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

MATTER NO: 02/NSW24

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION (ASIC)
Applicant

SAM DANIELI
Respondent

NOTICE OF DECISION AND REASONS

16 December 2025

Panel:

Howard K Insall SC (Panel Chairperson)
Brad Potter (Accounting Member)
Julie Williams (Accounting Member)
Angela Pearsall (Business Member)
Michael Flynn KC (Business Member)

Hearing date: 20 and 21 May 2025. Written Submissions 4 and 6 June 2025. Sanctions Hearing 25 November 2025. Additional written submissions 27 and 28 November 2025.

Counsel and instructors:
Arron Hartnett for the Applicant
Felicity Bentley instructed by *Jake McKinley* for the Respondent

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NOTICE OF DECISION

Sam DANIELI

Corporations Act 2001 (Cth)
SECTION 1296(1)

Following a hearing held pursuant to section 1294 of the *Corporations Act 2001* (Cth) (**Corporations Act**) on 20 May, 21 May and 25 November 2025, 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 **Sam Danieli**, a registered auditor, had failed to carry out and perform adequately and properly the duties of an auditor, and was otherwise not a fit and proper person to remain registered as an auditor for the purposes of s 1292(1)(d) of the Corporations Act and on 16 December 2025, decided to exercise its powers under section 1292 of the Corporations Act by making the following orders:

1. Pursuant to s 1292(1) of the Corporations Act, the registration of Mr **Sam DANIELI (Mr Danieli)**, with auditor registration number 4303, as an auditor be cancelled.
2. Pursuant to s 1297(1)(a) of the Corporations Act, the order for cancellation in paragraph 1 will come into effect at the end of the day on which the Board gives Mr Danieli a notice of the decision in accordance with s 1296(1)(a) of the Corporations Act.

Dated: 16 December 2025

Kathy Vaiano

Principal Registrar

REASONS FOR DECISION

PART A. INTRODUCTION

Preliminary

1. These are the reasons for the decision of the Panel of the Companies Auditors Disciplinary Board (**the Board** or **CADB**) in relation to an application made to the Board by the Australian Securities and Investments Commission (**ASIC**) on 23 December 2024 (**Application**) that the Respondent, Mr Sam DANIELI **(Mr Danieli)** be dealt with under s 1292(1)(d) of the Corporations Act 2001 (Cth) (**the Corporations Act**).

2. By its Application[1], ASIC contends that Mr Danieli:

   (a) Has failed to carry out or perform adequately and properly, duties (within the meaning of the Corporations Act, subparagraph 1292(1)(d)(i)); and

   (b) Is otherwise not a fit and proper person to remain registered as an auditor (as described in the Corporations Act, paragraph 1292(1)(d)).

3. The Applicant seeks the following orders:

   (a) An order that the Board cancel the registration of the Respondent as an auditor;

   (b) In the alternative, an order that the Board suspend, for a specified period decided by the Board, the Respondent's registration as an auditor; and

   (c) Costs.

4. This Application relates to the performance by Mr Danieli of his duties in relation to 10 audit engagements for five Listed Companies across two financial years, being the financial years ending June 2023 (**FY23**) and June 2024 (**FY24**).

Procedural history

5. The proceedings were commenced when an Application was lodged with the Board by ASIC on 23 December 2024. On 12 February 2025 Mr Danieli lodged his Notice of Appearance and Concise Response. On 14 March 2025, Mr Danieli lodged an Amended Concise Response. On 28 March 2025 ASIC lodged an Amended Application and an Amended Concise Outline. On 24 April 2025, ASIC and Mr Danieli lodged an Issues Summary with the Board. On 30 April 2025 ASIC lodged a Further Amended Concise Outline.

6. On 28 February 2025, a Pre-hearing conference took place, at which the matter was fixed for hearing on 20 and 21 May 2025.

[1] See Amended Application dated 28 March 2025, paragraph 2 and Concise Outline fn 2.

7. A Panel of the Board was constituted, consisting of Mr Howard K Insall SC (Chairperson), Mr Brad Potter (Accounting Member), Ms Julie Williams (Accounting Member), Ms Angela Pearsall (Business Member) and Mr Michael Flynn KC (Business Member).

8. On 9 May 2025, the Applicant filed opening written submissions. On 16 May 2025, the Respondent filed its opening written submissions.

9. On 16 May 2025, the parties filed a Joint Hearing Plan which provided that the available hearing time on 20 and 21 May 2025 would be taken up with presentation of evidence, with closing submissions to be made in writing after the hearing.

10. The initial hearing took place on 20 and 21 May 2025 with Mr Arron Hartnett of counsel appearing for the Applicant and Ms Felicity Bentley of counsel appearing for the Respondent, (instructed by *Jake McKinley*). The Panel directed that written submissions be exchanged and filed by 4 June 2025, with any reply submissions to be exchanged and filed shortly thereafter. The parties filed written submissions by 4 June 2025. ASIC filed brief written submissions in reply on 10 June 2025. On 5 June 2025, the parties were offered an opportunity to elaborate their written submissions orally at a proposed hearing on 23 June 2025. Neither party took up that offer

11. On 29 August 2025, the Panel issued its Determination as to whether the grounds for the Application had been made out. The Panel found that the grounds had been made out, that is, that Mr Danieli had failed to carry out or perform adequately and properly the duties of an auditor and that he was otherwise not a fit and proper person to remain registered as an auditor. The Reasons for that Determination are substantially reproduced in Parts B to F below. Thereafter, the parties were directed to file and serve evidence and submissions relating to Sanctions, Publicity and Costs. The hearing on these issues took place on 25 November 2025 and the parties filed supplementary submissions in the days thereafter. The Panel's decision on Sanctions appears at Part G below.

12. For the reasons set out in Part G, we consider that the appropriate sanction, in all the circumstances of the case, is to order the cancellation of Mr Danieli's registration.

Evidence and Statement of Admissions and Agreed Facts (SAAF)

13. At the commencement of the hearing, a Statement of Admissions and Agreed Facts (**SAAF**) and supporting documents were tendered.

14. The SAAF states that it is made jointly by ASIC and Mr Danieli, in accordance with the Board's Practice Note 1.

15. However, in addition to the SAAF and supporting documents, a number of other documents were tendered and each party called witnesses to give evidence in its respective case.

PART B. SUMMARY OF THE FACTS AND ISSUES - SUMMARY OF THE BOARD'S FINDINGS ON WHETHER THE GROUNDS FOR THE APPLICTION WERE MADE OUT

Summary of facts and issues

16. This case concerns Mr Danieli's role in the audits of the financial reports of five Listed Companies: Urbanise.com Ltd (**Urbanise**), Love Group Global Ltd (**Love Group**), Gladiator Resources Ltd (**Gladiator**), Cassius Mining Ltd (**Cassius**), Pure Hydrogen Corporation Ltd (**Pure Hydrogen**) (together, **the Listed Companies**) for the financial years ending 30 June 2023 (**FY23**) and 30 June 2024 (**FY24**), ie 10 audits over two years.

17. Mr Danieli is a director of A D Danieli Audit Pty Ltd (**AD Danieli Audit PL**). AD Danieli Audit PL is registered with ASIC as an authorised audit company. AD Danieli Audit PL was appointed as auditor for each of the five companies for each of the relevant financial years (FY23 and FY24). Each of the relevant audit reports were signed by Mr Danieli in his capacity as the director of AD Danieli Audit PL.

18. For each of the 10 audits, Mr Danieli was the lead auditor and engagement partner.

19. The contentions against Mr Danieli concern a quality control procedure prescribed by ASA 220 which is mandatory in respect of audits of the financial reports of Listed Companies. Under the version of ASA 220 in force at the time of the FY23 audit (referred to as **FY23 ASA 220** in the Concise Outline), the process was known as "engagement quality control review" (**EQCR**). A new version of ASA 220 (referred to as **FY24 ASA 220** in the Concise Outline) came into operation by the time of the FY24 audit and the process was then called "engagement quality review".

20. The process required the involvement of an "Engagement Quality Control Reviewer" in FY23, or an "Engagement Quality Reviewer" in FY24. (Generally, we shall refer to the process in either year as "EQCR", and the reviewer in either year as an "EQC Reviewer". We note, however, that some of the witnesses referred to the Engagement Quality Control *Reviewers* as "EQCRs".)

21. Both versions of ASA 220 imposed certain obligations, referred to below, on the "engagement partner". ASIC contends that Mr Danieli, as the engagement partner on the 10 audits, was required to perform these obligations. Mr Danieli does not dispute this.

22. In essence, each version of ASA 220 required the engagement partner to:

    (a) Determine that an engagement quality control reviewer had been appointed;

    (b) Discuss significant matters arising during the audit engagement, including those identified during the engagement quality control review, with the engagement quality control reviewer; and

(c) Not date the auditor's report until the completion of the engagement quality control review.

23. An additional obligation was imposed by FY24 ASA, namely to:

> "(b) Cooperate with the engagement quality reviewer and inform other members of the engagement team of their responsibility to do so;"

24. ASIC contends that Mr Danieli:

(a) Took some steps to appoint an EQC reviewer for the years FY23 and FY24. Those steps were insubstantial;

(b) Had no (or limited) discussion, with the person whom he considered was the EQC reviewer about significant matters arising during the audit engagement; and

(c) Signed the auditor's report prior to the completion of the EQCR process.

25. ASIC contends that in respect of each of the 10 relevant audits, Mr Danieli did not comply with:

(a) FY23 ASA 220 para 19(b) and FY24 ASA 220 para 36(c) because there was no or limited discussion with the EQC reviewer of significant matters arising during the audit engagement; and

(b) ASA 220 paragraph 19(c) and FY24 ASA 220 para 36(d) because, in respect of each audit, Mr Danieli signed and dated the auditor's report prior to the completion of the EQCR process[2].

26. ASIC contends, in the circumstances, that Mr Danieli, did not comply with his obligation as an auditor under subsection 307A(2) of the Corporations Act because he did not ensure that the 10 audits were conducted in accordance with the Australian Auditing Standards. Consequently, ASIC contends, the matter is within the Board's jurisdiction in subparagraph 1292(1)(d)(i).

27. ASIC also contends that Mr Danieli's conduct in the FY23 and FY24 is very serious and is exacerbated by reason of the fact that Mr Danieli had been subject to a quality review by Chartered Accountants Australia and New Zealand (**CA ANZ**) (Mr Danieli's professional association). The findings of that review were communicated to Mr Danieli on 28 February 2023. ASIC contends that the findings revealed "significant issues" in his practice's quality control, which required enhancements to meet mandatory requirements.

28. In particular, one of the matters specifically raised in the findings was the following:

[2] FACO paras 73 and 96. Although there is reference in the pleadings to the second breach being "signing" the auditor's report prior to the completion of the EQCR process, it is clear that ASIC contended, and Mr Danieli accepted, that he had "dated" the auditor's report prior to the completion of the EQCR process in breach of ASA 220, see SAAF para 8

> "The engagement quality control reviewer's sign off was dated significantly later than the auditor's report. ASA 220 *Quality Control for an Audit of a Financial Report and Other Historical Financial Information* requires an auditor's report not be dated prior to completion of the engagement quality control reviewer review."

29. Notwithstanding this, it is admitted by Mr Danieli that in each of the ten audits, he signed off and dated the auditor's reports prior to the completion of the EQCR process[3].

30. ASIC contends, in all the circumstances, that Mr Danieli is not a fit and proper person to continue to be registered as an auditor.

31. Mr Danieli's position, in broad outline, is:

    (a) He concedes that he signed and dated the auditor's reports for the Listed Companies prior to the completion of the EQCR process in breach of ASA 220;

    (b) In this respect, at least, he acknowledges that he failed to comply adequately with his duties set out in section 307A(2) of the Act, to ensure that all audits were conducted in compliance with relevant auditing standards;

    (c) He concedes that his engagement with and oversight of the EQCR process ought to have been more thorough[4];

    (d) It was not clear whether Mr Danieli ultimately conceded that he had breached FY23 ASA 220 para 19(b) and FY24 ASA 220 para 36(c) (obligation to discuss significant matters). In para 11 of the ACR, he disputed "for an abundance of caution", the contentions in paras 73(a) and 96(a) of the FACO (which were to the effect that he breached these sub-paragraphs of the ASAs). However, in other places, he appears to have conceded breach, see ACR para 97-98, Respondent's Opening Submissions (**ROS**) paras 4, 34, Respondent's Closing Submissions (**RCS**) paras 54-61;

    (e) Whatever the case, Mr Danieli denies

        i. that the EQCR process occurred in the way in which ASIC contended (and as described by some of the witnesses called by ASIC);

        ii. denies ASIC's characterisation of his conduct in that process;

        iii. points to facts (including delegation to and reliance on others and assurances that the EQCR process was on track, with no issues) which are said to be relevant to his performance and character; and

[3] ACR pars 51, 90, 98, SAAF pars 8 and 9.
[4] ACR par 98, SAAF par 9

iv. denies the CA ANZ findings or that the CA ANZ review was context of a pattern of behaviour;

(f) Ultimately, whilst conceding that he failed to comply adequately with his duties, so that the jurisdiction of the Board is enlivened under s 1292(1)(d)(i), he denies that he is not a fit and proper person within s 1292.

Summary of the Board's findings on whether the grounds for the Application were made out

32. We consider that Mr Danieli failed to carry out or perform adequately and properly his duties as an auditor in failing to ensure that the 10 audits of the five Listed Companies were carried out in accordance with ASA 220,

(a) by failing to ensure that he, as Engagement Partner had discussed significant matters arising during the audit engagement, including those identified during the engagement quality control review, with the engagement quality control reviewer and

(b) by dating the auditor's report, on each occasion, at a time when the EQCR had not been completed.

33. In relation to the "fit and proper person" issue, we consider that Mr Danieli repeatedly and without justification breached his duties as an auditor. He knew or ought to have known what was required of him. He was reminded by third parties of what was required of him. He had ample opportunities to show that he understood and respected the obligations imposed upon him and ample opportunities to comply with them and yet persisted in breaching them.

34. In our view, Mr Danieli's conduct was serious and prolonged and showed an indifference to the requirements of the standards. In our view, he is not a person of the character who can be relied upon to comply with mandatory auditing standards, despite his assertions to the effect that he has learnt his lessons.

35. Notwithstanding the matters which he put forward in support of his position, to which we have given due consideration, we are satisfied in all the circumstances, that Mr Danieli is not a fit and proper person to remain registered as an auditor.

PART C. THE FACTS NOT IN DISPUTE

36. The factual position set out in this section of the Determination was not in dispute and we accept it as correct. These facts were either set out in the "Statement of Agreed Facts" section in the SAAF tendered at the hearing (which were matters of fact capable of admission and which were admitted by Mr Danieli), were admitted on the pleadings or were supported by documents tendered without objection at the hearing.

37. We note that Mr Danieli, in his Amended Concise Response made very little challenge to the facts alleged in the Concise Outline[5] as a whole. We deal with disputed matters of fact in Section E below.

Key personnel

38. Mr Danieli is a "person who is registered as an auditor" within the meaning of s 1292. He became a Registered Company Auditor (**RCA**) (numbered 4303) on 16 May 1988. He has maintained his RCA registration ever since that date.

39. As an RCA, Mr Danieli is also a Director of A D Danieli Audit Pty Ltd (**AD Danieli Audit PL**). AD Danieli Audit PL is registered with ASIC as an authorised audit company (number 339233). It was first registered on 24 July 2009 and has remained registered since that date.

40. At all relevant times, Mr James Phu was also a Director of AD Danieli Audit PL and an RCA.

41. Mr Phu gave evidence that he commenced employment with Mr Danieli's companies in 2014. He became a Director of AD Danieli Audit PL in May 2022. During 2024, he had personal issues and he wished to spend more time with his family. In September 2024, his commuter train line was closed, making attendance at the city office difficult. In September 2024, he resigned from AD Danieli Audit PL, effective 22 November 2024.

42. Mr Mario Raciti and Mr Vincent Poon were registered company auditors and principals of Hayes Knight Audit (NSW) Pty Ltd (**Hayes Knight**). Mr Raciti and Mr Poon were identified by Mr Danieli as persons who were to be appointed as EQC Reviewers in respect of the audits by AD Danieli Audit PL of the Listed Companies some time in the first half of 2023.

43. Mr Raciti is a Certified Practising Accountant (and has been one since 1983) and has been a Chartered Accountant since 1989. He has been a registered company auditor since 1986. He is a director of Hayes Knight and has held this position since 2018.

44. Hayes Knight had audited AD Danieli Audit PL's trust account since 2014.

45. Mr Daniel Marando (partner at Grech Smith Bridle (**GSB**)) is a registered company auditor. He was an acquaintance of Mr Phu's and verbally agreed to act as EQC Reviewer in respect of the audits by AD Danieli Audit PL of the Listed Companies for FY24.

CA ANZ Review of Mr Danieli's Practice 2022

46. On 26 August 2022, Chartered Accountants Australia and New Zealand (**CA ANZ**) began a quality review of Mr Danieli's practice, and appointed a reviewer to review a cross-section of engagement files.

[5] ACR para 10,11.

47. On 28 February 2023, Heila Cronje (Manager Quality Review) from CA ANZ sent Mr Danieli a letter concerning the quality review results.

The Listed Companies

48. AD Danieli Audit PL was appointed auditor, and Mr Danieli was appointed lead auditor, for the audits of the financial reports of each of the Listed Companies, (set out in the following table) for the 2023 and 2024 financial years. Mr Danieli signed (and dated[6]) each of those auditor's reports on the respective dates set out in the following table:

Table 1 - FY23 and FY24 auditor's reports

Listed companies	FY23 auditor's report	FY24 auditor's report
Urbanise.com Ltd (30 June) (**Urbanise**)	22/08/23	27/08/24
Love Group Global Ltd (30 June) (**Love Group**)	25/08/23	19/08/24
Gladiator Resources Ltd (30 June) (**Gladiator**)	18/09/23	13/09/24
Cassius Mining Ltd (30 June) (**Cassius**)	27/09/23	27/09/24
Pure Hydrogen Corporation Ltd (30 June) (**Pure Hydrogen**)	29/09/23	30/09/24

The key facts relating to the FY23 audits

49. In an email exchange on 9 March 2023, Mr Danieli approached Mr Mario Raciti about his interest in performing the EQCR of the Five Listed Companies' audits. Mr Raciti indicated he would be willing to accept the role and arranged to meet about it.

50. Prior to meeting on 13 March 2023, Mr Danieli emailed Mr Raciti the "audits we require quality reviewer for" including Pure Hydrogen, Cassius, Urbanise and Gladiator and details of the past EQCR fee arrangement. On 26 April 2023, Mr Danieli emailed Mr Raciti informing him that AD Danieli Audit PL had won another listed company audit and asked if Mr Raciti would also act as EQC reviewer for this audit. This request related to the audit of Love Group indicated in the email subject.

51. On 28 April 2023, Mr Raciti emailed Mr Danieli to consider an EQCR engagement letter for the FY23 audit of Love Group. The EQCR engagement letter stated that it set out Hayes Knight's understanding of the engagement, set out the proposed fee and requested that Mr Danieli sign and return an attached copy of the letter to indicate acknowledgement of, and agreement with, the arrangements, including Hayes Knight's responsibilities. The EQCR

[6] ACR par 98; SAAF paragraph 8.

engagement letter remained unexecuted by Mr Danieli on behalf of AD Danieli Audit PL.

52. EQCR engagement letters were ultimately not issued or executed for the FY23 audits of Urbanise, Gladiator, Cassius and Pure Hydrogen.

53. On 23 May 2023, Mr Raciti and Mr Poon met with Mr Danieli and a member of Mr Danieli's team, Mr Phu, to plan the EQCR process for the audits of Urbanise, Love Group, Gladiator, Cassius and Pure Hydrogen.

54. On 2 August 2023, Mr Phu emailed Mr Raciti and Mr Poon information about the FY23 Urbanise audit, carbon copying Mr Danieli. The email included a first draft of financial statements to be subsequently updated by Urbanise, draft audit report, draft audit committee report and audit timetable with comments as to the status (received or outstanding). Mr Poon responded to all in the email thanking Mr Phu for the information.

55. On 18 August 2023, Mr Phu emailed Mr Raciti and Mr Poon information about the FY23 Urbanise audit, carbon copying Mr Danieli. The email noted that Urbanise was wanting to lodge on 22 August 2023, attaching the most recent financial report, audit committee report and audit report for review and that Mr Phu would send the Urbanise CaseWare file via Dropbox.

56. On 22 August 2023, Mr Danieli signed and dated the FY23 auditor's report for Urbanise, and the Urbanise financial report (including the auditor's report) was lodged with the ASX.

57. On 24 August 2023, Mr Phu emailed Mr Raciti and Mr Poon information about the FY23 Love Group audit, carbon copying Mr Danieli and another AD Danieli Audit PL audit team member. The email attached draft audit report and draft audit committee report for Love Group and advised that Mr Phu will be sending over the CaseWare file via Dropbox.

58. On 25 August 2023, Mr Danieli signed and dated the FY23 auditor's report for Love Group, and the Love Group financial report (including the auditor's report) was lodged with the ASX.

59. On 18 September 2023, Mr Danieli signed and dated the FY23 auditor's report for Gladiator, and the Gladiator financial report (including the auditor's report) was lodged with the ASX.

60. On 26 September 2023, Mr Phu emailed Mr Raciti and Mr Poon with an update on the FY23 audits for Urbanise, Love Group, Gladiator, Cassius and Pure Hydrogen, carbon copying Mr Danieli. Mr Phu stated that:

    (a) For Urbanise, he was waiting for signed contracts and additional commentary on points raised;

    (b) For Love Group, Mr Phu will be including responses to queries in the audit file;

    (c) For Gladiator, the audit file was being tidied up;

(d) For Cassius, Mr Phu attached an audit committee report and updated financials; and

(e) For Pure Hydrogen, Mr Phu was waiting for updated financial statements to be provided.

61. On 27 September 2023, Mr Danieli signed and dated the FY23 auditor's report for Cassius, and the Cassius financial report (including the auditor's report) was lodged with the ASX.

62. On 29 September 2023, Mr Danieli signed and dated the FY23 auditor's report for Pure Hydrogen, and the Pure Hydrogen financial report (including the auditor's report) was lodged with the ASX.

The key facts relating to the FY24 audits

63. On 25 June 2024, Mr Phu asked Mr Daniel Marando, at an informal lunch, whether Mr Marando and GSB would be interested in acting as EQC Reviewer for the 5 Listed Companies. Mr Marando verbally accepted the engagement on the same day.

64. On 2 July 2024, Mr Phu sent Mr Marando two text messages, about template documents to prepare for the EQCR and sending over the audit file once it is ready.

65. On 12 August 2024, Mr Phu emailed Mr Marando, carbon copying Mr Danieli, version 1 of the financial reports for Urbanise and Love Group, asked who would be EQC Reviewer from GSB and provided fee information for the engagement letters.

66. On 13 August 2024, Mr Marando emailed Mr Phu, carbon copying Mr Danieli, attaching EQCR engagement letters for Urbanise and Love Group FY24 audits for signing and confirming Mr Marando would act as EQC Reviewer for these engagements. Ultimately Mr Marando did not issue EQCR engagement letters for the FY 24 audits of Gladiator, Cassius and Pure Hydrogen.

67. On 19 August 2024, Mr Danieli signed and dated the FY24 auditor's report for Love Group, and the Love Group financial report (including the auditor's report) was lodged with the ASX.

68. On 23 August 2024, Mr Phu emailed Mr Marando, a code to access CaseWare until the end of August and said he would upload the CaseWare files for Mr Marando to access on his laptop.

69. On 27 August 2024, Mr Danieli signed and dated the FY24 auditor's report for Urbanise, and the Urbanise financial report (including the auditor's report) was lodged with the ASX.

70. On 13 September 2024, Mr Danieli signed and dated the FY24 auditor's report for Gladiator, and the Gladiator financial report (including the auditor's report) was lodged with the ASX.

71. In an email exchange on 17 September 2024 and 18 September 2024, Mr Phu sent the executed EQCR engagement letters for Urbanise and Love Group, signed by Mr Danieli and dated 13 August 2024.

72. On 27 September 2024, Mr Danieli signed and dated the FY24 auditor's report for Cassius, and the Cassius financial report (including the auditor's report) was lodged with the ASX.

73. On 30 September 2024, Mr Danieli signed and dated the FY24 auditor's report for Pure Hydrogen, and the Pure Hydrogen financial report (including the auditor's report) was lodged with the ASX.

PART D. ADMISSIONS MADE BY MR DANIELI

74. It is convenient, at this point, to record a series of admissions which Mr Danieli made in relation to the matter in the Statement of Admissions and Agreed Facts, as follows:

    (a) Mr Danieli agrees that an EQCR was required in respect of 10 listed company audit engagements he performed, being the FY23 and FY24 audits of Urbanise, Love Group, Cassius, Gladiator and Pure Hydrogen;

    (b) Mr Danieli agrees and accepts he did not comply with his obligation under subsection 307A(2) of the Corporations Act as lead auditor[7] of the audit company when he did not ensure that the 10 audits were conducted in accordance with the Australian Auditing Standards detailed in sub-paragraphs (c) and (d) below;

    (c) Paragraph 19 of ASA 220[8] requires for audits of Listed Companies the engagement partner shall: (a) determine that an EQC reviewer has been appointed; (b) discuss significant matters that arise during the audit engagement, including those identified during the EQCR, with the EQC reviewer; and (c) not date the auditor's report until the completion of the EQCR;

    (d) Paragraph 36 of ASA 220[9] requires for audit engagements for which an engagement quality review is required, the engagement partner shall: (a) determine that an EQC reviewer[10] has been appointed; (b) cooperate with the EQC reviewer and inform other members of the engagement team of their responsibility to do so; (c) discuss significant matters and significant judgements arising during the audit engagement, including

[7] Lead auditor has the meaning given by the Corporations Act, subsection 324AF(1) that, in respect of an audit company that conducts an audit of a company, the 'lead auditor' is the RCA who is primarily responsible to the audit company for the conduct of the audit.
[8] Auditing Standard ASA 220 *Quality Control for an Audit of a Financial Report and Other Historical Financial Information*, compilation number 6 (incorporating amendments from the original ASA 220 (October 2009)) which became operative for reporting periods commencing after 15 December 2021, applying to five FY23 audits.
[9] Auditing Standard ASA 220 *Quality Management for an Audit of a Financial Report and Other Historical Financial Information*, (a revised ASA 220 from March 2021) which became operative for reporting periods commencing on or after 15 December 2022, applying to five FY24 audits.
[10] In the ASA 220 applicable for the FY24 audits, the term changes from 'engagement quality control reviewer' to 'engagement quality reviewer'. For simplicity, this concise outline will use the term EQC reviewer for both.

those identified during the EQCR, with the EQC reviewer; and (d) not date the auditor's report until the completion of the EQCR;

(e) Mr Danieli accepts that he was the engagement partner for each of the 10 listed company audit engagements;

(f) Mr Danieli agrees he wrongfully, and in breach of ASA 220, dated the auditor's report of the five Listed Companies (for two financial year audits, FY23 and FY24) prior to completion of the EQCR;[11]

(g) Mr Danieli acknowledges that:

i. his engagement with and oversight of the EQCR process should have been more thorough;[12] and

ii. at the time he signed off on each of the FY23 and FY24 audit reports for the 5 Listed Companies, Mr Raciti had not yet signed off on the FY23 EQCR and Mr Marando had not yet signed off on the FY24 EQCR;

(h) Mr Danieli accepts that the CADB power to cancel or suspend his registration is enlivened and that the matters described between paragraphs (a) to (g) above, mean that the matter is within the Board's jurisdiction for the Corporations Act, subparagraph 1292(1)(d)(i).

PART E. DISPUTED FACTUAL MATTERS

Introduction to disputed factual matters

75. For reasons given at paragraphs 693*ff* below, we need to be satisfied that the grounds in s 1292 are made out, even if the parties rely upon a statement of agreed facts and even if the Respondent admits a breach of s 1292. Thus, we need to be satisfied that the case which is admitted by Mr Danieli is actually made out, ie that, on the facts, Mr Danieli has failed to carry out an perform adequately and properly the duties of an auditor as provided in s 1292(1)(d)(i).

76. In any event, there were a number of areas of disputed fact which we needed to resolve. This has made it necessary to give consideration to the evidence relevant to these disputed matters. There was a large amount of very detailed evidence about each of the five audits over two successive years, in addition to the CA ANZ process and other matters.

77. The main areas of dispute related to the nature and extent of the EQCR process actually undertaken, the characterisation of Mr Danieli's conduct and the extent of Mr Danieli's involvement in, and knowledge of what was done. In particular, Mr Danieli contends (in broad summary) that:

[11] ACR paragraph 98.
[12] ACR paragraph 98.

(a) He appropriately delegated responsibility for liaising with EQCRs to Mr Phu, a fellow director at AD Danieli Audit PL and himself a registered company auditor;

(b) He was told that EQC Reviewers had been appointed and were aware of the deadlines and were working towards these;

(c) He was told (and assumed from absence of any contact by the EQC Reviewers) that there were no issues with the EQCR processes, and this was consistent with his expectation, particularly as the companies concerned were mainly small cap companies with limited trading and straightforward operations; and

(d) (In giving evidence) at the time he signed the reports, he had been told and believed that the EQCR had been completed[13].

78. In relation to the last matter in sub-paragraph 77(d), there was a difference between Mr Danieli's position in giving evidence and the position adopted by Mr Danieli in his Amended Concise Response. The position adopted in the ACR (in broad summary) was that when signing the reports, Mr Danieli was focusing on ensuring timely lodgement of the company reports, particularly given the consequences for the companies for delay (which included suspension from trading). Mr Danieli contended that when he was faced with the fact that the EQCR process had not been completed, but in the genuine belief that there had been no issues identified, Mr Danieli prioritised lodging on time, in order to avoid any negative consequences to the audit clients.

79. The parties identified the following matters as issues requiring resolution, (by reference to the relevant paragraph number in their Issues Summary):

(a) *Issue 9* - The weight given and conclusions drawn from CA ANZ's quality review findings;

(b) *Issue 11* - whether in FY23 Hayes Knight and in FY24 GSB were engaged as EQC Reviewer's for Love Group, Urbanise, Cassius, Gladiator and Pure Hydrogen (see also ACR para 10(i)). (We note that the relevance of this issue from ASIC's point of view appears to be that the failure to engage EQC Reviewers underpins Mr Danieli's alleged lack of involvement[14] and, from Mr Danieli's point of view, the fact that EQC Reviewers were appointed was consistent with what he was being told, and with his assumption that the EQCR process was proceeding without issues);

(c) The following issues relating to the audit process:

i. *Issue 19(a)* - The extent to which Mr Raciti had access to the audit files in FY23 (see also ACR para 10(v));

[13] This is only a description of the gist of his evidence in a number of instances; the detail is considered below.
[14] See for example FACO para 101

ii. *Issue 19(b)* - The extent to which Mr Raciti reviewed the audit files in FY23 (see also ACR para 10(ii));

iii. *Issue 19(c)* - The extent to which Mr Raciti signed off the audit files in FY23;

iv. *Issue 19(d)* - The extent of Mr Danieli's communication and discussion of key audit matters in FY23 (see also ACR para 10(iii));

v. *Issue 19(e)* - The extent to which Mr Marando had access to the audit files in FY24 ;

vi. *Issue 19(f)* - The extent to which Mr Marando reviewed the audit files in FY24;

vii. *Issue 19(g)* - The extent to which Mr Marando signed off the audit files in FY24;

viii. *Issue 19(h)* - The extent of Mr Danieli's communication and discussion of key audit matters in FY24; and

ix. *Issue 19(i)* - Whether each of the Listed Companies in FY23 and FY24 would have missed ASX lodgement deadlines without Mr Danieli's sign off. (However, we did not understand that any specific submissions were ultimately made in relation to this issue[15]. Accordingly, we have not addressed this issue).

80. A further important issue, particularly in the light of the matter referred to in paragraph 78 is Mr Danieli's state of mind about the EQCR process at the time he signed the audit reports.

The parties' submissions on factual matters

81. Mr Hartnett on behalf of ASIC made written submissions which touched upon the disputed factual matters. In brief summary, he submitted:

(a) The CA ANZ letter of 28 February 2023 communicated to Mr Danieli the reviewer's findings, including significant issues which included, first, that AD Danieli Audit PL did not appoint an EQC reviewer with appropriate technical expertise, secondly AD Danieli Audit PL did not document evidence of significant discussions and thirdly the sign off being dated significantly later than the auditor's report;

(b) Mr Danieli, in his ACR disputed the CA ANZ findings, but in giving evidence, he could not remember what the third issue was about but then agreed with the finding;

[15] AOS, para 56

(c) Mr Danieli had represented in his Action Plan (prepared in response to the CA ANZ letter) that he was taking steps to remediate the issues but over the next two years failed to comply with ASA 220 in 10 instances;

(d) That Mr Danieli's assertion in the Action Plan that third issue (dating the audit report prior to completion of the EQCR) was a timing issue, turned out to be wrong;

(e) The evidence relating to the Epsilon review, showed that Mr Danieli did not understand his obligations as engagement partner;

(f) That Mr Danieli's had no direct involvement in the 2024 EQCR process. and the Board can be comfortably satisfied that Mr Danieli took little interest in the EQCR process in FY24.

(g) In relation to Mr Danieli's case that he appropriately delegated and relied upon Mr Phu[16]:

i. His reliance consisted of (A) evidence that he "would have" or "did have" conversations about various EQCR processes that were going on and (B) evidence that he inferred that EQCR processes were complete because Mr Phu did not expressly bring any issues to his attention;

ii. The evidence of reliance of the first type was vague;

iii. Reliance of the second type is telling of Mr Danieli's lack of understanding of his obligations under FY 2023 ASA 220 para 19 and FY2024 ASA para 36 because those obligations were imposed upon Mr Danieli himself as engagement partner, (see also the Engagement Partner's overall responsibility in FY23 ASA 220 [15] FY24 ASA 220 [40]);

iv. It was a simple step for Mr Danieli to satisfy himself that the EQCR process had been completed; and

v. However it was a substantive step, which Mr Danieli regarded as nothing more than administrative[17];

(h) Mr Danieli's assertion that no one told him that the EQCR was not complete and his failure to take further simple steps to satisfy himself was not compatible with the requirements and expectations of an auditor taking ultimate responsibility in performing his duties as an engagement partner on listed company audits and by extension, reflects poorly on Mr Danieli's judgment competence and attitude to remain registered as a company auditor[18].

[16] Applicant's Closing Submissions (**ACS**) paras 50-59
[17] ACS para 61
[18] ACS para 62

82. Ms Bentley, on behalf of Mr Danieli also made detailed submissions on the evidence. As to the FY23 audits, she submitted that Mr Danieli relevantly gave the following, wholly unchallenged, evidence:

(a) He delegated responsibility for engaging with Mr Raciti to James Phu, his fellow director and a registered company auditor himself;

(b) Mr Danieli was present at some of the earlier "planning meetings" during which the audits of each of the entities were planned and discussed with Mr Raciti and Mr Poon;

(c) He sought to oversee Mr Phu's work by requiring Mr Phu (and other staff) to email him with a "daily plan", by discussing the audits with him regularly in the office and by establishing a practice of a Monday morning meeting during which the team would provide updates on their work progress. He believed, as a result of these engagements, that Mr Phu was not only working on the audits of the Companies, but was appropriately engaging with the EQC Reviewers;

(d) He believed that the EQC Reviewers had access to all the documentation that they needed, not only because they also used CaseWare, but that they could easily come to the AD Danieli Audit PL offices to view documents as they were only a "stone's throw" away;

(e) He saw Mr Raciti and Mr Poon coming into the AD Danieli Audit PL offices to meet with Mr Phu a number of times during August and September 2023;

(f) He believed that the EQCR review of the CaseWare file wasn't a large or time-consuming task. He stated:

> "These companies are not overly complicated, the audits are not complicated. In a couple of hours you would review certain sections and then yes, okay, you might have to come in another day...".

(g) Mr Phu told him on multiple occasions that everything was under control with the EQCR process and that Mr Raciti had no issues and was going to sign off;

(h) At no point did Mr Phu or Mr Raciti advise him that there was any issue with the EQCR process. This includes the time during which Mr Phu was assisting him with finalising the audit reports and the audit committee reports, knowing sign off was imminent;

(i) He was not surprised by the lack of engagement from or issues raised by the EQCR. He had been the auditor for each of the entities for a period of time and was familiar with their operations and their key audit issues. The Companies, with the exception of Urbanise, were small cap entities with limited trading activity. He did not think that they were complex audits that were likely to raise any significant or contentious issues;

(j) Where he saw emails which indicated that matters were outstanding, he believed those issues to be "loose ends" only relating to the file compilation, which he has 60 days to finalise; and

(k) When he signed the audit reports for each of the entities, he believed that Mr Raciti had finished his review. For instance, he said that immediately prior to signing off on the Urbanise audit: "I asked James, "Has that been all finalised?" The answer was *"Yes"* although Mr Danieli acknowledged that he did not check this on CaseWare or confirm it directly with the EQC Reviewer.

83. Ms Bentley also submitted that Mr Danieli's evidence was largely supported by Mr Phu. She submitted that Mr Phu gave evidence that:

(a) In respect of all of the Companies, Mr Phu provided Mr Raciti with the audit timetables and lodgement deadlines for each of the entities. The purpose of sending these timetables to Mr Raciti was to ensure that Mr Raciti was aware of the lodgement deadlines and could plan to ensure that the EQCR process was finalised by then;

(b) In respect of **Urbanise**:

i. He was the audit manager; he identified the key audit matters from the audit and communicated those matters to and discussed those matters with Mr Poon and Mr Raciti;

ii. On 2 August 2023, Mr Phu emailed Mr Poon and Mr Raciti copying in Mr Danieli and attaching a first draft of the financial statements, the draft audit report, the draft audit committee report and the audit timetable from the client. Mr Phu explained that the purpose of providing Mr Raciti with the draft documents was so that he could commence his work, and notify "if they have any further work they want us to do". Mr Phu stated that he received no feedback from Mr Raciti or Mr Poon in respect of the documents but that they came in a few weeks later to discuss it;

iii. At a meeting with Mr Raciti, the date of which he cannot recall (but presumably the meeting "a few weeks later"): "*Mario signed off a few sections* verbally" and required additional work to be done such as obtaining signed customer contracts, evidence of any changes in relation to the business of Urbanise and any other evidence that would substantiate the going concern assumption;

iv. Mr Phu did further work on the Urbanise file in response to Mr Raciti's queries and provided that work to Mr Raciti;

v. On 18 August 2023, Mr Phu sent Mr Raciti and Mr Poon a further email, again copying in Mr Danieli, attaching updated financials, audit committee report and auditors report. The email noted that Urbanise was wanting to lodge on 22 August 2023 and asked for Mr Raciti and Mr Poon to "*review* and let me know if any changes are required or if

you have any questions." Mr Phu also stated he'd send over the CaseWare file via dropbox "like last time". Mr Phu received no response to this email;

vi. Where in his witness statement he stated: "*Mario did not provide final* clearance or sign off on the Urbanise Audit" and his belief that it would be discussed between Mr Raciti and Mr Danieli, he was referring to February 2024, not the time of the audits/audit sign off; and

vii. Mr Phu was assisting Mr Danieli with preparing the audit report and the audit committee report. He knew that Mr Danieli was going to be signing the Urbanise audit report on 22 August 2023. Given that he had asked Mr Raciti and Mr Poon for their comments on the documents sent on 18 August 2023 and they had not responded with any concerns, he communicated to Mr Danieli that there were no outstanding issues with the EQCR for Urbanise.

(c) In respect of **Love Group**;

i. He was the audit manager for Love Group and his main responsibilities were overseeing the audit, corresponding with the client, attending audit meetings and sending emails to the EQC Reviewer.

ii. He recalls a meeting at AD Danieli Audit PL's officers where Mr Raciti and Mr Poon attended to review the CaseWare files for Urbanise and Love Group, and to discuss Cassius. During that meeting: "*Mario verbally signed off on a few sections of the Love Group Audit and then provided feedback requesting more work to be done."*

iii. He sent an email to the financial controller of Love Group entitled "*QC Comments*". These were comments made by Mr Raciti about the Love Group audit, and which he followed up with the client and then reported back to Mr Raciti.

(d) In respect of **Cassius**;

i. He was the audit manager for Cassius;

ii. On or about 5 September 2023, he had a discussion with Mr Raciti about the Cassius EQCR, including the "key audit matters".

iii. He took a file note entitled "*Meeting Notes with QC (Mario Raciti)"* for Cassius, in which he records "*Mario raised the following points in regards to his review of the following sections".* The file note reflects what additional information Mr Raciti requested him to obtain;

iv. Mr Phu then went back to the client to obtain the further information, recorded that in a further file note and provided that to Mr Raciti.

v. Mr Phu says that "*a few weeks later, I gave Vincent three files, including the Cassius file, for Mario to review, clear and sign off."* Mr

Phu heard nothing from Mr Raciti or Mr Poon about Cassius following that.

(e) In respect of **Pure Hydrogen;**

i. Despite chasing the client, the Pure Hydrogen audit documents came in late because the client was quite disorganised;

ii. Mr Phu: *"…dropped off the Pure Hydrogen audit file to Mario's office via USB for review, final clearance and sign-off. I did not see the file again after I dropped it off and I did nothing."*

iii. He identified the key audit matters for Mr Raciti and Mr Poon.

(f) Overall:

i. Mr Phu got the impression that Mr Raciti regarded himself as being engaged as the EQCR for each of the Listed Companies. He certainly had a number of meetings with him and Mr Poon during which they discussed the audits and the EQCR process;

ii. Mr Phu was providing documents to Mr Raciti and he was not asking any questions or asking for further information and as a result Mr Phu assumed everything was ok and he communicated this to Mr Danieli;

iii. Mr Phu denies that Mr Raciti ever informed him that they "…*required the final CaseWare file and the final financial reports before undertaking any review work."*

iv. Mr Phu agreed that during the months of July, August and September 2023, he gave Mr Danieli the impression that the EQCR process was completely under control;

v. He agrees he "probably did" say to Mr Danieli that "*Mario is going to sign it*";

vi. He and Mr Danieli discussed the EQCR process and there weren't any major issues at the time;

vii. He assisted Mr Danieli with preparing the audit committee report and the audit report for the entities and at no stage told Mr Danieli not to sign the audit report because the EQCR process wasn't finished.

viii. During the August and September 2023 period he was not only extremely busy at work, he was also experiencing personal issues which were distracting him and influencing his performance at work**.**

84. Ms Bentley also submitted that Mr Raciti gave evidence which was wholly inconsistent with Mr Phu's evidence:

(a) Mr Raciti gave evidence in his witness statement that, although Hayes Knight was initially approached and engaged to perform engagement

quality control reviews (EQCRs) for five Listed Companies—namely Pure Hydrogen, Cassius, Urbanise, Epsilon, and Gladiator—he ultimately did not perform any EQCR work for any of them. Mr Raciti made the following very definitive statements in his witness statement:

i. Hayes Knight did not issue an engagement letter to ADDCA and did not undertake any work in relation to Urbanise.

ii. Hayes Knight did not complete any services or commence any work in relation to Love Group.

iii. Hayes Knight did not issue an engagement letter to ADDCA and did not undertake any work in relation to the Pure Hydrogen, Cassius and Gladiator.

(b) Mr Raciti vehemently stood by these statements during cross-examination;

(c) Despite this, not only does Mr Phu state that he had multiple discussions with Mr Raciti and Mr Poon, discussed with them the key audit matters and did further work on the audits in response to their queries, there is also documentary evidence to suggest that Mr Raciti and Hayes Knight did indeed do work on these files. For example:

(d) In respect of **Urbanise**:

i. On 30 August 2023, Mr Poon sent Mr Phu an email entitled "Quality Review (Urbanise.com Ltd June 23)" in which he stated "Mario and I have reviewed the documents for the above entity".

ii. On 26 September 2023, Mr Phu sent Mr Raciti and Mr Poon an email with an update on each of the entities. Next to the heading "Urbanise" Mr Phu notes that he is waiting for the clients to return signed contracts and provide additional comments on "points raised". Mr Phu confirmed that refers to points raised by Mr Raciti.

iii. In respect of Love Group, there is an email from Mr Phu to *wendy@datetix.com*, the financial controller of Love Group with the heading "QC comments". The email sets out a number of queries. Mr Phu confirmed these were queries made by Mr Raciti.

(e) In respect of Cassius, there a file note taken by Mr Phu entitled "*Meeting Notes with QC (Mario Raciti)"* for Cassius, in which Mr Phu records "*Mario raised the following points in regards to his review of the following sections"* and then goes on to set out a range of issues. It could not be sensibly suggested that this file note was made up by Mr Phu; there would be no reason for him to do such a thing; and

(f) The better evidence suggests that Mr Raciti and Hayes Knight were more substantively involved than Mr Raciti has been prepared to acknowledge. It may be that Mr Raciti appreciates that, as the nominated

EQC Reviewer, he was subject to obligations under the relevant auditing standards, and that his performance did not meet those obligations. With full knowledge of his appointment as EQC Reviewer and the deadlines by which the audit reports were to be signed, there is no evidence that Mr Raciti took any proactive steps to follow up with Mr Phu or Mr Danieli to obtain the materials he believed he required to complete his review. There are no emails or records indicating any such attempts. His involvement, as reflected in the available correspondence, was largely passive and reactive.

85. Ms Bentley submitted that Mr Phu was a fairly candid witness who made a range of admissions against his own interests, including recognising that he failed to perform his duties properly in a number of respects. Mr Raciti, on the other hand, was very defensive and refused to make any appropriate concessions. His explanations for the documents which contradicted his evidence were entirely unconvincing, for instance:

(a) Where Mr Poon wrote "*Mario and I have reviewed the documents*" he suggested it was poor English on Mr Poon's behalf and he should have written *"We reviewed the list of documents."*

(b) That where Mr Phu was referring to his "points raised" that they were not raised by him and we'd have to ask Mr Phu why he said that; and

(c) That Mr Phu invented the file note in respect of Cassius.

