided will include evidence that the CPD Requirement completed is distinct from and in addition to the annual training I am required to complete to retain my membership of CAANZ.

Non-compliance

11. Should I become aware that any of the above undertakings have not been complied with, I shall within 5 business days of becoming aware of such issue notify ASIC in writing of the details of the non-compliance including the date on which it occurred and the circumstances and reasons for which it occurred.
12. I acknowledge that should I fail to comply with any of these undertakings, ASIC is entitled to take such action as it thinks fit in relation to any such non-compliance.
13. The documents required to be provided to ASIC pursuant to these undertakings are to be directed to the attention of the Senior Executive Leader, Investigation and Enforcement Action, ASIC, Level 1, 11 Mounts Bay Road, Perth WA 6000 and service of those documents is also to be effected by email to the attention of stephanie.cathcart@asic.gov.au or by alternative method advised by ASIC.