86. Ms Bentley submitted that where there is a difference between the evidence of Mr Phu and Mr Raciti, Mr Phu's evidence ought to be preferred. It seems wholly unlikely that Mr Phu created fake file notes and sent emails to clients setting our supposed queries from the EQCR if no such queries were ever raised.

87. She submitted that whilst Mr Raciti's conduct is not the subject of these proceedings, his failure to discharge the responsibilities of the EQC Reviewer role in an active and diligent manner undeniably contributed to the breakdown in process. She submitted:

(a) For instance, on 18 August 2023, Mr Phu sent Mr Raciti an email, copying in Mr Danieli, which attached the most recent financials, the audit committee report and the independent auditors report for Urbanise. That email clearly noted to Mr Raciti that Urbanise was wanting to lodge on 22 August 2023 and clearly stated: "*Could you please review and let me know if any changes are required or if you have any questions".*

(b) The email also noted that he would be sending the CaseWare file by Dropbox.

(c) "Quite extraordinarily", neither Mr Raciti nor Mr Poon responded to this and Mr Raciti stated, without explanation, that he didn't see the need to review it at that stage. Mr Raciti acknowledged that he was aware of the lodgement deadlines for the Companies, but, despite believing he had insufficient information to complete his job, he felt that "*There was no*

need to speak to [Mr Danieli]" and he was relying on Mr Danieli to "*manage his own timeframes*".

(d) Despite believing that Mr Phu was disorganised, Mr Raciti stated that he "*didn't see the need to"* call Mr Danieli.

(e) In the circumstances, it was reasonable for Mr Danieli to assume, as he did, that Mr Phu was engaging with Mr Raciti, that Mr Raciti had access to all the documents he required and had expressed no concerns about the audits.

88. In relation to the 2024 year Ms Bentley submitted that

(a) In early 2024, Mr Danieli became aware that Mr Raciti contended that he had not finished the EQCR process for each of the entities. Prior to this, Mr Phu had taken some time off due to personal issues and had not taken any steps between October 2023 and February 2024 in relation to the EQCR.

(b) Notably, Mr Raciti had also not made contact with him or Mr Danieli during this time. When Mr Phu attempted to re-engage with Mr Raciti in February 2024, seemingly to get his final sign off on the completed audit file, Mr Raciti refused to sign off and withdrew from his engagements.

(c) Mr Danieli was surprised by the email and spoke with Mr Phu about it. They discussed that they "*had been let down*" by Hayes Knight and needed to find someone new for the 2024 year.

(d) Accordingly, for the 2024 financial year, Mr Danieli asked Mr Phu if he knew of any registered company auditors who might perform the EQC Reviewer role for the 2024 year. In response, Mr Phu suggested Mr Daniel Marando. As Mr Danieli explained "*…,he was with a firm, and also, again, that they were in Pitt Street, so when I heard that they were close by, I felt that he would be suited because he's a registered company auditor, he's with a firm in Pitt Street, they are close by, so I asked James to pursue it."*

(e) Over August 2024, Mr Phu attempted to provide Mr Marando with CaseWare access to the files for Urbanise and Love Group but they experienced some ongoing technical issues. Despite Mr Marando being located nearby, Mr Phu did not suggest that Mr Marando attend the office of AD Danieli Audit PL and Mr Marando did not offer to. Mr Phu explained that: "*We were trying to set up on the cloud, so he wouldn't have to come into our office*" and that he didn't encourage Mr Marando to come into the A D Danieli office *"Because it's peak season for everyone."*

(f) Mr Danieli was aware that Mr Marando was having issues with accessing relevant documents but Mr Phu told him "….*He was providing access or that if anything failed, he would put it on a USB and take it across."* He did not really understand the technical issues and had no reason to believe it wasn't being sorted out.

(g) As with the 2023 year, Mr Phu acknowledged that for the months of August and September 2024, he told Mr Danieli that all was under control with the EQCR. He advised Mr Danieli that Mr Marando did not have any issues with the audits and that "*Daniel will sign off."* Again, Mr Danieli gave evidence that when he signed the audit reports for each of the entities, he believed that the EQCR process had been finalised.

(h) Despite this, it is plain from the evidence that Mr Phu was not providing Mr Marando with documents in any suitable fashion and took so long to provide adequate CaseWare access that Mr Marando struggled to get started on the work in time. Mr Phu explains his conduct saying that he was very busy and he was falling behind.

(i) Mr Marando was contacted by ASIC in or about September 2024. Mr Phu gave clear evidence that Mr Marando contacted him when he was contacted by ASIC and told him that he was no longer comfortable being the EQC Reviewer. Mr Phu recalled the conversation quite specifically, noting that he remembered being home with COVID at the time. Curiously, Mr Marando denied ever discussing being contacted by ASIC with Mr Phu. It is apparent that Mr Marando no longer felt comfortable with being the EQC Reviewer given ASIC's involvement and Mr Phu told him *"if he wasn't comfortable, then he should just not complete it".* At that point, Mr Marando considered his engagement terminated.

(j) Concerningly though, Mr Danieli did not ask Mr Phu to terminate Mr Marando's engagement and was not advised of this by either Mr Phu nor Mr Marando.

The witnesses

Mr Danieli

89. Mr Hartnett for ASIC made no general submission concerning Mr Danieli's credibility but submitted that, in particular respects, the Board should give less weight to Mr Danieli's evidence where it was not supported by documentary evidence[19].

90. Ms Bentley for Mr Danieli submitted that a large body of Mr Danieli's evidence was wholly unchallenged.

91. In the absence of a general attack on Mr Danieli's credibility by ASIC, particularly regarding the key evidence that Mr Phu was assuring him that the EQCR process was on track and that there were no issues, we do not think it is open to us to make any general adverse findings about Mr Danieli's credibility.

92. However, we found that a reasonable proportion of Mr Danieli's evidence was not of great assistance because he often gave answers at a high level and in general terms and did not give responsive answers to perfectly clear and

[19] ACS par 76

relevant questions. There are many examples of this but one example will suffice to make the point, (at T216):

> "Q. And what discussions, if any, did you have with James about the Cassius EQCR process?
>
> A. Again, it was a very straightforward audit. The
>
> issues were pretty much similar to prior years,
>
> and, again, was there anything that has come out
>
> of the EQCR process that would give any
>
> indication that we weren't going to be given
>
> clearance in order to sign off on the audit."

93. Moreover, there were many documents in evidence which, at least, showed that he was provided with information which impacted the reasonableness of his reliance on Mr Phu and belief in what he was being told. Mr Danieli did not file a statement in these proceedings, as is expected by our Practice Note, and his evidence did not address many of the documents which were provided to him at the time of the events in question. We deal with this issue in detail below. In the light of this, there are areas where we either cannot accept Mr Danieli's evidence about what he said he was told, or his assumptions or we find that a reasonably competent auditor would not have held those assumptions, having received such information.

Mr Phu

94. As already stated, Ms Bentley for Mr Danieli submitted that Mr Phu was a fairly candid witness who made a range of admissions against his own interests, including recognising that he failed to perform his duties properly in a number of respects.

95. We generally accept these submissions. We found Mr Phu generally to be a credible witness. Despite having been part of the AD Danieli Audit PL "team", he was not partisan in favour of Mr Danieli, nor did he appear to have an axe to grind against him. He gave some evidence which was helpful to Mr Danieli's case[20] and some evidence which was not[21].

96. He accepted that he "could have done better" in relation to Pure Hydrogen[22].

97. However, as with Mr Danieli, in some respects, Mr Phu's recollection was clearly not consistent with the contemporaneous documentary records or was simply unlikely to be correct. We will deal with specific aspects of his evidence later in these reasons, in context.

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[20] Eg Para 59 of his Statement
[21] Eg T53
[22] T75.11

Mr Raciti

98. The parties made submissions concerning Mr Raciti's credibility as follows:

(a) As already stated above, Ms Bentley for Mr Danieli submitted that Mr Raciti was a very defensive witness and refused to make any appropriate concessions. She submitted that his explanations for the documents which contradicted his evidence were entirely unconvincing, (see the examples in paragraph 85 above);

(b) Mr Hartnett for ASIC submitted:

i. Mr Raciti's evidence (that he carried out no work) was supported by the fact that a completed CaseWare file was a necessary precondition to carry out an EQCR in an efficient way;

ii. In referring to "review" of documents Mr Poon meant he had "looked at" documents but was communicating that a completed CaseWare file was required;

iii. Mr Raciti's denial that points were raised by him at the September meeting was believable in view of the absence of any documentary request;

iv. The supposed email from Wendy@datetix.com was an undated email, likely copied and pasted, and the "QC Comments" documents were not Mr Raciti's documents and the management of CaseWare documents was so unreliable that they have limited probative value;

v. There was a reason for Mr Phu making up records of discussing significant issues with the EQC Reviewer, noting the CA ANZ review had noted that discussions of significant issues had not been appropriately documented;

vi. Credibility findings were unnecessary unless the Board accepts that reliance on Mr Phu by Mr Danieli mitigates his conduct.

99. We think that there is some merit in Ms Bentley's submissions.

(a) Mr Raciti gave evidence about the role of Hayes Knight in absolute terms, and this evidence was contradicted by contemporaneous documents. He stated, unambiguously, that Hayes Knight "did not undertake any work" in relation to any of the six entities in respect of which he agreed to be EQC Reviewer[23]. For reasons which we explain in detail below, it is clear that Mr Raciti and/or Mr Poon *did* undertake work, and that their correspondence shows that they did;

(b) Mr Phu's email of 26 September 2025 is consistent with Mr Phu's evidence and inconsistent with Mr Raciti's;

[23] Statement of Mario Raciti paras 18, 30, 41, 47.

(c) Mr Phu's email of 5 September 2025 (see paragraph 212 below) provides strong support for the fact that comments were raised by Mr Raciti as "QC" at the meeting of 5 September;

(d) We do not accept that Mr Phu contrived the QC comments documents.

100. Thus, in certain areas where Mr Raciti's evidence conflicts with Mr Phu's evidence, we prefer the evidence of Mr Phu. It may well be the case, as ASIC submits, that a resolution of the conflict is not ultimately necessary. Nevertheless, the parties have identified a number of disputed factual issues requiring resolution by us, and such resolution requires, in some respects, the resolution of the conflicts between the evidence of Mr Raciti and Mr Phu. In the circumstances, we have made findings, the detail of which is set out below, in which, generally, we prefer Mr Phu's evidence in preference to Mr Raciti's.

Mr Marando

101. No submissions were made concerning the general credibility of Mr Marando[24] and we generally believed he was doing his best to tell the truth.

The evidence relating to the disputed factual matters

(a) CA ANZ review

The documents

102. On 28 February 2023, Heila Cronje (Manager Quality Review) from CA ANZ sent Mr Danieli a letter concerning the quality review results. The letter included the following:

> "Our review was conducted in accordance with our Letter of Engagement dated 26 August 2022. On the basis of this review, we believe that your practice's system of quality control requires enhancement to ensure compliance with mandatory requirements.
>
> During the review of the public listed company audit engagement your reviewer noted the following significant issues:
>
> …
>
> Your practice did not appoint an engagement quality control reviewer with appropriate technical expertise and authority. ASQC 1 Quality Control for Firms that Perform Audits and Reviews of Financial Reports and Other Financial Information, Other Assurance Engagements and Related Services Engagements and Corporations Act (2001) requires the engagement quality control reviewer to have sufficient and appropriate experience and authority to act as an audit engagement partner on audits of financial reports of listed entities, that is a Registered Company Auditor.
>
> Your practice did not document evidence of discussions of significant matters with the engagement quality control reviewer as required by

[24] Cf RCS para 62(c).

> ASA 220 Quality Control for an Audit of a Financial Report and Other Historical Financial Information.
>
> The engagement quality control reviewer's sign off was dated significantly later than the auditor's report. ASA 220 Quality Control for an Audit of a Financial Report and Other Historical Financial Information requires an auditor's report not be dated prior to completion of the engagement quality control reviewer review."

103. The letter continued, raising a number of other matters, and then concluded:

> "We require you to review your practice's system of quality control and prepare an Action Plan outlining how and when your practice will address the issues raised above. …
>
> Once your Action Plan is received, we will arrange a follow up review in approximately twelve months' time to confirm that the plan has been implemented. …
>
> If the issues raised in this review results letter have not been adequately addressed at the time of your follow up review, your practice will be referred to the Conduct and Discipline team for possible disciplinary action."

104. (We note that whilst it is not disputed that this letter was sent, Mr Danieli does not accept the CA ANZ findings or that the letter is the context of a pattern of behaviour. We discuss this issue in more detail below)[25].

105. Following the letter from CA ANZ, Mr Danieli prepared an action plan which he provided to CA ANZ[26] in about the first half of 2023.

106. In relation to the issue raised in the CA ANZ letter concerning the appointment of engagement quality control reviewer with appropriate technical expertise and authority, the Action Plan stated:

> "For this audit we had an experienced CPA appointed. However, for 2023 an RCA has been appointed as the Quality Reviewer. We have now approached Hayes Knight to outsource this function which they have agreed to do. Mario Raciti and Vincent Poon, both RCA's from Hayes Knight will act as quality reviewers for us and be appointed depending on audit job teams and their availability."

107. In relation to the issue raised in the CA ANZ letter concerning documenting evidence of discussions, the Action Plan stated:

> "We have now created a Planning Memo for the discussions of significant matters with the Quality Reviewer in addition to the CaseWare schedules."

108. In relation to the issue raised in the CA ANZ letter concerning the date of the engagement quality control reviewer's sign off, the Action Plan stated:

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[25] ACR par 14; Issues Summary pars 8 and 9.
[26] FACO par 36; ACR par 15.

"We acknowledge there was a timing issue in this instance. However, this was an isolated incident and certainly not the case with our audits when outsourcing this function."

Mr Danieli's evidence

109. Mr Danieli was asked about the CA ANZ in giving evidence in chief.

110. He gave evidence that he read the letter from CA ANZ dated 28 February 2023, giving the results of his quality review. His evidence continued:

> "Q. And can I get to you go to the last two paragraphs on the first page, so the paragraphs starting "Your practice did not" - it says:
>
> > Your practice did not document evidence of discussions of significant matters with the engagement quality control reviewer as required by ASA 220 ...
>
> And then on the next paragraph:
>
> > The engagement quality reviewer's sign off was dated significantly later than the auditor's report.
>
> Did you read this section?
>
> A. Yes, of course.
>
> Q. All right. So one of the things they identify, then, is that the EQCR review sign-off was dated later than the auditor's report. Do you remember what happened in relation to that?
>
> A. No, I don't. No.
>
> Q. And it says that you didn't document evidence of discussions of significant matters with the EQC. What, if anything, did you do in response to that paragraph?
>
> A. With that, there was the issue also that came up about the EQCR that certainly CA ANZ, they preferred to see a registered company auditor be the EQCR. And so that's why, then, we set about making changes to appoint an external professional firm to undertake our future EQCRs.
>
> Q. And what were your key take-aways from the CA ANZ review?
>
> A. I was disappointed that with our quality review there were deficiencies in certain parts of the practice, in both the audit section and our general section. In the general section, there was some
>
> deficiency with not always having engagement letters for clients, especially the - our existing ones, if things changed, we had to do
>
> a new one, so we made changes to that, and also about every year doing a continuing - whether you - an assessment of whether you're going to continue to work for that client.

In relation to the audit work papers, certainly the reviewer made references to - a lot of times we did the work but it wasn't adequately

documented, and also in certain areas in our sampling methods, that we didn't provide enough

documentation, explanation, in our files about

the sampling.

So we took all that on board and then we

commenced making changes to improve our audit

work and procedures and also, obviously, the

other parts of the practice in relation to

quality control. Yes.

Q. You said you made some changes. What were those

changes?

A. Look, this was fully discussed with the staff.

We discussed this at our Monday morning meeting

with all the staff --

THE CHAIRPERSON: Q. Sorry, when you say "this",

what do you mean?

A. The quality review and the findings of the

CA ANZ.

Q. Yes.

A. We - the staff were fully made aware. This was

discussed at our Monday morning meeting quite a

number of times, and then we set about that we

would address each of those issues and make the

changes, which we have in the practice.

Everybody's fully aware.

And in fact, it's a continuing process. We

are actually doing that now. We've formed a -

like a committee of the more senior people there
to continually make changes in relation to these
findings, and now we also are working with some
external consultants to help us with that process
in relation to quality control procedures for the
practice.
We are working with Quality Assurance,
they're a consultancy firm. They're helping us
with that. And also with audit, we're looking at
some more specialised training to provide in
certain areas.
Also the CaseWare program itself, CaseWare,
they also provide a lot of training as well, and
webinars, and now we are taking advantage of that
as well and it's a continual process for us, and
this is ongoing and will continue to be ongoing.
It has to be. Because in probably three years'
time we'll face another quality review. It's
just part of our profession. You've got to
always, you know, be on your game.
And also, of course, you know, you want to
be called a chartered accountant, you have
certain expectations and you've got to meet "

111. In cross-examination, Mr Danieli accepted the finding in the CA ANZ letter that the engagement quality control review sign-off for the file that was reviewed was dated significantly later than the auditor's report. He agreed that that was what the file showed[27].

112. He said that he prepared an action plan to be provided to CA ANZ in response to this and gave evidence about this:

[27] T247

“Q. Can you tell the board about the process that you undertook to create this document? You've got to make the action plan. Did you write what's in here?

A. The action plan - we went through all of this. It was James - I went through it with James and also I believe Steve as well. So I did it with other staff, yes.

Q. Okay. So did someone else draft it and then you review it? Is that how it worked?

A. This action plan certainly I - James helped me draft it and also to go back to CaseWare file to see what we had done and how we could improve on the areas that the reviewer found us deficient.

THE CHAIRPERSON: Mr Danieli, just listen to the question when it is asked. I think the question was "Did someone else draft it", and I'm not sure that you answered that question.

THE WITNESS: James drafted some of it. Some of it - the action plan, I actually also wrote. So we did it - we did it together.

MR HARTNETT: Q. Okay. And at some point it came together and you approved the final version to be --

A. Yes.

Q. -- sent back to CA ANZ?

A. Yes.”

Consideration of the CA ANZ matter (Issue 9)

113. The "issue" raised by the parties in connection with the CA ANZ letter was described as "The weight given and conclusions drawn from CA ANZ's quality review findings".

114. We can only sensibly deal with this issue as part of our overall consideration of the breach of duty and "fit and proper person" issues, and accordingly, deal with this issue in Section F at paragraphs *737ff* below.

(b) General evidence dealing with engagement of Hayes Knight (Issue 11)

Mr Danieli's evidence

115. Mr. Danieli gave evidence that in response to the CA ANZ review dissatisfaction with the qualifications of the EQC Reviewer they had been using, he arranged to engage someone else

116. He said that he first met Mr Raciti in relation to the EQCR process on 13 March 2023 and they discussed the EQCRs they were to undertake, namely the five Listed Companies plus Epsilon. He said that he very briefly explained what each of the companies did, that normally, they did their planning in May and June, and that they would then meet with the reviewer and also provide timetables for the deadlines and the EQCR.

117. Mr Danieli gave evidence that he was at the meeting on 27 March 2023 with Messrs Raciti, Poon, Phu and McDowell and that they discussed more detail, including the detail concerning timeframes.

118. Mr Danieli said, in paragraph 25 of his Amended Concise Response, at all times, he was of the understanding that Hayes Knight had been engaged to perform the role, and was performing the role, irrespective of whether an engagement letter was signed.

119. Mr Danieli also gave evidence in chief to the effect that he relied on Mr Phu and that he was "delegated the role of looking after the EQCR process to assist me in looking after that process"[28].

120. Mr Danieli gave evidence that every Monday morning, AD Danieli Audit PL has a staff meeting where all staff excluding admin met. At that meeting, they went through the job list, which included every job that came in. Mr Phu would go through the audits, and where they "were at" with them. Mr Danieli would ask about the EQCR process. When Mr Danieli asked about this, Mr Phu would say that "that was in hand". In addition, staff sent Mr Danieli a "plan of the day" every day as to what work will be done by them each day and Mr Danieli would provide feedback to them.

121. He stated that normally with a lot of audits, they would not start receiving information until the end of July and then it was then "hammer and tongs in

[28] T184.113

order to get the audit done, complete the EQCR process and meet the deadline of the end of August[29].

122. Mr Danieli gave evidence about receiving an email from Hayes Knight on 22 February 2024 asking whether the audit reports for 2023 had been signed off and then a subsequent email on 22 February drawing attention to the obligation of an engagement partner under para 36(d) of ASA 220 not to date the auditor's report before completion of the EQCR. Mr Danieli stated that he found these emails bizarre because Hayes Knight were aware of the lodgement deadlines and the consequences of not meeting them and it was bizarre that he would receive these emails when Hayes Knight were undertaking the processes in August and September[30]. In cross-examination, he said that it was particularly concerning because the appointment of Hayes Knight was specifically done to meet the findings of the CA ANZ review[31].

123. Mr Danieli responded to the emails suggesting they catch up again "and we can go through the sign off procedures and timing". He said he did not catch up because he did not hear from Mr Raciti[32].

124. On 27 February 2024, Mr Raciti sent an email to Mr Danieli stating "we have decided to withdraw from the engagement to undertake the quality review in respect of the abovementioned entities". In examination in chief, Mr Danieli gave evidence denying that they withdrew, but was not specifically taken to this email[33].

Mr Phu's evidence

125. Mr Phu gave evidence that he was the audit manager for each of the audits in FY23 (which is not apparent from his Statement).

126. He stated that he was familiar, at the time, with the requirements of the engagement of the EQCR as they were set out in the auditing standards.

127. He stated that his understanding of the EQCR process at the time was that the EQC Reviewer would review the file and the auditors would have meetings with the EQC Reviewer during the audit and that prior to signing the audit report, the EQC Reviewer needed to have completed their review.

128. Mr Phu stated that

> "Mario Raciti ("Mario") of Hayes Knight is a registered company auditor ("RCA") and ADDA engaged him for the first time in the first half of 2023 for the purpose of conducting engagement quality control reviews ("EQCR")".

[29] T199
[30] T224-5
[31] T254
[32] T225
[33] T225

129. He said that his first meeting with Mr Raciti and Mr Poon of Hayes Knight was around 13 March 2023 and they went through the EQCR program (which was a CaseWare accounting program which set out the EQCR process).

130. He said that at that meeting, the AD Danieli Audit PL staff asked Mr Raciti if he was okay to do the EQCR process for the other Listed Companies and he thought he said "yes".

131. He gave evidence that on 23 May 2023, Mr Raciti and Mr Poon came to the AD Danieli Audit PL offices to meet with Mr Phu and Mr Danieli to plan the audits, and they discussed all of the five Listed Companies. Mr Phu got the impression that Hayes Knight considered themselves engaged as EQC Reviewer for each of those entities.

132. He said that they indicated to Mr Raciti and Mr Poon that AD Danieli Audit PL would send Hayes Knight the timetables for the audits and on the next day, 24 May, Mr Phu sent an email to Mr Raciti and Mr Poon attaching the timetables for the audits, including the report lodgement deadlines, other than Urbanise.

133. The 24 May email is as follows:

> Hi Maria & Vincent,
>
> It was great to see the both of you yesterday.
>
> As discussed in the meeting, please find attached the following:
>
> - CA Review Results Letter
> - Timetables for each entity
> - Urbanise.com Limited – Waiting for client to confirm times and dates.
> - Cassius Mining Limited
> - Gladiator Resources Limited
> - Pure Hydrogen Corporation Limited
> - Love Group Global Ltd
> - Soalara Limestone Property (Limestone Project in Madagascar for Cassius Mining Limited)
>
> Please let me know if you require anything else further.
>
> **Kind Regards,**

134. We note that this email made reference to the CA Review Results letter as having been attached to the email. The issue about why this was sent to the Reviewer was not explored in evidence or in submissions.

135. The attached timetable contained a series of deadlines relating to the 2023 audits and preparation of the financial reports, including the submission of information to the auditors between 4 July and 28 July, submission of the final draft financial report to the auditors by 4 August and submission of the final draft to the Board by 10 August.

136. On 20 June 2023, Mr Phu sent to Mr Raciti the timetable for Urbanise.

137. Mr Phu gave further evidence in relation to the performance of the EQCR, which is relevant to the engagement or Hayes Knight, but we will consider that evidence separately in respect of the audit of each relevant entity.

Mr Raciti's evidence

138. On 9 March 2023, Mr Raciti received an email from Mr Danieli stating that they needed to outsource and asking Mr Raciti whether he was interested in performing the role of the quality reviewer for 5 Listed Companies. Mr Raciti replied to say "we are interested in taking this role" and, in response, Mr Danieli suggested that he would visit Mr Raciti to discuss.

139. Mr Danieli then sent an email to Mr Raciti listing the audits of the 5 Listed Companies as the audits they needed a quality reviewer for, and indicating that the total audit fees was $141,255 and in the past, their arrangement (presumably for the QR fees) had been 10% of the audit fees.

140. Mr Raciti gave evidence that on 13 March 2023, Mr Poon and he had a meeting with Mr Danieli to discuss whether Hayes Knight had the resources to do what was asked, the anticipated fee structure and the balance dates for the companies concerned. Mr Danieli advised at the meeting that Hayes Knight was to be engaged as EQC Reviewer with respect to:

    (a) Pure Hydrogen, for the year ended 30 June 2023;

    (b) Cassius, for the year ended 30 June 2023;

    (c) Urbanise, for the year ended 30 June 2023;

    (d) Epsilon, for the year ended 31 December 2022; and

    (e) Gladiator, for the year ended 30 June 2023.

141. We note that the list did not include Love Group, one of the Listed Companies, but Mr Raciti gave evidence that Love Group was added later[34].

142. Mr Raciti said that he and Mr Poon had a further meeting on 27 March 2023 to meet the audit team including Mr Phu and Mr McDowell and to discuss the background on each of the entities.

143. Mr Raciti said in cross examination that he took note of the dates listed for the proposed audit committee meetings and lodgement deadlines. He said he was aiming to work to complete his process before the deadlines.

144. Mr Raciti gave further evidence in relation to the performance of the EQCR, which is relevant to the engagement or Hayes Knight, but we will consider that evidence separately in respect of the audit of each relevant entity.

145. Mr Raciti gave evidence that on 21 February 2024, Mr Phu delivered a USB containing 3 full CaseWare files including Pure Hydrogen, Urbanise and Lover

[34] T122.

Group. On 22 February 2024, Mr Poon emailed Mr Phu, copying Mr Danieli, asking if the audit reports for the 5 Listed Companies had been signed off for the year ended 30 June 2023 and Mr Phu replied by email confirming that they had been. Later on 22 February 2024, Mr Raciti sent an email to Mr Danieli as follows:

From: Mario Raciti <mario.raciti@hayesknight.com.au>
Sent: Thursday, February 22, 2024 1:09 PM
To: Sam Danieli <Sam@addca.com.au>
Cc: James Phu <James@addca.com.au>; Vincent Poon <Vincent.Poon@hayesknight.com.au>
Subject: Engagement Quality Review

Dear Sam,

I trust that you are well.

We have been made aware that the audit reports for the five applicable entities have been signed off and have been lodged with the ASX.

F54.0019.0001.00

I need to draw your attention to paragraph 36(d) of ASA 220 which sets out that for audit engagements for which an engagement quality review is required, the engagement partner shall not date the auditor's report until the completion of the engagement quality review.

In each instance the engagement quality review has not been completed.

Can I suggest that you seek guidance on this matter.

146. A few minutes later, Mr Danieli replied as follows:

From: Sam Danieli <Sam@addca.com.au>
Sent: Thursday, 22 February 2024 1:13 PM
To: Mario Raciti
Cc: James Phu; Vincent Poon
Subject: RE: Engagement Quality Review/REPLY

Hi Mario

Perhaps we could have a catch up again and we can go through the sign off procedures and timing. As we have various half year reviews and deadlines at present if we could do say after 15th March depending on how you're placed?

Kind Regards,

147. On 27 February 2024, Mr Raciti sent an email to Mr Danieli, copying Mr Poon, as follows:

Mario Raciti

From: Mario Raciti
Sent: Tuesday, 27 February 2024 5:02 PM
To: Sam Danieli
Cc: Vincent Poon
Subject: Engagement Quality Review

Dear Sam

RE ENGAGEMENT QUALITY REVIEW OF THE FOLLOWING ENTITIES

Urbanise
Love Group
Gladiator Resources
Cassius Mining
Pure Hydrogen

After careful consideration, and for the reasons raised in my earlier emails, we have decided to withdraw from the engagement to undertake the quality review in respect to the abovementioned entities.

We take this opportunity to wish you and your staff all the very best.

Kind Regards,

Mario Raciti CA
Director

Hayes Knight (NSW) Pty Ltd
Level 2, 115 Pitt St, Sydney NSW 2000
t: +61 2 9221 6666 | f: +61 2 9221 6305 | www.hayesknight.com.au

Consideration of the Engagement question (Issue 11)

148. We have set out, above, the general evidence which goes to the question of engagement.

149. However, there was also specific evidence dealing with this issue in respect of each entity.

150. Accordingly, we give consideration in relation to "Engagement" issue (Issue 11) in relation to each entity in turn, below.

(c) Epsilon – Audit Report dated and signed by Mr Danieli on 31 March 2023

Introduction

151. The audit and EQCR of Epsilon is not one of the matters in respect of which the complaint is made in the FACO. Nevertheless, evidence was tendered without objection in relation to the Epsilon EQCR and submissions were made by ASIC about it. As already noted above, ASIC made submissions concerning Epsilon and appeared to suggest that the matter was a "contextual fact"[35].

152. We note, for context, that Mr Danieli signed off the audit report for Epsilon on 31 March 2023.

Mr Danieli's evidence

153. Mr Danieli gave evidence that he "would have been" present at meetings where Mr Phu discussed Epsilon with Mr Raciti but did not have any specific recollections of the meetings or any discussions that were had.

154. He did not recall being present at that meeting.

155. Mr Danieli said that when he signed off the Epsilon audit report at the end of March 2023, his understanding of where the EQCR process "was at" for Epsilon was "That it was complete, because I had (sic, been) given no indication that it wasn't"[36].

156. He gave the following evidence about this[37]:

> "Q. And had you had any discussions with anyone about
>
> the EQCR process for Epsilon?
>
> A. Other than James, no.
>
> Q. And what discussions had you had with James?
>
> A. Well, when it came - as we were going closer,
>
> getting closer to the deadlines and the sign-off,
>
> I would always ask, "Where are we with the
>
> engagement quality review", and whether there was
>
> any - were there any - any indication that we'd
>
> not be given clearance to sign off.
>
> Q. And do you recall what Mr Phu said to you?
>
> A. There was never any indication to me that we

[35] APHS C1 page 6
[36] T195.9
[37] T195.11*ff*

weren't going to be given clearance. That's why

I signed off on the EQCR - on the audit.

Q. Did you understand at that time what your

responsibilities were in terms of when you could

or couldn't sign off the audit report?

A. Yes, of course. Yes. "

157. There was evidence of a series of emails involving Mr Danieli on 27 April 2023. At 10:42 am on that day, Mr Raciti emailed Mr Danieli, copying Mr Poon, asking "Can you please provide details of how this audit is progressing, in order that we can update our files".

158. Mr Danieli replied almost immediately saying "All good Mario, how about Vincent comes in to go through with James". A short time later, Mr Raciti replied, copying Mr Poon, saying "I will make arrangements with Vincent. By which date do you need to sign the audit report?"

159. On Friday 28 April 2023 at 4:52 pm, Mr Danieli replied to Mr Raciti, copying Mr Poon and Mr Phu stating "Signed off 31 March 2023", and attaching the relevant documents.

160. Mr Danieli was cross-examined about the email "All good Mario, how about Vincent comes in to go through with James" and what he understood Mr Poon was going to go through. His evidence was as follows:

"Q. What were you understanding that Vincent was

going through with James in that email? What do

you mean?

A. Well, to go through the EQCR process and the

file.

Q. To go through the whole of the EQCR process?

A. What - what hadn't been - what hadn't been

attended to at the time.

Q. At the time, did you know that anything had or

hadn't been attended to?

A. I wasn't made aware that anything hadn't been

attended to. "

Mr Phu's evidence

161. Mr Phu said that he did not have much involvement with the Epsilon Audit due to personal issues.

162. He said that Mr Raciti was the EQC Reviewer on the Epsilon Audit. He said that he recalled there were "multiple meetings" with Mr Raciti and that this file was signed off by Mr Raciti. He said that he also recalled that Mr Raciti had raised queries and wanted more work to be done.

163. In cross-examination, Mr Phu said that his first meeting with Mr Raciti and Mr Poon of Hayes Knight was around 13 March 2023 and at that meeting, they went through the EQCR program (which was a CaseWare accounting program which set out the EQCR process).

164. In paragraph 59 of his Statement, Mr Phu said that at one of the audit group meetings in AD Danieli Audit PL's office, Mr Raciti "told us to sign off as him as the EQCR. He told us to type the answers for him as he was providing answers to the EQCR program". He said that on 29th March 2023, Mr Raciti reviewed, cleared and personally instructed AD Danieli Audit PL to sign off on the Epsilon file for financial year 2023 (i.e. year ended 31 December 2022).

165. We note, in relation to this evidence, that there was a series of emails relating to Epsilon at about this time:

(a) An email dated 27 March 2023 at 1:11 pm from Mr Danieli headed "Epsilon follow up Quality Review meeting" addressed to Mr Raciti and Mr Poon, copied to Mr Phu and McDowell, which said:

> "Mario and Vincent
>
> Just confirming that we have scheduled this Wednesday 4 pm for the follow up quality review meeting, hope that is OK with you."

(b) An email dated 27 March 2023 at 1:18 pm in reply, from Mr Raciti, with the heading "RE: Epsilon follow up Quality Review meeting" which said:

> "Hi Sam,
>
> We will attend your office on Wednesday at 4 pm."

(c) An email dated 27 March 2023 at 3:06 pm headed "Re: Epsilon follow up Quality Review meeting" from Mr Poon to Mr Raciti and Mr Danieli stating:

> "Hi Sam
>
> In relation to the engagement quality review for Epsilon Healthcare Limited, please find the attached quality review engagement letter for us to sign and return to us" – and the engagement letter was attached,

(d) An email dated 27 March 2023 at 3:49 pm from Bianca Parker of AD Danieli Audit PL sent to Messrs Poon and Raciti copied to Mr Danieli and Mr Phu attaching the engagement letter executed by Mr Danieli.

166. The letter is as follows.

Hayes Knight Audit

Hayes Knight Audit (NSW) Pty Ltd
ABN 52 142 320 590

Level 2, 115 Pitt St, Sydney NSW 2000
GPO Box 4565 Sydney NSW 2001
T: 02 9221 6666 F: 02 9221 6305
www.hayesknight.com.au

27 March 2023

Mr. Sam Danieli
Company Director
A D Danieli Pty Ltd
Level 1, 261 George Street
Sydney NSW 2000

Dear Sam,

QUALITY REVIEW ENGAGEMENT LETTER

You have requested that we perform engagement quality review for an audit engagement of Epsilon Healthcare Limited for the year ended 31 December 2022. We are pleased to confirm our acceptance and our understanding of this engagement quality review by means of this letter.

The objectives of our engagement quality review are to perform an objective evaluation of the significant judgements made by the audit engagement team and the conclusions reached thereon. However, an engagement quality review is not intended to be an evaluation of whether the entire engagement complies with Australian Auditing Standards and applicable legal and regulatory requirements, or with the firm's policies or procedures.

We will perform our engagement quality review in accordance with Australian Auditing Standards, and we will ensure that our work is conducted with the appropriate level of professional care and diligence. However, our engagement quality review does not constitute an audit and will not provide assurance on the financial report.

In order to conduct our engagement quality review, we will need access to all relevant information and documentation related to significant matters and significant judgement. We will also require cooperation from your staff to provide us with any additional information or clarification necessary to complete our engagement quality review.

We will discuss our findings with you and provide any assistance necessary to address any issues identified during our engagement quality review.

The fee for our services is $3,000 plus GST. In respect of all accounts rendered, our trading terms of payment, is net 14 days from date of invoice.

We look forward to full cooperation from your staff during our engagement quality review

Hayes Knight Audit

Hayes Knight Audit (NSW) Pty Ltd
ABN 52 142 320 590

Level 2, 115 Pitt St, Sydney NSW 2000
GPO Box 4565 Sydney NSW 2001
T: 02 9221 6666 F: 02 9221 6305
www.hayesknight.com.au

Please sign and return the attached copy of this letter to indicate your acknowledgement of, and agreement with, the arrangements for our engagement quality review for an audit engagement including our responsibilities.

Yours faithfully,
Hayes Knight Audit (NSW) Pty Ltd

Ma rio Ciciti
Director – Audit Services
Registered Company Auditor

Acknowledged on behalf of A D Danieli Pty Ltd by:

.....

Sam Danieli

Director

Date: 27/03/2023

167. In the circumstances, there can be no doubt that there was an executed agreement between AD Danieli Audit PL and Hayes Knight for Hayes Knight to provide the quality review for Epsilon in accordance with the terms of that letter.

168. (An issue which arises from this fact, in relation to the broader case, is why, in view of the fact that Mr Raciti and Mr Danieli both executed a formal engagement letter on this occasion, it was never done in relation to the other entities, and what this says about the question whether Mr Raciti was engaged as EQC Reviewer in the other audits).

169. In cross-examination, Mr Phu said he was unsure about the dates of meetings but he agreed that he had meetings with Mr Raciti about the Epsilon audit "prior to him giving his sign-off via you [Mr Phu]". He confirmed that at one meeting, Mr Raciti told the AD Danieli Audit PL staff (Mr Danieli, Mr Phu and Mr Stephen McDowell, who were all present at the meeting) to sign off as him as the EQC Reviewer, and he confirmed what he said in paragraph 59 of his Statement (see paragraph 164 above).

Mr Raciti's evidence

170. As already stated, Mr Raciti accepted that on 13 March 2023, Mr Poon and he had a meeting with Mr Danieli but that it was an introductory meeting. He also accepted that he and Mr Poon had a further meeting on 27 March 2023 but that this was to meet the audit team including Mr Phu and Mr McDowell and to discuss the background on each of the entities.

171. He gave evidence confirming the series of emails on 27 March 2023 referred to above.

172. Mr Raciti made no reference to a meeting on 29 March 2023 in his statement. In cross-examination, he said he remembered it "vaguely", albeit denying that he instructed AD Danieli Audit PL to sign off[38].

173. Approximately one month later, on 27 April 2023, Mr Raciti emailed Mr Danieli, copying Mr Poon, asking "Can you please provide details of how this audit is progressing, in order that we can update our files". Mr Danieli replied almost immediately saying "All good Mario, how about Vincent comes in to go through with James". A short time later, Mr Raciti replied, copying Mr Poon, saying "I will make arrangements with Vincent. By which date do you need to sign the audit report?"

174. On Friday 28 April at 4:52 pm, Mr Danieli emailed Mr Raciti, copying Mr Poon and Phu stating "Signed off 31 March 2023". The email attached the signed Consolidated Financial Report for Epsilon for the year ended 31 December 2022, the Auditors Independence Declaration to the directors of Epsilon, signed and dated by Mr Danieli on 31 March 2023 and the Independent Auditors Report on the audit of the financial report of Epsilon, addressed to the members

[38] T128

of Epsilon and signed by Mr Danieli on behalf of AD Danieli Audit PL, dated 31 March 2023.

175. Mr Raciti said that he understood that the lodgement date for an entity with a balance date of December would have been the end of March[39], but he said he was under the impression that perhaps Mr Danieli had sought an extension of time. He said that as at this time (28 April 2023), there was no engagement because AD Danieli Audit PL was in breach of the engagement because AD Danieli Audit PL had not provided the relevant information including the CaseWare files[40].

176. Mr Raciti said that:

(a) He did not respond further to Mr Danieli's email on 28 April 2023 and the proposed meeting did not take place because the Epsilon engagement did not proceed;

(b) Subsequent to the email from Mr Danieli on 28 April 2023, Hayes Knight closed its file for Epsilon;

(c) Mr Danieli and AD Danieli Audit PL did not continue seeking EQCR from Hayes Knight on the Epsilon audit file after this date;

(d) Hayes Knight did not perform any services or commence any work on Epsilon as the audit work had not been completed by AD Danieli Audit PL and Hayes Knight was awaiting receipt of the full Case Ware file prior to commencing its review;

(e) Neither Hayes Knight nor he marked any work papers, reviewed the CaseWare file, conducted or signed off on any EQCR regarding Epsilon, or gave instructions to Mr Danieli or AD Danieli Audit PL to sign off on any Epsilon EQCR; and

(f) As no services were rendered by Hayes Knight, no invoice was issued by Hayes Knight regarding Epsilon.

(d) Consideration of Epsilon EQCR

177. As already indicated, no specific allegation was made in respect of the Epsilon EQCR. Essentially, ASIC relied upon the Epsilon review as context. In those circumstances, we obviously have not considered whether Mr Danieli failed in his duty in relation to the Epsilon audit, and make no finding in that regard. We consider that the following matters of context are established on the evidence:

(a) Hayes Knight (or Mr Raciti) were clearly engaged to act as EQC Reviewer for the Epsilon audit;

(b) Hayes Knight performed some work on the EQCR. We note:

[39] T130
[40] T133-4

i. At the time of the "follow up" meeting on 29 March 2023, Hayes Knight had signed and received a countersigned Letter of Engagement for Epsilon;

ii. The emails between Hayes Knight and AD Danieli Audit PL on 27 March 2023 referred to an "*Epsilon follow up* Quality Review meeting" (emphasis added). This is inconsistent with Mr Raciti's evidence that the purpose of the meeting was to meet the team and to discuss the background on each of the five entities to be reviewed;

iii. Mr Raciti made no reference to a meeting on 29 March 2023 in his statement. In cross-examination, he said he remembered it "vaguely", albeit denying that he instructed AD Danieli Audit PL to sign off;

iv. In the circumstances, we consider that the 29 March meeting was arranged to undertake a substantive consideration of Epsilon issues. It may have been the case that Mr Raciti signed off certain aspects, or that little was left to be done;

(c) However, relevantly, we do not accept that the evidence establishes that Mr Raciti completed the Epsilon Review or performed any final sign off, nor do we find that Mr Danieli assumed that the review had been completed or finally signed off (as opposed to assuming that the file *would* be signed off). In our view, such conclusions would be inconsistent with the contemporaneous documentary records and are unlikely having regard to the evidence as a whole:

i. Mr Danieli's own evidence was that he did not recall being present at that meeting;

ii. The thrust of Mr Danieli's evidence was to the effect that "There was never any indication to me that we weren't going to be given clearance". This is not the same as believing that sign off had actually been given or believing that the Review had actually been completed;

iii. The email exchange on 27 April 2023 suggests that neither Mr Raciti nor Mr Danieli considered that the Review had been completed, in particular, Mr Danieli's response to Mr Raciti's request as to "how this audit is progressing", which was: "All good Mario, how about Vincent comes in to go through with James". There was no reason for Mr Danieli to invite the Reviewer to come in and go through things if Mr Danieli believed that the Review had already been completed and signed off;

iv. Mr Danieli's evidence in cross-examination showed that his expectation was that Mr Poon was going to go through "the EQCR process and the file" or "what hadn't been attended to at the time". He supplemented this evidence by saying that he "wasn't made aware that anything hadn't been attended to" but this is not consistent

with his invitation for Mr Poon to come in "to go through with James". If there was nothing to go through, why make the invitation?

v. Mr Raciti's contemporaneous understanding is confirmed by his subsequent email query "By which date do you need to sign the audit report?" This was a clear indication that Mr Raciti did not know that the audit report had been signed off, and it also suggests that Mr Raciti was attempting to work out how much time he had to complete the Review. In other words, this email is not consistent with the Review having been completed or Mr Raciti having signed off;

vi. The above evidence is, rather, consistent with an approach that the EQCR for Epsilon was to be completed *after* the signing of the audit report. In cross-examination, Mr Phu stated that this was normally the way the EQCR was done – indeed, he went on to say that this was "always" the way it was done[41];

vii. Ultimately, there was no documentary record of a sign-off or completion of the Epsilon EQCR and no documentary communication recording the sign-off or completion of the Review;

viii. Further, we find that there was no invoice issued for the Epsilon Review and no amount paid by AD Danieli Audit PL in relation to the engagement. Mr Raciti said that no invoice was issued. Mr Danieli said he did not recall receiving an invoice but that he had not looked to see if an invoice was issued[42].

ix. Having only recently received the countersigned Engagement Letter, providing for a fee of $3,000.00 plus GST, if Mr Raciti had completed the Review or signed off, there was no reason for him not to send an invoice;

x. Further, the absence of any request by Mr Danieli for Mr Raciti to issue an invoice in the days and weeks following the 27 April 2023 email exchanges, is also inconsistent with any belief on the part of Mr Danieli that the Review had been completed or signed off;

xi. Accordingly, we do not accept Mr Phu's evidence in relation to the 29 March 2023 meeting, that Mr Raciti reviewed, cleared and personally instructed AD Danieli Audit PL to sign off on the Epsilon file for financial year 2023;

(d) We also note, as a contextual matter, that Mr Danieli signed the letter of engagement. The fact that Hayes Knight proffered a letter of engagement for signature, containing important terms, indicated that Hayes Knight was intending to proceed on the basis of a formal letter of engagement. We consider that Mr Danieli, who signed the letter, would

[41] T53
[42] T252-253

have understood this and would have assumed that the parties intended to enter into the engagement by means of a formal letter of engagement;

(e) We also note, as a contextual matter, that the letter of engagement which Mr Danieli signed, would have alerted Mr Danieli to the facts that:

i. Hayes Knight was proposing to perform the Review in accordance with Australian Auditing Standards;

ii. In order to conduct the review, Hayes Knight would need access to all relevant information and documentation related to significant matters and significant judgment;

iii. Hayes Knight would also require cooperation from AD Danieli Audit PL staff to provide any additional information and clarification necessary to complete the review;

iv. Hayes Knight would discuss their findings with "you" and provide any assistance necessary to complete the review.

(e) Urbanise – audit report signed and dated 22 August 2023

Mr Danieli's evidence

178. Mr Danieli gave evidence that he had been auditing Urbanise since 2020 and that the key audit matters were fairly consistent. He stated that he was aware that the key audit matters for the Urbanise audit in 2023, were the carrying value of the intangibles and the goodwill, deferred income and going concern[43].

179. He stated that his role in the audit was handling the relationship with the client, understanding the business and relaying that to the staff, but also being hands on day-to-day with the staff and over-viewing. He said he would accompany staff on attendances with the client for part of the visit. He also said that his role included attending planning meetings, keeping an eye on things, answering queries and "to ensure that, of course, the deadlines are met"[44]. He stated that he was fully focussed on meeting deadlines because if they were not met, it was disastrous for the client and the shareholders.

180. Mr Danieli stated that he recalled meeting with Mr Raciti and Mr Phu in May 2023 to plan the Urbanise audit. He said they discussed what would be the key audit matters and what they had been in the past, and also the timeframes.

181. He stated that he did not have any further meetings with Mr Raciti either by phone or in person about the Urbanise EQCR process, "because then we sort of get on with the job"[45].

182. Mr Danieli stated that he was under the impression that Mr Raciti had the CaseWare program so had no issue about access to the CaseWare files. He

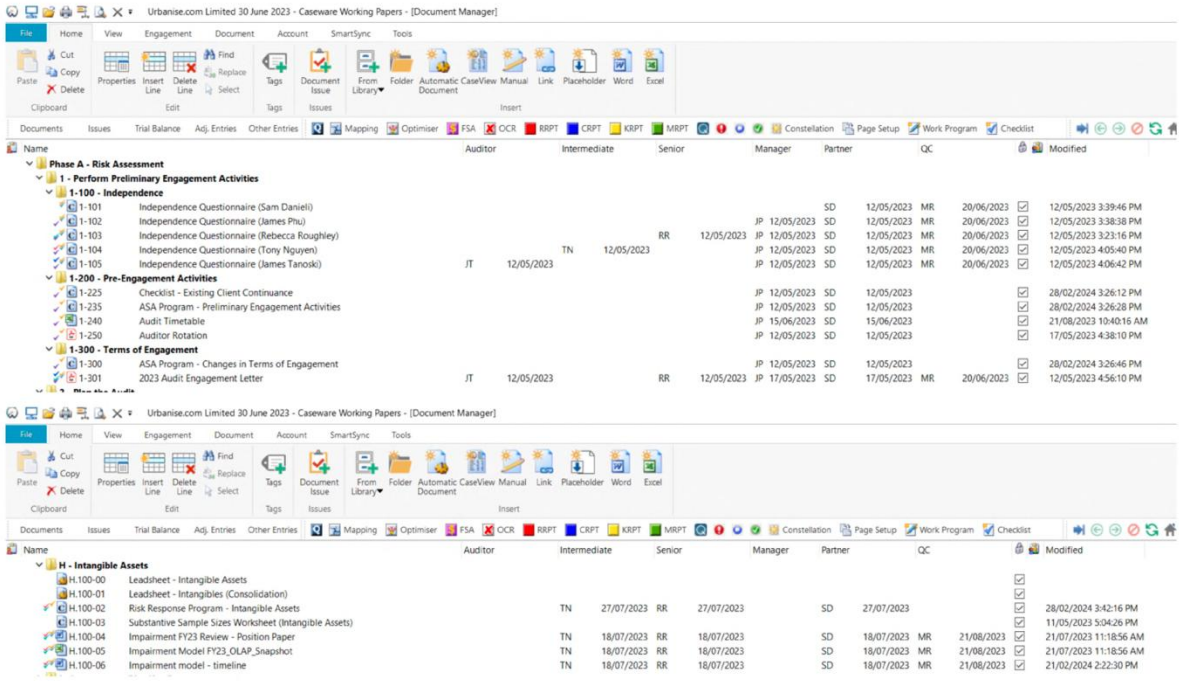
[43] T197
[44] T198
[45] T199

also stated that part of the reason why he engaged Mr Raciti was that he was in Pitt St and AD Danieli Audit PL were in George Street, a stone's throw away so if they needed access to the files, they could just come into the office.

183. Mr Danieli also said that the relevant companies and the audits were not overly complicated so that in a couple of hours, you could review certain sections and then you might have to come in another day.

184. He was shown the Urbanise CaseWare file, containing Mr Raciti's initials as signing off certain sections as "QC". He said he had never put Mr Raciti's initials on any CaseWare file and did not know who had put those initials there. Part of the file is reproduced below:

FY23 Urbanise.com Limited – WorkPapers screenshots



185. Mr Danieli was asked what discussions he had with Mr Phu about EQCR process for Urbanise. He said:

> "Along the way, we would discuss it, and "How's it all going", and James would assure me, reassure me, that it was progressing. Never any indication that there was going to be any hiccups or problems with sign-off."[46]

186. Mr Danieli said that he signed the audit report on 22 August 2023, being a draft which Mr Phu prepared and Mr Danieli checked carefully.

187. Paragraphs 28, 36 and 37 of Mr Danieli's Amended Concise Reply stated that:

> "28. On 18 August 2023, James Phu emailed Mr Raciti and Mr Poon regarding the status of the audit of Urbanise by ADPL.8 In that email, Mr Phu informed

[46] T201

Mr Raciti and Mr Poon that it was intended that the Urbanise reports would be signed and lodged on 22 August (the following Tuesday). Mr Phu attached the draft financial report, draft audit committee report and draft auditor report which were intended to be lodged. Mr Phu asked Mr Raciti in the email whether 'any changes to the reports were required.' Mr Raciti did not reply. I understood the absence of a reply meant that Mr Raciti was satisfied with the contents of the draft reports and that they were ready to be signed.

…

"36. In the lead up to the audits being due in August and September, I was in regular communication with James Phu about the audit status. At no point in those conversations did James raise with me that there was an issue with the EQCR having access to files or having insufficient information.

37. Mr Raciti was made aware of the timelines for the auditor's reports to be lodged in about March 2023, when he accepted the engagement to be the EQCR. Yet, by September 2023, the external reviews by Hayes Knight had not been completed."

188. Then, in paragraph 46 of the ACR, he stated:

"I dispute that Mr Phu ever told me that Mr Raciti had 'refused' to sign off. On the contrary, whilst I had not received a formal sign off from Mr Raciti, it was my understanding that the audit file was in order and that no problems had been identified by the EQC."

189. In relation to the signing of the Urbanise Audit Report, he gave the following evidence:

"Q. When you signed the Urbanise audit report, did you know whether or not the EQCR process had been finalised?

A. Yes. The process certainly, yes. With - with

these audit files, look, it - it is evolving.

Day to day, you build up the file. It's a bit

like, you know, if you're building a brick wall,

it's brick by brick. You just don't throw the

bricks and up comes the brick wall. It's brick

by brick. We build the audit file.

And, yes, sometimes right at the end there

may be some loose ends, and so I believe that's

why there is the 60-day assembly period in order

to then compile, because sometimes, as much as
you push and push, sometimes the client just
doesn't get the information. So then you would,
you know, insert that document, if you were - but
I think the other day there was something about
those contracts, that they - that we had unsigned
contracts, but then we received signed contracts.
Sometimes, with these audits, unfortunately,
you know, there might be some loose ends. But
not in relation to the audit. It's in respect to
the completing the full file and compiling the
full file, yes.
Q. All right.
THE CHAIRPERSON: I'm not sure that was an answer to
your question.
MS BENTLEY: No. I'm going to ask it again.
Q. Did you know that the EQCR process had not been
finalised at the time you signed the audit
report?
A. I believed that it was because of - I had -
no-one had indicated to me that it wasn't.
That's why I was able to sign off. I asked
James, "Has that been all finalised?" The answer
was "Yes". I've had no indication from James or,
in that instance, Mario, that I wasn't going to
be given clearance.
So then I've got a deadline to meet. My
focus is on the deadline. I've completed the

audit. I believed my audit conclusion is

correct, and so we engaged the EQCRs, they were

engaged all along, and so then I'm confident that

the audit has been completed, the process has

been finalised. Yes, there might be a few loose

ends in the fire, but I'm confident. That's why,

then, I was able to sign off.

Q. Did you believe there was anything to go in the

EQCR process?

A. No, not with the EQCR process."

190. Mr Danieli gave evidence that he remembered receiving an email on 26 September 2023 from Mr Phu, part of which is reproduced below:

From:	James Phu <James@addca.com.au>
Sent:	Tuesday, 26 September 2023 10:37 AM
To:	Mario Raciti; Vincent Poon
Cc:	Sam Danieli
Subject:	Audit Updates
Attachments:	CMD_Ann Rep_2023v2.doc; 30 June 2023 Audit Committee Report - No Watermark.pdf

Hi Mario & Vincent,

Hope you both have been well. Just to give you an update on everything:

Urbanise

- Waiting for Client to send back over the signed contracts and provide addition commentary on points raised. There were only 3 contracts out of 60 contracts that were unsigned (5%).

191. Mr Danieli stated that his thinking, upon receiving that email was that it was providing an update on the overall file and that if there were any loose ends, they would certainly be attended to and finalised during the 60-day assembly period. He stated that there was nothing in the email which indicated to him that there were not any audit issues which had not been addressed.

Mr Phu's evidence

192. Mr Phu gave evidence that he was the Audit Manager for the Urbanise Audit and worked on specific parts of it and that Mr Raciti was the EQCR for the Urbanise Audit.

193. Mr Phu gave evidence that in mid-late 2023, he met Mr Raciti and Mr Poon at AD Danieli Audit PL's office and went through the planning and key audit

matters for the Urbanise files. At that meeting, they assessed and discussed what the audit team was required to do.

194. On 2 August 2023, Mr Phu provided Mr Raciti and Mr Poon with the 1st draft of the financial statements for Urbanise, together with the Draft Audit report, draft audit committee meeting and a very detailed Audit Timetable from the client. Mr Poon replied with "Thanks for the information" and did not make any further requests or express any concern about the documents provided.

195. The emails are set out below:

From: James Phu <James@addca.com.au>
Sent: Wednesday, 2 August 2023 4:30 PM
To: Mario Raciti <mario.raciti@hayesknight.com.au>; Vincent Poon <Vincent.Poon@hayesknight.com.au>
Cc: Sam Danieli <Sam@addca.com.au>; Steven McDowell <steven@addca.com.au>
Subject: Urbanise Reports

Hi Mario & Vincent.

Please find attached the following:

1. 1st draft of financial statements which will be updated by the client tomorrow/Friday. Changes to the financial report include updating AASB16 calculations & the impact of transfer pricing.
2. Draft audit report
3. Draft audit committee meeting.
4. Audit Timetable from the client.

Below is the timeline for the audit field work with our comments:

FY23 Audit	Commencement Date	Due Date	Comments
TB to the auditors	Monday, 10 July 2023	Monday, 10 July 2023	Received 13 July 2023 – **updated TB show adjustments**
RSA local audit report	Monday, 10 July 2023	Friday, 28 July 2023	Sent 27 June 2023 – **Transfer pricing figur**
Audit field work - walkthrough, control/sample testing, testing of impairment/debtors	Tuesday, 11 July 2023	Thursday, 10 August 2023	Started 13 July 2023 – **last attendance Thu**
Board Minutes	Monday, 3 July 2023	Tuesday, 4 July 2023	Received
Board Packs	Monday, 3 July 2023	Tuesday, 4 July 2023	Received
Bank statements	Monday, 3 July 2023	Wednesday, 5 July 2023	Received major bank accounts from Gareth - **waiting for immaterial bank balances**
Debtors Summary and Provisions	Tuesday, 11 July 2023	Tuesday, 11 July 2023	Received
FAR	Tuesday, 11 July 2023	Tuesday, 11 July 2023	Received
Impairment Model	Tuesday, 11 July 2023	Tuesday, 18 July 2023	Received
ATO reports	Monday, 3 July 2023	Friday, 7 July 2023	Received ATO copies – require lodged BAS l
Payroll tax reconciliation	Monday, 3 July 2023	Thursday, 20 July 2023	Not yet received – await for lodgement.
Payable Summary	Tuesday, 11 July 2023	Wednesday, 12 July 2023	Received
Provision calculations	Tuesday, 11 July 2023	Thursday, 13 July 2023	Received
Deferred revenue workpaper	Tuesday, 11 July 2023	Friday, 14 July 2023	Received
Equity reconciliation	Tuesday, 11 July 2023	Tuesday, 18 July 2023	Received
Share Register	Tuesday, 11 July 2023	Tuesday, 18 July 2023	Received
Revenue samples	Tuesday, 11 July 2023	Friday, 28 July 2023	**Waiting for contracts**
Expense samples	Tuesday, 11 July 2023	Friday, 28 July 2023	We will provide you with samples –insurance
Payroll	Tuesday, 11 July 2023	Friday, 28 July 2023	Sample received – APAC SA and UAE.
Tax Calculations	Tuesday, 11 July 2023	Friday, 28 July 2023	**Received – to discuss about transfer pricil**
Lease	Tuesday, 11 July 2023	Friday, 28 July 2023	**Updated Lease calculations to be includec**
Analytical Review	Wednesday, 19 July 2023	Friday, 28 July 2023	**Received**
ME new regulation	Tuesday, 11 July 2023	Friday, 28 July 2023	Received

Kind Regards,

A D Danieli
Chartered Accountants

James Phu
james@addca.com.au

Re: Urbanise Reports

From Vincent Poon <Vincent.Poon@hayesknight.com.au>
Date Wed 02/08/2023 5:06 PM
To James Phu <James@addca.com.au>; Mario Raciti <mario.raciti@hayesknight.com.au>
Cc Sam Danieli <Sam@addca.com.au>; Steven McDowell <steven@addca.com.au>

Hi James,

Thanks for the information.

Regards

Vincent Poon CPA
Registered Company Auditor
Director, Audit and Assurance Services

196. (For convenience, we note the following matters about these emails at this point:

(a) Mr Danieli was copied into the emails. Thus, in addition to the information about the Urbanise EQCR which he received at regular Monday morning meetings and from staff sending him their "Plan of the Day", Mr Danieli was provided with the more detailed information set out in this email;

(b) The email does not suggest that the CaseWare file had been provided or was to be provided;

(c) The financial statements attached were the first draft, and Mr Phu indicated that they were to be updated; and

(d) The audit timetable showed that the audit field work was due to finish on 10 August 2023).

197. Mr Phu agreed that on 18 August 2023, he emailed Mr Raciti and Mr Poon noting that Urbanise was wanting to lodge on 22 August, (ie, a few days later) and attaching various documents. He asked them if they could please review and let him know if any changes were required or if they had any questions. He said he would send over the CaseWare file via Dropbox like last time. The email was as follows:

From:	James Phu <James@addca.com.au> on behalf of James Phu
Sent:	Friday, 18 August 2023 4:06 PM
To:	Mario Raciti;Vincent Poon
Cc:	Sam Danieli
Subject:	Urbanise Reports & Caseware
Attachments:	Urbanise Annual Financial Report 2023.docx; 2023 Audit Committee Report-Urbanise - 16.08.2023.pdf; 2023 Independent Auditors Report.docx

Hi Mario & Vincent,

Hope you both have been well. Urbanise is wanting to lodge on Tuesday the 22nd of August and I have attached the following for review:

- Most recent financials
- Audit committee report
- Independent auditors reports.

The main accounting issues are:

- Intangible assets
- Revenue recognition
- Going concern
- Impairment
- Trade receivables
- Taxation
- AASB 16 Leases

The first 3 points are KAMs while the other 4 were issues that were immaterial.

Could you please review and let me know if any changes are required or if you have any questions.

I will send over the Caseware File via Dropbox like last time.

Kind Regards,

198. For convenience, we note the following about this email at this point:

(a) the email was sent at 4:06 pm on a Friday 18th August, and notified Messrs Raciti and Poon that Urbanise was wanting to lodge on 22nd August, which was only one clear business day later;

(b) the implication of the email was that, subject to sending over the CaseWare file, Mr Phu had provided all necessary material to Hayes Knight and was seeking their urgent completion of the EQCR. We say this because:

i. Mr Phu included the most recent financials, the audit committee report and the independent auditors report and there was nothing to suggest that these were provisional or early drafts (compare the 2 August email);

ii. Mr Phu identified the main accounting issues;

iii. Mr Phu identified the key audit matters;

iv. Mr Phu's question "could you please review" was a clear instruction to Hayes Knight that he expected them to take action;

v. Mr Phu's invitation "let me know if any changes are required or if you have any questions" was suggested that he was ready to deal with these matters and he expected them to take action and, if necessary, contact him about any issues;

(c) There was no suggestion in the email that, apart from sending over the CaseWare file, AD Danieli Audit PL were still working on the matter and would be sending further information.

199. However, Mr Phu also gave evidence that he did not send over the CaseWare file at this stage.

200. It is not clear if the reference to sending the CaseWare file over "like last time" was a reference to an earlier version of the Urbanise CaseWare file which had been sent to Hayes Knight, or a CaseWare file for one of the other entities.

201. In cross-examination, Mr Phu accepted that it was obvious from this email that Mr Raciti knew that Urbanise wanted to lodge on 22 August and that accordingly he knew that Mr Danieli would be signing the report by then. At the time of this email, Mr Phu did not believe that the EQCR had any outstanding issues about the Urbanise audit and that is what he communicated to Mr Danieli because Hayes Knight had "never responded back with any issues". (We note that Mr Phu did not give evidence to this effect in his statement). Then the following passage appears in Mr Phu's transcript of cross-examination:

> "MS BENTLEY: Q. And so you didn't say to Mr Danieli, just before he was about to sign the audit report, "Stop, wait, the EQCR process isn't finished" - you never said anything to that effect?
>
> A. No.
>
> Q. And that's because you, based on your engagement with Mr Raciti, viewed the EQCR process as, in substance, finished?
>
> A. No, it - it's because we have - we normally do the EQCR afterwards.
>
> Q. When you say you "do the EQCR afterwards", what do you mean by that?
>
> A. After the sign-off date.
>
> Q. You said earlier you knew that the EQCR process needed to be finalised before signing the audit report?
>
> A. Yes.
>
> Q. And so why weren't you trying to do that?
>
> A. Because it was always done like that.[47]"

[47] T53

202. We note, at this point, that the copy of the CaseWare file produced by AD Danieli Audit PL at the hearing contained entries indicated that Mr Raciti had "signed off" several workpapers on 20 June 2023 and 21 August 2023.

203. A copy of part of the workpaper is set out at paragraph 184 above.

204. We also note that it was not in dispute that on 22 August 2024, Mr Danieli signed and dated the FY24 auditor's report for Urbanise.

205. Mr Phu accepted that on 30 August 2023, he received an email from Mr Poon, copied to Mr Raciti and Mr Danieli as follows:

> From: Vincent Poon <Vincent.Poon@hayesknight.com.au>
>
> Sent: Wednesday, August 30, 2023 3:30 PM
>
> To: James Phu <James@addca.com.au>
>
> Cc: Mario Raciti <mario.raciti@hayesknight.com.au>; Sam Danieli <Sam@addca.com.au>
>
> Subject: Quality Review (Urbanise.com Ltd June 23)
>
> Hi James,
>
> Mario and I have reviewed the documents for the above entity. We note that we are yet to receive the following documents:
>
> - Completed Caseware file; and
> - Final version of financial report.
>
> ***As part of the quality review, we will be focusing on the significant risks that you identified in the report to audit committee***. Can we visit your office next week to review the working papers in Caseware with you when the completed Caseware file is available?
>
> Regards
>
> Vincent Poon CPA
>
> Registered Company Auditor
>
> Director, Audit and Assurance Services" (emphasis added)

206. Mr Phu gave evidence that he had not provided any version of the CaseWare file because AD Danieli Audit PL were still working on it. However, he provided Hayes Knight with the final version of the financial report straight after this email and physically delivered a copy of the CaseWare file to them on a USB.

207. Mr Phu replied to this email at 3:34 pm, copying Mr Danieli and Mr Raciti stating:

> "Hi Vincent,

> Did the Dropbox link not go through this morning?
>
> I will drop off the file to you now.
>
> With regards to Gladiator and Love Group, they are still in progress and I will upload the completed file when ready."

208. Mr Poon replied at 6:46pm on 30 August 2023, copying Mr Danieli and Mr Raciti stating:

> "Maro (sic) and I can visit your office on next Tuesday 10am to review the Caseware file with you. Please advise if it suit (sic) your schedule."

209. In an email on 31 August 2023, Mr Poon asked if there was any chance that Mr Phu could complete the CaseWare file for the other two entities by Tuesday so that they could go through it as well. Mr Phu confirmed that the reference to these two entities was a reference to Love Group and Gladiator.

210. Mr Phu agreed that he had had a meeting with Mr Raciti and Mr Poon at the offices of AD Danieli Audit PL on 5 September 2023, after the audit reports for Love Group and Urbanise had been signed and dated. Mr Phu said that the final version of the financial report had been completed and that he did not recall saying to Mr Raciti that it had not been completed.

211. Mr Phu gave evidence about a meeting at about this time when Messrs Raciti and Poon attended AD Danieli Audit PL's office for a review of Urbanise and Love Group Case Ware files in addition to discussions about Cassius. We consider that this must have been the meeting which took place on 5 September 2023, having regard to the way the meeting is described by Mr Phu and the contemporaneous documents. In his statement, he said:

> "22. My true recollection of this meeting was that Mario signed off a few sections verbally and required additional work to be done such as obtaining signed customer contracts, evidence of any changes in relation to the business of Urbanise and any other evidence that would substantiate the going concern assumption.
>
> 23. I did work on the file to address Mario's queries and my recollection is that there is a Word document on the file regarding this work."

212. There is an internal email from Mr Phu relating to a QC meeting on 5 September 2023. The email is as follows:

From: James Phu <james@addca.com.au>
To: Tony Nguyen <tony@addca.com.au>, Rebecca Roughley <rebecca@addca.com.au>
Date: Tue, 05 Sep 2023 12:05:52 +1000

Hey team,

These were the points raised in the QC meeting:

- * Revenue
  - * Need to request for all signed contracts
  - * Need PICA confirmation

- * Going Concern
  - * Need management information on ratio analysis + worse case scenarios
  - * Ratio Analysis needs to be brought up to management for Urbanise
    - * Employee Benefits Expense is 90% of revenue costs – target figure should be approx. 50%. – shows Urbanise not recouping costs in their revenue.
    - * Shows that pricing model for Urbanise might not be correct
    - * Employee and Hosting Costs are approx. 120% of revenue.

- * Impairment
  - * Need further analysis on Goodwill
  - * Include fact that substantial impairment was done previously

Kind Regards,

213. Mr Phu said that although he believed that Mr Raciti was engaged as the EQCR in relation to Urbanise, did not know if Mr Raciti did any work, other than engaging with him in the AD Danieli Audit PL office on the Urbanise file.

214. Mr Phu confirmed that he had sent an email to Mr Raciti and Mr Poon on 26 September 2023 (see paragraph 215 below) in which he provided an update on Urbanise, to the effect that they were waiting for the Client to send back signed contracts and provide additional commentary on the point raised, noting that there were only 3 contracts out of 60 which were unsigned. He confirmed that this was a reference to an issue which had been raised by Mr Raciti.

215. The email is set out below:

From: James Phu <James@addca.com.au>
Sent: Tuesday, 26 September 2023 10:37 AM
To: Mario Raciti; Vincent Poon
Cc: Sam Danieli
Subject: Audit Updates
Attachments: CMD_Ann Rep_2023v2.doc; 30 June 2023 Audit Committee Report - No Watermark.pdf

Hi Mario & Vincent,

Hope you both have been well. Just to give you an update on everything:

Urbanise

- Waiting for Client to send back over the signed contracts and provide addition commentary on points raised. There were only 3 contracts out of 60 contracts that were unsigned (5%).

Love Group

- Client has responded to the queries that were discussed and I will be including this in the Audit File.

Gladiator Resources – (Gold & Uranium)

- Tidying up audit file.
- KAMs are:
  - Capitalised Exploration Expenditure
  - Impairment of exploration expenditure
  - Going concern

Cassius Mining (Limestone)

- I've attached audit committee report and updated financials.
- KAMs are:
  - Capitalised Exploration Expenditure
  - Impairment of exploration expenditure
  - Going concern
  - Legal matter with Ghanian Government

Pure Hydrogen (Hydrogen & Gas)

- Waiting for updated financial statements as numerous changes were picked up from version 1.
- KAMs are:
  - Investment in equity affiliates (equity accounting)
  - Capitalised Exploration, evaluation and development costs
  - Impairment of exploration, evaluation and development costs

Kind Regards,

216. Mr Phu gave the following evidence in his statement:

> "24. Mario did not provide final clearance or sign off on the Urbanise Audit. My understanding from discussions with Vincent was that Mario did not feel comfortable in clearing the Urbanise file because he felt that there had not been enough work done on the file and that he would email Sam and it would be sorted out between them. Mario sent ADDA an email with words to the effect of *"I'm not signing it".*
>
> 25. I advised Sam that Mario refused to provide the final clearance on the Urbanise file and Sam advised me that it would be sorted out between him and Mario. My understanding is that Mario and Sam are friends and I have no knowledge of what subsequently happened between Sam and Mario.

26. I heard nothing more about the Urbanise file. The next few months were disruptive for me ….

27. I believe someone other than Mario signed off on the Urbanise EQCR but I do not know the identity of that person. The audit system does not reveal who signed off on the EQCR. When a person logs into the file there is no password and that person can choose to assume any identify.

28. I did not sign off the Urbanise EQCR and I was not asked to sign off on the Urbanise EQCR."

217. Mr Phu accepted that he discussed with Mr Danieli whether Mr Raciti was going to sign off and said "there weren't any major issues at the time"[48]. He said he probably did say to Mr Danieli "Mario is going to sign it".

218. The transcript of Mr Phu's cross-examination continues[49]:

"Q. And do you accept that at all times during those months of August - July, August, September, you gave Mr Danieli the impression that the EQCR process was completely under control?

A. Well, yes. He was also in the emails.

Q. And do you recall attending regular Monday morning meetings with Mr Danieli and the rest of the audit team?

A. Yes.

Q. And is it right that during those meetings, you each provided updates as to where things were at with your various audits; is that right?

A. Yes.

Q. And would you accept that at no point during any of those meetings did you say to Mr Danieli that the EQCR was unhappy with the documents or there were outstanding issues you couldn't fix by the time that Lodgement deadlines were going to come

[48] T68
[49] T68-9

about?

A. I didn't receive any feedback.

Q. But do you accept that you didn't - you certainly

didn't tell Mr Danieli that there were any

outstanding issues?

A. Oh, yes.

219. In February 2024, Mr Phu visited Mr Poon and gave him the CaseWare files for Cassius and Pure Hydrogen. Mr Phu said that he had a discussion with Mr Poon on that occasion and was told that Mr Raciti did not feel comfortable in clearing the Urbanise file because he felt that there had not been enough work done on it and that he would email Mr Danieli and sort it out.[50]

220. Mr Phu was asked in cross-examination why he was giving him the CaseWare files so many months after the audit reports were due and he said "because we finished the files and we gave him the completed files."[51]

221. On 22 February 2024, Mr Poon emailed Mr Phu, asking him if the audit report for the Listed Companies had been signed off for the year ended June 2023. Mr Phu replied by email confirming that all the audit reports had been signed off and lodged to the ASX.

Mr Raciti

222. Mr Raciti gave evidence that at the meeting which took place on 13 March, 2023 between Mr Danieli and Mr Poon and himself, Mr Danieli advised that Hayes Knight was to be engaged as EQCR with respect to Urbanise for the year ended 30 June 2023.

223. They had another meeting on 27 March 2023, but that was for the purpose of meeting Mr Danieli's audit team.

224. Mr Raciti accepted that he received the email on 20 June 2023 providing the audit timetable in relation to Urbanise and that he took note of the deadlines.

225. On his evidence, nothing further happened in relation to Urbanise until 2 August 2023, when he received the email from Mr Phu (set out above) attaching draft financial statements, draft audit report, draft audit committee meeting, and audit timetable documents for Urbanise.

226. In cross-examination, Mr Raciti said that after he received this email, he did not review the attachments because they were waiting for the entire CaseWare file to be completed and were not doing any work until the entire file was finalised. He gave, as his reason for adopting this approach, "for efficiency purposes". He denied that he was waiting until the last minute but said that he was hoping

[50] T67
[51] T67

that the documents would have been delivered well before the due date. He stated that they were waiting for Mr Phu. He did not know whether he made Mr Phu aware of this, but stated that he was an experienced auditor and "He would have known". He did not know why Mr Phu was sending him documents if he was of the view that Hayes Knight were not going to look at them.

227. According to his evidence, nothing further happened in relation to Urbanise until 18 August 2023, when he and Mr Poon received the email from Mr Phu, which was copied to Mr Danieli, in which Mr Phu noted that Urbanise was wanting to lodge on 22 August 2023, (ie, a few days later) and attaching the Annual Financial report for the year ended 30 June 2023, draft and undated Independent Auditor's Report and Report to the Audit Committee for Urbanise. In the email Mr Phu said: "Could you please review and let me know if any changes are required or if you have any questions. I will send over the CaseWare File via Dropbox like last time."

228. (It is not clear if the reference to "last time" is a reference to an earlier occasion on which the Urbanise CaseWare file had been sent or a reference to some other CaseWare file).

229. Mr Raciti said, in cross-examination, that he did not review these documents, nor could he recall responding to Mr Phu because he thought Mr Phu would have known his obligations and he would have delivered the information on a timely basis, and not on 21 February 2024. He stated that notwithstanding the fact that this was a few days before the deadline, he did not see the necessity to speak to Mr Phu or Mr Danieli. He stated that Hayes Knight had the resources to give the job priority as soon as the remainder of the information was made available to them.

230. On 22 August 2023, Mr Danieli signed and dated the Audit Report for Urbanise.

231. On 30 August 2023 at 3:30 pm, Mr Poon sent an email to Mr Phu, copied to Mr Raciti and Mr Danieli set out in paragraph 205 above.

232. Mr Phu replied to this email at 3:34 pm, copying Mr Danieli and Mr Raciti stating:

> "Hi Vincent,
>
> Did the Dropbox link not go through this morning?
>
> I will drop off the file to you now.
>
> With regards to Gladiator and Love Group, they are still in progress and I will upload the completed file when ready."

233. Mr Poon replied at 6:46pm on 30 August, copying Mr Danieli and Mr Raciti stating:

> "Maro (sic) and I can visit your office on next Tuesday 10am to review the Caseware file with you. Please advise if it suit (sic) your schedule."

234. Mr Raciti gave evidence that on 5 September 2023, Mr Poon and he attended a meeting with Mr Phu at AD Danieli Audit PL's office in relation to

Urbanise.com and that during the meeting, Mr Phu informed them that the CaseWare file was incomplete and the final version of the financial report had not been completed. They informed Mr Phu that they required the final CaseWare file and the final financial reports before undertaking any review work, and ended the meeting on the basis that Mr Phu was disorganised and the meeting was a waste of time.

235. Mr Raciti gave evidence as to the importance of conducting a review with the full CaseWare file. He said:

> "A. Things flow in an audit perspective. If you approach a CaseWare file in segments, there's always the risk that - well, firstly from an efficiency point of view, I mean, it makes a lot of sense to review the file in full.
>
> Also, when you're reviewing a file, certain sections of the file integrate or interrelate with other sections, and so looking at sections in isolation or not having a complete CaseWare file could lead to risks, and that's why we were very, very keen to have the entire CaseWare file available to us at the time. That was - well, from an efficiency point of view and from a risk minimisation point of view, we - these - we were prepared to devote the necessary time to conduct that review provided we had the entire CaseWare file available to us."

236. Mr Raciti was cross-examined about Mr Phu's evidence that they had had a meeting at about this time when Mr Raciti verbally signed off on some sections.

> "Q. Now, Mr Phu says in his witness statement that there was a meeting about Urbanise –
>
> A. Yes.
>
> Q. -- during which you signed off some sections verbally and you required additional work to be done such as obtaining signed customer contracts, evidence of any changes in relation to the business of Urbanise, and any other

evidence that would substantiate the going concern assumption. Do you recall that meeting?

A. No, and that statement is untrue.

Q. Did you ever say to him that more work needed to be done, such as obtaining signed customers' contracts?

A. No.

Q. Can you explain why he went away and asked the company for them and sent you a note saying he'd done it?

A. Because he was aware that they were required rather than us instigating that information to be procured."

237. Mr Raciti accepted that in August 2023, he did not reach out to Mr Phu or Mr Danieli to ask for further information despite being aware of the deadlines. When asked whether he believed he had performed his duty as EQC Reviewer adequately, he stated that he did not believe that he was engaged at that point in any capacity.

238. Mr Raciti stated that on 26 September 2023, he received an email from Mr Phu providing updates on the AD Danieli Audit PL audits (see paragraph 215 above). In relation to Urbanise, he stated based on the email that the status of the audit for Urbanise appeared to be incomplete.

239. Mr Raciti gave further evidence that:

(a) On 21 February 2024, James contacted Vincent and personally delivered a USB device containing 3 full CaseWare files to Vincent, including the Case Ware file relating to Urbanise, referred to in paragraph 27 of his statement.

(b) Hayes Knight did not issue an engagement letter to AD Danieli Audit PL and did not undertake any work in relation to Urbanise.

(c) He did not log in or access the Urbanise CaseWare file; and

(d) Neither Hayes Knight nor he marked any work papers, conducted or signed off on any EQCR regarding Urbanise, or gave instructions to Mr Danieli or AD Danieli Audit PL to sign off on any Urbanise EQCR.

240. Mr Raciti was challenged on this evidence in cross-examination, particularly by reference to Mr Poon's statement in the 30 August email that "Mario and I have reviewed the documents". Mr Raciti, having denied that they did any work or reviewed any documents was cross-examined as follows:

"Q. Is what Vincent is saying there, then, untrue?

A. Okay, it's - we didn't review any documents. Okay. What we did was reviewed the list of documents that we - that we required. Okay? So we didn't review any documents; it was more - what Vincent should have said is that,

"We reviewed the list of documents. We note that we're yet to receive the following: Completed CaseWare; and the final version of financial reports."

So what he's - what Vincent's looked at is, okay, we've got some documents, we didn't review them, but we need some - we need these – the completed CaseWare files and final version of the financial reports.

Q. It's not what it says, though, is it? It says:

Mario and I have reviewed the documents for the above entity.

A. Yeah. That's - that's poorly written by Vincent.

Q. I suggest that you and Vincent had reviewed the documents?

A. Well, I –

THE CHAIRPERSON: Can you just take the questions one by one? Who - I mean, Mr Raciti can answer for himself, unless it's established that he did something together with Mr Poon.

THE WITNESS: I didn't write that email.

MS BENTLEY: Q. And had you reviewed the documents?

A. No.

Q. Had Vincent reviewed the documents?

A. I suspect not.

Q. You suspect not but you don't know?

A. My understanding is that Vincent didn't review any documents. He looked at the list of documents that were still - that were required, before conducting the review of the documents. I think that's poor English on Vincent's part.

Q. Do you accept that this email gives the impression, at least, to Mr Phu and Mr Danieli, the recipients of the email, that you are reviewing some of the documents?

A. I can - yes."

241. Mr Raciti gave evidence that after the 26 September 2023 email, he received nothing further until February 2024. He said that he became uncomfortable because of concerns regarding Mr Phu's competence from an organisational perspective and respecting deadlines. He was so concerned that he decided he would not be the EQCR for the 5 Listed Companies. He accepted that he did not communicate this to anyone because there was total silence, and the whole process of provision of information was being dealt with very poorly. He accepted that "perhaps I erred in not communicating with Mr Danieli the circumstances"[52].

[52] T158-159

242. Mr Raciti accepted, in cross examination that he had received the timetable showing that the audit committee meetings were happening shortly prior to the end of the lodgement period and had received draft audit committee reports and knew those meetings were going ahead, but agreed that he said nothing to Mr Phu and Mr Danieli[53].

243. It was put to him that he did work on each of the audit files and was now denying that he had just to distance himself from the matter. He denied this. It was put to him that he did not take his role as EQCR seriously at all and he said "We did"[54].

(f) Findings in relation to the Urbanise EQCR process

Issue 11 - whether in FY23, Hayes Knight were engaged as EQCR's for Urbanise (ACR par 10(i))

244. For reasons set out below, we find that Hayes Knight was engaged (or appointed) as at 22 August 2023, although the position as at that date was not clear, and on the information provided to Mr Danieli, he could not have been sure about whether or not Hayes Knight had been engaged, or the terms upon which they were engaged. Oddly, the position became clearer *after* sign-off of the audit report, as a result of the parties' conduct, which confirmed that Hayes Knight had accepted the engagement.

245. At the outset, we note that the parties formulated this issue by reference to the question whether Hayes Knight were "engaged". We consider that the real question (when considering compliance with the standards) was, rather, whether Hayes Knight was "appointed". Under the relevant standards, Mr Danieli was required to determine that an EQC Reviewer had been "appointed". There is no requirement to determine that an EQC Reviewer has been "engaged", (assuming there is a difference in these terms). Indeed, the term "engagement" in the relevant standard is actually used in reference to the "*audit* engagement", rather than the relationship with the reviewer. Thus, the real question here, should be whether an EQC reviewer had been "appointed".

246. "Engagement" (in contradistinction to "appointment") connotes the formation of a contract to govern the appointment.

247. There is no definition, in ASA 220, as to what is required in order to "appoint" an EQC Reviewer. In ordinary circumstances, the appointment to a position or office requires no more than the statement by the appointor of the fact of appointment, communicated to the appointee and consent by the appointee to act, cf the statutory prescription for consent to an appointment as a reviewing liquidator in the *Insolvency Practice Schedule (Corporations) s 90-25*). Consent to act can occur by conduct, without any express acceptance, for example, where a person consents to an appointment as a trustee, by acting as trustee.

248. The distinction we make was not adverted to in the parties' submissions, and we will deal with the issue raised by the parties, namely, whether or not Hayes

[53] T159-160
[54] T161-162

Knight had been "engaged". This involves consideration of whether a simple contract of engagement had been formed. In our view, such a contract could be formed orally or even by conduct. There is nothing in the nature of this type of contract which would require the contract to be in writing. However, the conduct of the parties may make it clear that they only intend to contract by means of a formal written engagement letter.

249. Mr Raciti gave evidence that Hayes Knight was not engaged in relation to the EQCR process but this really involves his view of a question of law or a question of mixed fact and law. Mr Raciti's position appeared to be based upon his view that he intended, or it was necessary, to execute a formal written engagement letter before an engagement could take effect. We can understand that view, and one would normally expect that parties would adopt that formality in appointing an EQC Reviewer. However, we do not consider that such a formality is essential to the "engagement" of an EQC Reviewer.

250. Mr Danieli contended, in paragraphs 23*ff* of his Amended Concise Response:

(a) That he intended to execute the engagement letter closer to the completion of the external reviews[55];

(b) Despite not having signed the letter, it was apparent to him through 2023 that Hayes Knight had been engaged to undertake EQCR work, as evidence by the engagement letter which "accepted" the role, and the work that Mr Raciti and Mr Poon did do, in trying to access the files and communicating with Mr Phu;

(c) At all times he was of the understanding that Hayes Knight had been engaged to perform the role, and was performing the role, irrespective of whether the engagement letter was signed.

251. In our view, it is clear enough that Hayes Knight communicated their willingness to undertake the role of EQC Reviewer for Urbanise for 2023:

(a) Mr Raciti received the email from Mr Danieli on 9 March 2023 asking whether he was interested in performing the role of the quality reviewer and Mr Raciti indicated "we were";

(b) on 13 March 2023, Mr Raciti had a meeting with AD Danieli Audit PL to discuss whether Hayes Knight had the resources to do what was asked, the anticipated fee structure and the balance dates for the companies concerned;

(c) Mr Danieli advised at that meeting "that Hayes Knight was to be engaged as EQCR" with respect to (amongst others) Urbanise, for the year ended 30 June 2023;

[55] He only referred to the Love Group engagement letter in this context, (par 24) but in the course of dealing with all 5 audits.

(d) Mr Raciti had a further meeting on 27 March 2023 to meet the audit team including Mr Phu and Mr McDowell and to discuss the background on each of the entities; and

(e) Mr Raciti said in cross examination that he took note of the dates listed for the proposed audit committee meetings and lodgement deadlines and said he was aiming to work to complete his process before the deadlines.

252. However, there was contextual evidence suggesting an intention by the parties to engage Hayes Knight only by means of a formal engagement letter. This is one area whether the "context" of the Epsilon review was relevant:

(a) The context included the fact that Hayes Knight had sent the draft formal engagement letter to Mr Danieli for the *Epsilon* Review on 27 March 2023 requesting Mr Danieli to sign and return it, which he did;

(b) That terms of the letter were significant, and contained important provisions relating to the proposed EQCR (including provisions which were to Hayes Knight's benefit and which, it should be inferred, was a reason why they would only have wished to proceed on the basis of a formal engagement letter);

(c) The letter included the final paragraph "Please sign and return the attached copy of this letter to indicate your acknowledgement of and agreement with, the arrangements for our engagement quality review for an audit engagement including our responsibilities"; and

(d) A further draft engagement letter was sent to Mr Danieli, in the same terms, on 28 April 2023 in relation to the Love Group.

253. In the light of this context, by April 2023, we consider that a reasonable person in the position of Mr Danieli would have understood that Hayes Knight was proposing to accept the position as EQC Reviewer in relation to each entity only through a formal letter of engagement executed by both parties.

254. However, the position moved on:

(a) On 2 August 2023, Mr Phu provided Mr Raciti and Mr Poon with the 1st draft of the financial statements for Urbanise, together with the Draft Audit report, draft audit committee meeting and a detailed Audit Timetable from the client;

(b) Mr Poon replied with "Thanks for the information". (He did not reply to the effect that Hayes Knight had not yet been appointed EQC Reviewer, or by sending a draft letter of engagement and requesting AD Danieli Audit PL to sign it);

(c) Documents were then sent to Hayes Knight by AD Danieli Audit PL on 18 August 2023, including the most recent financials, audit committee report and the independent auditors report; and

(d) Mr Raciti received those documents, without objecting (and knowing that the proposed lodgement date was 22 August 2023).

255. In the light of the above, we consider that, by 18 August, (and as at 22 August 2023):

(a) Whilst the position was far from clear, the better view is that Hayes Knight had accepted their appointment or engagement as EQC Reviewer, notwithstanding that the parties had initially contemplated that the appointment or engagement would occur by means of the execution of a formal engagement letter; and

(b) We accept that Mr Danieli assumed this to be the case (as was implicit in his general evidence);

(c) However, having regard to the above confused position revealed in the communications and documents copied to Mr Danieli, he had no reasonable basis for thinking the position was clear.

256. To the extent that the situation after 22 August 2023 is relevant, the conduct of the parties thereafter confirmed that Hayes Knight was engaged and, indeed, made the position clearer:

(a) On 30 August, Mr Poon replied to Mr Phu's earlier email and stated "Mario and I have reviewed the documents for the above entity". He also said "*As part of the quality review*, we will be focusing on the significant risks *that you identified in the report to audit committee*" (emphasis added). It must follow that Mr Poon was proceeding on the basis that Hayes Knight had been appointed and had read the report to the audit committee which had been sent by Mr Phu on 18 August;

(b) Mr Poon also asked if they could "visit your office next week to review the working papers in CaseWare with you when the completed CaseWare file is available", which could well have been interpreted to mean that they intended to sign-off on that visit;

(c) There was a significant meeting on 5 September when Mr Raciti raised a number of matters which needed to be attended to; (We accept that Mr Phu's file note was genuine); and

(d) On 27 February 2024, Mr Raciti sent an email to Mr Danieli stating, in connection with all 5 Listed Companies (including Urbanise) "we have decided to withdraw from the engagement to undertake the quality review in respect of the abovementioned entities". This involves an implicit acceptance that Hayes Knight had been engaged to undertake the quality review (and we note that post contractual conduct may be take into account in considering whether a contract was formed[56]).

[56] *Cirrus Real Time Processing Systems Pty Ltd v Jet Aviation Australia Pty Ltd* [2025] FCFCA 85 at [151] and [270].

257. Another sub-issue which arises here concerns the identity of the intended EQC Reviewer. Paragraph 19(a) of FY23 ASA 220 and para 36(a) of FY24 ASA 220 require the appointment of an "engagement quality control reviewer" or "engagement quality reviewer". The definition of those terms makes it clear that the reviewer must be an "individual", ie a human person (or in the case of FY23 ASA 220, "a team made up of such individuals"). Thus, in the present case, to appoint an EQC reviewer, Mr Danieli needed to appoint *an individual* and *that individual* needed to consent.

258. Mr Danieli's original request was made to Mr Raciti personally. Mr Raciti replied "*we* are interested in taking this role" (emphasis added). Mr Phu's evidence was generally to the effect that *Mr Raciti* was the person nominated as EQC Reviewer. His recollection of the conversation at the 13 March 2023 meeting was that the AD Danieli Audit PL staff asked *Mr Raciti* if he was okay to do the EQCR process for the other Listed Companies and he thought he said "yes".

259. Most of Mr Raciti's evidence, including emails he sent, used the word "we" suggesting that Hayes Knight, rather than Mr Raciti personally, was to be the EQC Reviewer. The emails included his email to Mr Danieli in February 2024 saying "*we* have decided to withdraw from the engagement to undertake the quality review in respect of the abovementioned entities". This, and other emails were sent by Mr Raciti in his capacity as director of Hayes Knight.

260. Having said that, Mr Raciti gave evidence in cross-examination to the effect that he, rather than Hayes Knight, was the EQC Reviewer[57].

261. It was no part of ASIC's case that Mr Danieli's performance was in breach of duty or involved serious failings because there was no engagement or appointment of an *individual* as EQC Reviewer (as opposed to Hayes Knight). Mr Danieli has not had an opportunity to address such a case. Accordingly, we express no final view on this issue.

Issue 19(a) and (b) - The extent to which Mr Raciti had access to the Urbanise audit files in FY23 (see also ACR para 10(v)) - The extent to which Mr Raciti reviewed the Urbanise audit files in FY23 – (see also ACR para 10(ii))

262. In this section, we consider issues 19(a) and (b), including the issues raised in paragraph 10(v) and 10(ii) of the ACR, namely, Mr Danieli's denial that in August and September 2023, neither Mr Raciti nor Hayes Knight had received a copy of the completed[58] CaseWare file and Mr Danieli's denial that on 5 September 2023, the Urbanise papers were not yet in a position to be reviewed.

263. The documentary evidence to which we have referred above clearly establishes that prior to the dating of the Audit Report for Urbanise:

(a) On 2 August 2023, Mr Phu provided Mr Raciti and Mr Poon with the 1st draft of the financial statements for Urbanise, together with the Draft

[57] T122.26, T123.23, T124.4

[58] See the FACO which amended para 67 (old paragraph 64) to allege that Mr Raciti and Hayes Knight did not receive the "completed" CaseWare files despite requests.

Audit report, draft audit committee meeting and the Audit Timetable from the client;

(b) On 18 August, Mr Phu provided Mr Raciti and Mr Poon with the most recent financials, audit committee report and the independent auditors report, in which Mr Phu identified, for the first time, the key audit matters;

(c) On 18 August, Mr Phu informed Mr Raciti and Mr Poon that he would send the CaseWare file via Dropbox.

264. It appears that the above documents were the only material provided to Hayes Knight prior to the sign off on 22 August 2023.

265. We find that, at the time the audit report was signed and dated (22 August 2023), Hayes Knight had not received the completed version of the CaseWare file for Urbanise or the final draft of the financial report (as Mr Poon recorded this position in his email of 30 August).

266. Indeed, it is not clear that any version of the CaseWare file had been provided to Hayes Knight by 22 August 2023. In cross-examination, Mr Phu said that when he received the email from Mr Poon on 30 August (in which Mr Poon said that they were yet to receive the complete CaseWare file), Mr Phu had not yet provided any version of the CaseWare file because they were still working on it[59].

267. At some stage between 18 August and 30 August, Hayes Knight (probably Mr Poon) undertook some consideration of the material which Hayes Knight had received on 18 August. This is clear from the fact that in Mr Poon's email of 30 August, he said that they planned to go through the CaseWare file with Mr Phu, focussing "on the significant risks *that you identified in the report to audit committee*" (emphasis added), indicating that he had read that report by that time.

268. We find that Mr Poon carried out this very limited consideration referred to in the 30 August email and that this review was carried out shortly prior to that email (and after 22 August 2023).

269. *Insofar as the provision of files and review in the period after 22 August is relevant,* after 22 August (the date of the audit report), Hayes Knight had access to more audit files:

(a) Mr Phu stated that he gave them the CaseWare file and the final version of the Financial Report after the email on 30 August. Mr Phu stated that he dropped the CaseWare file round to Hayes Knight on a USB. We accept that evidence;

(b) Mr Raciti and Mr Poon then attended a meeting with Mr Phu on 5 September.

[59] T58.26-T59.2

We prefer Mr Phu's version of this meeting to Mr Raciti's version. Mr Phu said that at this meeting, Mr Raciti signed off a few sections of the CaseWare file verbally and required additional work to be done such as obtaining signed customer contracts, evidence of any changes in relation to the business of Urbanise and any other evidence that would substantiate the going concern assumption. He also said that at this stage the financial report had been completed[60]

Mr Raciti's version was that nothing was achieved at the meeting, that they told Mr Phu that they needed the final CaseWare file before undertaking "any review work" and the meeting ended on the basis that Mr Phu was disorganised and the meeting was a "waste of time".

This is inconsistent with Mr Phu's notes of the meeting, which listed the items said to be raised by Mr Raciti which needed to be addressed, including Revenue ("need to request for all signed contracts"), Going Concern and Impairment. It is also inconsistent with the subsequent email from Mr Phu to Messrs Raciti and Poon on 26 September, in which Mr Phu provided an update on these matters, including "Urbanise – Waiting for Client to send back over the signed contracts and provide addition (sic) commentary on points raised. There were only 3 contracts out of 60 contracts that were unsigned (5%)".

These documents are contemporaneous records and they are consistent with Mr Raciti, at the meeting on 5 September, specifying remaining matters which needed to be addressed and the fact that Mr Phu was proceeding to deal with them.

We find that the Urbanise files were in a position to be reviewed as at the 5 September meeting.

270. However, there is no evidence that these matters were further progressed after the end of September and there is no evidence of any further action on the EQCR, until Mr Phu delivered files to Hayes Knight in February 2024.

271. Thus, in relation to the overall question as to the extent to which Mr Raciti had access to Urbanise files for FY23 and reviewed them:

(a) As at 22 August 2023, Mr Raciti had been provided with minimal access to files, and certainly not the completed CaseWare file, and had performed no meaningful review;

(b) After 22 August 2023, and shortly prior to 30 August 2023, Mr Poon undertook a very limited consideration of the documents provided by Mr Phu;

(c) Shortly after the 30 August email, Mr Phu provided Hayes Knight with the CaseWare file and the final version of the Financial Report;

[60] T63.12

(d) Subsequently, on 5 September, Mr Raciti and Mr Poon attended a meeting with Mr Phu in which they went through the CaseWare file and signed off certain sections, but raised a number of issues;

(e) Mr Phu contacted the client about the issues and, on 26 September provided Hayes Knight with an update to the effect that he was waiting for the client to send documents and provide additional commentary on the issues which Mr Raciti had raised;

(f) The matter was not further progressed until February 2024, at which point Hayes Knight withdrew from the matter.

272. In relation to the issue raised in paragraph 10(v) of the ACR (Mr Danieli's denial that in August and September 2023, neither Mr Raciti nor Hayes Knight had received the completed CaseWare file, and raised this request with Mr Danieli), we find that the completed CaseWare file had not been provided to Mr Raciti or Hayes Knight by 22 August. We are satisfied that Mr Phu provided the completed CaseWare file on about 30 August. We find that Mr Raciti or Mr Poon informed Mr Phu that they required the completed CaseWare file before they could review the working papers. This is consistent with Mr Poon's 3:30pm email on 30 August 2023, in which Mr Poon said:

> "Can we visit your office next week to review the working papers in Caseware with you when the completed Caseware file is available?"

273. We also consider that it is not consistent with good practice (or efficient) to embark on a EQC review when the CaseWare file was incomplete.

274. In relation to the issue raised in paragraph 10(ii) of the ACR (Mr Danieli's denial that on 5 September, the Urbanise workpapers were not yet in a position to be reviewed), our findings above show that on 5 September, the workpapers were in a position to be reviewed. However, we note that this was two weeks after he had signed and dated the audit report. Further, the fact that the workpapers were ready for review does not mean that Mr Raciti was required to sign off on the EQCR process. In fact, upon reviewing the workpapers, he raised issues which required further work and there is no evidence that AD Danieli Audit PL thereafter attempted to provide Mr Raciti with the results of this further work until February 2024.

Issue 19(c) - The extent to which Mr Raciti signed off the Urbanise audit files in FY23

275. The nature of this issue needs to be considered having regard to the discussion of the issue in the parties' Issues Summary which relevantly states:

> "[12] Mr Danieli disputes that CaseWare audit work papers were not signed off by Mr Raciti. Mr Raciti denies signing off on workpapers as EQCR."

276. We have doubts about the relevance of the fact, if it be the fact, that Mr Raciti signed off audit work papers (as opposed to signing off the completed CaseWare file as "QR", or completing the Review).

277. To the extent that it is relevant, we find that there was no sign-off of any audit workpapers prior to the audit report being dated and signed by Mr Danieli. Although there are entries in the CaseWare file showing Mr Raciti's initials as at 20 June and 20 August 2023, there is no clear evidence as to when the entries were actually made. The more reliable contemporaneous evidence is that any sign-off of audit work papers occurred after Mr Poon emailed Mr Phu on 30 August 2023, to say

> "Can we visit your office next week to review the working papers in Caseware with you when the completed Caseware file is available?"

278. We find that Mr Raciti did not sign off the Review (ie complete the Review) by the time of dating the audit report.

279. We have even greater doubts about the relevance of sign-off of audit working papers *after* the date of the audit report. However, we accept Mr Phu's evidence that Mr Raciti signed off a few sections of the CaseWare file verbally at the 5 September meeting, but required additional work to be done.

280. We find that Mr Raciti never completed or signed off on the Review.

Issue 19(d)* - The extent of Mr Danieli's communication and discussion of key audit matters for Urbanise in FY23 – *ACR para 10(iii)

281. This issue needs to be understood in the context in which it is presented in the "Issues Summary". In that document the parties state:

> "[15] Mr Danieli contends that in the lead up to the audits being due in August and September 2023, Mr Danieli was in regular communication with Mr Phu about the audit status. He says that at no point in those conversations did Mr Phu raise that there was an issue with the EQC reviewer having access to files or having insufficient information (ACR, [36]).
>
> [16] Mr Danieli says (ACR, [58]):
>
> (a) that the companies the subject of these audits were, in comparison to the listed company market, small cap. The number of significant matters for discussion is as a result of that was small as well; and
>
> (b) he denies that there was no discussion with the EQC reviewer and contends there was discussion throughout the audit process with Mr Danieli or members of the audit team."

282. ACR Para 10(iii) involves Mr Danieli's denial that Mr Raciti raised "issues" in a meeting of 5 September 2023. We will consider this together with para [15].

283. Further, evidence emerged in Mr Danieli's examination-in-chief, which went further than the Amended Concise Response, to the effect that Mr Phu made a positive statement that the EQCR had been finalised[61].

284. In other words, Issue 19(d) encompasses a number of issues:

[61] T203

(a) Whether there were issues raised by Mr Phu or the EQCR and Mr Danieli's knowledge or belief about this (**No issues raised point**);

(b) The extent of Mr Danieli's discussions with the EQCR (**EQC Reviewer discussions point**).

(c) A broader issue raised in the evidence, as to Mr Danieli's knowledge or belief concerning the completion of the EQCR at the time of sign off and subsequently (**Mr Daneil's knowledge**)

No issues raised point

285. In relation to the "No issues raised point", we note that Mr Danieli relies upon the fact that *Mr Phu* never informed him that there was an issue with the EQC reviewer having access to files or having insufficient information or any other issue. The real question is whether *Mr Raciti* raised any such issue. Mr Danieli does not assert, and there is no evidence, that Mr Danieli discussed the EQCR with Mr Raciti. Mr Danieli's case appears to be that he relied upon Mr Phu and if Mr Raciti had raised an issue, Mr Phu would or should have passed this on.

286. In cross-examination, Mr Phu gave evidence that at the time of the 18 August email, he did not believe that there were outstanding issues on the EQCR for Urbanise and that this is what he communicated back to Mr Danieli because Hayes Knight "had never responded back with any issues".

287. Mr Danieli gave evidence about regular Monday morning meetings during which all professional staff would go through audit jobs. He also implemented a system where every day, staff would provide him with a "Plan of the Day" as to what work they would do that day and he would provide feedback[62].

288. Mr Danieli produced no copy of a "Plan of the day" which made reference to the EQCR process. He said there was no reason why he had not produced such a document[63].

289. Notwithstanding this, we accept the evidence that Mr Phu was regularly updating Mr Danieli about the progress of the audits, that he never informed him that there were any issues on the Urbanise audit, and that he informed Mr Danieli as at 18 August that there were no outstanding issues.

290. However, Mr Danieli had much more precise information by 18 August. He had been copied into Mr Phu's email of 18 August which was, on its face, the first set of comprehensive instructions and documents provided to Hayes Knight, for the review and it showed that the EQCR was far from complete. It identified the key audit matters, which indicated that it was the first or an initial brief to Hayes Knight and the email noted that the CaseWare file was *yet to be provided*. This email was sent at 4:06 pm on a Friday 18th August, and notified Messrs Raciti and Poon that Urbanise was wanting to lodge the following Tuesday.

[62] T185-6
[63] T251

291. Even if, prior to the receipt of this email, Mr Danieli had been informed by Mr Phu that the EQCR was on track and no issues with access to files or insufficient information had been raised or no other outstanding issues had been raised, on receiving the 18 August email, with one business day to go until lodgement, Mr Danieli either became aware, or ought reasonably to have become aware, that Hayes Knight had only been effectively briefed with initial information on that day and was yet to receive the CaseWare file.

292. Thus, Mr Danieli knew, or was provided with information to show, by 18 August,

(a) That there *was* an issue with access to files, namely the important CaseWare file (in that the reviewers had not yet received it); and

(b) That very little time was available to permit Hayes Knight to consider whether they needed more information or access to files (or whether they had any issues generally in relation to the audit);

293. Thus, to the extent that Mr Phu had been assuring Mr Danieli that the EQCR process was on track and there were no issues, Mr Danieli was put on notice or ought reasonably to have considered that there were issues with the EQCR by 18 August. Urbanise was not said to be one of the small cap companies and we consider that a reasonably competent auditor in Mr Danieli's position would have been concerned about the state of progress of the EQCR, one business day away from lodgement date.

294. We find it odd that Hayes Knight did not respond to Mr Phu's 18 August email, at least to respond in relation to the proposed deadline of 22 August. The 18 August email put Messrs Raciti and Poon on notice (if they were not on notice already) that Urbanise were wanting to lodge on 22 August and they were being asked to proceed with the Review. In those circumstances, if, as appears likely, it was going to be difficult or impossible to complete the Review by 22 August, it was reasonable to expect that Hayes Knight would have notified AD Danieli Audit PL of this as a matter of urgency.

295. Having said that, it was Mr Danieli, not Hayes Knight, who had control of the sign-off of the audit report and who was the engagement partner responsible for the direction of the audit and who had (in our view) non-delegable duties to engage in discussions with the EQC Reviewer and make sure that the EQCR was complete by 22 August. Mr Danieli knew, or certainly ought to have known that he had to ensure that the Review was complete before sign-off. Mr Danieli knew or should have known as at 22 August that it was a real possibility that Hayes Knight had not yet been provided with the CaseWare file or had not completed their review, and that issues may yet be raised.

296. The related issue, raised in paragraph 10(iii) of the ACR, is that "Mr Danieli denies that Mr Raciti 'raised issues' in a meeting of 5 September 2023" (see also paragraph 33 of the ACR, where Mr Danieli asserted "I was not present at that meeting, and I did not receive a copy of that email of 5 September. No member of staff raised with me any concerns arising out of the QC Meeting").

297. In paragraph 13 of the Parties' Issues Summary, the parties note that Mr Danieli contends that no one told him about any 'issues raised' by Mr Raciti (at a meeting on 5 September 2023 at which Mr Danieli was not present). ASIC contends that when this meeting occurred, Mr Danieli had already signed the FY23 report for Urbanise on 22 August 2023 and further emails that Mr Danieli was carbon copied on after this date, being 26 September 2023 and 21 February 2024, indicated outstanding matters in the FY23 audit files impacting EQCR completion.

298. In our view, Mr Raciti *did* raise issues at the meeting on 5 September. We note that Mr Phu made a file note of the issues raised and if, as Mr Danieli contends, he asked Mr Phu about developments in each job at the regular Monday morning meetings, it seems likely that Mr Phu would have made him aware of these issues at such a meeting. Tony Nguyen and Rebecca Roughley had also been made aware of the issues in the file note and presumably they attended the Monday morning meeting as well. Further, Mr Danieli received the follow up email on 26 September 2023 providing the EQC Reviewer with an update in relation to each of the Listed Companies.

299. Mr Danieli gave evidence in relation to the 26 September email that "There's certainly nothing there which indicated to me there was any audit issues that we hadn't addressed"[64]. But there are several problems with this evidence:

(a) In the first place, the more relevant question was whether the EQC Reviewer had raised any issues;

(b) More importantly, it is difficult to see how Mr Danieli could have reasonably formed the view he asserts. In relation to Urbanise, the 26 September email stated that Mr Phu was "waiting for the Client to send back signed contracts and *provide additional commentary on the points raised*" (emphasis added). If, as Mr Danieli contends, no one had told him about the issues which had been raised at the 5 September meeting, he did not know what the "points raised" referred to in the 26 September emails were, and he could not reasonably have formed the view, from the 26 September email that there were no outstanding audit issues or no outstanding issues for the EQC Reviewer; and

(c) Perhaps most importantly, Mr Danieli's evidence misses the point, having regard to his obligations in relation to the EQCR process. His obligation was to discuss significant matters with Mr Raciti, *prior* to the dating of the audit report. The email of 26 September was more than a month after he had signed off and dated the audit report, without having had any discussion at all with the EQC Reviewer about the review. To say that an email, received a month after the deadline, did not indicate issues which hadn't been addressed, provides no assistance to Mr Danieli in relation to the performance of his obligations.

[64] T204

EQC Reviewer discussions point

300. In relation to the EQC Reviewer discussions point, we find that Mr Danieli did not engage in any discussion with Mr Raciti (or Mr Poon) prior to dating the audit report for Urbanise (or subsequently) of the matters required to be discussed by ASA 220, namely "significant matters arising during the audit engagement, including those identified during the engagement quality control review". Mr Danieli does not contend otherwise.

301. Mr Danieli appears to rely upon a contention that there were discussions between Mr Raciti and "members of the audit team".

302. We accept that there were discussions between Mr Raciti and Mr Phu. But

(a) These are of little, if any, significance in relation to Mr Danieli's personal obligation to discuss significant issues with Mr Raciti under the Auditing standards;

(b) There is scant evidence of discussions prior to 22 August 2023, which is the critical date in this context;

(c) Mr Phu gave evidence that "in mid-late 2023", he met Mr Raciti and Mr Poon at AD Danieli Audit PL's office and went through the planning and key audit matters for the Urbanise files. At that meeting, they assessed and discussed what the audit team was required to do. We consider that this must have been a reference to the 5 September meeting;

(d) The 5 September meeting and discussions occurred *after* the audit report sign off on 22 August;

(e) It was not submitted that there was evidence that the issues raised by Mr Raciti in the 5 September meeting were ever resolved; and

(f) As we have already found, Mr Raciti never completed the Review.

Mr Danieli's knowledge

Knowledge or assumption about engagement

303. We first consider Mr Danieli's state of mind concerning whether Hayes Knight had been appointed or engaged as EQC Reviewer about the engagement. He did not give express evidence concerning his assumption in this regard, but his broader statements that he assumed that the process was proceeding without any issues would include an assumption that Hayes Knight had been engaged or appointed.

304. We note that Mr Danieli was not challenged in cross-examination about his evidence that he assumed that the EQCR process was proceeding with no issues which would cause him not to sign off.

305. Our findings above, (including, in particular, the email exchanges in August 2023, which were copied to Mr Danieli, and the absence of any response by

Hayes Knight to those emails to the effect that there was no engagement yet), are consistent with the existence of an assumption by Mr Danieli as at 22 August 2023 that Hayes Knight had accepted the engagement or appointment as EQC Reviewer in relation to the Urbanise audit.

Knowledge or assumption about completion of EQCR

306. The more important issue is Mr Danieli's state of mind concerning whether or not the EQCRs had been completed as at the time he signed and dated the audit report for Urbanise.

307. We have set out, above, Mr Danieli's evidence about his assumptions about how the EQCR was progressing. In substance, Mr Danieli gave evidence that he was assured that the EQCR was progressing and there were no issues. For example, he gave evidence that during the course of the audit, he would discuss the EQCR with Mr Phu and ask him "How's it all going", and Mr Phu would assure him that it was progressing, and there was never any indication that there were going to be any hiccups or problems with sign-off.

308. Importantly, Mr Danieli gave the following evidence at T203:

> "Q: Did you know that the EQCR process had not been finalised at the time you signed the audit report?
>
> A. I believed that it was"
>
> And continued:
>
> "I asked James, "Has that been all finalised?" The answer was "Yes".

309. To the extent that this answer can be understood as evidence that Mr Danieli was informed by Mr Phu that the EQCR process had been formally finalised at the date that he signed and dated the audit report, and that he believed the EQCR had been formally signed off (cf ACR para 42) we do not accept that evidence.

310. Mr Danieli was not specifically cross-examined about these statements or similar statements in relation to other entities. But these statements were not consistent with the case which Mr Danieli had mounted in his Amended Concise Response, or consistent with other evidence.

311. As already noted above, Mr Danieli's case appears to have expanded from the case he put forward in his Amended Concise Response to the position he asserted, in examination-in-chief, to suggest that Mr Phu positively asserted that the EQCR had all been finalised. There was no allegation in Mr Danieli's Amended Concise Response to this effect. Nor was there any evidence to this effect in Mr Phu's statement.

312. In this regard, we note that Mr Danieli's position as set out in his ACR contained the following assertions, dealing with all audits in global terms:

> " [36] In the lead up to the audits being due in August and September, I was in regular communication with James Phu about the audit status. At no point in

those conversations did James raise with me that there was an issue with the EQCR having access to files or having insufficient information.

37. Mr Raciti was made aware of the timelines for the auditor's reports to be lodged in about March 2023, when he accepted the engagement to be the EQCR. *Yet, by September 2023, the external reviews by Hayes Knight had not been completed*. (emphasis added).

42. I dispute that Mr Phu ever told me that Mr Raciti had "refused" to sign off. On the contrary, whilst I had not received a formal sign off from Mr Raciti, it was my understanding that the audit file was in order and that no problems had been identified by the EQC."

313. The ACR continues at [45], [46]:

"[45] I was then *faced with a decision* to either lodge the auditor's reports in the absence of the EQCR or fail to meet the ASX deadlines for the lodgement of the financial reports. *I elected to do the former*. (emphasis added)

46. On 22 August 2023, I signed the FY23 auditor's report for Urbanise, and the Urbanise financial report (including the auditor's report) was lodged with the ASX."

314. The ACR then states in paragraph [52]:

"[52] At the time I *made the decision to sign the reports absent the EQCR completion*, I was feeling time pressures of meeting the ASX deadlines *and frustration at the lack of action from Hayes Knight*, despite clearly outlined and known deadlines. I did not know what to do, and *I ultimately chose* to ensure the clients met the ASX deadlines. I regret my actions and acknowledge that it was it a poor decision. I also regret not having monitored what Hayes Knight was doing more carefully, such that I would have realised that the work was not going to be completed in time."(emphasis added)

315. In other words, the position Mr Danieli put forward in his ACR was clearly to the effect that, at the time for signing the reports, he was frustrated by the lack of action from Hayes Knight (despite clearly outlined and known deadlines) and that he was in a position of doubt about whether he should hold off signing until the EQCR was complete or choose to sign although the EQCR process had not been completed. In substance, he contended in the ACR that he ultimately chose, or elected to lodge the auditor's reports in the knowledge that the EQCR had not been completed. (We will refer to Mr Danieli's contentions in paragraphs [45] and [52] of the ACR as "the ACR election contentions")

316. At the Hearing, the Board inquired of Mr Danieli's counsel as to the status of the ACR, particularly as it contained quite a bit of content in evidentiary form rather than pleading form, and she indicated that she did not wish to ask Mr Danieli to adopt it as evidence as it was a hybrid document with legal contentions, prepared with the assistance of lawyers and preferred Mr Danieli's evidence on oath to stand for itself. Nevertheless, the ACR represents the document which is intended to identify which matters alleged in the Concise Outline are disputed, to identify why they are disputed and to advance any other

matters potentially relevant to CADB's decision and an outline of the evidence to be adduced on the Application[65]. We consider that the way Mr Danieli outlined his case in the ACR is relevant in assessing his oral evidence.

317. Further, the assertion that Mr Danieli knew that the EQCR had been finalised by the time of the audit report (or subsequently) is not consistent with other evidence. Mr Danieli gave evidence

(a) That he understood, at the time, the obligations of an Engagement Partner to discuss significant matters with the EQC Reviewer and not to date the audit report before completion of the EQCR[66];

(b) That there was a document in the CaseWare file which needed to be complete for him to satisfy himself that the EQCR process had been finalised[67];

(c) He did not look at the CaseWare file at the time to check whether it had been completed[68], despite the fact that this would not have taken "long at all"[69];

(d) He was also expecting to receive a report to the auditor from Mr Raciti, as EQC Reviewer, at the end of the EQCR process[70]; and

(e) He never received such a report[71].

318. Mr Danieli was also aware of the Epsilon context, including the fact that Hayes Knight had indicated in the Engagement Letter (which Mr Danieli signed) that Hayes Knight was proposing to perform the Review in accordance with Australian Auditing Standards and would discuss "their findings".

319. Mr Danieli's evidence (set out in the extract at paragraph 308 above) is inconsistent and unconvincing:

(a) He was asked a clear question: "Q. When you signed the Urbanise audit report, did you know whether or not the EQCR process had been finalised? His answer commenced with "A. Yes. The process certainly, yes. With –" and then he commenced a long explanation, which suggested that it was an ongoing process which might have loose ends;

(b) He was then asked the question again in slightly different terms: "Q Did you know that the EQCR process had not been finalised at the time you signed the audit report?" He did not answer the question, (which required an answer about his actual knowledge) and instead he said "A. I believed that it was because of - I had - no-one had indicated to me that

[65] See the Board's PN1 para 7.1, 7.2
[66] T195, 246, 280-282
[67] T216-7
[68] T272.26
[69] T274.28
[70] T274.1
[71] T274.8

it wasn't. That's why I was able to sign off." The fact that no one had indicated to Mr Danieli that the EQCR process had not been finalised was hardly a reasonable basis for believing that it *had been* completed; and

(c) Mr Danieli's evidence continued: "I asked James, "Has that been all finalised?" The answer was "Yes". I've had no indication from James or, in that instance, Mario, that I wasn't going to be given clearance." This evidence was in ambiguous terms ("Has that") and unconvincing. We do not accept that Mr Phu informed Mr Danieli that "*the EQCR* has been finalised" or words to the effect that the EQCR had been completed.

320. We accept that no one was telling Mr Danieli, prior to signing the audit report, that the EQC Reviewer had raised issues or that the EQC Reviewer had said that he was not going to sign off. We accept that Mr Phu was assuring Mr Danieli that the process was under control and that no issues had been raised. But that is not the same as a statement that the EQC Reviewer had signed off and/or that the EQCR was complete (and we accept, in this regard, that the 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)[72].

321. In the circumstances, notwithstanding that Mr Danieli was not challenged on the specific statements set out in paragraph 308 above:

(a) We do not accept that Mr Danieli was told by Mr Phu, shortly prior to signing the audit report for Urbanise, that the EQCR process on Urbanise had been completed. We reject his evidence that he asked Mr Phu shortly before sign of "Has that been all finalised?" (meaning the EQCR process) and Mr Phu said "Yes";

(b) Rather, we accept that Mr Danieli was being assured by Mr Phu that everything was under control with the EQCR process and that Mr Raciti had no issues;

(c) We accept the position was as set out in the ACT Election Contentions, namely that at the point of sign-off of the audit report, Mr Danieli knew that the EQCR process was not complete but was faced with a decision to sign off or await completion and he elected to sign off the audit report; and

(d) He also did so, knowing that he had not engaged in any discussions with Mr Raciti as provided for in FY23 ASA 220 par 19(b) relating to the Urbanise audit).

322. However, as discussed later, we will also address Mr Danieli's position on the alternative basis that we are wrong in rejecting the evidence in paragraph 321(a).

[72] ASA 220 A26.

Position after signing the audit report

323. We note that after the signing of the audit report, Mr Danieli never contacted Mr Raciti as EQCR to discuss the EQCR or any issues concerning Urbanise, he never checked the CaseWare file to check whether EQCR had been signed off, he never received the report he was expecting from Mr Raciti, there is no evidence that he ever received and paid an invoice for the Urbanise EQCR (and we find there was none issued) and he never obtained any other form of confirmation that the EQCR for Urbanise had been completed.

324. In fact, a short while after he signed off the audit report, Mr Danieli received information which showed that Hayes Knight *had not* completed the Review. Just over a week after he signed the audit report, on 30 August, he was copied into an email from Mr Poon to Mr Phu which noted:

(a) Hayes Knight was yet to receive the completed CaseWare file for Urbanise;

(b) Hayes Knight were yet to receive the final version of the financial report;

(c) "*As part of the quality review we will be focussing on the significant risks that you identified in the report to the audit committee"* (emphasis added)*;* and

(d) "Can we visit your office next week to review the working papers in CaseWare with you when the completed CaseWare file is available"

325. This email ought to have confirmed for Mr Danieli that if, which we do not accept, he was informed that the EQCR had been completed prior to signing the audit report, (relying upon a statement by Mr Phu, without checking the CaseWare file or obtaining other confirmation from Hayes Knight), he had made a serious error. The fact that Mr Danieli did not react strongly to this email by challenging Mr Phu and/or Hayes Knight is only consistent with our finding that he knew that the EQCR had not been completed as at 22 August, and that he elected to sign the audit report regardless.

326. Indeed, there was no document received by Mr Danieli after the 30 August email suggesting that the EQCR has been completed. In February 2024 Mr Phu delivered the completed CaseWare file for Urbanise (amongst others) to Hayes Knight. Mr Danieli was copied into emails between Hayes Knight and AD Danieli Audit PL at this time, and then received Mr Raciti's email to Mr Danieli on 22 February 2024 saying that they had been made aware that the audit reports for the five Listed Companies had been signed off and:

> "I need to draw your attention to paragraph 36(d) of ASA 220 which sets out that for audit engagements for which an engagement quality review is required, the engagement partner shall not date the auditor's report until the completion of the engagement quality review.
>
> In each instance, the engagement quality review has not been completed.
>
> Can I suggest you seek guidance on this matter".

327. If, as Mr Danieli contends, he knew or believed that the EQCR had been completed for Urbanise, this would have come as huge surprise and a serious concern to Mr Danieli. He said as much in cross-examination. He said that he was "astounded" by it and said it was especially concerning because the appointment of Hayes Knight was done specifically to meet the findings in the CA ANZ letter. He said he had a discussion with Mr Phu about how serious this was[73].

328. Mr Danieli was further cross-examined about this email and was asked:

> "Q …Do you agree or disagree with what Mr Raciti writes –
>
> A. Totally disagree.
>
> Q So you thought then, on 22 February, that the engagement quality review had been completed?
>
> A. Yes"

329. He was then asked whether he contacted Mr Raciti about this and he said that he did not because he saw that it was pointless to do so. He was asked:

> "Q. But he [Mr Raciti] was suggesting, wasn't he, that something had seriously gone wrong with the EQC process is that correct?
>
> A. Well at this stage here, I saw it pointless to take it up with him because I couldn't see it was going to achieve anything with him"

330. We find this evidence unconvincing. If, as Mr Danieli contends he was "astounded" and "totally disagreed" with Mr Raciti and had been told by Mr Phu prior to sign off of the audit report for Urbanise that the EQCR process had been completed, it would have been extremely important for Mr Danieli to have got to the bottom of the position and challenged Mr Raciti about his assertion and to set the record straight, particularly in the light of the correspondence from CA ANZ. Had he done so, he would have discovered that Mr Raciti was correct. If, as he asserts, Mr Phu had informed him in 2023 that the EQCR process had been completed, this would have revealed that Mr Phu had falsely misrepresented the position to him. It would then have been wholly appropriate for Mr Danieli to take some serious action in relation to Mr Phu. The fact that he did neither is supportive of the proposition that Mr Phu did not tell him that the EQCR process had been completed prior to sign off and that Mr Danieli knew, when he signed and dated the audit reports, that the EQCRs had not been completed, but elected to sign off in any event.

331. Mr Danieli was asked in cross-examination whether at this point (February 2024) he had any concerns about Mr Phu being responsible for the EQCR process. He said "No. James had been with us a long time. He's a registered company auditor and he's a director of the audit company"[74].

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[73] T255
[74] T255

332. He gave evidence that he did not implement a strategy or plan with Mr Phu to guide him about how to engage an EQC Reviewer on the basis that Mr Phu "knew what had to be done"[75]

333. Mr Danieli's lack of meaningful action by challenging Mr Raciti or by taking some form of action against Mr Phu is further evidence supporting our finding that Mr Danieli had not been informed by Mr Phu that the EQCR process for Urbanise had been completed as at 22 August 2023 or at any time thereafter.

(f) Love Group – Audit report signed and dated 25 August 2023

Mr Danieli's evidence

334. Mr Danieli gave evidence that his involvement in the Love Group audit and EQCR process included working with Mr Phu and the clients in planning and then overseeing the audit with Mr Phu and the staff.

335. He gave evidence that (as in the case of the Urbanise audit), they started to receive information by the end of July/early August and then it was "hammer and tongs" to get the audit done and complete the EQCR process by the end of August[76].

336. Mr Danieli did not recall any meeting (as described by Mr Phu) with Messrs Raciti, Poon and Phu to review the Love Group CaseWare file. (Mr Phu gave evidence that at this meeting, Mr Raciti verbally signed off on a few sections of the Love Group audit and then provided feedback requesting further work to be done[77]).

337. Mr Danieli gave evidence that the only discussions he had about the EQCR process for Love Group were with Mr Phu, and these were to the effect that the EQCR process was being conducted, that there were no major issues with the EQR process and that Mr Raciti had not raised any significant issues with the audit that would lead Mr Danieli not to be in a position to sign off by the deadline[78].

338. Mr Danieli said that he was not surprised that there were no significant issues because the Love Group audits raised the same issues, year after year, there was not a lot of activity and the audits were straightforward.

339. Mr Danieli gave evidence that when he signed the audit report on 25 August 2023, his view was that the EQCR process had been completed and that he had not received any indication from Mr Phu or Mr Raciti that would lead him not to be able to sign off on the audit. He said that he did not seek out any documents to confirm this for himself because he relied upon Mr Phu, who had assured him that "it had been completed"[79].

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[75] T259
[76] T199
[77] T219.13
[78] T219.26 – his words were that "Mario had – had raised any significant issues" but this is either a transcript error or Mr Danieli must have meant "Mario had not raised any significant issues".
[79] T220.20-221.3

340. He confirmed receiving the 26 September 2023 email in which Mr Phu provided an update on everything including Love Group, and he said that his thinking about this was that it was an update as to the overall file, that if there were loose ends, they would be attended to and finalised during the 60 day assembly period, and that there was nothing in the email which indicated that there were audit issues which had not been addressed[80].

341. In cross-examination, Mr Danieli said that he could not recall if he had ever received an invoice for the EQCR for 2023 for Love Group[81].

Mr Phu's evidence

342. Mr Phu gave evidence that his main responsibilities on the Love Group audit and EQCR process were overseeing the audit, providing correspondence with the client, attending audit meetings and sending emails to the EQCR.

343. He said that Mr Raciti was the EQCR on the Love Group Audit.

344. At 10:04 am on 24 August 2023, (the day before the audit report was due to be signed) Mr Phu emailed Messrs Raciti and Poon, copying Mr Danieli, attaching the draft report for Love Group, identifying the key audit matters and stating that he would be sending over the uncompleted CaseWare filed by Dropbox. The email is set out below:

Love Group Global

From James Phu <James@addca.com.au>
Date Thu 24/08/2023 10:04 AM
To Mario Raciti <mario.raciti@hayesknight.com.au>; Vincent Poon <Vincent.Poon@hayesknight.com.au>
Cc Sam Danieli <Sam@addca.com.au>; Steven McDowell <steven@addca.com.au>

2 attachments (288 KB)
2023 Independent Auditors Report.docx; 2023 Audit Committee Report - Love Group.docx;

Hi Mario & Vincent,

Please find attached the draft report for Love Group Global.

The only KAM is revenue and revenue recognition under AASB15 due to the subscription based model that they use.

I will be sending over the uncompleted Caseware File via dropbox.

Kind Regards,

[80] T204
[81] T253

345. Mr Phu said that he did not recall any response to that email. He was aware Mr Danieli was about to sign off the audit reports on 25 August and said that Mr Danieli would have told him that when they didn't receive any feedback, it was okay to go ahead for the audit reports to be signed.

346. On 31 August 2023, Mr Phu emailed Messrs Raciti and Poon, copying Mr Danieli, stating, in relation to Love Group "we are tidying up the file and I can show you where we are up to on Tuesday". (We note that 31 August 2023 was a Thursday and the next Tuesday was 5 September).

347. In paragraphs 47 to 50 of his Statement, Mr Phu said:

> "47. I recall Mario and Vincent in ADDA's office for a review of Urbanise and Love Group Case Ware files in addition to discussions about Cassius.
>
> 48. During this meeting, Mario verbally signed off on a few sections of the Love Group Audit and then provided feedback requesting more work to be done. Mario did part of the work but he did not provide final sign off.
>
> 49. I advised Sam that Mario refused to provide the final clearance on the Love Group file and Sam told me it would be sorted out between him and Mario. I do not have any knowledge of what subsequently happened between Sam and Mario.
>
> 50. Mario did not provide final clearance or sign off and I do not know why. …."

348. Mr Phu was cross examined about this meeting. He was asked whether he recalled when the meeting took place and said "It was around this time" (in the context of cross-examination about the 24 August email). He was asked "Some time in August, is that?" and replied "Yes".

349. He gave evidence that the process at the meeting involved Mr Raciti looking at supporting documentation, then saying "That's okay" and Mr Phu would then put his initials into the CaseWare file next to the sections he had looked at. Mr Phu said that he did not believe that Mr Danieli was present at that meeting but he believes that he would have reported back to Mr Danieli that "Mario and Vincent came in and they gave some feedback on the audit files"

350. Mr Phu said that Mr Raciti wanted more work to be done and he did that work. He said that this occurred after the audit had been signed off. He was asked if the additional work was simply compiling the audit file (which he was entitled to do in the 60 days after the lodgement date) or whether he was doing further audit work[82]:

> "Q. All right. And so after the report
>
> has been signed, do you think that you were just
>
> compiling the documents or were you doing further

[82] T86

additional audit work?

A. We were compiling the documents that we were

doing beforehand.

Q. So in your view, all of the necessary audit work

was completed?

A. Yes, the majority of the work was completed and

the QC requested more work afterwards."

351. In cross-examination, Mr Phu gave evidence that Mr Raciti wanted more work done, and that Mr Phu did that work by requesting more supporting documentation from the company and that this was provided by an email from Wendy Hui which was undated[83]. The email, which is headed "QC comments" (and clearly suggests that it was a response to a request by Mr Phu relating to comments made by Mr Raciti or Poon) is as follows:

[83] T83

From: Wendy Hui <wendy@datetix.com>
To: James Phu <James@addca.com.au>
Cc: Michael Ye <michael@datetix.com>
Subject: Re: QC Comments

Hi James,

Please have answers below in blue.

- Is there a revenue forecast for the next 12 months?

[Wendy: Yes, pls see attached.]

- Is there a breakdown of how much each country generates for Love Group as we only have information for Asia and Europe.

[Wendy: Yes, please see attached.]

- Who is the target customer for Love Group?

[Wendy: Singles seeking committed relationships, age 18+.]

- Is there a breakdown of fixed and variable costs of the Group?

[Wendy: Yes, please see attached.]

- Are there any plans for future marketing expenditure? Love Group is currently paying Google $100K AUD a month.

[Wendy: We are paying Google, facebook, MTR and bus ads for marketing. Please see attached for future marketing expenditure.]

352. He said he would have passed that information to Mr Raciti and said that he showed him the extra documentation on the Tuesday after 31 August[84].

Mr Raciti's evidence

353. Mr Raciti emailed Mr Danieli attaching a proposed letter of engagement for the Love Group EQCR signed by Mr Raciti on 28 April 2023 but never received an executed copy from Mr Danieli. The proposed letter was in identical form to the Epsilon letter, except addressing the Love Group EQCR. It set out some specific terms and concluded:

> "Please sign and return the attached copy of this letter to indicate your acknowledgement of and agreement with, the arrangements for our

[84] T85

engagement quality review for an audit engagement including our responsibilities".

354. In cross-examination, he accepted that he received the email of 24 May 2023 from Mr Phu providing him with the timetable for the audit of Love Group and that he was aiming to complete the EQCR process before the date for signing the audit report[85].

355. Mr Raciti gave similar evidence to Mr Phu about the 24 August 2023 email in which Mr Phu emailed Messrs Raciti and Poon, copying Mr Danieli, attaching the draft report for Love Group, identifying the key audit matters and stating that he would be sending over the uncompleted CaseWare filed by Dropbox.

356. In cross-examination, he accepted that Mr Poon had received the uncompleted CaseWare file by Dropbox.

357. In his statement, the next development to which Mr Raciti referred was the receipt of the 26 September 2023 email (referred to at paragraph 215 above) providing an update on the audits.

358. Mr Raciti also referred to the subsequent events in February 2024, which included delivery of the full CaseWare file for Love Group.

359. He said that Hayes Knight did not complete any services or commence any work in relation to the Love Group, nor did he or Hayes Knight mark any workpapers or sign off on any EQCR regarding Love Group or instruct AD Danieli Audit PL to do so.

360. In cross-examination, Mr Raciti denied that he verbally signed off a few sections of the Love Group audit and then provided feedback requesting more work to be done. He accepted that he did not reach out to Mr Phu or Mr Danieli to say "We can't do our EQCR job without further information". He said that he did not believe that at that point Hayes Knight were engaged in any capacity[86].

***Issue 11* - whether in FY23 Hayes Knight were engaged as EQCR's for Love Group**

361. We do not consider that Hayes Knight were appointed or engaged as EQCR for the Love Group as at the time of the signing of the audit report on 25 August 2023.

362. Hayes Knight sent Mr Danieli a formal engagement letter for signature in April 2023 and this was never returned. There is no evidence that it was signed. Mr Danieli must have known that he had not signed it. Thus, Hayes Knight's formal offer to act (which must have supplanted the informal dealings prior to the sending of the letter) was never accepted by Mr Danieli.

363. Between April 2023 and 25 August 2023 (the date of sign off), the only relevant event which occurred between the parties in relation to Love Group was Mr

[85] T136-7
[86] T148-9

Phu's email of 24 August containing obviously incomplete information. There was no conduct by Hayes Knight between the receipt of that email and the sign-off of the audit report on the following day which could be regarded as the acceptance by Hayes Knight of the appointment, particularly in circumstances where the draft engagement letter remained unsigned by Mr Danieli.

364. Thus, as at 25 August 2023, Hayes Knight had not been engaged or appointed in relation to the Love Group EQCR. Further, even if Mr Phu was assuring Mr Danieli that the Love Group EQCR was proceeding without issues, Mr Danieli knew he had not yet signed the agreement he had received. He ought to have realised that the engagement had not yet been put in place.

365. However the parties' subsequent conduct (including Mr Raciti's notification in February 2024 to Mr Danieli of his decision to "withdraw from the engagement" to undertake the quality review for Love Group) shows that Hayes Knight accepted the appointment or engagement as EQC Reviewer, albeit after the date of sign off.

366. We accept that Hayes Knight remained willing to act as EQC Reviewer in August and September 2023, and Mr Danieli assumed this to be the case.

Issue 19(a) and (b) - The extent to which Mr Raciti had access to the Love Group audit files in FY23 (and see para 10(v) ACR) - The extent to which Mr Raciti reviewed the Love Group audit files in FY23

367. Mr Raciti did have access to the Love Group audit files, but the access was extremely limited, particularly the access prior to the signing of the audit report.

368. There is no evidence that AD Danieli Audit PL provided Hayes Knight with *anything* prior to 24 August (the day before signing of the audit report).

369. The documentary evidence shows that the first time any information was provided to Mr Raciti was 24 August, and that information was contained in the 24 August email. This appeared, on its face, to be the first time that the key audit matters had been identified for Hayes Knight and the first time a draft report for Love Group had been provided to them.

370. There is no documentary evidence that a meeting took place on 25 August prior to signing (or at any subsequent date in August). However, there is documentary evidence showing that a meeting likely took place on 5 September. On 31 August 2023, Mr Phu emailed Hayes Knight saying "we are tidying up the file and I can show you where we are up to on Tuesday". "Next Tuesday" was 5 September.

371. We find that:

(a) The first meaningful information about the Love Group audit provided to Mr Raciti was that contained in the 24 August email, identifying the key audit matters and attaching the draft report for Love Group;

(b) The uncompleted CaseWare file was received by Mr Poon, probably the same day;

(c) Messrs Raciti and Poon met Mr Phu on 5 September 2023 to discuss the Love Group audit;

(d) It may well be the case that Mr Phu had, by this stage "tidied up" the CaseWare file but it is impossible to know whether the CaseWare file had been completed this time. Mr Phu's statement in his 31 August email that "I can show you *where we are up to* on Tuesday" hardly suggested that AD Danieli Audit PL had a confident expectation their work would be complete. The passage from the cross-examination of Mr Phu set out above, at paragraph 350 does not support a conclusion that the audit work was complete by that date and, in any event, Mr Raciti was not satisfied. Mr Phu said: "the *majority* of the work was completed and the QC requested *more work afterwards*" (emphasis added).

(e) On 5 September, Mr Raciti raised a number of queries and wanted more to be done and certainly did not complete the EQC Review;

(f) After the 5 September meeting, Mr Phu requested further documentation from the client, which was provided in an undated email from Ms Hui set out in paragraph 351 above;

(g) On 26 September 2023, Mr Phu informed Mr Raciti and Mr Poon that the "Client has responded to the queries that were discussed and I will be including this in the audit file";

(h) Mr Phu did not provide Mr Raciti with the documentation but merely informed him that he had received it; and

(i) No further contact was made with Messrs Raciti and Poon until February 2024.

372. If follows from the above, that we reject Mr Raciti's evidence, in which he denied that he met Mr Phu and provided feedback requesting more work to be done. The undated Wendy Hui email and the email of 26 September strongly supports Mr Phu's version that he met Mr Raciti, that Mr Raciti signed off on some sections but requested more information and that Mr Phu set about obtaining that information.

373. However, it also follows from our findings above, that Mr Phu was incorrect in his evidence in cross-examination in suggesting that he sought and obtained the documentation which Mr Raciti had asked for *prior* to the Tuesday meeting and that he *provided* the documentation to Mr Raciti *on the Tuesday* (ie on 5 September 2023)[87]. There is nothing to suggest that Mr Phu had a meeting with Mr Raciti or Mr Poon prior to 5 September, or that Mr Raciti requested further documentation *prior to 5 September*. The evidence does not support a finding that Mr Phu provided the documentation from the client to Mr Raciti.

374. We find that Mr Phu sought and received the information from the client between 5 September and 26 September.

[87] T85

375. In relation to the issue raised in paragraph 10(v) of the ACR (Mr Danieli's denial that in August and September 2023, neither Mr Raciti nor Hayes Knight had received the completed CaseWare file, and raised this request with Mr Danieli), we find that the completed CaseWare file had not been provided to Mr Raciti or Hayes Knight by 22 August. We are not satisfied that Mr Phu provided the completed CaseWare file subsequently in August or September, and note that his 26 September update indicated that additional information was still being sought as at that date. We find it highly likely that Mr Raciti informed Mr Phu that he required the completed CaseWare file before he could sign off or complete the Review.

376. We note, at this point, that the issue raised by paragraph 10(ii) of the ACR (Mr Danieli's denial that workpapers were not in a position to be reviewed as at 5 September) only relates to Urbanise, so does not need to be addressed in relation to the Love Group.

Issue 19(c) - The extent to which Mr Raciti signed off the Love Group audit files in FY23

377. Whilst nothing much turns on the issue, we accept that Mr Raciti signed off a few sections of the Love Group audit at the 5 September meeting. We have rejected Mr Raciti's recollection about the 5 September meeting and we generally prefer Mr Phu's evidence about it. Mr Phu did not say that Mr Raciti signed off sections of the audit in relation to other matters (other than Urbanise) and it would be odd if he contrived this evidence, only in relation to Love Group and Urbanise.

378. However, it is clear in our view,

(a) That nothing was signed off by Mr Raciti at the date of signing the audit report; and

(b) Mr Raciti did not, at any time, sign off the Love Group audit files entirely (or complete the EQCR).

Issue 19(d)* - The extent of Mr Danieli's communication and discussion of key audit matters for Love Group in FY23 - *ACR para 10(iii)

No issues raised point

379. In relation to the "No issues raised point", we note, again, that Mr Danieli relies upon the fact that *Mr Phu* never informed him that there was an issue whereas the real question is whether *Mr Raciti* raised any such issue. Mr Danieli does not assert, and there is no evidence, that Mr Danieli discussed the EQCR with Mr Raciti for Love Group at all.

380. Mr Danieli gave evidence that Mr Phu informed him that the EQCR process was being conducted, that there were no major issues with the EQR process and that Mr Raciti had not raised any significant issues with the audit that would lead Mr Danieli not to be in a position to sign off by the deadline.

381. We accept this evidence. However, Mr Danieli was copied into the email from Mr Phu to Messrs Raciti and Poon on 24 August 2023 in which Mr Phu sent the draft report and noted that he would be sending the "uncompleted CaseWare file" via Dropbox. Although the audit report was signed the following day, (25 August), the email said nothing about the fact that Love Group proposed to lodge on 25 August. Thus, even assuming Mr Phu had made assurances prior to 24 August, Mr Danieli knew or was in the possession of information which would have caused a reasonably competent auditor to know that Mr Phu had not yet provided Hayes Knight with any meaningful material in relation to the Love Group audit, that he had only just provided Messrs Raciti and Poon with the draft report and instructions as to the key audit matters and he had only just provided Messrs Raciti and Poon with the CaseWare file which he knew was "uncompleted".

382. Thus, Mr Danieli knew or ought to have known that the opportunity for Hayes Knight to consider and raise issues had not yet arisen and Mr Phu's assurances were of little significance.

383. Moreover, this position was confirmed when, on 31 August 2023, Mr Phu emailed Messrs Raciti and Poon, copying Mr Danieli, stating, "we are tidying up the file and I can show you where we are up to on Tuesday".

384. In relation to the period after signing, for reasons already stated above, we find that Mr Raciti did raise issues subsequently, at the 5 September meeting. Mr Danieli was copied into the 26 September email which noted the issues raised and responses included in the file.

EQC Reviewer discussions point

385. There is no evidence that there were any meaningful discussions between Hayes Knight and Mr Phu prior to the signing of the audit report.

386. Mr Danieli gave no evidence that he had any discussions with Messrs Raciti and Poon in relation to the Love Group audit or EQCR at all. We so find.

387. There was discussion between Mr Phu and Messrs Raciti and Poon after the signing of the audit report (ie on 5 September) but discussions *after* the signing of the audit report are of little assistance to Mr Danieli and, in any event, there was no resolution of the issues raised.

Mr Danieli's knowledge

Knowledge or assumption about engagement

388. As set out above, as at 25 August 2023, Mr Danieli knew he had not yet signed the proposed agreement he had received. He ought to have realised that his signature of the engagement letter was required in order to engage Hayes Knight and he knew that this had not yet occurred.

Knowledge or assumption about completion of EQCR

389. We accept Mr Danieli's evidence that Mr Phu informed him that the EQCR process was being conducted, that there were no major issues with the EQR process and that Mr Raciti had not raised any significant issues with the audit that would lead Mr Danieli not to be in a position to sign off by the deadline

390. However, Mr Danieli was copied into the 24 August email and which would have conveyed to a reasonably competent auditor in the position of Mr Danieli that Mr Phu had only just provided Messrs Raciti and Poon with the draft report and instructions as to the key audit matters and he had only just provided Messrs Raciti and Poon with the CaseWare file which was "uncompleted".

391. For reasons similar to those above at paragraphs 306*ff* we reject Mr Danieli's evidence that at the time he signed and dated the audit report, he believed that the EQCR had been completed or that Mr Phu had assured him that "it had been completed"[88].

392. Further, as already noted in relation to Urbanise, Mr Danieli's own evidence was that he expected a report from the EQC reviewer at the end of the review and that there would be a record on the CaseWare file if the EQCR had been completed. He conceded it would not have been a time-consuming matter to have checked the CaseWare file.

393. Despite this, Mr Danieli signed off the audit report on 25 August. We find that he did so, not knowing that the EQCR was complete. Rather, we find that the correct position was set out in the ACT election contentions, namely that Mr Danieli knew that the EQCR process was not complete but was faced with a decision to sign off or await completion and he elected to sign off the audit report.

394. On 26 September 2023, Mr Danieli received Mr Phu's email to Mr Raciti and Mr Poon which put him on notice that the "Client has responded to the queries that were discussed and I will be including this in the audit file". There is no evidence that Mr Danieli was made aware of any further developments on the Love Group EQCR until the correspondence with Hayes Knight in February 2024, at which point, Haye Knight withdrew.

395. In relation to the issue raised by paragraph 10(iii) of the ACR, it is not clear whether this issue is raised in relation to Love Group (see paragraph [55] of the FACO) but assuming that it is, we find, for reasons already set out above, that Mr Raciti did raise issues in a meeting of 5 September 2023 regarding Love Group.

(g) Gladiator – Audit report signed and dated 18 September 2023

Mr Danieli's evidence

396. Mr Danieli gave evidence that his personal role in the Gladiator audit for 2023 was in the relationship with the client, discussing with the client what had gone on during the year, in the planning, overseeing the process with staff when they

[88] T220.20-221.3

were working on it and discussing issues on a day to day basis with Mr Phu and the staff who worked on the audit.

397. When asked about what if any discussions he had with Mr Phu about the EQCR process in relation to Gladiator he said:

> "Again, the same, that it .. what was being undertaken; again, that there was no major issues; and that the EQCR would sign off; and that they had no particular issues with us to be able to give clearance to us to sign off – to me – to give clearance to me to sign off"[89].

398. He gave evidence that when he signed the audit report on 27 September his view as to "where the process was at" was:

> "Again, that it had been undertaken and that it was complete and that they didn't have any issues with the audit, because there was certainly no indication given to me by either James or Mario about that audit"[90].

399. Mr Danieli gave evidence about having read Mr Phu's email to Mr Poon on 21 February 2024 attaching the subsequent events note and said that his view about what was being communicated was that Hayes Knight wanted to see the completed file after the 60 Day assembly period.

400. He said that when he received the subsequent emails on 22 February 2024 asking whether the audits had been signed off and pointing out the obligation not to date the auditor's report prior to completion of the EQCR, he found it bizarre because Hayes Knight had been given the deadlines and the consequences of not meeting the deadlines and they had been through that in planning in April and May.

401. He was asked whether he remembered reading the sentence in the email from Mr Raciti "In each instance the engagement quality review has not been completed". He said he did not remember "drilling down to that particular" but found the whole email bizarre "that I would receive that in February, when they were undertaking the processes in August and September"[91].

Mr Phu

402. In his statement, Mr Phu gave evidence that he did not have much involvement in relation to the Gladiator Audit except providing some guidance to the audit staff and he said that

    (a) Mr Raciti was the EQC Reviewer on the Gladiator Audit and that he provided Mr Raciti with a summary of key audit matters and dropped off the audit file;

    (b) He did not recall being asked to sign off or clear the Gladiator EQCR, but had he been asked to do so he would have refused; and

[89] T222
[90] T222
[91] T224-5

(c) He did not know if the EQCR was ever cleared and signed off.

403. In cross-examination, Mr Phu said that he would have dropped off the audit file at the same time as Love Group, sometime in September 2023[92]. He did not recall if he provided the summary of key audit matters and the audit file before or after mid-September. He said that he dropped off the audit file at Hayes Knight's office on a USB. He said that when he dropped off the files he had discussions, mainly with Mr Poon, and he said that in relation to the Gladiator audit, he talked about the planning side of things, all about the key audit matters and "what we were going to focus on".

404. He accepted that he did not ask Hayes Knight at the time "We're about to sign the audit report. Do you have any issues"? He said that he had sent them the financials and the audit report for their comments and he took the fact that they did not respond to be an approval. He did not agree that he communicated this to Mr Danieli but said the Mr Danieli was receiving the emails as well.

405. He said he did not think that he had any discussion about the actual review of the audit. The following line of questioning ensued:

> Q. Did that concern you?
>
> A. That they - I - they just never responded back to
>
> me or Sam.
>
> Q. Did you try to chase them up and say, "What's
>
> going on with your EQCR review"?
>
> A. No.
>
> Q. You didn't say to them, "We're about to sign the
>
> audit report. Do you have any issues"?
>
> A. Well, we did do that, we did issue them, like -
>
> we did send them the financials and we did send
>
> them the audit report for their comments.
>
> Q. And the fact that they didn't respond with
>
> comments you took to be an approval; is that
>
> right?
>
> A. Yes.
>
> Q. And you communicated that to Mr Danieli?

[92] T76

A. Sam was in the email as well.[93]"

406. Mr Phu also appeared to suggest that Mr Raciti "came in and talked to us" although it is not clear whether he was addressing Gladiator or other entities[94].

407. Mr Phu was unable to say whether Mr Raciti was doing any work on the Gladiator audit but he assumed from the fact that he had come into to talk to AD Danieli Audit PL that he was doing work.

Mr Raciti

408. The effect of Mr Raciti's evidence was that he had very little at all to do with Gladiator. In effect, he stated that the first information he received was the 26 September 2023 email referring to Gladiator in the following terms:

"**Gladiator Resources – (Gold & Uranium)**

- Tidying up audit file.
- KAMs are:
  - Capitalised Exploration Expenditure
  - Impairment of exploration expenditure
  - Going concern"

409. He stated that from reading the email, the status of the audits appeared to be incomplete.

410. Apart from that, Mr Raciti gave evidence that Hayes Knight did not issue an engagement letter to AD Danieli Audit PL, did not undertake any work in relation to Gladiator, did not mark any work papers, did not conduct or sign off any EQCR or give instructions to Mr Danieli or AD Danieli Audit PL to sign off any Gladiator EQCR.

411. In cross-examination, Mr Raciti denied that Mr Phu dropped off the audit file for Gladiator[95].

412. He also said that he believed he was to be the EQCR for Gladiator but said that he was not engaged, because there was no signed engagement letter[96].

***Issue 11* - whether in FY23 Hayes Knight were engaged as EQCR's for Gladiator**

413. In our view, whilst the position is not clear, Hayes Knight were engaged or appointed as EQC Reviewer for Gladiator as at the time of sign-off of the audit report on 18 September 2023.

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[93] T78
[94] T79
[95] T152
[96] T153

414. For reasons already outlined above in relation to Urbanise, initially:

(a) Hayes Knight communicated their willingness to undertake the role of EQCR for Gladiator for 2023 in March 2023; (see paragraph 251); and

(b) By April 2023, a reasonable person in the position of Mr Danieli would have understood that Hayes Knight was proposing to accept the position as EQC Reviewer only through a formal letter of engagement executed by both parties, (see paragraph 252).

415. However,

(a) On 30 August, Mr Phu emailed Mr Poon, copying Mr Danieli and Mr Raciti, stating "With regards to Gladiator .., they are still in progress and I will upload the completed file when ready.";

(b) On 31 August, Mr Poon emailed Mr Phu, copying Mr Danieli and Mr Raciti, asking if there was any chance that Mr Phu could complete the CaseWare file for Gladiator by Tuesday so that they could go through it as well on 5 September; and

(c) Mr Phu replied to this email later on 31 August stating that he doubted it as the client was still working on the financials and other areas of the audit.

416. In the light of the above, we consider that, as at 18 September 2023:

(a) Whilst the position was not clear, Hayes Knight had accepted their appointment or engagement as EQC Reviewer for Gladiator, notwithstanding that the parties had initially contemplated that the appointment or engagement would occur by means of the execution of a formal engagement letter; and

(b) Having regard to the communications and documents copied to Mr Danieli, we accept that he assumed this to be the case, but had no reasonable basis for thinking the position was clear.

417. As to the position after the date of sign-off, to the extent it is relevant, there were further communications suggesting that the parties were proceeding on the basis that Hayes Knight had been engaged or appointed as EQC Reviewer for Gladiator, concluding, ultimately, with Mr Raciti's email to Mr Danieli on 27 February 2024, withdrawing from the engagement to undertake the quality review for Gladiator.

Issues 19(a) and (b) - The extent to which Mr Raciti had access to the Gladiator audit files in FY23 - The extent to which Mr Raciti reviewed the Gladiator audit files in FY23

418. For the reasons which follow, we find that Mr Raciti was not provided with the CaseWare file for Gladiator and undertook no review of the Gladiator audit files

419. The first piece of documentary evidence relating to this topic was the email from Mr Phu to Mr Poon at 3:34 pm on 30 August, copying Mr Danieli and Mr Raciti, in which he said "With regards to Gladiator .., they are still in progress and I will upload the completed file when ready."

420. The second piece of documentary evidence is in an email to Mr Phu on 31 August, in which Mr Poon asked if there was any chance that Mr Phu could complete the CaseWare file for Gladiator by Tuesday so that they could go through it as well on 5 September. Mr Phu replied to this email later on 31 August as follows:

> "I don't (sic, "doubt") there will be as I am still waiting for documentation on them. Just to give you an update on the other two:
>
> **Love Group –** we are tidying up the file and I can show you where we are up to on Tuesday
>
> **Gladiator Resources –** the client is still working on the financials and other areas of the audit"

421. The only other documentary evidence relating to Gladiator at about this time was the email of 26 September 2023. The terms of this email suggest that prior to this email, AD Danieli Audit PL had not provided Hayes Knight with the CaseWare file nor had they even informed Hayes Knight of the key audit matters.

422. A review of the email shows that Mr Phu made a distinction in the "update" as between Urbanise and Love Group (on the one hand) and Gladiator, Cassius and Pure Hydrogen (on the other). In the first group, Mr Phu provided an update in the form of a progress report on the issues which Hayes Knight had already raised with him at the 5 September 2023 meeting. In the second case, Mr Phu was still in the process of providing the initial information confirming key audit matters, the current state of the CaseWare file and other essential documentation necessary for the Hayes Knight review.

423. In paragraph [47] of his statement, Mr Phu stated that Hayes Knight attended his office "for a review of Urbanise and Love Group Case Ware files in addition to discussions about Cassius." He said nothing about discussions concerning Gladiator.

424. We accept that discussions may well have taken place on 5 September in relation to all five audits. However, it is clear that Urbanise and Love Group were further advanced by the 5 September meeting (not unexpectedly, in view of the fact that their lodgement dates were about a month earlier than the others).

425. To demonstrate this distinction, we set out the email again, below:

From: James Phu <James@addca.com.au>
Sent: Tuesday, 26 September 2023 10:37 AM
To: Mario Raciti; Vincent Poon
Cc: Sam Danieli
Subject: Audit Updates
Attachments: CMD_Ann Rep_2023v2.doc; 30 June 2023 Audit Committee Report - No Watermark.pdf

Hi Mario & Vincent,

Hope you both have been well. Just to give you an update on everything:

Urbanise

- Waiting for Client to send back over the signed contracts and provide addition commentary on points raised. There were only 3 contracts out of 60 contracts that were unsigned (5%).

Love Group

- Client has responded to the queries that were discussed and I will be including this in the Audit File.

Gladiator Resources – (Gold & Uranium)

- Tidying up audit file.
- KAMs are:
  - Capitalised Exploration Expenditure
  - Impairment of exploration expenditure
  - Going concern

Cassius Mining (Limestone)

- I've attached audit committee report and updated financials.
- KAMs are:
  - Capitalised Exploration Expenditure
  - Impairment of exploration expenditure
  - Going concern
  - Legal matter with Ghanian Government

Pure Hydrogen (Hydrogen & Gas)

- Waiting for updated financial statements as numerous changes were picked up from version 1.
- KAMs are:
  - Investment in equity affiliates (equity accounting)
  - Capitalised Exploration, evaluation and development costs
  - Impairment of exploration, evaluation and development costs

Kind Regards,

426. As regards Gladiator, at this time, (ten days after the audit report had been signed) it appears that AD Danieli Audit PL were, for the first time, informing Hayes Knight about what the key audit matters were and were still tidying up the audit file.

427. There was no documentary evidence suggesting that AD Danieli Audit PL had provided the CaseWare file to Hayes Knight before this date. Mr Raciti denied that he received the Gladiator CaseWare file. In the light of the evidence discussed above, we accept this evidence and we reject Mr Phu's evidence that he provided Hayes Knight with the Gladiator CaseWare file. We also reject the evidence which Mr Phu gave in cross-examination, summarised in paragraph 403 above.

428. It is clear to us that Mr Raciti did not have access to the audit files prior to the date on which Mr Danieli signed and dated the audit report (18 September 2023). Further, we are not satisfied on the evidence, that Mr Raciti was ever provided with access to the necessary audit files. Indeed, it appears that he was not even provided with the Gladiator CaseWare file at the time the other files were delivered to Hayes Knight in February 2024.

***Issue 19(c)* - The extent to which Mr Raciti signed off the audit files in FY23**

429. It follows from our findings above, that Mr Raciti did not sign off the audit files or complete the EQCR for Gladiator either prior to the date upon which Mr Danieli signed and dated the audit report or thereafter.

Issue 19(d) – The extent of Mr Danieli's communication or discussion of key audit matters for Gladiator in FY 23

No issues raised point

430. There is no evidence that either Hayes Knight or Mr Phu raised any issues concerning the Gladiator EQCR either prior to the sign off of the audit report or afterwards. As at the date of sign off, Hayes Knight had not been provided with any file or information about Gladiator and, 10 days later, Mr Phu was telling Hayes Knight, for the first time, what the key audit matters were and was still tidying up the file.

431. In those circumstances, Hayes Knight was not in a position to raise any issues.

EQC Reviewer discussions point

432. There is no evidence that Mr Danieli had any communication or discussion with Messrs Raciti or Poon about key audit matters or significant issues relating to Gladiator either prior to the date he signed off the audit report or subsequently.

433. Further, we do not accept that Mr Phu had any meaningful discussion with Messrs Raciti and Poon prior to the date on which Mr Danieli signed the audit report. Apart from the fact that we accept that there were some preliminary discussions about Gladiator at the 5 September meeting, the fact that Mr Phu only informed Hayes Knight of key audit matters in his 26 September email, taken together with the absence of any evidence of subsequent discussions, leads us to conclude that neither Mr Phu or Mr Danieli thereafter had any discussions with Hayes Knight of key audit matters or any other significant issues at any time.

Mr Danieli's knowledge

Knowledge or assumption about engagement

434. We have found about that Hayes Knight were engaged or appointed as EQC Reviewer for Gladiator as at the time of sign-off of the audit report on 18 September 2023 and that, having regard to the communications and documents copied to Mr Danieli, Mr Danieli assumed this to be the case, but had no reasonable basis for thinking the position was clear.

Knowledge or assumption about completion of EQCR

435. As recorded above, Mr Danieli gave evidence to the effect that Mr Phu informed him that there were no major issues with the EQCR, that the EQC Reviewer would sign off and that they had no particular issues which would prevent sign off. Mr Phu did not give evidence confirming this. Indeed, he gave evidence that he did not know if the EQCR was ever cleared and signed off.

436. However, notwithstanding this, we accept Mr Danieli's evidence. The evidence as a whole indicates that Mr Phu was making assurances to Mr Danieli to the effect that there were no issues even where there was no basis for him to do so.

437. However, for reasons already set out above in relation to the other audits, (see paragraphs 306*ff*) we reject Mr Danieli's evidence that Mr Phu had said that the EQCR for Gladiator was complete. As already noted above, Mr Danieli's own evidence was that

    (a) He expected a report from the EQC Reviewer at the end of the review;

    (b) There would be a record on the CaseWare file if the EQCR had been completed; and

    (c) It would not have been a time-consuming matter to have checked the CaseWare file.

438. Despite this, Mr Danieli signed off the audit report on 25 August. We find that he did so, in the knowledge as set out in the ACT Election Contentions, namely that he knew that the EQCR process was not complete but was faced with a decision to sign off or await completion and he elected to sign off the audit report.

439. We find that he did so, knowing that he had not engaged in any discussions with Mr Raciti as provided for in ASA 220 par 19(b) relating to the Gladiator audit.

440. In relation to the issue raised by paragraph 10(iii) of the ACR, it is not clear whether this issue is raised in relation to Gladiator (see paragraph [55] of the FACO) but assuming that it is, we find, for reasons already set out above, that Mr Raciti did not raise issues in a meeting of 5 September 2023 regarding Gladiator, but that this was because no information had been provided to him at that point.

(g) Cassius Mining – Audit report signed off on 27 September 2023

Mr Danieli's evidence

441. Mr Danieli gave evidence that the audits for Cassius were not complicated, having two key audit matters: carrying value of the exploration expenditure and going concern. He said that the company did not have any staff apart from the

company secretary, who was a chartered accountant, so they dealt with one person plus the board[97].

442. He said that his involvement with the audit was: engaging with the client, discussing time frames and talking to the client to discuss what had been happening over the year. He also said that the company secretary brought the physical files into the office and AD Danieli Audit PL staff would scan relevant information and start compiling and completing the CaseWare file from these files[98].

443. He said that he was not at any meetings during which Mr Phu discussed Cassius with Mr Raciti or at which Mr Raciti had raised issues with the Cassius audit (see the "QC Meeting notes" document at paragraph 453 below).

444. However, he said that Mr Phu discussed with him the fact that the key audit matters were "the exploration and impairment and going concern"[99].

445. Mr Danieli gave evidence that his understanding was that Mr Raciti had access to the CaseWare file for Cassius and also the manual files which were in the office. He said he saw Messrs Raciti and Poon come into the office two or three times in the August/September months[100].

446. He said that he signed the audit report for Cassius on 27 September 2023 and his view at that time was that the EQCR process as complete[101].

447. He was aware that there was a document in the CaseWare file that the EQCR needed to complete for the process to be finished. He said he was relying on Mr Phu to ensure that it was complete. He said he had not seen the document at the time of signing[102]. The examination in chief continued as follows:

> "MS BENTLEY: Q. And why didn't you go and check
>
> whether it was finalised?
>
> A. Well, again, that was delegated to James. I did
>
> rely on James to ensure that that process was
>
> complete, yes."

Mr Phu's evidence

448. Mr Phu said that his role in the Cassius Audit was overseeing the audit, reviewing key audit matters and dealing with the client.

449. In paragraph [47] of his statement, he stated that Hayes Knight attended his office "for a review of Urbanise and Love Group CaseWare files *in addition to*

[97] T212
[98] T214
[99] T215
[100] T216
[101] T216
[102] T217

discussions about Cassius" (emphasis added) and in paragraph [52] stated that discussion took place on 5 September 2023.

450. In cross-examination, Mr Phu stated this discussion concerned planning and key audit matters[103].

451. Mr Phu created two documents headed "Meeting notes with QC (Mario Raciti)", the first containing notes of issues which he said were raised in relation to Cassius by Messrs Raciti and Poon in a meeting with them, the second being a copy of the first document, with additional bold lettering containing Mr Phu's answers to the queries. Mr Phu said that the issues raised in the first document were actioned and they went back to the client if they had to do something to make Mr Raciti happy[104]. He inserted the answers in bold in the second document.

452. Mr Phu stated that he would have filed the second document in the CaseWare file which he later provided to Messrs Raciti and Poon. These documents were not dated, but Mr Phu believed that they were filed prior to an email he sent on 26 September[105].

453. The second document is set out below:

[103] T86
[104] T89
[105] T90

Meeting Notes with QC (Mario Raciti)

Cassius Mining Limited

Period: 30/6/2023

Mario raised the following points in regards to his review of the following sections:

Impairment of Assets (KAM)

- He notes that while the Gbane project is fully impaired, should there be any impairment on the Soalara Calcaire project? **We have reviewed the reports in Section J.120 and at this stage it still shows that the carrying value of the Soalara Calcaire project is below its fair value. We note that not much work has been performed in this project due Cassius prioritising the Gbane project as well as the litigation against the Ghanian government.**

Exploration (KAM)

- There is a possibility that the valuation reports and technical review of the Soalara Calcaire project are outdated. Could you please request an updated report in the future? **Will request this from the directors. I assume that they will not ask for another valuation report or technical review until the litigation with the Ghanian government is complete.**

Cash and Cash Equivalents (KAM)

- Have you received the bank confirmations? **We have asked the client to send these out and have not yet received it back. While waiting for the bank confirmations to be sent back, we have copies of all bank statements including statements for subsequent events to perform all other audit procedures.**

Subsequent Events (KAM)

- Has there been any updates on the litigation claim against the Ghanian government? **Besides what has been announced on the ASX, the directors have advised that the co-arbitrators are still in discussions in determining where the hearing will be held.**

Going Concern (KAM)

- Is there a cash flow forecast available showing cost of the litigation claim against the Ghanian government? Legal fees can add up and while they have enough cash in the bank to cover current liabilities and losses for now, will it actually last for the next 12 months? **We have requested a projected cash flow forecast and received one back that shows a budget figure of approx. $100,000 per month in legal fees. The directors have also budgeted for 2 capital raises in the next financial year which should cover all operating costs while also providing enough cash to continue with litigation against the Ghanaian government. James is also a practising lawyer who is doing work on the litigation case to reduce cash outflows for Cassius.**

454. Mr Phu gave evidence that he did not have any follow up from Hayes Knight after he filed this document in the CaseWare file and provided the CaseWare file to them a few weeks later[106].

455. By email dated 26 September 2023, Mr Phu sent Messrs Raciti and Poon the audit committee report and the updated financials for Cassius. The email is set out in paragraph 215 above. In relation to Cassius, the email stated:

> "**Cassius Mining (Limestone)**
>
> - I've attached audit committee report and updated financials
> - KAMs are:
> - Capitalised Exploration Expenditure
> - Impairment of exploration expenditure
> - Going concern
> - Legal matter with Ghanian Government"

456. At about this time, he gave Mr Poon three files, including the Cassius file, for Mr Raciti to review, clear and sign off. He stated that this was not the completed file[107].

457. He said in his statement that he had no interaction with Mr Raciti after dropping off the files and that to the best of his knowledge, no EQCR sign off occurred.

458. He gave evidence that he had no response to the email attaching the draft audit committee report and draft audit report and he was operating on the assumption that it was okay to go ahead for the audit report to be signed[108].

Mr Raciti's evidence

459. As with Gladiator, the effect of Mr Raciti's evidence was that he had very little at all to do with Cassius. He gave evidence that he received the 26 September email referring to Cassius in the terms set out in paragraph 455 above.

460. He stated that from reading the email, the status of the audits appeared to be incomplete. In cross examination, he denied that the email update referred to points made by him at the 5 September meeting or otherwise[109]. He suggested that the document "Meeting notes with QC Mario Raciti" was invented by Mr Phu[110]. He denied that Mr Phu passed on the comments which are set out in bold in the document to Mr Raciti.

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[106] T90
[107] T87
[108] T88
[109] T153-155
[110] T154.25

461. Mr Raciti gave evidence in cross-examination that he performed no audit work whatsoever in relation to Cassius. He did not accept that he had been engaged as EQC Reviewer but said “there was an invitation to be engaged”[111].

462. He stated that at the time he received the 26 September email, he did not consider he was engaged and he stated that he had some reservations about Mr Phu’s competency regarding respecting deadlines and the lack of provision of information on a timely basis, and that he and Mr Poon became uncomfortable about the process[112].

463. He agreed with a question in cross-examination that he was so concerned about Mr Phu’s competency in this regard that he decided he would not be the EQCR for the 5 Listed Companies[113]. He said he did not communicate this to anyone because there was total silence after the 26 September email until February 2024. He said:

> “We thought that the whole process of the provision
>
> of information was being dealt with poorly, not
>
> systematically, ad hoc, and perhaps I erred in
>
> not communicating with Mr Danieli the
>
> circumstances.
>
> Q. So do you accept, then, that you should have said
>
> to Mr Danieli at this time, "James is just not
>
> getting us what we need. We can't do the job
>
> anymore"?
>
> A. Perhaps.
>
> Q. And you didn't?
>
> A. No. But at the same time, Mr Danieli signed off on these audit reports without the quality review being completed.[114]”

464. Mr Raciti accepted that despite nothing further happening until February 2024, he did not reach out to anyone at AD Danieli Audit PL and say “What’s going on”, notwithstanding having received the timetables and the draft audit reports[115]

465. Apart from that, Mr Raciti gave evidence that Hayes Knight did not issue an engagement letter to AD Danieli Audit PL in respect of Cassius, did not undertake any work in relation to Cassius, did not mark any work papers, did

[111] T156
[112] T157-8
[113] T158
[114] T159
[115] T159-160

not conduct or sign off any EQCR or give instructions to Mr Danieli or AD Danieli Audit PL to sign off any EQCR in relation to Cassius.

***Issue 11* - whether in FY23 Hayes Knight were engaged as EQCRs for Cassius**

466. In our view, for similar reasons to those set out in relation to the Gladiator audit referred to above, we find that, as at 27 September 2023, Hayes Knight or Mr Raciti were engaged and/or appointed as EQCR for Cassius.

467. We find that the conduct by which Mr Raciti and/or Hayes Knight accepted the appointment or engagement included Mr Raciti's attendance at the 5 September meeting at which he identified issues in relation to the Cassius audit. Mr Phu's email to Hayes Knight on 26 September providing information in relation to Cassius (copied to Mr Danieli) is consistent with the position that Hayes Knight had accepted the appointment or engagement.

468. For the same reasons referred to in the last paragraph, we find that as at the date of signing the audit report, Mr Danieli assumed that Hayes Knight had accepted the engagement or appointment as EQC Reviewer in relation to Cassius, but must have known that the position was not clear.

Issue 19(a) and (b) - The extent to which Mr Raciti had access to and reviewed the audit files of Cassius in FY23

469. In our view, Mr Raciti had *some* access to audit files (or documents) and undertook *some* limited review of the audit files (or documents) for Cassius, prior to the date upon which Mr Danieli dated and signed the audit report (27 September 2023). We largely accept Mr Phu's evidence in preference to that of Mr Raciti in relation to this issue.

470. The starting point was the meeting of 5 September 2023. We find that Mr Raciti and Mr Poon attended that meeting with Mr Phu and discussed issues in relation to Cassius, (despite the fact that there is no evidence that any documents had been provided to Hayes Knight prior to that meeting). We accept Mr Phu's evidence that he recorded the issues raised by Mr Raciti in that meeting in relation to Cassius in the first "Meeting notes with QC" document and that he subsequently addressed these issues, after consulting the client, by recording responses, in bold, in the second document.

471. Next, it is clear that Mr Phu provided Hayes Knight with an "Update" in relation to Cassius on 26 September, by identifying the "Key Audit matters" and attaching the audit committee report and updated financial financials on 26 September.

472. We accept Mr Phu's evidence that at about the same time, he provided the CaseWare file, which was not complete.

473. Mr Phu gave no evidence that he provided Hayes Knight with the complete CaseWare file, and there is no evidence about what aspects of the file were incomplete.

474. Thus, it is clear that Mr Phu only provided Hayes Knight with key information the day before the audit report was to be signed, and this did not include the completed CaseWare file.

475. There is no evidence that Mr Raciti undertook any further review or did any further work after attending the meeting on 5 September, and, in particular, there is no evidence that he reviewed the documents provided by Mr Phu on 26 September or read the "QC Meeting Notes" documents.

Issue 19(c) – the extent to which Mr Raciti signed off the Cassius Audit files

476. What is clear, (accepting the evidence of both Mr Phu and Mr Raciti on this point) is that:

    (a) Mr Raciti did not respond to AD Danieli Audit PL after the receipt of documents and files provided by Mr Phu on 26 September 2023; and

    (b) Mr Raciti did not sign off or complete the review, either before Mr Danieli signed and dated the audit report the following day (27 September 2023) or subsequently.

Issue 19(d) - The extent of Mr Danieli's communication and discussion of key audit matters for Cassius in FY23

No issues raised point

477. Paragraph [36] of Mr Danieli's ACR asserted that in the lead up to the audits being due in August and September, he was in regular contact with Mr Phu about audit status and at no point in those conversations, did Mr Phu raise with him that there was an issue with the EQC Reviewer requiring access to files or having sufficient information(see also para [37]-[42]).

478. Mr Phu gave evidence that he was operating on the assumption that when he received no response to the 26 September email, that it was okay to go ahead for the audit report to be signed. However, he gave no evidence that he said anything to Mr Danieli to the effect that there were no issues and that the EQCR process was complete.

479. As with our consideration of the previous entities, Mr Danieli received the 26 September email, which provided an update on this and other audits. The email suggested that AD Danieli Audit PL was only briefing Mr Raciti about Cassius that day. Mr Danieli signed off the audit report the following day. There is no evidence that the EQCR proceeded thereafter.

480. We do not consider that there was any reasonable basis, in these circumstances, for Mr Danieli or Mr Phu to assume that the absence, by 27 September, of a response to the 26 September email meant that there were no issues with the EQCR or that it was complete. Thus, even if Mr Phu had previously indicated this to Mr Danieli, Mr Danieli was not reasonably entitled, after receipt of the 26 September email, to continue to believe that this was the case.

EQCR discussions point

481. On his own evidence, Mr Danieli did not have any discussions of key audit matters or significant issues relating to the Cassius audit with Mr Raciti or Mr Poon. He said that he was not at any meetings during which Mr Phu discussed issues with Messrs Raciti and Poon. Although he said he saw Mr Raciti and Mr Poon come into the office two or three times in August/September, he gave no evidence that he had any substantive discussions with them.

482. The only evidence of discussion about key audit issue for Cassius was his evidence that Mr Phu discussed with him the fact that the key audit matters were "the exploration and impairment and going concern".

483. Having regard to the terms of the 26 September email, insofar as it referred to Cassius, we do not accept that Mr Phu had undertaken any meaningful discussion with Hayes Knight about key audit matters or significant issues prior to the time he sent that email. There is no evidence of any further discussions, either prior to the sign off of the audit report or thereafter.

Mr Danieli's knowledge

Knowledge or assumption about engagement

484. We have found above that as at 27 September 2023, Hayes Knight or Mr Raciti were engaged and/or appointed as EQC Reviewer for Cassius, and that as at the date of signing the audit report, Mr Danieli assumed that Hayes Knight had accepted the engagement or appointment as EQC Reviewer in relation to Cassius, but must have known that the position was not clear.

Knowledge or assumption about completion of EQCR

485. Mr Danieli did not give express evidence that Mr Phu had informed him that the EQCR was proceeding without issues and was complete. He gave evidence that his understanding was that Mr Raciti had access to the CaseWare file for Cassius and also the manual files which were in the office. He said he saw Messrs Raciti and Poon come into the office two or three times in the August/September months. He said that he signed the audit report for Cassius on 27 September 2023 and his view at that time was that the EQCR process as complete.

486. We find it difficult to accept (having regard to our findings above as to the limited steps undertaken in relation to Cassius as at 26 September 2023), that Mr Phu would have informed Mr Danieli, prior to 27 September that Hayes Knight would sign off or that they had no particular issues which would prevent Mr Danieli from signing off.

487. We are prepared to accept that Mr Danieli assumed that the EQCR process was proceeding and that he was not informed of any issues. However, for reasons similar to those explained at paragraphs *306ff* above in relation to the previous entities we do not accept that at the time he signed and dated the audit

report, Mr Danieli was informed by Mr Phu, and believed that the EQCR was complete.

488. As already noted above, Mr Danieli's own evidence was that

(a) He expected a report from the EQC reviewer at the end of the review;

(b) There would be a record on the CaseWare file if the EQCR had been completed; and

(c) It would not have been a time-consuming matter to have checked the CaseWare file.

489. Rather, as with the previous entities, we find that the correct position was set out in the ACT Election Contentions, namely that Mr Danieli knew that the EQCR process was not complete but was faced with a decision to sign off or await completion and he elected to sign off the audit report.

490. We find that he did so, knowing that he had not engaged in any discussions with Mr Raciti as provided for in ASA 220 par 19(b) relating to the Cassius audit.

491. In relation to the issue raised by paragraph 10(iii) of the ACR, it appears that this issue is not raised in relation to Cassius (see paragraph [55] of the FACO) but assuming that it is, we find, for reasons already set out above, that Mr Raciti did raise issues in a meeting of 5 September 2023 regarding Cassius.

(h) Pure Hydrogen – Audit report signed and dated 29 September 2023

Mr Danieli's evidence

492. Mr Danieli made few specific contentions regarding Pure Hydrogen (referred to as "PH2") in his ACR,

493. He gave evidence at the Hearing that Pure Hydrogen was a company which was involved in the provision of hydrogen. The issues were similar year by year, including impairment of exploration expenditure. He said it was a small cap company with limited staff and AD Danieli Audit PL had to chase them to get information in time[116] and that they were quite late in getting a lot of information to AD Danieli Audit PL[117].

494. He gave evidence that the key audit matters for Pure Hydrogen in 2023 would have been exploration expenditure and impairment and investments in related entities[118].

495. Mr Danieli gave evidence that his involvement in the 2023 audit including talking to the client and their CFO, pointing our deficiencies in draft reports and finalising them to have them ready for final review and the EQCR process[119].

[116] T207-8
[117] T209
[118] T208-209
[119] T209

496. He said he had ongoing discussions with Mr Phu to the effect "How are we going with the EQCR? Have they received the information? The CaseWare file, have they got access to the CaseWare file?". He said he had assurances from Mr Phu that Hayes Knight had access to the files and information and that they were undertaking the EQCR process[120].

497. Mr Danieli gave evidence that he had no personal knowledge of the Pure Hydrogen audit file being dropped off at Mr Raciti's office.

498. He was shown a copy of the Engagement quality control review document from the CaseWare file for Pure Hydrogen which included "MR, 29 September 2023" and stated that he had no knowledge as to how those initials got there. The relevant extract is set out below;

30 June 2023 Pure Hydrogen Limited
Year End: June 30, 2023
ASA Program - Engagement Quality Control Review

Auditor	Senior	Manager
Partner	**EQCR**	
	MR 29/09/2023	

5-320-6

Conclusion

I confirm that I have completed the above engagement quality control review procedures prior to the date of the draft audit report and made an objective evaluation of the engagement team's conclusions.
I am not aware of any unresolved matters that would cause me to believe that the significant judgements and conclusions made by the engagement teams were not appropriate

Auditor: ☐
Senior: ☐
Manager: ☐
Partner: ☐
EQCR: ☑ Mario Raciti 29/09/2023

499. Mr Danieli was asked what his view was, when he signed the Pure Hydrogen audit report, as to where the EQCR process "was at" and he answered "That it was complete. I have been given no indication that it wasn't". He was asked "Did you ever see any documents to confirm that for yourself?" and replied "No. I relied on James for that".

Mr Phu's evidence

500. In relation to the Pure Hydrogen audit and EQCR process, Mr Phu gave evidence in his statement that:

(a) Initially it was planned that he was to act as Audit Manager for the Pure Hydrogen Audit but when he arrived on-site, the client's record keeping was in such a poor state, he had to spend his time reviewing, collating and generally tidying up the accounts themselves. As a result, Mr Phu did little auditing on this file and the file only became available for audit the last week and a half before the deadline;

(b) Mr Phu said that Mr Raciti was the EQC Reviewer and that he discussed the Pure Hydrogen file with Mr Danieli. But Mr Phu said that he was not

[120] T210

involved in these discussions but sent him an email with the key audit matters; and

(c) Mr Phu dropped off the Pure Hydrogen audit file to Mario's office via USB for review, final clearance and sign-off. He did not see the file again after he dropped it off and he did nothing further.

501. Mr Phu stated that he discussed Pure Hydrogen with Mr Raciti and Poon in a planning meeting and gave them an indication about what the key audit matters were. He did not discuss any details of the key audit matters and his conclusions and why he reached them because "we were completing the file before providing the file to Mario"[121]. He stated that he provided the file to Mr Raciti in February 2024. He said he may have sent the financials and audit report prior to signing the audit report but did not receive any feedback before providing the file in February 2024[122].

502. We note that the email of 26 September 2023 from Mr Phu to Messrs Raciti and Poon stated, in respect of Pure Hydrogen

> "Waiting for updated financial statements as numerous changes were picked up from version 1".

503. We also note that there are no documents in evidence showing communications from AD Danieli Audit PL to Hayes Knight after 26 September 2023, until the email exchanges in February 2024. Mr Phu said in cross-examination that he assumed Hayes Knight would ask questions when they reviewed the documents, that because they weren't asking questions, he assumed that everything was okay, and he communicated that to Mr Danieli[123].

504. Mr Phu also gave evidence, in relation to the Pure Hydrogen EQCR process, about a document which was a printout from an accounting program used by AD Danieli Audit PL (known as "CaseWare") entitled "30 June 2023 Pure Hydrogen Limited, Year End: June 30, 2023, ASA Program - Engagement Quality Control Review".

505. That document was in the form of a seven page table which contained an apparent record of steps performed in the EQCR process and contained initials and dates purporting to indicate the date upon which a particular individual had completed the steps. The first two entries in the table are set out below

[121] T72-3
[122] T72-3
[123] T73-4

30 June 2023 Pure Hydrogen Limited
Year End: June 30, 2023
ASA Program - Engagement Quality Control Review

Auditor	Senior	Manager
Partner	**EQCR**	
	MR 29/09/2023	

5-320-1

Procedure	Result	By	Ref
ENGAGEMENT QUALITY CONTROL REVIEW PROCEDURES			
Questions to be answered by the engagement quality control reviewer			
1. Are you satisfied that the selected documentation reflects the work performed in relation to the significant judgements made supports the conclusions reached?	Completed	MR 29/09/2023	
2. Is this engagement related to: • the audit of a listed entity financial report; • an audit or review of historic financial information; or • another assurance engagement; that meets the firm's established criteria for an engagement quality control review?	Yes	MR 29/09/2023	

506. The Table concluded, on page 7, as follows:

30 June 2023 Pure Hydrogen Limited
Year End: June 30, 2023
ASA Program - Engagement Quality Control Review

Auditor	Senior	Manager
Partner	**EQCR**	
	MR 29/09/2023	

5-320-6

Conclusion

I confirm that I have completed the above engagement quality control review procedures prior to the date of the draft audit report and made an objective evaluation of the engagement team's conclusions.
I am not aware of any unresolved matters that would cause me to believe that the significant judgements and conclusions made by the engagement teams were not appropriate

Auditor: ☐
Senior: ☐
Manager: ☐
Partner: ☐
EQCR: ☑ Mario Raciti 29/09/2023

507. Mr Phu referred to this document in his evidence. He asserted that the initials "MR" referred to Mario Raciti but that he could not say whether Mr Raciti did clear or sign off on the Pure Hydrogen Audit file as he did not receive any comments or feedback. He stated that Mr Raciti took the file but he did not look at it because he did not provide comments on it. He said that Mr Poon advised him that Mr Raciti would speak to Mr Danieli about the file.

508. In cross-examination, he said that he did not put the initials "MR" on the file and did not know how or when those initials came to be on the file[124].

509. Mr Phu's evidence continued:

> "40. Later, Sam told me to clear and sign off this file on Mario's behalf, but I refused to do so. I said words to the effect of *"No I don't think we should do that.* " and I left the room. In the end, someone else signed off on the file but I do not know the identity of that person."

[124] T71

510. Mr Phu was cross-examined about this evidence as follows:

> "Q. In your witness statement at paragraph 40 in relation to Pure Hydrogen, you say:
>
> > "Later, Sam told me to clear and sign off this file on Mario's behalf but I refused to do so. I said words to the effect of, "No I don't think we should do that." and I left the room. In the end, someone else signed off on the file but I do not know the identity of that person.
>
> I suggest that's not true.
>
> A. Why would you say that?
>
> Q. Mr Danieli certainly denies ever instructing you to do that. Do you have any recollection of when you say this conversation occurred?
>
> A. Yes.
>
> Q. When?
>
> A. Before the follow-up CA meeting.
>
> Q. And are we talking about February or times around February 2024 or are we talking about the time around the signing of the audit report?
>
> A. We're talking about before the follow-up CA meeting.
>
> Q. And that's after the signing of the audit report?
>
> A. Yes."

511. We note that the CA follow up meeting took place on 19 July 2024[125].

512. Mr Phu accepted in cross-examination that he could have done better in relation to the Pure Hydrogen audit if he had been better resourced. He stated that the period in question was their busiest time of year and he had other personal matters he had to deal with which influenced his job performance.

Mr Raciti's evidence

513. According to Mr Raciti, Hayes Knight had little involvement with Pure Hydrogen. He stated that he received the 26 September email (which, as noted above), simply stated "Waiting for updated financial statements as numerous changes were picked up from version 1".

514. Mr Raciti said, in his statement, that on 21 February 2024, Mr Phu personally delivered a USB containing the full CaseWare file for Pure Hydrogen.

[125] See para 39 FACO, not denied in the ACR.

515. In cross-examination, Mr Raciti said that when Mr Phu said, in his statement that he had "dropped off the Pure Hydrogen audit file to Mario's office via USB for review, final clearance and sign-off", this was on 21 February 2024[126].

516. He said that he did not seek any information or attempt to speak to Mr Danieli about Pure Hydrogen in September 2023 because he was relying on Mr Danieli to manage his own timeframes and he was copied into the emails. He stated that the email he was referring to was the 24 August email but said Mr Danieli was cced into most if not all of the emails[127]. (We note that the 24 August email concerned the Love Group, but the 26 September email referred to Pure Hydrogen).

517. He gave evidence that Hayes Knight did not issue an engagement letter, or undertake any work on Pure Hydrogen, nor did they mark any work papers, conduct or sign off any EQCR or give instructions to Mr Danieli or AD Danieli Audit PL to sign off on any EQCR for Pure Hydrogen.

Issue 11 - whether in FY23 Hayes Knight were engaged as EQCR for Pure Hydrogen

518. For reasons similar to those set out in respect of Cassius above, we consider that, as at 29 September 2023, Hayes Knight were engaged or appointed as EQC Reviewer for Pure Hydrogen.

519. Whilst there was little activity on the Pure Hydrogen matter prior to 29 September 2023, we accept Mr Phu's evidence that Pure Hydrogen was discussed in September (and we find that it was at the meeting on 5 September). Further, Mr Phu sent Hayes Knight an update in relation to Pure Hydrogen on 26 September 2023, (which was not reacted to by Hayes Knight, by rejecting any engagement). Whilst the evidence is far from overwhelming, we consider, on balance, that these matters established an engagement or appointment by conduct.

520. For the same reasons referred to in the last paragraph, we find that as at the date of signing the audit report, Mr Danieli assumed that Hayes Knight had accepted the engagement or appointment as EQC Reviewer in relation to Cassius, but must have known that the position was not clear.

521. Insofar as the position after 29 September is relevant, Mr Raciti's email of 27 February 2024 (which refers specifically to withdrawing from the engagement in relation to Pure Hydrogen) is consistent with an understanding that Hayes Knight had been engaged or appointed.

Issue 19(a) - The extent to which Mr Raciti had access to the Pure Hydrogen audit files in FY23

522. The 26 September email confirmed that as at that date, Mr Phu was still in the course of preparing the financial statements. The email did not indicate that any documents had been provided or were attached to the email. Essentially,

[126] T150
[127] T151-2

the only information provided to Hayes Knight as at 26 September was the identification of the key audit matters.

523. The evidence of both Mr Phu and Mr Raciti was that the CaseWare file was only provided to Hayes Knight in February 2024. We accept that evidence and note that there is no documentary evidence to suggest otherwise.

524. Thus, we find that as at the time the audit report was signed (29 September 2023) minimal information had been provided to Hayes Knight. The CaseWare file was only provided to Hayes Knight in February 2024.

Issue 19(b) - The extent to which Mr Raciti reviewed the Pure Hydrogen audit files in FY23

525. Mr Raciti had not received the audit files prior to sign off of the audit report on 29 September 2023. He only received the CaseWare file in February 2024. We accept Mr Raciti's evidence that he undertook no review of the audit files for Pure Hydrogen.

Issue 19(c) - The extent to which Mr Raciti signed off the Pure Hydrogen audit files in FY23

526. It is clear that there was insufficient material provided to Hayes Knight to enable them to conduct any form of Review, let alone sign off.

527. There is no evidence to suggest that Mr Raciti signed off any audit files for Pure Hydrogen prior to the sign-off of the audit report on 29 September 2023 or subsequently.

528. There is a question about how the CaseWare file for Pure Hydrogen came to include Mr Raciti's initials, as having completed the Review.

529. The FACO contains no allegation that Mr Danieli signed off the CaseWare file for Pure Hydrogen as Mr Raciti. There was no cross-examination of Mr Danieli to suggest that he did it. In those circumstances, we do not think it is open to ASIC to allege, or to us to make any finding, to that effect. In any event, we did not read ASIC's submissions as making any such allegation.

530. The same goes for any contention that Mr Danieli requested Mr Phu to sign off the Pure Hydrogen CaseWare file as Mr Raciti.

Issue 19(d) - The extent of Mr Danieli's communication and discussion of key audit matters for Pure Hydrogen in FY23

No issues raised point

531. It follows from our findings above, that in view of the minimal provision of information and the inability of Hayes Knight to progress the Review in those circumstances, no issues were raised by Hayes Knight.

532. However, Mr Danieli (having been copied into the 26 September email) could not rationally have expected that the absence of any issues being raised said

anything about the likelihood of the Review being completed without issues or the Review having been completed.

EQCR discussion point

533. In his statement, Mr Phu said that:

(a) Mr Raciti discussed the Pure Hydrogen file with Mr Danieli but he (Mr Phu) was not involved in these discussions; and

(b) He discussed Pure Hydrogen with Mr Raciti and Poon in a planning meeting and gave them an indication about what the key audit matters were, but did not discuss any details of the key audit matters and his conclusions and why he reached them because "we were completing the file before providing the file" to Mr Raciti.

534. As to paragraph 533(a), neither Mr Danieli nor Mr Raciti gave evidence of discussions with each other. We find that no such discussions took place.

535. As to paragraph 533(b), there is no documentary evidence of any planning meeting involving Pure Hydrogen apart from the planning meeting on 23 May 2023. It seems likely that Pure Hydrogen was discussed at the 5 September meeting, when the other matters were discussed. However, there is no evidence that significant issues or conclusions etc were discussed, and this seems unlikely in view of the state of the audit at that date.

536. The timing of the provision of information on the Pure Hydrogen EQCR shows that it is most unlikely that there was any meaningful discussion about Pure Hydrogen issues in 2023. In the circumstances, and in the absence of evidence to show otherwise, we find that there were no discussions between Mr Danieli and Mr Raciti in relation to significant issues or otherwise prior to the date upon which Mr Danieli signed off the audit report, or thereafter.

Mr Danieli's knowledge

Knowledge or assumption about engagement

537. We have found above that, as at 29 September 2023, Hayes Knight were engaged or appointed as EQC Reviewer for Pure Hydrogen and that Mr Danieli assumed that Hayes Knight had accepted the engagement or appointment as EQC Reviewer in relation to Pure Hydrogen, but must have known that the position was not clear.

Knowledge or assumption about EQCR process

538. We have found that Mr Danieli knew, as at 26 September that virtually nothing had been provided to Hayes Knight. There is no evidence that Mr Phu informed him that the EQCR process was complete. For the same reasons as set out above in relation to the other entities, (see paragraphs 306*ff*) we do not accept that Mr Danieli believed, as at the time he signed and dated the audit report, that the EQCR process had been completed.

539. We note the ACR Election Contentions suggest, in effect, that Mr Danieli knew that the EQCR process was not complete but was faced with a decision to sign off or await completion and he elected to sign off the audit report.

540. We find that he did so, knowing that he had not engaged in any discussions with Mr Raciti as provided for in FY23ASA 220 par 19(b) relating to the Pure Hydrogen audit.

541. In relation to the issue raised by paragraph 10(iii) of the ACR, it appears that this issue is not raised in relation to Pure Hydrogen (see paragraph [55] of the FACO) but assuming that it is, we find, for reasons already set out above, that in view of the minimal provision of information and the inability of Hayes Knight to progress the Review in those circumstances, no issues were raised by Hayes Knight.

(i) The 2024 EQCRs

542. The evidence relating to the 2024 EQCRs is much more contained than in the case of the 2023 EQCRs and we will deal with the EQCRs for the 5 Listed Companies together.

Mr Danieli's evidence

543. Mr Danieli gave evidence that after receiving the February 2024 emails from Hayes Knight, he had a discussion with Mr Phu about looking towards finding new EQCRs for the '24 financial year[128]. Mr Danieli said that he asked Mr Phu if he knew a registered company auditor and Mr Phu told him about Daniel Marando. Mr Danieli felt that he would be suited because he was a registered company auditor with a firm in Pitt Street which was close by[129].

544. Mr Danieli was cross-examined about his role in the FY24 EQCR[130]:

> "Q. After 22 February 2024 - so this is, I'm going
>
> back now to when Mr Raciti sent that email to you
>
> that we were talking about before - did you think
>
> that it was prudent to get more involved in the
>
> EQCR process?
>
> A. Yes, yes.
>
> Q. And why didn't you?
>
> A. Well, during the course of the audit, I was - my

[128] T225
[129] T226
[130] T265*ff*

focus was on completing the audit and meeting the deadline and by having not just an employee audit manager but someone to the highest qualifications in audit help me with that process, then I - I did - I relied on James.

Q. Well, did you not think that it was a good idea to have a more active, hands-on involvement with the EQCR process following CA ANZ's finding and Mr Raciti's email - that's the context - from that point, did you not think, "Gee, I'd better get more involved in this EQCR thing", to put it that way?

A. Yes. Yes.

Q. And what you did was delegated completely that process to James - that's fair to say, isn't it?

A. Not - not totally, no.

Q. Okay. Well, he selected Mr Marando; that's right?

A. (Witness nods).

Q. You had no conversations with Mr Marando?

A. (Witness nods).

Q. So what part of "not totally" delegating - what do you mean by that?

A. Well, had James not presented a suitable RCA, then we wouldn't have appointed that person.

…

Q. So I had asked you whether you should have got more involved in the EQCR process after

22 February 2024.

A. (Witness nods).

Q. And I suggested that you delegated even further

to Mr Phu, and you had less involvement than you

had with Hayes Knight. Is that right or

incorrect? Do you remember me asking you that?

A. When you say I delegated more to James, because

James knew Daniel Marando more than I did,

whereas with Hayes Knight, I knew Mario and

Vincent more than what James knew, and so that's

why, with Daniel Marando, that's why, again, I -

I placed more reliance on James."

545. Mr Danieli said that after Mr Phu informed him that Mr Marando would undertake the EQCRs for the entities for 2024, he did not have particular conversations with Mr Phu about whether he had been in touch with Mr Marando[131].

546. Mr Danieli gave evidence that he did not inquire as to whether Mr Marando had access to the relevant documents through CaseWare but was of the view that if he had any issues, he could come across the street and AD Danieli Audit PL would go through them in its office. Mr Danieli said that Mr Phu did inform him that for a period of time, Mr Marando was having difficulties accessing the CaseWare files, but Mr Danieli said that he could not quite understand what the difficulties were and still did not understand it[132].

547. Mr Danieli said the Mr Phu told him that he was providing Mr Marando with access and if anything failed, he would put it on USB and take it across[133].

548. Mr Danieli said that he never spoke personally to Mr Marando about the EQCR process[134].

549. Mr Danieli gave evidence about the process in drafting reports for the audits and said that Mr Phu drafted the audit committee report, that he (Mr Danieli) would then go through it and review it and make changes and then Mr Phu would send it to the EQC Reviewer. He said that Mr Phu drafted the audit report

[131] T226-7
[132] T227
[133] T228
[134] T228.9

and Mr Danieli would pay very particular attention to it to ensure that it was consistent with the financial report[135].

550. Mr Danieli said that he was aware that, at the time of the 2024 reports, Mr Phu had various things going on in his personal life but said that he did not have any concerns that these personal circumstances were impacting his work. He said Mr Phu was working late and sending emails at 9pm or 9:30pm and he believed that Mr Phu was still undertaking these tasks[136].

551. *In relation to the Love Group EQCR for 2024 (Audit report sign-off 19 August 2024)*, Mr Danieli gave evidence that his view at the time he signed the audit report was that the EQCR process had been completed. He said that he was "not made aware that anyone had – that the EQCR had any issues, neither by James or by Daniel contacting me about it"[137].

552. *In relation to the Urbanise EQCR for 2024 (Audit report sign-off 27 August 2024)*, Mr Danieli gave evidence that there had been no material changes from the previous year and the key audit matters were the same[138].

553. Mr Danieli gave evidence about his view as to where the EQCR process was at, at the time he signed the audit report (on 27 August 2024) as follows[139]:

> "Q. At the time you signed that, what was your view about where the EQCR process was at with
>
> Mr Marando?
>
> A. Again, that the process had been undertaken and
>
> that I had not been given any indication by James
>
> or by Daniel that I would not be given clearance
>
> to sign off on the audit. No indication
>
> whatsoever. No contact from Daniel and certainly
>
> James continually assured me that Daniel would
>
> sign off.
>
> Q. Do you remember any specific sentences or phrases
>
> or words Mr Phu used in respect of that?
>
> A. He would say, "Yes, Daniel will sign off.
>
> They're - he does not have any issues". He

[135] T231
[136] T233
[137] T229
[138] T228
[139] T228-9

confirmed that at our Monday morning meetings.

554. *In relation to the Gladiator EQCR for 2024 (Audit report sign-off 13 September 2024)*, Mr Danieli gave evidence that there had been no material changes from the previous year and "no activity"[140].

555. He said that at the time he signed the audit report on 13 September 2024, his view of where the EQCR process was at, was that the EQCR process had been completed and that there had been no indication to him that he would not be given clearance to sign off on the audit conclusions[141].

556. *In relation to the Cassius EQCR for 2024 (Audit report sign-off 27 September 2024)*, Mr Danieli gave evidence that there had been no material changes and other than payment of legal fees, no activity at all.

557. He said that at the time he signed the audit report, his view about the EQCR process was the same as the others, namely that it had been completed and no indication was given to him that clearance was not given for him to sign off on the audit and the audit conclusions they had made[142].

558. *In relation to the Pure Hydrogen EQCR for 2024 (Audit report sign-off 30 September 2024)*, Mr Danieli gave evidence that there had not been any material changes for the 2024 year. He said that Mr Phu constantly assured him that Mr Marando would sign off on the EQCR process. He said Mr Phu told him he would go and see Mr Marando and this would be for the EQCR process[143].

559. Mr Danieli accepted that no invoice was received from Mr Marando[144].

Mr Phu's evidence

560. Mr Phu gave evidence that Mr Danieli asked him to find a new EQC Reviewer for the 2024 financial year and he suggested Mr Daniel Marando, a friend of his who was a registered company auditor.

561. Mr Phu said that on 25 June 2024, Mr Phu met Mr Marando for lunch to discuss him being EQC Reviewer and he agreed.

562. On 4 August 2024, Mr Phu emailed Mr Marando with a link to download the CaseWare working papers to do the QC part. On 6 August, Mr Marando replied to Mr Phu asking what his turnaround time was for the QC. In response, Mr Phu said that Friday 16 August was the turnaround time but that he was still awaiting documents from the client and he should be able to push back further if required.

563. On Thursday 8 August 2024, Mr Marando messaged Mr Phu stating that he had downloaded the software but the files were not linked. Mr Phu replied that

[140] T231
[141] T231
[142] T230
[143] T230
[144] T275

he was waiting for the first set of financial statements from the client so he could show Mr Marando and set it all up.

564. On 27 August 2024, Mr Danieli signed and dated the FY24 auditor's report for Urbanise.

565. On Friday 30 August 2024, Mr Marando messaged Mr Phu stating

> "I'm able to get into the urbanised.com file, is that ok foe (sic) me to review? Is there anything I need to wait on?"

566. Mr Phu replied

> "Just review and make comments on it. I still need to do the planning documents but have until the end of October to get it done"

567. Mr Marando replied:

> "OK, I'll review it as is. When do you need it finished by?"

568. Mr Phu replied:

> "Anytime between now and end of October …"

569. Mr Phu gave evidence that he knew that the EQC Reviewer was required to do their review prior to the signing of the audit and that what was proposed was too late. He stated that he knew that this was a problem, but he was having IT problems and he was too busy to arrange for Mr Marando to come over and spend his whole day in the AD Danieli Audit PL office. Mr Phu gave evidence that he told Mr Danieli, before sign-off that he was still trying to sort out the IT issues but that he was sorting it out.

570. Mr Phu gave evidence that on 17 September, he met Mr Marando for lunch and told him that they were working on the audits for Cassius, Gladiator and Pure Hydrogen. At that stage, they had not provided any documents in relation to those entities to Mr Marando.

571. On 17 September, Mr Phu emailed Mr Marando (not copying Mr Danieli) with two engagement letters, one in relation to Love Group dated 12 August 2024 from Mr Marando's firm Grech Smith & Bridle, countersigned by Mr Danieli on 13 August 2024, and one in relation to Urbanise, also dated 12 August and countersigned by Mr Danieli on 13 August.

572. There is no evidence of any further engagement letters in relation to the other Listed Companies. Mr Phu gave evidence that he was going to ask Mr Marando to prepare engagement letters for these entities when he provided him with relevant information and documents.

573. Mr Phu gave no evidence of any further dealings with Mr Marando until mid October. Mr Phu gave evidence that he did not work on the audit files for Pure Hydrogen, Gladiator and Cassius because he tried to rotate off because of the rotation rules. He said that he suggested to Mr Danieli that he would rotate off

those jobs and he got the team to do most of the substantive testing whilst he did certain areas that they could not do. He said that Mr Steve McDowell was the audit manager for those jobs.

574. Mr Phu gave evidence that he knew that Mr McDowell did not engage with Mr Marando about EQCR matters because he would talk to Mr Marando.

575. Mr Phu agreed with Mr Marando's evidence that on 16 October 2024, they had lunch and that Mr Marando had raised the issue of completing the EQCR, as he had not heard anything yet, and that Mr Phu had suggested that he should not worry about it. Mr Phu gave evidence that he thought he told Mr Marando that he was busy and that he would get back to him on it. He said that Mr Marando had said that ASIC had given him a call and he indicated that he was not comfortable. Mr Phu had then said "If you don't feel comfortable, don't worry about completing the EQCR process".

576. Mr Phu accepted that Mr Danieli did not tell him to disengage Mr Marando, that he just did this because Mr Marando was a friend and that he did not tell Mr Danieli that he was doing this. He said that he did not mention this in his statement because the plan was for him to rotate off and have no input in 2024 so that he could rotate back in a few years time. He assumed that someone else was engaged as EQCR because he disengaged Mr Marando.

577. However, Mr Phu accepted that it was his responsibility to make sure that Mr Marando had proper access to the files and that he did not fulfil that duty. He accepted that Mr Marando may have offered to come to his offices to view the files but that he, Mr Phu, would have been out at attendances and could not have been with there him.

578. He accepted that in the 2024 year, particularly in August and September 2024, he repeatedly told Mr Danieli that he was engaging with Mr Marando and all was under control.

579. Mr Phu accepted in cross-examination that he had discussed the Urbanise EQCR with Mr Danieli (implicitly prior to the sign off) and that there were not any major issues at the time. He accepted that he probably said to Mr Danieli "Mario is going to sign it". Mr Phu accepted that he attended regular Monday morning meetings with Mr Danieli during which he updated Mr Danieli on where things were at on his various audits and he did not tell Mr Danieli that there were any outstanding issues.

Mr Marando's evidence

580. Mr Marando gave evidence that he became a registered company auditor in 2022 and a partner of Grech Smith Bridle (**GSB**) in 2023.

581. Mr Marando met Mr Phu at university in 2011 and had kept in touch and met for lunch on regular occasions since them.

582. He said he met Mr Phu for lunch on 25 June 2024 and on that occasion, Mr Phu asked him whether GSB would be interested in acting as EQR for AD

Danieli Audit PL for five listed audits, all small cap companies, three of which were in the mining industry.

583. Mr Marando said he verbally accepted the appointment on the same day.

584. In cross-examination, Mr Marando stated that as at that time, he had never been an EQC Reviewer and had never audited a listed company. However he said that he understood what the role required of him, namely that he needed to review the audit file to make sure it was compliant with Australian Auditing Standards. Initially he understood that the review had to occur prior to signing off by the firm but said that the timeline by which he expected to complete his role continually got pushed out, through his interactions with Mr Phu[145].

585. He stated that at no time during the period he was engaged as the EQC Reviewer did he have any dealings with Mr Danieli[146]. He said there was no discussion with Mr Phu about whether he should go to AD Danieli Audit PL's offices to review the files and he did not visit the AD Danieli Audit PL offices for the purposes of the EQCR process[147].

586. On 2 July 2024 at 8:39 am, Mr Phu sent Mr Marando the following message:

> "Hey bro, I'll send you some documents to prepare for the QC later today."

587. At 4:39 pm, Mr Marando received the following message from Mr Phu:

> "Hey bro, Just sent you all the documents. Once audit file is ready for you, I will send over for review. Just let me know if you have any questions on the documents I sent you"

588. Around the same time, Mr Marando sent the following message to Mr Phu:

> "Thanks, just looking through. Seem OK. Will let you know if I've any questions"

589. On 2 July 2024, Mr Marando received an email from Mr Phu attaching 3 template documents from AD Danieli Audit PL as follows:

[145] T169
[146] T170
[147] T172

QC Documents

From: James Phu <james@addca.com.au>
To: Daniel Marando <daniel@gsbaccounting.com.au>
Date: Tue, 02 Jul 2024 16:35:09 +1000
Attachments: Quality Assurance Review Report - AUS.docx (21.7 kB); QC Engagement Letter.doc (31.23 kB); QC Representation Letter.doc (31.74 kB)

Hi Daniel,

Please find attached the following documents:

- * Engagement Letter – to be inserted on your letterhead and completed once we advise of audit file completion.
- * QC Representation Letter – we will put on our letter head and send to you after you are satisfied from your review.
- * Quality Assurance Review Report – to be inserted on your letterhead and sent over once you receive the representation letter.

Kind Regards,

590. The Engagement Letter template was as follows:

(Date)

Mr. Sam Danieli
Company Director
A D Danieli Pty Ltd
Level 1, 261 George Street
Sydney NSW 2000

Dear Sam,

QUALITY REVIEW ENGAGEMENT LETTER

You have requested that we perform engagement quality review for an audit engagement of (Client Name) for the year ended (Date). We are pleased to confirm our acceptance and our understanding of this engagement quality by means of this letter.

The objectives of our engagement quality review are to perform an objective evaluation of the significant judgement made by the audit engagement team and the conclusions reached thereon. However, an engagement quality review is not intended to be an evaluation of whether the entire engagement complies with Australian Auditing Standards and applicable legal and regulatory requirements, or with the firm's policies or procedures.

We will perform our engagement quality review in accordance with Australian Auditing Standards, and we will ensure that our work is conducted with the level of professional care and diligence. However, our engagement quality does not constitute an audit and will not provide assurance on the financial report.

In order to conduct our engagement quality review, we will need access to all relevant information and documentation related to significant matters and significant judgement. We will also require cooperation from your staff to provide us with any additional information or clarification necessary to complete our engagement quality review.

We will discuss our findings with you and provide any assistance necessary to address any issues identified during our engagement quality review.

The fee for our services is (Fee Amount) plus GST. In respect of all accounts rendered, our trading terms of payment, is net 14 days from date of invoice.

We look forward to full cooperation from your staff during our engagement quality review.

Please sign and return the attached copy of this letter to indicate your acknowledgement of, and agreement with, the arrangements for our engagement quality review for an audit engagement including our responsibilities.

Yours faithfully,
(Client Name & Company)

(Client Name)
(Director – Audit Services)
(Registered Company Auditor)

Acknowledge on behalf of A D Danieli Pty Ltd by:

.....
Sam Danieli

Director

Date:

591. (We note that this template appears to have been copied directly from the Hayes Knight engagement letters received in 2023).

592. The "QC Representation letter" was as follows:

(Date)

A D Danieli Audit Pty Ltd
[Company Letterhead]

(Client Company Name)
(Client Postal Address)

Dear (Client Name)

This representation letter is provided in connection with your engagement quality review for an audit engagement of (Company Name) for the year ended (Date) for the purpose of performing an objective evaluation of the significant judgements made by the audit engagement team and the conclusions reached thereon.

We confirm that [*to the best of our knowledge and belief, having made such enquiries as we considered necessary for the purpose of appropriately infroming ourselves*]:

- The engagement team did not use the work of the internal audit function to modify the nature, or reduce the extent, of audit procedures to be performed by us.
- The engagement team did not identify any significant risks that related to services providing by service organisations.
- No identified or suspected non – compliance with laws and regulations were identified during the audit.
- The engagement team provided those with governance with timely observations arising from the audit that were significant, including those internal control deficiencies deemed to be significant.
- The engagement team appropriately evaluted the effect of identified misstatements on the audit and the effect of uncorrected misstatements on the financial report, and that there are no remaining uncorrected misstatements, that are individually or in aggregate, material to the financial report.
- All related party relationships and transactions have been appropriately identified, accounted for and disclosed in the financial report in accordance with the applicable reporting framework.
- The engagement team have considered their reporting obligations to ASIC for contraventions or suspected contraventions under s311 of the Corporations Act.
- The engagement team have considered whether there was a material inconsistency between other information and the financial report and responded appropriately in the circumstances.
- Appropriate consultation has taken place on matters involving differences of opinion or other difficult or contentious matters, that we were resolved in accordance with the firm's policies and procedures, and the conclusions arising from those consultations are documented on the audit file.

Your Faithfully,
A D Danieli Audit Pty Ltd

Sam Danieli
Company Director

593. The Quality Assurance Review Report was as follows:

(LETTERHEAD)

Quality Assurance Review Report
To A D Danieli Audit
On their audit of (CLIENT)
For the Year Ended (DATE)

The objective of this review is to provide reasonable assurance that A D Danieli Audit are complying with Australian Professional Standards and the laws relating to matters of quality control and independence when conducting audits in:

Australia including:

- The Corporations Act 2001
- APES 320: Quality Control for Firms
- Parts A and B of APES 110: Code of Ethics for Professional Accountants
- ASQC 1 Quality Control of Firms that Perform Audits and Reviews of Financial Reports and Other Financial Information, and Other Assurance Engagements
- Auditing Standard ASA 220: Quality Control for Audits of Historical Financial Information.

Our review included obtaining evidence to ensure the engagement was properly planned, with the appropriate involvement of the audit engagement partner, all identified risks had received adequate attention, the conclusions documented support the opinion expressed in the report, the financial report was presented in accordance with applicable accounting standards and regulations; and the wording of the Audit Report issued was appropriate in the circumstances and in conformity with applicable standards or guidelines. Our review was conducted before the auditor's report was issued.

We are independent of A D Danieli Audit and they have met the independence requirements of Australian professional ethical pronouncements, the *Corporations Act 2001*.

We note that our review did detect various matters in regard to the audit, including evidence supporting various audit assertions, documentation and support for audit conclusions and other audit related issues. Prior to finalising our review these issues were addressed and resolved.

(COMPANY NAME)

(SIGN OFF PARTNER)
Sydney, (DATE)

ANNEXURE "A"
To Quality Assurance Review Report
To A D Danieli Audit
On Their Audit of (CLIENT)
For the year ended (DATE)

WP Description	Findings	Quality Review Comments
Feedback as at (DATE) via email.	As noted within the file and within our email.	Minor issues outstanding at the time of this report to be addressed by A D Danieli Audit. Updated file to be provided to (FIRM NAME)

594. Mr Marando gave evidence that Mr Phu provided him with an overview of how these documents should be prepared.

595. On 24 July, Mr Phu sent Mr Marando the following message:

> "Hey bro, Thanks for the email. Just to give you an update I'll be giving you a file to review soon. Probably next week or something like that"

596. Mr Marando replied shortly thereafter:

> "Hey bro,Thanks for the heads up"

597. On 30 July Mr Marando received the following message from Mr Phu:

> "Hey bro, Are you in the office anytime this week?"

598. Mr Marando responded:

> "Hey bro, I'm at the office tomorrow and Thursday"

599. Mr Phu then sent Mr Marando the following messages:

> "Ok bro, I'll fly and get the software on a USB stick that ·way you can just review the work remotely" "Saves you the hassle of coming to my office to do the work"

600. Mr Marando responded:

> "No worries, just let me know when things are ready and next steps"

601. Mr Marando gave evidence that after these messages, nothing further happened.

602. Mr Marando gave evidence that on 6 August 2024, he received emails from Mr Phu (which were not copied to Mr Danieli) providing links to access CaseWare and confirming the expected turnaround time of 16 August 2024. He said that

AD Danieli Audit PL use CaseWare, which is an audit and assurance software package that assists auditors with conducting their audit in accordance with Australian Auditing Standards and that GSB used another program to review audit files called 'MyWorkPapers', which was a competitor to CaseWare.

603. Mr Marando gave evidence that on 6 August, he was emailed a link and password by Mr Phu to download and install audit software (Case Ware) on his computer. He said that no user access was granted at the time. Mr Phu asked him “Let me know the next time you’re in the city and we can catch up to discuss. Mr Marando then emailed Mr Phu, noting that he (Mr Marando) was in the office on Thursday (8 August 2024), and asking Mr Phu to call him or organise a Zoom or Teams call if that did not suit him.

604. Mr Marando also asked Mr Phu “What is your turnaround time for this QC” and Mr Phu emailed a reply “I would say Friday next week is the turnaround time but I’m still waiting for documents from the client I should be able to push back further if required”. (We note that “Friday next week” would have been 16 August).

605. In cross-examination, Mr Marando confirmed that he understood that mid August was the time by which the EQCR process needed to be finalised. He was asked what access he had had to documents at that stage and he said “none”[148]. He was asked what if anything he did about it and he said that he had conversations with Mr Phu but it was a very busy period for his firm and him, and its more than likely that he got sidetracked on other tasks whilst waiting for the client to come back to him with the necessary information to start the process[149].

606. On Thursday 8 August 2024, Mr Marando communicated with Mr Phu via text messages with respect to downloading the Case Ware software. Mr Phu sent the following message:

> "Hey bro, How'd you go with everything"

607. Mr Marando responded:

> "Hey Bro, So I've download the software onto the computer, but it doesn't seem to be linked to any of your files. Seems like there are further steps needed"

608. Mr Phu then sent the following messages:

> "Yeah I ·will set it up for you" "Just ·wanted to make sure you could download it first"

609. At 3:23 pm that day, Mr Marando received further messages from Mr Phu:

> "I'm waiting for first set of financial statements from the client so I can show you" "And set it all up".

[148] T173.8
[149] T173.10

610. On 12 August 2024, Mr Marando communicated with Mr Phu via text messages. At 10:29 am, Mr Phu sent Mr Marando the following messages:

> "Hey bro, hope you had a great weekend. I'll be sending you an email after lunch today with some financials. Let me know if you are available this week to catch up. "

611. After Mr Marando responded to Mr Phu' message indicating that he was in the office Tuesday to Thursday (13 to 15 August 2024), Mr Phu sent Mr Marando the following message:

> " .. . I'm out and about most of the ·week but will try to pop in the city when I can"

612. Mr Marando responded to Mr Phu with the following message:

> "Thanks Bro. Just let me know ·when you're free, my schedule is clear this week" "Also can you send the engagement details so I can fix the engagement letter etc (when you can) Thanks"

613. Mr Marando gave evidence that they he was yet to issue their engagement letter to AD Danieli Audit PL as he was waiting to receive particulars of AD Danieli Audit PL's fees for the audits, as they indicated that their fee would be ten percent of this.

614. Later that day, Mr Marando received an email from Mr Phu, copied to Mr Danieli, with initial draft copies of financial reports (in MS (Microsoft) word format) for Urbanise and Love Group:.

Urbanise.com Limited & Love Group Global Limited

From: James Phu <james@addca.com.au>
To: Daniel Marando <daniel@gsbaccounting.com.au>
Cc: Sam Danieli <sam@addca.com.au>, Audit <audit@addca.com.au>
Date: Mon, 12 Aug 2024 11:33:12 +1000
Attachments: Financial Report 2024.docx (672.22 kB); LVE - Annual Report 30 June 2024_Version 3.doc (2.06 MB); QC Engagement Letter.doc (31.23 kB)

Hi Daniel,

Please find attached version 1 of the financial reports for the above entities.

Just so you have some background information on the above, the Key Audit Matters (KAMS) in 2023 were:

Urbanise (Audit Opinion - Unmodified with a MURG)

- * Intangible Assets & Goodwill
- * Revenue Recognition
- * Going Concern

Love Group Global (Audit Opinion - Unmodified)

- * Revenue Recognition

When you have a chance, could you please advise who will be acting as the QC (Joseph or yourself) and then send over your engagement letters for both of these entities with the following fees:

- * Urbanise.com Limited - $5,541.50 + GST
- * Love Group Global – $2,330 + GST

If you have any questions regarding the attached, please do not hesitate to let me know.

Kind Regards,

615. (We note that an examination of the Urbanise draft report shows that it contained a number of queries and was obviously still in the process of being finalised).

616. Mr Marando gave evidence that on the next day, 13 August 2024, he sent an email (as set out below) to Mr Phu, copied to Mr Danieli, replying and attaching 2 executed engagement letters for Love Group and Urbanise.

617. The engagement letters were in the same form as the drafts, but were executed by Mr Marando:

RE: Urbanise.com Limited & Love Group Global Limited

From:	Daniel Marando <daniel@gsbaccounting.com.au>
To:	James Phu <james@addca.com.au>
Cc:	Sam Danieli <sam@addca.com.au>, Audit <audit@addca.com.au>
Date:	Tue, 13 Aug 2024 09:31:38 +1000
Attachments:	Urbanise - GSB Engagement Letter 12-08-2024.pdf (412.69 kB); LGG - GSB Engagement Letter 12-08-2024.pdf (413.47 kB)

Good morning James,
I have attached our quality review engagement letters for:

- Love Group Global Ltd
- Urbanise.com Limited

Could you please organise for these to be signed and returned at your earliest convenience.
I can confirm that I will be acting as the quality review (my RCA number is 540609).
Should you have any questions on this, please do not hesitate to contact me.
Regards
Daniel Marando CA
GSB GRECH SMITH BRIDLE
Chartered Accountant

618. Mr Marando gave evidence that on 14 August 2024, he met with Mr Phu in person when he attended GSB office to run through how to navigate CaseWare. He said that Mr Phu brought a USB stick with Urbanise's FY24 CaseWare file. He said that these files were preliminary and not complete or ready for EQR. Although the file was uploaded to the GSB server, it was not compatible and unable to be opened. As an alternative, Mr Phu logged into Case Ware cloud and opened the cloud file for Urbanise from the prior year as an example of how to navigate the system. Mr Marando said that at this point, he did not have his own access to Case Ware.

619. On Friday 23 August, Mr Phu sent Mr Marando an email providing him with the code required to access CaseWare. He stated that this should give him access until the end of the week and that he would arrange for additional access in September. Mr Phu continued: “I will upload the Caseware Files to the Cloud so that you can access them from your laptop. Let me know if you have any issues with the access.”

620. It was Mr Marando’s understanding that the licence was provided for a limited time due to commercial and business reasons as he understood that licences were expensive to acquire.

621. On 28 August 2024, Mr Marando sent Mr Phu a text message:

> "Hey Bro, How's everything going? Have the audit review files been uploaded yet? If so, how do I access? I've already applied the licence. Thanks"

622. Mr Phu then sent Mr Marando the following messages:

> "Hey bro, sorry been sick. "
>
> "I'll upload it all today around 2pm and you should be able to access"

623. Mr Marando responded to Mr Phu with the following message:

"No problem. Hope you 're getting better. Will there be a log in I need to use to access the cloud data?"

624. Mr Phu then sent Mr Marando the following message:

"Yeah you'll get a link to set up your password"

625. Mr Marando gave evidence that due to other work commitments, he did not follow this up with Mr Phu as he was anticipating that Mr Phu would notify him once this was completed.

626. On 29 August 2024, Mr Marando received an email from Mr Phu (not copied to Mr Danieli) notifying him of access to CaseWare and noting that he would be uploading more files once Mr Marando confirmed that he could access the file in CaseWare.

627. On 30 August 2024, Mr Marando communicated with Mr Phu via text messages as follows. At 12:21 pm, Mr Marando sent Mr Phu the following message:

"Hey Bro, I'm able to get into the urbanised.com file, is that OK foe [sic] me to review? Is there anything I need to wait on?"

628. Mr Phu then sent Mr Marando the following message:

"Just review and make comments on it. I still need to do the planning documents but have until end of October to get it done"

629. Mr Marando responded to Mr Phu with the following message:

"Ok, I'll review it as is. When do you need it finished by?"

630. Mr Phu then responded to Mr Marando with the following messages:

"Anytime between now and end of October. "

"But whenever you 're done send invoice and I'll push for it to be paid for you"

631. Mr Marando responded to Mr Phu with the following message:

"Sweet. Just another question. For work papers I review, is there a spot for me to tick off as QC? "

632. Mr Phu responded with the following messages:

"Yes there should be"

"Wait"

"No there isn't"

"For the work papers (e.g. excel sheet) just right click and press properties. Then you tick off as QC"

633. Mr Marando responded with the following message:

"OK, got it, thanks"

634. Mr Marando gave evidence that later that day, he accessed the Urbanise CaseWare cloud audit file and completed the EQR independence declaration and reviewed some planning work papers. Mr Marando also performed a google search of Urbanise and realised the audit report for 2024 had already been issued and signed-off a few days prior, on the 27 August 2024. Mr Marando said he was not informed of this by anyone from AD Danieli Audit PL.

635. On 30 August 2024, Mr Marando sent an email to Mr Phu stating "When you have a moment, could you please provide me with a copy of ADDCA's engagement letter with Urbanise.com Limited? I am unable to view the document uploaded to caseware." Mr Phu replied by email stating "Hi Daniel, Please find attached the signed engagement letter" attaching the letter dated 8 November 2023.

636. Mr Marando gave evidence that following accessing the files on 30 August 2024, as it was a Friday, no work was done over the weekend, at which point he lost access to CaseWare.

637. Mr Marando was cross-examined about his understanding of why the date of mid-August for finalisation of the EQCR had changed, and he said that he did not discuss this with Mr Phu, but trusted his opinion. He said that from past experience, clients tended to dictate when they needed the work completed by and he would generally run with their timelines[150]. He said that he knew that Listed Companies generally had two months after year end to lodge their audited financial statements and understood that the 5 Listed Companies were required to lodge by the end of August but was never specifically advised of their lodgement deadlines[151]. He said that at the time it may not have been something that crossed his mind and he did not have any reason to doubt what Mr Phu was telling him[152].

638. Mr Marando said that on 17 September 2024, he met with Mr Phu for an informal lunch and briefly discussed EQR matters, including the fact that Mr Marando was not able to access CaseWare and had not received the signed engagement letters back. He said that he would organise this. On the same date, Mr Marando received an email from Mr Phu with the signed engagement letters for Urbanise and Love Group, signed by Mr Danieli and dated by him, 13 August 2024.

639. Mr Marando said that on 18 September 2024, he emailed Mr Phu asking him whether he needed another temporary licence to continue accessing the audit file. Mr Phu responded: "Hi Daniel, Let me arrange for another temp access for you. I'm about to finish another 3 files so I'll try and get it working for you in 2 weeks time?". Mr Marando said that he accepted this and moved onto other engagements whilst waiting to hear back from AD Danieli Audit PL.

[150] T176.6
[151] T176.17-27
[152] T177

640. Mr Marando gave evidence that on 16 October 2024, he was having lunch with Mr Phu, and he (Mr Marando) raised the issue of completing the EQR as he had not heard anything yet. Mr Marando said that Mr Phu suggested that Mr Marando should not worry about it and when Mr Marando asked him why, he did not elaborate further other than to imply that AD Danieli Audit PL was experiencing some issues.

641. Mr Marando said that following this lunch, he did not receive any further correspondence from Mr Phu or AD Danieli Audit PL regarding EQR or an indication that the EQR engagement would continue.

642. Mr Marando gave evidence summarising the steps he had taken, saying that had begun an initial review of the Urbanise, had signed his Independence Declaration, reviewed some initial work papers including independence declarations from AD Danieli Audit PL staff and Mr Danieli, initial planning, client details and engagement titles. He said that this was the only work completed in relation to Urbanise. He said that he had prepared a document titled 'Quality Review Program' (undated) in relation to the Urbanise's EQR, which he used as a tool to assist with his role as EQR for the Urbanise audit. Mr Marando said that he did not complete this document and that it had not been shared with anyone. An examination of the document shows that it was largely incomplete.

643. Mr Marando said that he only did work on the Urbanise file, but did not complete the EQR role for which he was engaged by AD Danieli Audit PL for Urbanise. He stated that his process involved working from top to bottom of the file, with quality control as the last component to sign off. Mr Marando said that he may have initialled this document to indicate that he had started reviewing but did not sign off. He said that he did not complete any papers relating to Quality Control report stating that the Urbanise quality review was completed and signed off.

644. Mr Marando said that there was no other work commenced or completed in the other AD Danieli Audit PL's audit files as no other material was received or able to be accessed. He said that he did not sign off any papers relating to quality control relating to other audits.

Issue 11 - whether in FY24 GSB were engaged as EQCR for Love Group, Urbanise, Cassius, Gladiator and Pure Hydrogen

645. GSB were clearly engaged or appointed as EQC Reviewer for Urbanise and Love Group for FY24, because AD Danieli Audit PL sent a countersigned copy of the engagement letters for each of those entities on 17 September. However, the audit reports for those entities had already been signed off by Mr Danieli at that time. Whilst the fact that an engagement or appointment takes place at a time when the Review cannot be performed in accordance with the Auditing Standards (ie after signing of the audit report) would not prevent an engagement or appointment from occurring, such an engagement or appointment provides little if any meaningful support for Mr Danieli's case.

646. As already indicated, Mr Danieli appears to rely upon the assertion that GSB was engaged as EQC Reviewer as a matter supporting his contention that he

assumed *prior* to signing the audit report, that the EQCR process was proceeding without issue and, as part of this, that GSB had been engaged.

647. Thus, it is more important to consider whether GSB had been engaged or appointed as EQC Reviewer prior to the time Mr Danieli signed the audit reports.

648. The circumstances relating to "engagement" or "appointment" in the FY24 are different to the circumstances in FY23.

649. Both Mr Phu and Mr Marando gave evidence that Mr Phu offered Mr Marando the role on 25 June 2024 and that Mr Marando accepted it on the same day. We accept that Mr Phu informed Mr Danieli and that he assumed and had a reasonable basis for assuming that Mr Marando was willing to perform the role of EQC Reviewer on those audits, as was the fact.

650. However, there was not a great deal of interaction between AD Danieli Audit PL and GSB thereafter. Further, on 2 July 2024, (which was the next contact after the initial meeting on 25 June) Mr Phu sent Mr Marando the email attaching a draft engagement letter which, he said, was to be "inserted on your letterhead and completed *once we advise of audit file completion*" (emphasis added). The draft engagement letter recorded the acceptance of the request to act as EQC Reviewer and set out, in some detail, the terms of the engagement.

651. In those circumstances, we find that the parties contemplated that the engagement was only to occur when the parties executed the formal engagement letter once the audit file had been completed, rather than as a consequence of the initial oral agreement. The parties' subsequent conduct must be understood in that context and it is difficult to conclude that an engagement or appointment could arise from that conduct in those circumstances.

652. We note, in any event, that the interaction between the parties in FY24 was minimal, and virtually non-existent for Cassius, Gladiator and Pure Hydrogen.

653. Mr Danieli was not copied into the 2 July email and his knowledge of the email and the draft letters was not investigated at the Hearing. Nevertheless, Mr Danieli was copied into the 12 August email which included version 1 of the financial reports for Urbanise and Love Group, identified the key audit matters for those entities and continued with the following:

> "When you have a chance, could you please advise who will be acting as the QC (Joseph or yourself) and then send over your engagement letters for both of these entities with the following fees:
>
> - Urbanise.com Limited - $5,541.50 + GST
> - Love Group Global - $2,330 + GST"

654. Up until this time, there was no discussion of the fees which would be payable in respect of each EQCR (see paragraph 613 above).

655. Mr Marando replied to that email on 13 August (copying Mr Danieli) attaching the engagement letters for Urbanise and Love Group, asking Mr Phu to organise for them to be signed and returned at his earliest convenience, and confirming that he, Mr Marando, "will be acting as the quality review".

656. It is apparent that Mr Danieli countersigned the two engagement letters on that day. It is not clear on the evidence if he knew when these letters were returned to Mr Marando but, as he dated his signature 13 August, we infer that he intended them to be returned forthwith and that he assumed that they were.

657. Thus, the information available to Mr Danieli as at this date showed that

(a) The specific identity of the EQC Reviewer was only just being finalised;

(b) Formal engagement letters were being executed to initiate the EQCRs; and

(c) That the only engagement letters being executed as at that time were the Urbanise and Love Group engagement letters.

658. Thus, as at 13 August, when Mr Danieli countersigned the engagement letter, he:

(a) Had reason to believe that Mr Marando had been engaged as EQC Reviewer for Urbanise and Love Group on that day; and

(b) Had no basis to think that Mr Marando had yet been engaged on the Cassius, Gladiator or Pure Hydrogen.

659. Mr Danieli gave general evidence that Mr Phu constantly assured him that the EQCR process was on track. We deal with this evidence in detail below. But he had more specific information regarding the particular question of the engagement of GSB (ie the evidence just referred to).

660. In the light of the fact that no engagement letters for Cassius, Gladiator or Pure Hydrogen were ever provided to Mr Danieli for signature, taken together with the fact that there was little if any further work performed on those reviews (and little if any documentary material provided to Mr Danieli evidencing any such work), we consider that Mr Danieli did not, at any time after 13 August, have any reasonable basis to think that GSB or Mr Marando had been engaged as EQC Reviewer for Cassius, Gladiator or Pure Hydrogen. It appears that he simply assumed that they would be acting as EQC Reviewer on those audits on the basis that Mr Phu had informed him that they were willing to act.

***Issue 19(e)* - The extent to which Mr Marando had access to the audit files in FY24**

661. The evidence above shows that the complete extent of Mr Marando's access to files was as follows:

(a) The first relevant documents received by Mr Marando were the version 1 of the financial reports for Urbanise and Love Group, sent 12 August;

(b) On 14 August, Mr Phu provided Mr Marando with the Urbanise FY24 CaseWare file on a USB stick, but the files were preliminary and not complete or ready for EQ review;

(c) On 29 August, Mr Phu emailed Mr Marando notifying him of access to the Urbanise CaseWare file, which Mr Phu said still needed the planning documents;

(d) Mr Marando accessed the Urbanise CaseWare file on 30 August and undertook some work, but thereafter lost access to CaseWare; and

(e) After some further correspondence about gaining access to CaseWare over the ensuing weeks, on 16 October 2024, Mr Marando and Mr Phu met for lunch at which Mr Marando raised the issue of completing the EQR and Mr Phu suggested he should not worry about it.

***Issue 19(f)* - The extent to which Mr Marando reviewed the audit files in FY24**

662. The above evidence shows that (and we find) that the only review carried out related to Mr Marando's review of the audit files for Urbanise. On 30 August, Mr Marando was able to access the CaseWare file for Urbanise, completed the EQR independence declaration and reviewed some planning work papers. After 30 August (which was a Friday) he lost access to CaseWare and did not receive access again.

663. There is no evidence that any further audit files were reviewed.

***Issue 19(g)* - The extent to which Mr Marando signed off the audit files in FY24**

664. As we have found above, Mr Marando only reviewed the CaseWare file for Urbanise, completed the EQR independence declaration and reviewed some planning work papers. There is no evidence that he signed off the audit files and we so find.

***Issue 19(h)* - The extent of Mr Danieli's communication and discussion of key audit matters in FY24**

No issues raised point

665. Noone gave evidence to the effect that Mr Marando raised any issues during the time he was performing any work in connection with the EQCR process.

666. The reason for this was, substantially, that Mr Marando was never really briefed, (except in a very preliminary way on Love Group) and was not provided with the CaseWare files (except in relation to the Love Group). Mr Phu would have known that the fact that Mr Marando was not yet raising any issues said nothing about the Reviews might give rise to issues when Mr Marando was provided access to necessary information.

667. Mr Danieli gave evidence (see paragraphs 543*ff* above) to the effect that:

(a) He never spoke personally to Mr Marando about the EQCR process;

(b) He was not made aware that the EQCR had any issues, either by Mr Phu or by Mr Marando contacting him about it;

(c) He had not been given any indication by Mr Phu or Mr Marando that he would not be given clearance to sign off on the audit;

(d) He had not been contacted by Mr Marando;

(e) Mr Phu constantly assured him that Mr Marando would sign off on the EQCR;

(f) Mr Phu said "Daniel will sign off; he does not have any issues";

(g) Mr Phu confirmed this at their Monday morning meetings:

(h) Mr Phu did inform him that for a period of time, Mr Marando was having difficulties accessing the CaseWare files, but Mr Danieli said that he could not quite understand what the difficulties were; and

(i) Mr Phu told him that he was providing Mr Marando with access and if anything failed, he would put it on USB and take it across.

668. Mr Phu substantially confirmed this evidence. Whilst we find it disturbing that Mr Phu made this kind of statement to Mr Danieli in circumstances where he simply had no basis to do so (as demonstrated by the matters in paragraphs 661 and 662 above), we accept this evidence. It is consistent with other evidence in the case that Mr Phu gave Mr Danieli unwarranted assurances about the progress of the EQCR process.

The EQCR discussion point

669. There is no evidence that Mr Phu had any meaningful discussion with Mr Marando about any issues, significant or otherwise, in relation to any of the audits of the 5 Listed Companies.

670. Mr Danieli gave evidence that he had no discussions with Mr Marando at all, either prior to the date he signed off the audit reports or at all.

Mr Danieli's knowledge

Knowledge or assumption about engagement

671. Mr Danieli knew he had signed engagement letters for Urbanise and Love Group. However, as found above, we consider that Mr Danieli did not, at any time after 13 August 2024, have any reasonable basis to think that GSB or Mr Marando had been engaged as EQC Reviewer for Cassius, Gladiator or Pure Hydrogen. It appears however, that he simply assumed that they would be acting as EQC Reviewer on those audits, on the basis that Mr Phu had informed him that they were willing to act.

Knowledge or assumption about completion of EQCR

672. We have accepted that Mr Phu assured Mr Danieli that Mr Marando did not have any issues and that he would sign off on the EQCR. We also accept that he had no indication that there were any issues.

673. However, this evidence must be considered in the context of other information known to or available to Mr Danieli at the time:

(a) Mr Danieli was copied into the 12 August email which showed that a very preliminary brief was provided to Mr Marando for Love Group and Urbanise, attaching version 1 of the financial reports and stating "Just so you have some background information on the above the Key Audit Matters (KAMS) *in 2023 were*" (emphasis added) and then the key audit matters for 2023 were set out;

(b) The same email showed that Mr Phu was only at that time, working out who the specific Reviewer would be and organising the engagement letters;

(c) There were no further emails from Mr Phu copying Mr Danieli and providing any other information to Mr Marando prior to the dates upon which Mr Danieli signed the audit reports for Love Group (19 August) and Urbanise (27 August);

(d) There were no emails copying Mr Danieli (or other communications) attaching copies of the engagement letters for Gladiator, Cassius and Pure Hydrogen and Mr Danieli was not asked to execute any such engagement letters either prior to the sign off dates (13 September, 27 September and 30 September respectively) or at all;

(e) There is no evidence that the fees for the review of these entities had been agreed by Mr Danieli;

(f) Mr Danieli was not copied into any email by which any material was provided to Mr Marando in relation to the EQCR for any of these entities either prior to the sign off date or at all; and

(g) The position is to be contrasted with the previous year where Mr Danieli was copied into many emails to Hayes Knight providing documents and information.

674. In the circumstances, even accepting that Mr Phu was assuring Mr Danieli that Mr Marando had no issues and would sign off, and that he received no indication that there were any issues, we consider that a reasonably competent auditor in Mr Danieli's position would have regarded these assurances as glib and treated them with scepticism in the above circumstances. We consider that any reasonably competent auditor in Mr Danieli's position would have investigated the details, and not simply accepted them at face value.

675. We find, as with the FY23, that Mr Danieli signed off the audit reports in FY24 in the manner he described in paragraphs [89] to [91] of his ACR, namely:

”[90] At the time I signed off on each of the five audit reports above, Mr Marando had not yet signed off on the EQC Reviews.

[91] For the second year in a row I found myself in a position where I had to decide to either lodge the auditor’s reports in the absence of the EQCR or fail to meet the ASX deadlines for the lodgement of the financial reports.

[92] I recall having a conversation with James in which he said to me words to the effect of: “If there is any information missing, we can pick it up through the assembly stage.” I understand this to mean that the audits were in order and the client would be providing further information in the following two months after the audits had been filed.

[93] I elected at that time to trust James’s relationship with Mr Marando, and his knowledge and expertise that the necessary information would be provided in the following two months.

[94] I made the same decision he had made the year before and lodged the auditor report. I accept, as I do above, that this was a mistake.”

PART F. BREACH OF DUTY AND FIT AND PROPER PERSON

The parties’ submissions

676. We have summarised the parties’ submissions on the factual issues earlier in these reasons.

677. The parties’ more general submissions concerning breach of duty and the fit and proper person issue were to the following effect.

678. ASIC submitted:

(a) Mr Danieli had admitted that he had signed off and dated each of the FY23 and FY24 audit reports for the 5 Listed Companies prior to the completion of the EQCRs[153];

(b) Mr Danieli accepted that by reason of that admission, the Board’s power to cancel or suspend his registration had been enlivened;

(c) The question whether Mr Danieli is a ‘fit and proper person’ involves consideration of Mr Danieli’s *continued* fitness and propriety and the answer to that question is to be determined on the facts as found when the Board comes to make its determination;

(d) The ‘fit and proper person test’ involves ‘an evaluative judgment which in practical terms may be indistinguishable from a discretionary judgment’;

(e) In the context of solicitors, older Australian authorities have identified that the concept involves a consideration of the requisite knowledge of

[153] Applicant’s Opening Submissions (**AOS**) para 5(b); SAAF para 8 and 9(b)

the discipline of law as well as consideration of a "moral integrity and rectitude of character";

(f) The dictum of Toohey and Gaudron JJ in *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 at 380 was relied upon;

(g) In addition to Mr Danieli's admitted breaches, Mr Danieli was aware or ought reasonably to have been aware that as at 28 February 2023, CA ANZ had identified his firm's quality control procedures as inadequate, including in relation to dating audit reports prior to the completion of the EQCR process, in breach of ASA 220[154];

(h) Mr Danieli's conduct in FY23 and FY24 showed (contrary to his suggestion in the Action Plan in response to the CA ANZ review) that his breach was not an isolated incident[155];

(i) Mr Danieli accepted that the reference to the timing issue being an isolated incident turned out to be wrong[156];

(j) The CA ANZ review was an aggravating feature of Mr Danieli's conduct which should go to the formation of a state of satisfaction by the Board that Mr Danieli is not a fit and proper person to remain registered as an auditor[157];

(k) In relation to Epsilon, Mr Danieli dated the audit report on 31 March 2023, relying on general assertions by Mr Phu that the EQCR process had started, (whereas Mr Raciti asked for an update on the audit on 27 April 2023 and Mr Danieli did not recall receiving an invoice)[158];

(l) In relation to the FY23 audits of the five Listed Companies, Mr Raciti's accessing and reviewing of the files were limited and he did not sign off on audit files[159];

(m) Mr Danieli's reaction when Mr Raciti informed him that the FY23 EQCR processes had not been completed at the time of sign off showed that he was completely disinterested in understanding what had gone wrong with the EQCR process and that he was not particularly concerned about his non-compliance[160];

(n) Mr Danieli's evidence was clear that the fact that the EQCR process had not been completed prior to the sign off of the audit report was Mr Raciti's fault[161];

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[154] AOS para 28
[155] AOS para 31
[156] ACS para 19
[157] AOS para 32
[158] ACS para 30-34
[159] AOS para 46
[160] ACS para 43-44
[161] ACS para 44

(o) Despite this, Mr Danieli said that after receipt of Mr Raciti's email in February 2024, he denied that Mr Raciti's email should have alerted him to the fact that Mr Phu did not know what he was doing; and he said he had no plan to guide Mr Phu about how to engage and EQC Reviewer because Mr Phu knew what had to be done[162];

(p) In relation to the FY24 audits of the five Listed Companies, Mr Marando's accessing and reviewing of the files was limited to Urbanise and his work was preliminary in nature and he did not sign off any audit files[163];

(q) Mr Danieli never had any discussions with Mr Marando and took little interest in the FY 2024 EQCR process, despite being made aware by Mr Raciti about what ASA 200 required[164];

(r) In relation to Mr Danieli's case that he appropriately delegated and relied upon Mr Phu[165]:

i. His reliance consisted of (A) evidence that he "would have" or "did have" conversations about various EQCR processes that were going on and (B) evidence that he inferred that EQCR processes were complete because Mr Phu did not expressly bring any issues to his attention;

ii. The evidence of reliance of the first type was vague;

iii. Reliance of the second type is telling of Mr Danieli's lack of understanding of his obligations under FY 2023 ASA 220 para 19 and FY2024 ASA para 36 because those obligations were imposed upon Mr Danieli himself as engagement partner, (see also the Engagement Partner's overall responsibility in FY23 ASA 220 [15] FY24 ASA 220 [40]);

iv. Mr Danieli should have known that his delegation of, in essence, the whole of the EQCR process was not permitted;

v. The Board can be satisfied that even at the time of the Hearing, Mr Danieli did not understand and could not explain practically what ASA 220 required of him;

vi. It was a simple step for Mr Danieli to satisfy himself that the EQCR process had been completed;

vii. However it was a substantive step, which Mr Danieli regarded as nothing more than administrative[166];

(s) Mr Danieli's assertion that no one told him that the EQCR was not complete and not taking further simple steps to satisfy himself was not

[162] ACS para 45
[163] AOS para 54
[164] ACS para 48-49
[165] ACS paras 50-59
[166] ACS para 61

compatible with the requirements and expectations of an auditor taking ultimate responsibility in performing his duties as an engagement partner on listed company audits and by extension, reflects poorly on Mr Danieli's judgment competence and attitude to remain registered as a company auditor[167].

(t) There is no reason why facts which cause the Board to arrive at a state of satisfaction in relation to the one limb of s 1292(1)(d) cannot be used in considering the other limb. For that reason, Mr Danieli's conduct which is admitted to be a breach of auditors' duties within s 1292(1)(d)(i) could, either by itself or in combination with other facts and considerations, be used by the Board in considering whether it is satisfied as to Mr Danieli's fitness and propriety to remain registered as an auditor[168];

(u) Aggravating features of Mr Danieli's conduct included[169]:

i. Mr Danieli's conduct, over two years, in respect of 10 audits, was itself very serious and fell drastically short of the standard of competence and diligence that the community would expect of a lead auditor and engagement partner of Mr Danieli's decades-long experience;

ii. The findings of the CA ANZ review were a particularly aggravating feature;

iii. The failure identified in the CA ANZ review was not an isolated incident and Mr Danieli's Action Plan was incorrect in saying so, because as at the date the Action Plan was sent to CA ANZ, (28 April 2023), Mr Danieli had just signed the audit report for Epsilon at a time when the EQCR process had not been completed, to his knowledge[170];

iv. Further, some six months later, Mr Danieli began lodging signed audit reports with no EQCR process being formally adopted whatsoever and no EXCR process having been performed;

v. This showed that Mr Danieli acted with (at best) indifference to his obligation to comply with ASA 220 over 10 audits of five Listed Companies;

vi. ASIC relied upon Mr Danieli's evidence as to his understanding of the CA ANZ follow up review letter received by Mr Danieli on 6 November 2024[171];

[167] ACS para 62
[168] AOS para 62
[169] AOS para 63, FACO par 98*ff*
[170] ACS para 19
[171] ACS para 20-24

(v) As regards Mr Danieli's engagement of external consultants to assist with quality management, despite the relevance of that evidence, no documentary evidence of the work was adduced[172];

(w) The Board should have little confidence that Mr Danieli has sufficient insight into his non-compliance with his duties as an auditor such that the Board can presently be satisfied that Mr Danieli is fit and proper to remain registered as an RCA[173];

(x) The "limb one" non-compliance happened over two financial years and it occurred after Mr Danieli was alerted to an EQCR process for a past audit being incomplete (and that CA ANZ would follow up on his own proposed remediation steps)[174];

(y) None of those remediation steps prevented the non-compliance from recurring; and

(z) Mr Danieli minimised the CA ANZ Review letter's significance, as showing there were "further improvements", and this would give the Board little confidence that Mr Danieli is concerned with complying with AS 220[175].

679. Mr Danieli submitted:

(a) Mr Danieli conceded that he signed the auditor's reports for the companies prior to the completion of the EQCR process in breach of ASA 220, and that he had limited engagement with the EQC Reviewers. He accordingly acknowledged that he failed to adequately comply with his duties in s 307A(2) of the Corporations Act to ensure that all audits were conducted in compliance with relevant auditing standards[176];

(b) He did not accept that having regard to all the circumstances, his failure means that he is not a fit and proper person to remain registered as a company auditor;

(c) Whilst the failure identified under s 1292(1)(d)(ii) (sic s 1292(1)(d)(i)) is directly relevant to the consideration of fitness and propriety and may ordinarily or without more be indicative of a lack of fitness, the underlying question of fitness and propriety is a distinct one and necessitates separate consideration and separate satisfaction[177];

(d) A proper assessment of fitness and propriety for the purposes of s 1292(1)(d) requires[178]:

[172] ACS para 17
[173] ACS para 72
[174] ACS para 73
[175] ACS para 75
[176] ROS para 4
[177] ROS para 9, RCS para 13
[178] ROS para 11, RCS para 25

i. *Firstly*, the consideration of what the conduct as found indicates about the person's fitness and propriety to perform the role of a registered company auditor, having regard to the role and responsibilities of an auditor, the seriousness or otherwise of the failure and the context in which that conduct occurred; and

ii. *Secondly*, a contemporaneous consideration of a person's character/fitness. The fit and proper test in s1292(1)(d), by its use of the words "is", requires the assessment of whether there is reason to believe that a person is not a fit and proper person to remain registered as at the time of the hearing, rather than at some earlier point in time. In considering this, it is important to have regard to the individual's response to the matters alleged, including features indicating cooperation, remorse and reform. This is particularly important given that the purpose of any disqualification/suspension order to be imposed by the Board is protective;

iii. The concept of "fit and proper person" involves a broad evaluative judgment that takes into account honesty, knowledge, ability, and character. As explained by Dixon CJ, McTiernan and Webb JJ in *Hughes & Vale Pty Ltd v The State of NSW (No. 2),* the phrase is deliberately open-ended, intended to give the decision-maker a wide scope for judgment. It encompasses personal integrity, competence, and diligence;

(e) In properly considering whether it can be actively satisfied that he is "not a fit and proper person to remain registered", the Board should consider not only any failure to comply with his duties, but also:

i. The seriousness or otherwise of that failure;

ii. What, if anything, the failure says about his skill and character, particularly having regard to the factual circumstances in which the failure occurred;

iii. His response to the matters raised against him, including his conduct since; and

iv. Other features which speak to his skill and competence as a company auditor.

(f) Mr Danieli accepted that he had limited engagement with Mr Raciti over the course of the audit and the EQCR process, and that he signed the audit reports for each of the Companies for the 2023 financial year, prior to Mr Raciti giving any formal sign off as EQCR. However the context in which Mr Danieli came to sign the audit reports prior to the formal EQCR sign off is critical, and provides important insight into Mr Danieli's thought processes and motivations which are relevant to an assessment of what

the conduct says of his character overall and the likelihood that the conduct would reoccur[179];

(g) ***First***, Mr Danieli delegated primary responsibility for liaising with the EQC Reviewers to Mr Phu—his co-director at AD Danieli Audit PL, audit manager, and a registered company auditor himself. This delegation was wholly appropriate given Mr Phu's skills and experience. Mr Danieli placed significant trust in Mr Phu's competence and expected that he would engage with the EQC Reviewers as needed, provide them with all relevant documents and escalate any material issues to him;

(h) The delegation involved ongoing oversight. Mr Danieli was in daily communication with Mr Phu about the audits and the EQCR process (referring to the daily work plans and the Monday morning meetings)

(i) At no point in these discussions did Mr Phu indicate that the EQCR process in relation to the Listed Companies had stalled, that an EQC Reviewer had unresolved issues with the audit or had refused to sign off. To the contrary, on numerous occasions, Mr Phu told Mr Danieli that all was under control with the audits and the EQCR process and made statements to him such as "Mario is going to sign off";

(j) Mr Danieli had no reason to doubt what Mr Phu was telling him and the active engagement between Mr Phu and Mr Raciti was supported by emails into which he was copied;

(k) Mr Danieli strenuously denies Mr Phu's evidence that:

i. Mr Phu advised him that Mr Raciti was refusing to sign off as EQC Reviewer on any of the 2023 files;

ii. He never advised Mr Phu to sign off on Mr Raciti's behalf.

(l) ***Secondly*****,** Mr Danieli also understood that Mr Raciti, as an experienced auditor, was well aware of the lodgement timelines for the Listed Companies. He reasonably believed that Mr Raciti (together with Mr Phu) were working towards these deadlines and that if issues had arisen (either from a timing perspective or an audit perspective), they would have been raised promptly. In the absence of such concerns being raised with him, and in light of Mr Phu's consistent reassurances, Mr Danieli believed that the EQCR process had not identified any issues with the audits. Mr Danieli assumed that had Mr Raciti or Mr Poon had issues with Mr Phu or with the EQCR engagement, they would have contacted him directly about it. They did not;

(m) ***Thirdly*****,** the absence of issues being raised with him and the lack of contact from Mr Raciti was not surprising or concerning to Mr Danieli having regard to the entities and audits involved. It was important to recognise that, with the exception of Urbanise, the entities in question—Love Group, Gladiator, Cassius, and Pure Hydrogen—were small-cap

[179] ROS para 18

companies with limited trading activity and relatively straightforward operations. For instance, both Cassius and Gladiator had balance sheets consisting of no more than $2m in exploration costs and some cash at bank; the audit issues were therefore very limited (namely, the carrying value of exploration expenditure, impairment and going concern). In that context, Mr Danieli did not expect the EQCR process to be a complicated or lengthy one, nor did he anticipate it to present significant audit issues;

(n) ***Fourthly,*** when signing the reports, Mr Danieli's focus was on ensuring timely lodgement of the Companies' financial reports, particularly given the consequences of any delay for those Listed Companies. Under section 319(3) of the Act, disclosing entities must lodge their financial reports within three months of the end of the financial year (ordinarily, 30 September). Late lodgement exposes entities to suspension from trading. When faced with the fact that the EQCR process had not been formally completed, but in the genuine belief that there had been no issues identified, Mr Danieli prioritised lodging on time in order to avoid any negative consequences to the audit clients;

(o) ***Finally,*** Mr Danieli's mindset was that, following the signing and dating of the audit report, he had a "2 month" window, in which to finalise compiling the audit file. He also was of the view that the documentation of EQCR process did not have to be completed by the time of dating the audit report, but rather that all concerns and issues raised by and with the EQC Reviewer needed to be resolved by that time. Mr Danieli's view is supported by ASA 230, ASQC1 and ASQC2;

(p) Following the issues which arose for the 2023 financial year, and the withdrawal of Hayes Knight, Mr Danieli had to engage a new EQC Reviewer for the 2024 financial year. Having not realised that it was Mr Phu's lack of engagement and organisation which caused issues with Hayes Knight, Mr Danieli asked Mr Phu if he could recommend a new EQC Reviewer. Mr Phu recommended Mr Daniel Marando of Grech Smith & Bridel;

(q) Again, as with the 2023 financial year, Mr Danieli delegated responsibility to Mr Phu for dealing with Mr Marando and believed, based on his instruction, that Mr Marando had been engaged as EQC Reviewer for each of the Listed Companies;

(r) Mr Danieli was aware at some point that Mr Marando was experiencing issues accessing the CaseWare files, but again was assured by Mr Phu this was all under control;

(s) As with the previous years, Mr Phu gave Mr Danieli comfort that the EQCR process was in hand and due to the nature of the entities, Mr Danieli was not expecting that the EQC Reviewer would raise any issues with the audit;

(t) Again for the 2024 financial year, Mr Danieli dated the audit reports for the Listed Companies in the belief that the absence of any issues raised by either Mr Phu or the EQC Reviewer indicated that the review process was substantively complete and that formal sign-off would follow as a matter of course;

(u) In hindsight, Mr Danieli accepts that he was operating under a significant misapprehension as to the status of the EQCR process—a misunderstanding that he candidly acknowledges stemmed from his own insufficient personal engagement with the reviewer;

(v) It is accepted that Mr Danieli's conduct fell short of what is expected of him as a registered company auditor. He acknowledges that he ought to have exercised far greater care in overseeing the EQCR process. He accepts that he should have engaged directly and substantively with the EQC Reviewers, rather than relying so heavily on Mr Phu, and that he should not have dated the audit reports until he had actively satisfied himself that the EQCR process had been completed, rather than making assumptions. Mr Danieli openly acknowledges these matters and greatly regrets them;

(w) Despite this, it is important to note that Mr Danieli's conduct:

i. Was not dishonest or motivated by the pursuit of any personal gain; to the contrary, he sought to prioritise (albeit in a misconceived way) the interests of his clients and meeting the lodgement deadlines;

ii. Was not designed to circumvent the EQCR process or avoid any scrutiny from the EQC Reviewer; and

iii. Does not reflect a fundamental deficiency in Mr Danieli's honesty, integrity, skill, or competence—nor does it warrant a conclusion that he is unfit to remain registered as an auditor.

(x) Mr Danieli further acknowledged that the CA ANZ review highlighted to him deficiencies in his EQCR process, and ought to have caused him to be more careful in the following years. Despite this, his focus following the CA ANZ review *was* on improving his and the firm's systems and process. Mr Danieli not only engaged a new EQC Reviewer but he also engaged Craig Allen from Quality Assurance for Accountants and David Stevens from A2A Knowledge Pty Ltd for further assistance with the firm's quality control systems and processes. It would be incorrect to suggest that Mr Danieli was flippant about the CA ANZ findings or his responsibilities.

(y) Mr Danieli is a very experienced auditor. He has been a registered company auditor since May 1988. He is a Fellow of the Chartered Accountants Australia and New Zealand and of the CPA Australia. He is a registered tax agent and self-managed superannuation fund auditor. He is well regarded by his clients and staff. Some clients have remained

with him for 43 years and over half of his staff have been with the firm for over 10 years.

(z) Whilst Mr Danieli failed to comply with auditing standards in respect of the quality review engagement, ASIC have not identified or made reference to any defects in the audit themselves. Mr Danieli maintains that he is a skilled and competent company auditor and provides important audit services to the community.

(aa) Mr Danieli has had a chance to reflect on these matters at length. He now appreciates and openly concedes his failings and the areas in which he must improve (and indeed, has already improved, as will be mentioned below). Mr Danieli's cooperation with ASIC and his appropriate concessions and contrition are to his credit and speak to his character at the time of the hearing. This demonstrated insight should give the Board comfort that the conduct would not occur again.

(bb) Mr Danieli has, in recent times, completed a further audit of a listed entity, Epsilon, for the year ending December 2023, demonstrating compliance with the standards;

(cc) Mr Danieli maintains, however that, when his conduct is assessed in its full factual context—taking into account how the failings arose, the insight he has demonstrated, the lessons he has drawn from his errors, and the tangible, proactive steps he has undertaken in response—as well as his longstanding professional background, reputation, and proven capabilities as an auditor, it cannot reasonably be concluded that he is not a fit and proper person to remain registered[180];

(dd) The additional finding urged by ASIC that he is not "fit and proper to remain registered" is a particularly grave one. It carries a distinctly adverse implication, may involve significant reputational harm, and necessarily influences the nature and severity of any sanction to be imposed[181];

(ee) Having regard to:

i. The factual context in which the failings occurred;

ii. The nature of the failings (specifically being failings not indicative of dishonesty);

iii. Mr Danieli's demonstrated remorse and insight;

iv. Mr Danieli's improved practices; and

v. Mr Danieli's skill and experience as an auditor,

[180] RCS para 3
[181] RCS para 4

there was no reason to believe that Mr Danieli is not a fit and proper person to remain registered, despite the breaches of his duties in failing to adequately comply with ASA 220.

Relevant principles on applications under s 1292(1)(d)

680. Although the Application relies upon both limbs of s 1292(1)(d) (ie failure to perform duties etc (first limb) and fit and proper person (second limb)), the parties' submissions concentrated on the second limb, as this was the limb which was disputed by Mr Danieli. However, as explained below, the Board's jurisdiction depends on the Board being "satisfied" of the grounds relied upon, notwithstanding the agreement of the parties. Accordingly, it is necessary for us to address the principles applicable to both limbs.

681. Section 1292(1) provides (relevantly):

> "(1) 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
>
> …
>
> 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."

Failure to carry out or perform adequately and properly the duties of an auditor

682. In relation to the first limb, the question on this Application is whether the Board "is satisfied … that … [Mr Danieli] has failed … to carry out or perform adequately and properly … the duties of an auditor".

683. The principles have been recently discussed by the Board in *ASIC v Santangelo* 03NSW/23, (***Santangelo***) (available on the Board's website) (at paragraphs [29] to [31]) and were touched upon by Rofe J in *CMW23 v Companies Auditors v Companies Auditors Disciplinary Board* [2024] FCA 407.

684. The essential task of the Board on such an application involves:

(a) *First*, identifying the "duties of an auditor"; and

(b) *Secondly*, making an evaluative or subjective determination about whether the duties have been carried out or performed "adequately and

properly" (cf *CMW23 v Companies Auditors Disciplinary Board* [2024] FCA 407 at [56]).

685. ***As to the first task**,* the case put forward by the parties was that Mr Danieli did not comply with his obligation under subsection 307A(2) of the *Corporations Act* as lead auditor of the audit company when he did not ensure that each of the 10 audits were conducted in accordance with ASA 220 (see Applicant's written submissions para 3, Respondent's Opening Submissions par 4).

686. This submission presumably took into account that Mr Danieli was not actually the auditor engaged to perform the audit. Accordingly, the normal duties imposed upon the auditor performing the audit were not directly applicable. It was necessary, nonetheless, to show

(a) That Mr Danieli owed duties;

(b) That these were "the duties of an auditor"; and

(c) And that Mr Danieli did not carry out or perform adequately and properly those.

687. *As to (a),* in our view, Mr Danieli *did* owe a relevant duty, namely, the duty to ensure that the audits were carried out in accordance with the auditing standards pursuant to s 307A of the Corporations Act. There is no apparent basis for contending that s 307A(2) does not impose a "duty" upon a lead auditor[182] (cf *NHPT and Members of the Companies Auditors and Liquidators Disciplinary Board* [2015] AATA 245 at [38], [39]; *Islam v ASIC* [2024] ARTA 88 at [100] – [101]).

688. *As to (b)* we accept that the duty under s 307A is a "duty of an auditor". The term "lead auditor" is defined in s 324AF as "the registered company auditor who is primarily responsible to the … audit company for the conduct of the audit". In effect, the obligation imposed by s 307A(2) is that "the registered company auditor who is primarily responsible to the … audit company for the conduct of the audit must ensure that the audit … is conducted in accordance with the auditing standards". We consider that such an obligation is a duty which is imposed upon an auditor and thus, comes within the phrase "duties of an auditor" in s 1292.

689. The duty may not be owed by every auditor involved in an audit, but it is owed by a particular auditor involved in the audit and, in our view, this is sufficient to support a finding that the duty comes within the "duties of an auditor".

690. *As to (c),* we will deal with this question subsequently in our reasons. We note that there has been some discussion in the authorities concerning whether the concept of performance of the "duties of an auditor" adequately and properly is

[182] It should be noted that in *Goodman v ASIC* (2004) 50 ACSR 1 at [26], Branson J appeared to suggest that Auditing Standards had no "direct statutory significance". She held that they were relevant to establishing the benchmark of "professional standards", against which performance of duties had to be judged. However, s 307A was only enacted in 2004, and thus was not relevant to her Honour's decision. In our view, by reason of the enactment of s 307A and similar provisions, as from 2004 auditing standards did have direct statutory significance for auditors.

concerned with whether the auditor has performed the role of auditor adequately and properly, rather than an identified duty or duties.

691. ***As to the second task,*** the following principles apply[183]:

(a) The ultimate question for the Board under s 1292(1)(d) is not a pure question of law. It is not concerned about whether there has been a contravention of a statute or the commission of an offence;

(b) Further, the question is not dependent simply on whether the auditor has breached an identified duty or identified duties;

(c) The question for the Board is whether relevant duties have been performed "adequately and properly";

(d) This requires assessment of the level and standard of performance of duties;

(e) The level and standard of performance of the duty needs to be tested against a relevant benchmark;

(f) CADB has adopted the "relevant benchmark" terminology to refer to what comprises the "measuring stick" by reference to which a Panel undertakes its assessment of the level of performance of a registered company auditor of their relevant duties, and whether those duties have been performed properly;

(g) The benchmark is "accepted professional standards";

(h) The accepted professional standards may be found by the Board to be set by, or alternatively reflected in, published Auditing Standards;

(i) The level of performance called for is that of "adequacy"; the standard is that the duty or function must be performed "properly";

(j) At its heart, the question is directed to whether duties have been performed with "requisite skill and probity" and the question can be seen as a reasonable surrogate for an enquiry as to the fitness of the person;

(k) In other words, the Board tests performance of duties and it does so by making an evaluative and subjective judgment, by reference to a benchmark, being accepted professional standards;

(l) This is a task within the expertise of the Board, as a body with appropriate professional skills to make informed decisions on this question[184]; and

(m) The question can depend to some extent on having an intelligent understanding of the purposes which relevant provisions of the

[183] *ASIC v Taylor* [2025] CADB 1 at [43]
[184] And see the recent decision in *Williams v Companies Auditors Disciplinary Board* [2025] FCA 269 at [61]*ff*.

Corporations Law are trying to achieve, and what proper professional practice required to be done to enable those purposes to be achieved.

692. We note that it must follow from Mr Danieli's submissions that the Board's jurisdiction has been enlivened under the first limb of s 1292(1)(d), that he accepts, that the nature of the conduct, based upon the factual position he asserts, amounts not only to a failure to perform duties, but a failure to perform them adequately and properly.

Relevant principles governing applications based upon admissions and agreed facts

693. To some extent, the present application has proceeded on the basis of admissions and agreed facts.

694. It is not in dispute that where the parties proceed upon an agreed statement of facts (and even where the parties have agreed to the making of orders under s 1292), CADB must be independently satisfied that the grounds for an application are made out and that it has the power to make the orders. Subject to the caveat expressed in *ASIC v* Wessels 05/QLD13 (***Wessels***) at [23], the Board may proceed to consider a matter by reference to an agreed statement of facts, (see also *Santangelo* at [34]*ff)*. The caveat in *Wessels*, was to the following effect:

> "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)])."

Relevant principles in relation to "fit and proper" issue

695. We generally accept the parties' submissions dealing with the principles in considering the question whether an auditor "is otherwise not a fit and proper person to remain registered as an auditor" within s 1292 (see paragraphs 678(c)-(f) and 679(c)-(e) above). We make the following further observations about the question.

696. The phrase "fit and proper person" is a commonly used phrase representing a required measure of competence and propriety with respect to professions. That said, the phrase is used in a specific context in s 1292 and the section must be construed in accordance with accepted contemporary principles of statutory interpretation "which emphasise that the beginning and the end of statutory construction is the text of the statute being construed"[185].

[185] *RD Miller Pty Ltd v Roads and Maritime Services NSW* (2020) 103 NSWLR 234; [2020] NSWCA 241 at [98]

697. Whilst the phrase “fit and proper person” occurs in a number of provisions in the Corporations Act it is, unsurprisingly, not defined.

698. The phrase in s 1292 appears in the context of the power given to the Board to cancel or suspend registration where the Board is satisfied that “a person who is registered as an auditor … has failed … to carry out or perform adequately and properly … the duties of an auditor… *or is otherwise not a fit and proper person to remain registered as an auditor*” (emphasis added).

699. A number of matters may be noted:

(a) Section 1292 appears in Part 9.2 of the Corporations Act, entitled “Registration of Auditors”, which includes the test for initial registration for an auditor, (which requires ASIC being satisfied “that the applicant is capable of performing the duties of an auditor and *is otherwise a fit and proper person* to be registered as an auditor”): s 1280;

(b) The test which the Board applies is very similar, ie making a judgment about whether the person “has failed … to carry out or perform adequately and properly … the duties of an auditor… *or is otherwise not a fit and proper person* to remain registered as an auditor”): s 1292

(c) It is probable that the phrase “fit and proper” means the same thing in each section; and

(d) The introductory words to the phrase (“or is *otherwise*” not a fit and proper person) show that the phrase “fit and proper person” adds to or expands on the preceding phrase, ie, a failure “to carry out or perform adequately and properly … the duties of an auditor”: *Albarran v Members of CALDB* (2007) 231 CLR 350 at [24] (which is the leading and binding authority on the Board’s powers). In other words, in order to make out a case that an auditor has failed to carry out or perform adequately and properly the duties of an auditor, it is not necessary for ASIC to show that such failure equates to the auditor not being fit and proper. On the other hand, it may well be the case that the failure to perform adequately and properly *does* mean that the Respondent is not fit and proper. Indeed, the Full Federal Court in *Albarran* said that the past failure to perform duties adequately and properly is a guide to whether the person is fit and proper, as indicated by the words “or otherwise”.

700. As to the general meaning of the phrase recognised in the authorities, the leading authority is *Hughes and Vale Pty Ltd v The State of New South Wales [No 2]*. This decision was referred to in *Albarran*. The plurality in *Albarran* said:

> “In *Hughes and Vale Pty Ltd v The State of New South Wales [No 2]*, Dixon CJ, McTiernan and Webb JJ, after saying that the expression "fit and proper person" was familiar as comprising "traditional words" when used with reference to offices and vocations, added that the very purpose of the expression was to give the widest scope for judgment and indeed for rejection; thus, "fit" involved honesty, knowledge and ability.”

> That passage was relied upon by Hill J in Davies v Australian Securities Commission when construing an earlier provision drawn in the same terms as s 1292(2) of the Corporations Act."

701. In *Ziem's v The Prothonotary of the Supreme Court of* NSW (1957) 97 CLR 279 Kitto J stated:

> "… the issue is whether the applicant is shown not to be a fit and proper person … it is not capable of more precise statement. The answer must depend on one's conception of the minimum standards demanded …"

702. It is useful to compare the view of the phrase in one of the leading UK authorities, *R v Crown Court at Warrington, ex p. RBNB* [2002] UKHL 24, where Lord Bingham said, at [9]:

> "Secondly, some consideration must be given to the expression 'fit and proper' person. This is a portmanteau expression, widely used in many contexts. It does not lend itself to semantic exegesis or paraphrase and takes its colour from the context in which it is used. It is an expression directed to ensuring that an applicant for permission to do something has the personal qualities and professional qualifications reasonably required of a person doing whatever it is that the applicant seeks permission to do."

703. In *Davies v ASC* (1995) 59 FCR 221, which the High Court appears to have endorsed in *Albarran*, Hill J said at 305-6:

> "The phrase "fit and proper person" is a familiar one in the context of qualifications for offices or vocations. Discussing the phrase in the context of licences to use vehicles for the purposes of interstate trade, Dixon CJ, McTiernan and Webb JJ said in *Hughes and Vale Pty Ltd v New South Wales (No 2)* (1955) 93 CLR 127 at 156–7:
>
> > 'But their very purpose is to give the widest scope for judgment and indeed for rejection. "Fit" (or "*idoneus*") with respect to an office is said to involve three things: honesty, knowledge and ability: "honesty to execute it truly, without malice affection or partiality; knowledge to know what he ought duly to do; and ability as well in estate as in body, that he may intend and execute his office, when need is, diligently, and not for impotency or poverty neglect it" — *Coke*. When the question was whether a man was a fit and proper person to hold a licence for the sale of liquor it was considered that it ought not to be confined to an inquiry into his character and that it would be unwise to attempt any definition of the matters which may legitimately be inquired into; each case must depend upon its own circumstances …'
>
> As I observed in *Stasos v Tax Agents' Board of New South Wales* 90 ATC 4950 at 4959, the content of what is necessary to constitute a person a fit and proper person to occupy a particular office or pursue a particular vocation will vary having regard to the office or vocation under consideration. Thus, the characteristics required to show fitness as a tax agent were expressed by Davies J in *Re Su and Tax Agents' Board, South Australia* 82 ATC 4284 at 4286 as requiring that person to be:

> "… a person of good reputation, has a proper knowledge of taxation laws, is able to prepare income tax returns competently and is able to deal competently with any queries which may be raised by officers of the Taxation Department. He should be a person of such competence and integrity that others may entrust their taxation affairs to his care. He should be a person of such reputation and ability that officers of the Taxation Department may proceed upon the footing that the taxation returns lodged by the agent have been prepared by him honestly and competently."

Generally speaking it may be said that an auditor who fails to carry out adequately and properly his or her duties or functions as an auditor would not be a fit and proper person to remain registered, even if otherwise that person is a person of good fame and character. Perhaps it was for that reason that s 1292(1)(d) was cast in the way it was.

704. We note that Ms Bentley submitted in this case, that:

> "a failure to comply adequately and properly with his duties as an auditor does not axiomatically mean [Mr Danieli] is not a fit and proper person to remain registered as an auditor. Whilst of course the failure identified under s1292(1)(d)(ii) (sic s 1292(1)(d)(i)) is directly relevant to the consideration of fitness and propriety, and may ordinarily,[*Davies v Australian Securities Commission* (1995) 59 FCR 221, 223 – 234] or without more, [*Gould v Companies Auditors and Liquidators Disciplinary Board* [2009] FCA 475, [102]] be indicative of a lack of fitness, the underlying question of fitness and propriety is a distinct one and in Mr Danieli's view necessitates a separate consideration and separate satisfaction".

705. There was a difference in approach in *Davies* and *Gould*. Justice Hill's approach in *Davies* was as follows:

> "***Generally speaking*** it may be said that an auditor who fails to carry out adequately and properly his or her duties or functions as an auditor would not be a fit and proper person to remain registered, even if otherwise that person is a person of good fame and character. Perhaps it was for that reason that s 1292(1)(d) was cast in the way it was". (at page 233) (emphasis added)
>
> And
>
> "If the words "or is otherwise" have any significance at all it is to express a legislative view that a person who does not carry out or perform adequately and properly the duties or functions referred to in subparas (i) and (ii) ***will ordinarily*** not be a fit and proper person to remain registered as an auditor." (at page 234) (emphasis added)

706. Justice Lindgren's approach in *Gould* revealed a less flexible approach

> "The word "otherwise" shows that the provision ***takes it for granted*** that a failure of the kind described in (1) ***will, without more***, demonstrate that the person is not a fit and proper person to remain registered as a liquidator." (emphasis added)

707. We are not aware of any authority which has attempted to reconcile the difference in approach. In the absence of such an authority, we consider Justice Hill's approach is to be preferred. The word "otherwise" can be read as introducing some flexibility into the phrase so that the section does not operate in the binary fashion suggested by Justice Lindgren.

708. In our view, the correct approach is to consider the question whether a person is a fit and proper person to remain registered as an auditor as a fresh question, in accordance with its terms, but bearing in mind that ordinarily, a failure to comply adequately and properly with the duties of an auditor will equate to an absence of fitness and propriety.

709. There are other authorities which provide further insights to the concept of "fit and proper".

710. In *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321, Mason CJ said at 380:

> "The question whether a person is fit and proper is one of value judgment. In that process the seriousness or otherwise of particular conduct is a matter for evaluation by the decision maker. So too is the weight, if any, to be given to matters favouring the person whose fitness and propriety are under consideration."

711. Toohey and Gaudron JJ said at 380:

> "The expression "fit and proper person", standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities. The concept of "fit and proper" cannot be entirely divorced from the conduct of the person who is or will be engaging in those activities. However, depending on the nature of the activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides indication of likely future conduct) or reputation (because it provides indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question."

712. Other guidance concerning the phrase is set out in the following quotations from the authorities (albeit in different contexts to the present).

713. In *Sobey v Commercial and Private Agents Board* 20 SASR 70 Walters J said

> "In my opinion what is meant by that expression is that the applicant must show not only that he is possessed of a requisite knowledge of the duties and responsibilities evolving upon him as the holder of a particular licence … but also that he is possessed of sufficient moral integrity and rectitude of character as to permit him to be safely accredited to the public … as a person to be entrusted with the sort of work which the licence entails."

714. In *Re T and the Director of Youth and Community Services* [1980] 1 NSWLR 392, Waddell J said, at 393:

> "A distinction must be drawn between "repute" or "reputation" and character" or "disposition". The word "character" is sometimes used as meaning a person's reputation, but "reputation" is not ordinarily used to mean character. The distinction has been referred to in many decisions of the courts."

715. In *Melbourne v R* [1999] 198 CLR 1 at 15 McHugh J said:

> "…character refers to the inherent moral qualities of a person or what the New Zealand Law Commission has called "disposition — which is something more intrinsic to the individual in question". It is to be contrasted with reputation, which refers to the public estimation or repute of a person, irrespective of the inherent moral qualities of that person."

716. In *Ex P Tziniolis; Re Medical Practitioners Act* (1966) 67 SR (NSW) 448 Walsh JA said, at 450, that in determining questions of character, in the context of an application for registration as a medical practitioner:

> "… the court is required to consider matters affecting the moral standards, attitudes and qualities of the Applicant and not merely to consider what is his general reputation."

717. In the context of solicitors, Lopes LJ in *Re Weare* expressed the relevant inquiry in the following terms:

> "… is the court, having regard to the circumstances brought before it, any longer justified in holding out the solicitor in question as a fit and proper person to be entrusted with the important duties and grave responsibilities which belong to a solicitor".

718. Both parties submitted (and we accept) that the test requires a contemporaneous consideration of a person's character/fitness, by the use of the word "is", in other words, the question is addressed at the time of the hearing or determination, rather than at some earlier time. We note that this approach has been adopted in analogous jurisdictions (see *A Solicitor v Council of the Law Society of New South Wales* (2004) 216 CLR 253 at [21]; *Prothonotary of the Supreme Court of New South Wales v Livanes* [2012] NSWCA 325 at [24]). Ms Bentley further submitted (and we accept) that it is important to have regard to the person's response to the matters alleged, including cooperation, remorse and reform.

719. In the analogous jurisdiction relating to solicitors, the following principles have been articulated:

(a) The question requires the Court to consider whether the practitioner is likely to be unfit for the indefinite future: *Council of the Law Society of New South Wales v Zhukovska* (2020) 102 NSWLR 655 at [99];

(b) "Indefinite" in this context is not the same as "permanent". Rather, the requirement is that it not be apparent whether, and if so when, the practitioner might be suitable for reinstatement to the roll: *Prothonotary*

of the Supreme Court of NSW v 'A' (a pseudonym) [2023] NSWCA 258 at [35] (where the requirement was expressed in terms of whether the unfitness was likely to continue for the "foreseeable future");

(c) The jurisdiction is protective, not punitive. Its purpose is protection of the public and its confidence in the legal profession: *Council of the Law Society of New South Wales v Green* [2022] NSWCA 257 at [58].

720. We consider that those principles apply to the question which arises under s 1292.

721. Thus, the question the Board has to address is one involving an evaluative judgment. It involves amongst other things, consideration of whether Mr Danieli has the personal qualities, qualifications or skill reasonably required of a registered auditor. The question depends upon the Board's conception of the minimum standards required. The seriousness of Mr Danieli's conduct is a matter for evaluation by the Board. So too is the weight, if any, to be given to matters favouring Mr Danieli.

Key propositions in the parties' case

722. Without ignoring the broader submissions referred to above, the parties' key submissions on the "fit and proper" question are as follows.

723. ASIC's essential case on "fit and proper" is:

(a) ASIC accepts that the question is an evaluative judgment for the Board;

(b) The Board should have little confidence that Mr Danieli has sufficient insight into his noncompliance with his duties as an auditor such that the Board can be presently satisfied that Mr Danieli is a 'fit and proper person' to remain registered as an RCA;

(c) The noncompliance happened over two financial years. It occurred after Mr Danieli was alerted to an EQCR process for a past audit being incomplete (and that CA ANZ would follow up on his own, proposed, remediation steps);

(d) None of those remediation steps prevented the noncompliance from recurring;

(e) Mr Danieli minimised the CA ANZ follow up review letter's significance.

(f) Mr Danieli was unable to practically explain what ASA 220 required from him at the conclusion of his evidence, and

(g) Whilst Mr Danieli gave oral evidence that he directly supervised an EQCR process which was completed, the Board would give less weight to Mr Danieli's oral evidence where it is not supported by documentary evidence.

724. The key propositions in Mr Danieli's case were:

(a) The question involves a broad evaluative judgment that takes into account honesty, knowledge, ability, and character;

(b) The phrase is deliberately open-ended, intended to give the decision-maker a wide scope for judgment. It encompasses personal integrity, competence, and diligence;

(c) Mr Danieli accepts that his conduct fell short of what was required, however he was let down by other professionals, including Mr Phu, Mr Raciti and Mr Marando;

(d) He says he should have taken greater care in overseeing the EQCR process and engaged directly rather than relying so heavily on Mr Phu;

(e) There can be no suggestion that he has a fundamental misunderstanding of, or disregard for his duties,

(f) He was not dishonest and, to the contrary, he sought, in a misconceived way to prioritise the interests of his clients;

(g) His conduct was not designed to circumvent the EQCR process or avoid any scrutiny;

(h) This conduct does not reflect any fundamental deficiency in Mr Danieli's honesty, integrity, skill, or competence;

(i) He was not flippant about the CA ANZ findings or his responsibilities but following the review, focused on improving his and the firm's processes;

(j) He had hoped the EQCR issues might be rectified by engaging a suitably qualified person and asking Mr Phu, who he believed to understand the obligations and the CA ANZ findings, to oversee that process. He has since learned that that was and is insufficient;

(k) He is a very experienced auditor;

(l) He is well regarded by clients and staff;

(m) ASIC has not identified any defects in the audits themselves;

(n) He has had a chance to reflect and concedes his failings and that he must improve. He has learnt his lessons and those lessons have been acted on;

(o) His evidence shows that he now fully understands the EQCR process and its importance;

(p) He has improved procedures and he adopted a markedly different approach in his audit of Epsilon, and this can give the Board confidence that it won't happen again;

(q) His concessions and cooperation with ASIC are to his credit; and

(r) This demonstrated insight should give the Board comfort that this conduct will not occur again.

The relevant Auditing standards

725. It is helpful, at this point, to set out the relevant provisions in ASA 220 (as applicable to the 2023 year). The Standard is entitled "Quality Control for an audit of a Financial Report and Other Historical Financial Information".

726. The Scope of the Standard is stated in paragraph 1 as:

> "1. This Auditing Standard deals with the specific responsibilities of the auditor regarding quality control procedures for the audit of a financial report and other historical financial information. It also addresses, where applicable, the responsibilities of the engagement quality control reviewer. This Auditing Standard is to be read in conjunction with relevant ethical requirements."

727. The relevant section of the Standard, for the purposes of this matter, is the section headed "Engagement Performance" which provides as follows

> "**Engagement Performance**
>
> *Direction, Supervision and Performance*
>
> 15. The engagement partner shall take responsibility for:
> (a) The direction, supervision and performance of the audit engagement in compliance with Australian Auditing Standards, relevant ethical requirements, and applicable legal and regulatory requirements; and (Ref: Para. A14-A16, A21)
> (b) The auditor's report being appropriate in the circumstances.
>
> *Reviews*
>
> 16. The engagement partner shall take responsibility for reviews being performed in accordance with the firm's review policies and procedures. (Ref: Para. A17-A18, A21)
>
> 17. On or before the date of the auditor's report, the engagement partner shall, through a review of the audit documentation and discussion with the engagement team, be satisfied that sufficient appropriate audit evidence has been obtained to support the conclusions reached and for the auditor's report to be issued. (Ref:Para. A19-A21)
>
> *Consultation*
>
> 18. The engagement partner shall:
> (a) Take responsibility for the engagement team undertaking appropriate consultation on difficult or contentious matters;
> (b) Be satisfied that members of the engagement team have undertaken appropriate consultation during the course of the engagement, both within the engagement team and between the engagement team and others at the appropriate level within or outside the firm;

(c) Be satisfied that the nature and scope of, and conclusions resulting from, such consultations are agreed with the party consulted; and
(d) Determine that conclusions resulting from such consultations have been implemented. (Ref: Para. A22-A23)

Engagement Quality Control Review

19. For audits of financial reports of listed entities, and those other audit engagements, if any, for which the firm has determined that an engagement quality control review is required, the engagement partner shall:
(a) Determine that an engagement quality control reviewer has been appointed;
(b) Discuss significant matters arising during the audit engagement, including those identified during the engagement quality control review, with the engagement quality control reviewer; and
(c) Not date the auditor's report until the completion of the engagement quality control review. (Ref: Para. A24-A26)

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;
(b) Review of the financial reports and the proposed auditor's report;
(c) Review of selected audit documentation relating to the significant judgements the engagement team made and the conclusions it reached; and
(d) Evaluation of the conclusions reached in formulating the auditor's report and consideration of whether the proposed auditor's report is appropriate. (Ref: Para. A27-A33)

21. [Deleted by the AUASB. Refer Aus 21.1]
Aus 21.1 For audits of financial reports of listed entities, and those other audit engagements, if any, for which the firm has determined that an engagement quality control review is required, the engagement quality control reviewer, on performing an engagement quality control review, shall also consider the following:
(a) The engagement team's evaluation of the firm's independence in relation to the audit
engagement;
(b) Whether appropriate consultation has taken place on matters involving differences of opinion or other difficult or contentious matters, and the conclusions arising from those consultations; and
(c) Whether audit documentation selected for review reflects the work performed in relation to the significant judgements made and supports the conclusions reached.(Ref: Para. A30-A33)

Differences of Opinion

22. If differences of opinion arise within the engagement team, with those consulted or, where applicable, between the engagement partner and the engagement quality control reviewer, the engagement team shall follow the firm's policies and procedures for dealing with and resolving differences of opinion."

728. ASA 220 at [A26] states:

> "Completion of the engagement quality control review means the completion by the engagement quality control reviewer of the requirements in paragraphs 20-Aus 21.1, and where applicable, compliance with paragraph 22. 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. ASA 230 establishes requirements and provides guidance in this regard."

729. There are minor differences in the 2024 version of the Standard.

Consideration

730. In our view, the nature of Mr Danieli's breaches were serious and were repeated. Moreover, they took place where Mr Danieli had received specific notice from CA ANZ letter of his relevant obligations. Even accepting everything Mr Danieli said about the reasons for his conduct, including his reliance on Mr Phu and his expectations from Mr Raciti, and notwithstanding the positive evidence brought forward by Mr Danieli, we are satisfied that Mr Danieli has both failed to carry out or perform adequately and properly the duties of an auditor and is otherwise not a fit and proper person to remain registered as an auditor.

Failure to carry out or perform adequately and properly the duties of an auditor

731. As to the first limb of s 1292(1)(d), Mr Danieli accepts that he has failed to carry out or perform adequately and properly the duties of an auditor. Despite this, we are required to be satisfied of this matter ourselves. Having regard to our findings above, we have no doubt that Mr Danieli failed in his duty under s 307A of the Corporations Act, to ensure that each of the ten audits was carried out in accordance with:

    (a) FY23 ASA 220 para 19(b) in relation to the FY23 audits and FY24 ASA 220 para 36(c) in relation to the FY24 audits, because there was no discussion with the EQC Reviewer of significant matters arising during the audit engagement;

    (b) ASA 220 paragraph 19(c) in relation to the FY23 audits and FY24 ASA 220 para 36(d) in relation to the FY23 audits because, in respect of each audit, Mr Danieli signed and dated each auditor's report prior to the completion of the EQCR process.

732. As at the time of the FY23 and FY24 audits, Mr Danieli knew that he was the Engagement Partner on an audit of a financial report of a Listed Entity on each of the 10 audits and knew (or certainly ought, as a registered company auditor, to have known – and particularly in view of the CA ANZ letter) that he had personal mandatory obligations as Engagement Partner, under the standards just referred to. He knew (or certainly ought, as a registered company auditor, to have known) that he was required to ensure that each of the audits was carried out in accordance with those standards.

733. We have found that Mr Danieli had no discussions with Mr Raciti or Mr Poon in the course of the performance of the FY23 audits. He made no attempt to contact them for a discussion. Mr Danieli well knew this, on each occasion that he signed and dated each of the 10 audit reports.

734. Mr Danieli admits that on each of the 10 occasions upon which he signed and dated the audit report of each of the 5 Listed Companies in FY23 and FY24, the EQCR was not complete. We have found this as a fact.

735. In our view, Mr Danieli failed to carry out or perform the duties of an auditor in relation to each of the 10 audits. The fact that his failures related to serious matters, were many and were repeated leaves us in no doubt that he had failed to carry out or perform the duties of an auditor adequately and properly.

736. Accordingly, we are satisfied of the matters in the first limb of s 1292(1)(d). To the extent that it is necessary, we also rely in this regard upon our findings below, in finding that Mr Danieli's performance was not adequate and proper.

Fit and proper person

737. As to the second limb, (whether Mr Danieli is a fit and proper person to remain registered as an auditor), we note that the parties both accept that this involves the making of an evaluative judgment by the Board.

738. As foreshadowed above, we have not considered the matter on the basis of the approach adopted by Justice Lindgren in *Gould v Companies Auditors and Liquidators Disciplinary Board* [2009] FCA 475. Thus, we have not adopted the position that simply because Mr Danieli has failed to carry out or perform adequately and properly the duties of an auditor, that we must therefore conclude that Mr Danieli is not a fit and proper person to remain registered.

739. Having said that, even on Justice Hill's more flexible approach, the fact that a person has failed to carry out or perform adequately and properly the duties of an auditor will ordinarily equate to the person not being fit and proper. Further, in our view, the nature and extent of Mr Danieli's failings and what they show about Mr Danieli's character have caused us to be satisfied that Mr Danieli is not a fit and proper person to remain registered as an auditor, notwithstanding the positive matters raised in defence of the allegation.

740. We repeat that Mr Danieli, was, for each of the ten audits, performing the role of an Engagement Partner on an audit of a financial report of a Listed Entity, and was required to know, understand and apply the requirements of, amongst other things ASA 220.

741. Those requirements included the obligation on "the engagement partner" to do three things:

(a) Determine that an EQC Reviewer had been appointed;

(b) Discuss significant matters arising during the audit engagement, including those identified during the engagement quality control review, with the EQC Reviewer; and

(c) Not date the auditor's report until the completion of the EQCR.

742. These are clear and straightforward obligations. They are not particularly demanding but are very important.

743. We consider that the key events relating to Mr Danieli's relevant conduct over the relevant period were as follows.

744. Mr Danieli was informed, by the 28 February 2023 CA ANZ letter, that the reviewer had noted significant issues, including a failure to document evidence of discussions of significant matters with the EQC Reviewer as required by ASA 220 and the fact that the sign-off was dated significantly later than the auditor's report.

745. In his Amended Concise Response, Mr Danieli contested the CA ANZ findings[186], although Mr Danieli did not make clear on what basis he contested them, and he asserted that he took the findings "on board" and then commenced making changes[187]. Mr Danieli also contested ASIC's contention that the breach identified in the CA ANZ review concerning sign-off prior to completion of the review, showed a pattern of behaviour. Whatever the position, the real significance of this matter for our purposes, was not whether there was an actual breach or whether there was a pattern of behaviour, but that Mr Danieli was reminded, in a serious context, of the requirements of ASA 220 and that a failure to comply with the requirements was, in the view of CA ANZ, a significant issue. We find that a failure to comply with the requirements was a significant issue.

746. Against that background, a reasonably competent auditor, in the position of Mr Danieli, would have ensured that he was in a position to address the requirements of ASA 220 in connection with the FY23 audits and FY24 audits (including discussing significant matters on a timely basis before sign-off, and not signing off prior to completion of the EQCR) and would have ensured that he did address them. We note the evidence about the "Action Plan" which was prepared with the purpose of addressing the CA ANZ review. All that need be said about this is that the key matters to be addressed by Mr Danieli, were the matters just discussed. The Action Plan obviously did not achieve the result that Mr Danieli complied with his obligations in connection with the FY23 and FY24 audits.

747. Lest the position needed to be made clearer, we note another matter of context was Mr Danieli's signing of the Hayes Knight engagement letter on the Epsilon audit, which, as we have found above, would have alerted Mr Danieli (to the extent that he needed to be alerted) to the facts that:

(a) Hayes Knight was proposing to perform the Epsilon Review in accordance with Australian Auditing Standards;

[186] ACR para 14
[187] T190

(b) In order to conduct the review, Hayes Knight would need access to all relevant information and documentation related to significant matters and significant judgment;

(c) Hayes Knight would also require cooperation from AD Danieli Audit PL staff to provide any additional information and clarification necessary to complete the review; and

(d) Hayes Knight would discuss their findings with "you" and provide any assistance necessary to complete the review.

748. Thus, there was information available to Mr Danieli to indicate what Hayes Knight expected in the EQCR process and this would have confirmed to him, or a reasonably competent auditor in Mr Danieli's position, that he needed to be in a position to address the requirements of ASA 220 on a timely basis in relation to all of the audits.

749. As we have discussed in detail above, the position regarding the actual engagement or appointment of Hayes Knight was unclear and needlessly so. Although there is no allegation of a breach of ASA 220 para 19(a) on this Application, it was Mr Danieli's personal obligation as engagement partner, to determine that an EQC Reviewer had been appointed. Having received and signed a formal letter of engagement for Epsilon, it would have been an easy step for him to have taken steps to ensure that engagement letters for the EQCRs on the other audits were also signed.

750. We have found that notwithstanding the lack of clarity about engagement, Hayes Knight were engaged by AD Danieli Audit PL in the case of Urbanise, Gladiator, Cassius and Pure Hydrogen but not in the case of Love Group. As there is no allegation of breach of para 19(a), we make no finding of such breach in the case of Love Group. However, as a contextual matter, we consider that Mr Danieli was less than diligent in determining that Hayes Knight had been engaged or appointed.

751. In any event, it is clear that although Mr Danieli proceeded upon the assumption that Hayes Knight was engaged on all five EQCRs for FY23, he did not contact Hayes Knight at all, or have any discussion relating to any issues, significant or otherwise with Mr Raciti in August or September 2023. He signed and dated the audit reports of the 5 Listed Companies when no EQCR had been completed on any of them. We find that he signed and dated the audit reports, knowing that the EQCR process had not been completed. If we are wrong in this finding, and Mr Danieli believed, based upon Mr Phu's assurances and lack of any contact by Hayes Knight, that the EQCRs had been completed, we find that no reasonably competent auditor in Mr Danieli's position would have held such a belief without contacting Hayes Knight or reviewing the CaseWare sign-off to confirm the position.

752. Subsequently, Mr Danieli was again reminded of the requirement not to date an audit report of a listed entity until the EQCR had been completed, when Mr Raciti sent him an email pointing out this fact in February 2024.

753. The position regarding the engagement of GSB or Mr Marando for the FY24 EQCRs was even more unsatisfactory than in 2023. We have found that there was no engagement or appointment of GSB or Mr Marando in relation to Cassius, Gladiator or Pure Hydrogen. Mr Danieli just assumed that GSB and Mr Marando would be acting as EQC Reviewer on the audits, despite the fact that he knew he had only signed engagement letters for Urbanise and Love Group.

754. Although Mr Danieli engaged GSB or Mr Marando on Urbanise and Love Group, and apparently assumed that they would be acting as EQC Reviewer on the other audits, Mr Danieli again made no contact with Mr Marando at all and had no discussion relating to any issues, significant or otherwise, with Mr Marando in August or September 2024. For the second year in a row, he signed and dated the audit reports of 5 Listed Companies when no EQCR had been completed on any of them. We find that he knew, when he signed and dated the audit reports, that the EQCR had not been completed. Again, if we are wrong in this finding, and Mr Danieli believed, based upon Mr Phu's assurances and lack of any contact by GSB, that the EQCRs had been completed, we find that no reasonably competent auditor in Mr Danieli's position would have held such a belief without contacting GSB or reviewing the CaseWare sign-off to confirm the position.

755. One of Mr Danieli's key contentions on this Application is that Mr Danieli's conduct does not mean that he is not a fit and proper person to remain registered as an auditor because, amongst other things, of the factual context. We address the key matters on which Mr Danieli relies in the following paragraphs.

756. ***The first matter on which Mr Danieli relies*** is that he said he delegated "primary responsibility" for liaising with the EQC Reviewers to Mr Phu[188] and that this involved ongoing oversight. This was not a particularly candid submission. In fact, Mr Danieli did not liaise with the EQC Reviewers at all, or more correctly, he did not discuss significant matters with the EQC Reviewers. He either ignored his personal obligation as engagement partner to discuss significant matters with the EQC Reviewers or wrongly delegated this obligation to Mr Phu.

757. The first point to be made about this submission is that Mr Danieli was not entitled to delegate his obligation to discuss significant matters with the EQC Reviewer and not to date the audit report until the EQCR review was complete, and he knew or ought to have known this.

758. Mr Danieli appeared to accept this in his submissions[189]. He accepted that this was an obligation which fell on him as engagement partner. He said that he took "insufficient steps to ensure this occurred".

759. Again, the latter phrase was not a particularly candid submission. The true position is that he took no steps to ensure that he, as engagement partner,

[188] ROS para 19
[189] RCS para 57(a)

carried out his personal obligations to discuss significant matters with the EQC Reviewers and not to sign and date the audit report until the EQCR had been completed.

760. Whilst there is no doubt that Mr Danieli could have delegated aspects of the EQCR process[190], he was not entitled to delegate his personal obligations as engagement partner under the standards.

761. The second point to be made is that the submission that Mr Danieli delegated to and relied upon Mr Phu is made in global terms in relation to each of the ten audits, which took place over months in 2023 and 2024. It ignores the fact that events occurred incrementally day by day during August and September 2023 and subsequently in February 2024 and, again, day by day in August and September 2024. Mr Danieli's general submission is that over the whole of this period, Mr Phu assured him that the EQCRs were progressing without issue and that they had been completed.

762. As revealed in our consideration of the disputed facts, we have largely accepted Mr Danieli's evidence that Mr Phu made assurances to him to the effect that the EQCR processes were on track and that there were no issues over the course of the audits. In some cases, Mr Phu confirms that he made these assurances. We have expressed concern that he did so in circumstances where he had no justification for doing so.

763. However, the question whether Mr Danieli actually relied upon these assurances or whether a reasonably competent auditor in his position would have relied upon these assurances is a different matter. We have found that Mr Danieli knew (as revealed in his ACR Election Contentions) at the time he signed and dated the audit reports, that the EQCRs had not been completed but elected to sign off in order to prioritise the interests of the clients. Moreover, a detailed consideration of the chronology shows that Mr Danieli could not reasonably have continued to rely upon Mr Phu's assurances (or no reasonably competent auditor would have done so) once his assurances in relation to the first audits were shown to be incorrect. We consider this in more detail below (at paragraph 767*ff*).

764. ***The second matter on which Mr Danieli relied*** was his understanding that Mr Raciti, as an experienced auditor, was well aware of lodgement timelines for companies and that he reasonably believed that Mr Raciti together with Mr Phu were working towards these deadlines and if any issues had arisen, they would have raised this promptly. He submitted in the absence of such concerns being raised and in the light of Mr Phu's constant reassurances, he believed that the EQC Reviewer had not identified any issues with the audits.

765. We find this submission unattractive. Mr Danieli was obliged to engage in discussions with Mr Raciti about significant matters and not date and sign off the audit report until the process was completed. He was not entitled to breach these obligations on the basis that he had not been contacted by Mr Raciti by the time of the signing and dating of the audit report. An engagement partner is

[190] And we accept ASIC's submissions in this regard - ACS para 57

not entitled to sign and date the audit report if he or she assumes, by reason of lack of contact from the EQC Reviewer, that there are no issues. It is not to the point that Mr Phu informed him that the EQC Reviewer had not identified any issues. It was not Mr Phu's obligation to discuss significant matters or, in effect, perform Mr Danieli's personal obligations on his behalf.

766. ***Further, as regards both the first and second matters***, Mr Danieli's trust and reliance on other practitioners does not derogate from his own duties and responsibilities as auditor. To the contrary, for Mr Danieli to assume that work had been performed without satisfying himself that in fact it had been done and properly documented on the audit file revealed a misunderstanding of and dereliction of his personal duties.

767. Further, as foreshadowed above, the submissions about his assumptions and reliance were made in very broad terms and avoided scrutiny of the precise nature and timing of Mr Danieli's breaches, and the knowledge of detail, which he gained progressively as the audits proceeded.

768. The starting point is Urbanise (lodgement date 22 August 2023):

(a) In the period leading up to 22 August 2023, Mr Danieli made no contact with Mr Raciti to discuss significant issues. Had he done so in a timely manner prior to 22 August he would have discovered that the EQCR was not complete, that his assumptions about Mr Raciti not having issues were incorrect and that Mr Phu had been misleading him about the progress of the EQCR. No doubt he could then have taken steps to ensure that Mr Phu did not continue to do so and he could have expedited the process particularly if, as he submits, the audits were not particularly complicated;

(b) Next, (if, as we have found, his knowledge was as he had asserted in the ACR Election Contentions), he knew, when he signed and dated the audit report on 22 August, that the EQCR had not been completed. To the extent that he had been relying on assumptions to that point, he should have realised that his assumptions were misplaced. A reasonably competent auditor in that position would have called Mr Raciti to work out what was going on. Once he had done that, he would have discovered that his assumptions about Mr Raciti having no issues, and his assumptions that he could rely upon Mr Phu's assurances, were wrong. He could have then taken some urgent action to remedy the position, including addressing what was happening on the upcoming audits;

(c) In the alternative, even if we are wrong about Mr Danieli knowing, at the time he signed and dated the Urbanise audit report on 22 August, that the EQCR had not been completed, and even if Mr Danieli thought (wrongly) that it was unnecessary to contact Mr Raciti because Mr Raciti had not contacted him and Mr Phu had assured him there were no issues, he was still required by ASA 220 para 19(c) not to date the audit report until the EQCR was completed. Had he checked whether the EQC Reviewer had signed off, he would have discovered that it had not;

(d) We find Mr Danieli's attitude in not taking the simple step of confirming completion of the EQCR to be baffling and inconsistent with the actions of a person who is fit and proper to be registered as an auditor. Mr Danieli accepted that the process of checking to confirm that the EQCR had been completed was straightforward and would take no time at all. He could have looked at the CaseWare file. He could have had a three minute telephone conversation with Mr Raciti or Mr Poon. There was no cogent reason why he would not have undertaken the simple step of checking. Mr Danieli failed to provide any credible reason why he did not do so. Had he done so, he would have discovered that his assumptions were incorrect. Then, he could and should have taken steps to remedy the position, at the very least so as to ensure that the EQCR process was properly attended to for the remaining audits;

(e) In any event, even ignoring the above, on 30 August, Mr Danieli was copied into the email from Mr Poon relating to Urbanise which stated "*As part of the quality review*, we *will be focusing* on the significant risks that you identified in the report to audit committee" (emphasis added). At this point, whatever Mr Danieli's state of knowledge on 22 August, he was or should have been aware that his assumptions that the EQCR process was on track and that no issues had been raised were misplaced. He knew or ought to have known from this email that:

i. The EQCR was still to occur, (or at the very least, had not been completed);

ii. That this was the reason, in all likelihood, that Mr Raciti had not yet raised any issues with him; and

iii. That the assurances he had been receiving from Mr Phu were, at their most innocent, misleading.

(f) Having regard to the above, we consider that a reasonably competent auditor in Mr Danieli's position would have realised these matters and undertaken significant steps to remedy the situation, at the latest, around the end of August. We do not consider that Mr Danieli was entitled to carry on assuming that the EQCR process was on track for other entities or to continue to rely on Mr Phu's assurances.

769. Next, at about the same time, Mr Danieli was provided with information about the Love Group EQCR, which was inconsistent with the assumptions which he said he relied upon:

(a) On 24 August, *one day before he signed the audit report for Love Group*, he was copied into the email from Mr Phu which would have conveyed to a reasonably competent auditor in his position that Mr Phu had only just provided Messrs Raciti and Poon with the Love Group draft report and instructions as to the key audit matters and he had only just provided Messrs Raciti and Poon with the CaseWare file which was "uncompleted";

(b) Again, to any reasonably competent auditor, this would have suggested that the EQCR was only just commencing, that Mr Danieli's assumption about Mr Raciti not raising any issues because there were none, was probably wrong and that Mr Phu had been misleading him about the EQCR process being on track without any issues;

(c) Indeed we have found, that Mr Danieli's knowledge on 25 August was as he asserted in the ACR Election Contentions, namely that he knew, when he signed and dated the audit report, that the EQCR had not been completed. Once again, to the extent that he had been relying on assumptions to that point, we consider that a reasonably competent auditor in that position would not only not have signed and dated the audit report, but would have called Mr Raciti to work out what was going on. Once had he done that, his assumptions about Mr Raciti having no issues, and his assumptions that he could rely upon Mr Phu's assurances, would have been revealed to be misplaced;

(d) Alternatively, even if we were to accept that Mr Danieli was told and assumed that the EQCR process for Love Group had been completed, we find it inconceivable that a reasonably competent auditor would not have checked the position, by taking the simple and straightforward step of opening the CaseWare file or calling Mr Raciti. As already stated above, we do not consider that Mr Danieli gave any cogent explanation for why he did not do so.

770. There are further matters of detail which are relevant at this point, and undermine Mr Danieli's argument that he was justifiably relying upon Mr Raciti and Mr Phu:

(a) Mr Danieli gave evidence that he expected to receive a report from Mr Raciti dealing with the completed EQCRs. Prior to signing the Urbanise and Love Group audit reports, Mr Danieli knew that he had not received a report on either Urbanise or Love Group. The failure to chase up the report or to inquire of Mr Raciti why no report had been received was yet another inexplicable omission by Mr Danieli. Had he contacted Mr Raciti either before signing, or in the days following, about when he was going to receive the reports, he would have been informed that neither the Urbanise nor the Love Group EQCR had been completed. This would have exposed his assumptions and reliance on Mr Phu as misplaced;

(b) Mr Danieli accepted, in his own submissions, that before signing the audit reports he should have checked that the EQCR process was finalised and "*picked up the phone*" to the EQC Reviewers. He accepted that had he done so, the true facts would have been revealed and "he could have rectified the situation";

(c) Secondly, if, as we have found, Mr Danieli knew when he signed the audit reports for Urbanise and Love Group, that the EQCR had not been completed (as at 22 August and 24 August respectively), he also knew at that time that the lodgement dates for the other entities were coming up (Gladiator 18 September, Cassius 27 September and Pure Hydrogen

29 September). Any reasonably competent auditor knowing this, and knowing that the EQCRs had not been completed for Urbanise and Love Group, would have taken immediate steps to contact Hayes Knight and implement steps to ensure that the three remaining EQCRs were completed on time. In paragraph 52 of the ACR, Mr Danieli asserted that when he "made the decision to sign the audit reports absent the EQCR completion" he was feeling (amongst other things) "frustration at the lack of action from Hayes Knight, despite clearly outlined and known deadlines". This frustration presumably arose in August when the first deadlines were missed. Mr Danieli's omission to take proactive action in relation to the remaining audits is not comprehensible and not consistent with the actions of a person who is fit and proper to remain registered as an auditor.

771. In relation to the remaining three audits, similar issues as those just discussed arose. Mr Danieli's asserted reliance upon Mr Raciti's lack of contact and Mr Phu's assurances in relation to these audits was not justified. On each occasion Mr Danieli signed off an audit report for these entities, he knew, yet again, that he had not engaged in any discussion with Mr Raciti in relation to any significant issue, that he had not received any report from Mr Raciti or Hayes Knight in relation to the EQCR and that he had not taken any of the simple steps available to check if the EQCR report had been signed off. He also must have known, as at this time, that he had not received any invoices from the EQC Reviewer.

772. Mr Danieli's behaviour in February 2024, when Mr Raciti contacted him to inform him that the EQCRs had not been completed and to remind him of the obligation not to date the audit report prior to completion, is also very relevant.

773. In the first place, it shows that Mr Danieli was again reminded of the requirements of standards. In the second place, his failure to investigate was consistent with indifference about his non-compliance with the standards. Thirdly, his failure to investigate shows that his asserted continued reliance on Mr Phu in relation to the FY24 audits was not justified.

774. Mr Danieli asserted that he found Mr Raciti's email "bizarre", that he "totally disagreed" with what Mr Raciti said and stated that he was "very concerned". Yet when he replied to Mr Raciti's email (the last line of which had said: "Can I suggest that you seek guidance on this matter"), Mr Danieli simply said "Perhaps we could have a catch up again and we can go through the sign off procedures and timing". Mr Danieli's understanding of that phrase was not investigated in cross-examination, but whatever it meant, it hardly revealed that Mr Danieli "totally disagreed" with and was "very concerned" about what Mr Raciti had said. Moreover, Mr Danieli's failure to contact Mr Raciti further (particularly in the light of the fact that Mr Raciti was withdrawing from the appointment) was inexplicable and not consistent with the actions of a person who understood and respected his obligations under ASA 220.

775. Mr Danieli knew that Mr Raciti was asserting that Mr Danieli had breached his obligation not to date the audit report prior to the completion of the EQCR, (the very thing which CA ANZ had asserted in its Review letter a year earlier). He knew this, against the background of his knowledge that he had not undertaken

any discussion with Mr Raciti about significant issues on any of the audits, that he had not taken any of the simple steps, at the time of signing off each of the audit reports, to check that the EQCRs had been completed, and that he had not received any of the expected reports from Mr Raciti on the EQCRs. In these circumstances, he had no proper basis for dismissing Mr Raciti's email as "bizarre". Even if he assumed that Mr Raciti was wrong, it was very important for him to clarify the position.

776. Once again, it would have been a very simple step for Mr Danieli to have telephoned Mr Raciti to ask him what he was talking about. Had he done so, Mr Raciti would inevitably have asserted that the EQCRs had not been completed, that he had not completed and provided any reports and that he had not signed off the CaseWare files. Mr Danieli could then have investigated the matter internally. Any simple investigation of what had taken place in relation to the EQCRs (eg checking when emails and materials were sent to Hayes Knight and what had been signed off in CaseWare) would have confirmed for Mr Danieli that little if anything had been done on the EQCRs by the time each respective audit report had been dated and signed. This, in turn, would have shown that, to the extent that Mr Phu had assured Mr Danieli, prior to sign off, that the EQCRs were on track and that no issues had been raised, these assurances were wholly misleading.

777. We are particularly concerned by the fact that Mr Danieli took no further step to ascertain the correctness of Mr Raciti's assertion. If, as Mr Danieli asserts, he totally disagreed with Mr Raciti, he would have had no concern about confronting Mr Raciti and/or checking the situation. Yet he was content to leave the matter alone and not check whether a concerning accusation suggesting that something had gone seriously wrong with the EQCR process, was correct. We are also concerned about Mr Danieli's answers, in the witness box, about why he did not contact Mr Raciti, and what this reveals about his attitude. He said "I saw it pointless to do so" … "because I couldn't see it was going to achieve anything with him".

778. This answer reveals an approach which we do not consider any reasonably competent registered company auditor would regard as an appropriate course in the face of such a serious allegation of breach of the standards. If Mr Danieli believed that the EQCR processes had all been completed, justifiably relying upon Mr Phu's assurances, there was every point in confronting Mr Raciti. It would have been important for Mr Danieli to set the record straight about such a serious allegation and reject any baseless assertion that he had failed to comply with standards. Mr Danieli had signed audit reports in which it was asserted that the audits had been carried out in accordance with the auditing standards. Further, however firmly he believed Mr Raciti was wrong (and we consider that he had very little basis for such a belief), it was important for Mr Danieli to check what Mr Raciti was saying. If, by chance, Mr Raciti's assertion was correct, it was clearly important to work out what had gone wrong and why, so that the issue would not arise again. We can see no proper reason why, if Mr Danieli "totally disagreed" with Mr Raciti and was very concerned, he would not have challenged Mr Raciti and worked through the facts with him.

779. We note that Mr Danieli gave no evidence that he consulted Mr Phu about Mr Raciti's February 2024 emails. Mr Danieli gave evidence that he did nothing to implement a strategy or plan about how to engage an EQC Reviewer after February 2024. Mr Danieli's evidence about why he did not was to the effect that Mr Phu knew what was required and that he was a capable registered company auditor.

780. The effect of Mr Danieli's evidence suggested that, contrary to his assertions to the contrary, he was unconcerned about the possibility that he had breached the requirements of ASA 220 in the FY23 audits. This was particularly concerning in the light of the history, including the notification he had received in the CA ANZ letter.

781. The position did not improve in 2024.

782. Mr Danieli, for the second year in a row, delegated to Mr Phu the entire EQCR process.

783. That said, the only review work carried out related to Urbanise, and it was not completed.

784. The lodgement dates were 19 August 2024 (Love Group), 27 August 2024 (Urbanise), 13 September 2024 (Gladiator), 27 September (Cassius), and 30 September 2024 (Pure Hydrogen).

785. Mr Danieli never spoke to Mr Marando at any time during the EQCR process.

786. The only email he received or was copied into in the entire FY24 EQCR process was the 12 August email which showed that a very preliminary brief had been provided to Mr Marando for Love Group and Urbanise, and showed that Mr Phu was only just working out who the specific Reviewer would be and organising the engagement letters (for those two entities). Mr Danieli signed engagement letters for Love Group and Urbanise on 13 August. He was never provided with or asked to sign any engagement letters for the other entities.

787. As we have found above, Mr Danieli merely assumed that Mr Marando was engaged as EQC Reviewer for Cassius, Gladiator and Pure Hydrogen.

788. Once again, Mr Danieli proceeded to sign and date the audit reports for each of the five entities without having had any discussion with Mr Marando about any significant issues or any discussion at all. He signed and dated the audit reports without taking the simple step of confirming for himself that the EQCR process had been completed and without receiving any report from Mr Marando. He did so against the background set out above, in relation to the receipt of the CA ANZ letter, the circumstances of the FY23 audits, the February 2024 email from Mr Raciti and the fact that he knew he had not investigated Mr Raciti's assertion that the EQCRs had not been completed.

789. We note (as already detailed above) that Mr Danieli maintained, in giving his evidence he was not made aware that the FY24 EQCR had any issues, either by Mr Phu or by Mr Marando contacting him about it, that Mr Phu constantly

assured him that Mr Marando would sign off on the EQCR, that Mr Phu informed him "Daniel will sign off; he does not have any issues" and Mr Phu confirmed this at their Monday morning meetings.

790. In the circumstances, even accepting that Mr Phu was assuring Mr Danieli that Mr Marando had no issues and would sign off, and that he received no indication that there were any issues, we have found that a reasonably competent auditor would have regarded these assurances as glib and treated them with scepticism, particularly in the light of Mr Danieli's knowledge of the FY23 EQCR process and Mr Raciti's email in February 2024.

791. Mr Danieli stated in his ACR:

> [91] For the second year in a row I found myself in a position where I had to decide to either lodge the auditor's reports in the absence of the EQCR or fail to meet the ASX deadlines for the lodgement of the financial reports.

792. This statement brushes over the time line. If he found himself in this position, he would have found himself in this position first in connection with the Love Group EQCR on 19 August 2024. That, alone, ought to have caused him to realise that Mr Phu had been misleading him in relation to the EQCR process. As at 19 August 2024, there were still 8 days to go until the lodgement date for Urbanise, nearly a month to go for Gladiator and more than a month to go for Cassius and Pure Hydrogen. The notion that Mr Danieli could, in that circumstance, justifiably continue to rely upon assurances from Mr Phu and the absence of contact by Mr Marando, does not withstand scrutiny. The point would have been brought home to him again on 27 August when he again found himself in a position where he had to decide either to lodge the Urbanise report or fail to meet the deadline.

793. Mr Danieli made a submission to the effect that he was let down by Mr Marando, who didn't take the steps he could have to access the relevant documents (namely attending the AD Danieli Audit PL offices) and ceased his engagement due to contact from ASIC, without speaking to or advising Mr Danieli.

794. We reject this submission. Mr Danieli wrongly delegated all dealings with Mr Marando to Mr Phu and he made no attempt to contact Mr Marando. Mr Marando was not provided with material to review for Love Group prior to Mr Danieli signing off on Love Group on 19 August 2024. Mr Phu did not upload the CaseWare files for Urbanise for Mr Marando until after Mr Danieli signed off the audit for Urbanise on 27 August. On 13 September 2024, Mr Danieli signed off on Gladiator, when no material relating to Gladiator had been provided to Mr Marando. On 18 September 2024, Mr Phu emailed Mr Marando to say that he would try to get access to CaseWare for Mr Marando in 2 weeks time. He was not provided with access and, in the meantime, Mr Danieli signed off on Cassius on 27 September and Pure Hydrogen on 30 September. No material relating to those companies had been provided to Mr Marando at that stage or later.

795. The suggestion that Mr Marando terminated the engagement in September 2024 after having been contacted by ASIC is not borne out by the evidence. Mr Marando was waiting for access to files as from 18 September 2024. Mr Phu

encouraged Mr Marando not to complete the EQCR process at the lunch meeting on 16 October 2024. We note that by that stage, it was more than two weeks after Mr Danieli had signed off audit reports for all entities without having had a single discussion with Mr Marando and at a time when he knew that the EQCR process had not been completed for any of the audits.

796. In the circumstances, it is an ambitious proposition for Mr Danieli to say that he was let down by Mr Marando.

797. In summary in relation to Mr Danieli's asserted reliance on Mr Phu and the EQC Reviewers, we consider that from an early stage in the FY23 audits, Mr Danieli realised that Mr Phu's assurances were wrong and misleading and the position must have become clearer to him as the days and weeks went by. When he signed and dated the audit reports, he either knew that the EQCRs were not being progressed properly (and that Mr Phu had misled him) or he persisted in relying on Mr Phu's assurances and wholly delegating his obligations, when no reasonably competent auditor in his position would have done so. Either way, Mr Danieli's conduct demonstrated an ongoing indifference to the requirements of the auditing standards.

798. As a general matter, we considered that this submission, that Mr Danieli relied upon others (Messrs Raciti, Phu and Marando) did not reflect well on Mr Danieli. He sought to draw comfort from the fact that he assumed everything was under control because of Mr Phu's assurances and the absence of contact from the EQC Reviewers, instead of accepting that had he performed his personal obligations as engagement partner in a timely manner, there would have been no reason to rely upon any assurances or make any assumptions. Had he contacted Mr Raciti or Mr Marando in a timely manner prior to the lodgement deadline to discuss significant issues, he would have had time to expedite the EQCR process, particularly if, as he contends, these were not overly complicated audits.

799. ***The third matter on which Mr Danieli relies*** is that the absence of issues being raised did not surprise him due to the size and absence of complexity of the audits. That might provide some support for his assumptions in relation to the first relevant audit (the Urbanise audit for FY23, which he signed off on 22 August 2023). But for reasons identified above, Mr Danieli was not properly entitled to continue making those assumptions once they were revealed to be incorrect, when he elected to sign off the Urbanise audit on 22 August 2023 or, at least when he received the 30 August 2023 email, in which Mr Poon notified AD Danieli Audit PL, in effect, that the EQCR had certainly not been completed, in stating that "As part of the quality review, we will be focusing on the significant risks that you identified in the report to audit committee".

800. ***The fourth matter on which Mr Danieli relies*** is that he was focussing on prioritising lodgement dates to avoid any negative consequences for his clients.

801. In our view, this submission is unconvincing and also reveals a concerning attitude on the part of Mr Danieli.

802. We accept that it is important to focus on lodgement dates but that, in no way, detracts from the importance of an engagement partner complying with their obligations in connection with the EQCR process. There is no occasion for an engagement partner to make a choice between complying with the EQCR obligations on the one hand, and meeting lodgement dates on the other.

803. We consider that this submission boils down to a proposition that some justification for Mr Danieli's conduct exists because he was acting in the interests of his clients by meeting the lodgement deadlines. We reject such an approach. The fact that it was important to meet lodgement dates simply serves to underline the importance of Mr Danieli being proactive and timely in discharging his personal obligations in relation to the EQCR process.

804. Further, as we have shown above, one needs to consider the precise timeline in addressing broad submissions such as this.

805. Mr Danieli said in his ACR Election Contentions, that in frustration at the lack of action from Hayes Knight, he did not know what to do and ultimately chose to ensure that the clients met the deadlines. But this indecision would have first arisen on 22 August in relation to Urbanise. Even if he prioritised the lodgement deadline on that occasion, at that point he must have become aware (or any reasonably competent auditor in his position would have become aware) that the lodgement dates for the other audits were fast approaching and he needed to take urgent steps to ensure that the position did not arise again.

806. In fact, Mr Danieli took no action to ensure that the issue did not arise in relation to Love Group and the other audits. The effect of Mr Danieli's assertions in the ACR, is that on each occasion when he needed to sign the audit report, he was again frustrated by Hayes Knight and again ultimately decided to prioritise the lodgement deadlines.

807. This submission that Mr Danieli's conduct is somehow made less serious because he was focussing on prioritising lodgement dates to avoid any negative consequences for his clients does not withstand scrutiny. It involves a broadbrush submission which is flawed, on close examination of the facts. It provides no justification for his conduct.

808. ***The fifth matter on which Mr Danieli relied*** was that his mindset, at the time of signing and dating the audit report, was that he had a "2 month" window in which to finalise compiling the audit file, that the documentation of the EQCR process did not have to be completed by the time of dating the audit report and that, rather, all concerns and issues needed to be resolved by that time.

809. This may be accepted. However, it does not address the matters we have raised above. Mr Danieli had no discussions with the EQC Reviewers at all in connection with significant issues. He dated and signed off the audit reports knowing that the EQCRs had not been completed (if his ACR Election Contentions are correct) or in circumstances where he should have known that any belief by him that the EQCR process was complete was not properly based or was revealed at or soon after sign-off, to be misplaced.

810. We do not accept Mr Danieli's position that where he saw emails which indicated that matters were outstanding, he believed that those issues to be "loose ends" only relating to the file compilation, which he has 60 days to finalise. A consideration of the actual wording of the emails which he received show that he could not have, or a reasonably competent auditor in his position would not have, drawn this conclusion.

811. For example, as we have stated a number of times, on 30 August 2023, Mr Danieli was copied into an email from Mr Poon relating to Urbanise which stated "*As part of the quality review*, we *will be focusing* on the significant risks that you identified in the report to audit committee" (emphasis added). No reasonably competent auditor could have read this as anything other than a statement showing that the EQCR was yet to take place.

812. The 26 September email, on its face, cannot be read as referring to "loose ends", but, rather was inconsistent with any view that the EQCRs were on track in time to meet lodgement dates.

813. ***The sixth matter on which Mr Danieli relied*** was that whilst his conduct "undoubtably indicate[d] a lack of care and diligence" in relation to particular matters, it was not indicative of anything more sinister about Mr Danieli's character. He submitted that his conduct was not so sufficiently serious as to suggest that Mr Danieli lacks the skill or integrity to be a registered auditor, there could be no suggestion that he had a fundamental misunderstanding of or disregard for his duties and that his conduct did not reflect any fundamental deficiency in Mr Danieli's integrity, skill or competence.

814. We do not agree. The significance of signing audit reports must be remembered and emphasised. Audit reports are relied upon by shareholders, potential investors, and the market. Signing off prematurely without an EQCR sign off could mislead users of those financial statements. The audit reports which Mr Danieli signed off asserted that the audits had been carried out in accordance with the auditing standards when they had not. Signing audit reports without full compliance, for whatever reason, shows a lack of professional integrity and an inability to meet the standards of competence and ethics expected of registered auditors.

815. In any event, we consider that Mr Danieli's conduct went beyond lack of care and diligence. He repeatedly breached his obligations (on five audits in August and September 2023 and, again, on five audits in August and September 2024). On the basis of our findings, (based upon his ACR Election Contentions), he knew as from the sign off of the first audit (Urbanise FY23), that he was breaching the standards. Even if we are wrong in those findings, we have explained above that the matters known to him would have indicated to any reasonably competent auditor that his assumptions were misplaced. Yet he persisted in breaching the standards.

816. Mr Danieli was alerted to the requirements of the standards by the CA ANZ letter and by Mr Raciti's emails of February 2024. Yet he repeatedly breached the standards in the FY23 and FY24.

817. Mr Danieli breached the obligations in FY24 against the background that he had failed to follow up and investigate Mr Raciti's assertions in February 2024 when, in our view, any reasonably competent auditor would have done so. We consider that Mr Danieli's breaches in FY24 against that background revealed an absence of the insight and judgment required of him.

818. Mr Danieli's conduct was not mere carelessness. Mr Danieli repeatedly breached the standards in a way and over a lengthy period, which was only consistent with indifference to their requirements. In our view, Mr Danieli is not a person of the character who can be relied upon to comply with mandatory auditing standards.

819. ***The seventh matter on which Mr Danieli relied*** was that, whilst Mr Danieli's performance fell short of what is to be expected of him as an auditor, it is clear from the evidence that he was also let down by other professionals around him, including Mr Raciti and Mr Phu.

820. We have dealt with Mr Danieli's assumptions and the reasons why we consider he was not entitled to delegate and rely upon Mr Phu's assurances and Mr Raciti's "lack of response" above.

821. We do not accept that Mr Raciti's "lack of response" provides any real justification or excuse for Mr Danieli's conduct. Mr Danieli was the engagement partner on the audit and was required to carry out his obligations regardless of Mr Raciti's performance. Further, the evidence shows that Mr Danieli's delegate Mr Phu, failed to provide Mr Raciti with the necessary timely information to carry out the EQCRs by the lodgement dates.

822. We accept that Mr Phu assured Mr Danieli that the EQCR process was on track and that there were no issues when he had no proper basis for doing so.

823. But, for reasons already explained, Mr Danieli was not entitled to breach the requirements of the standards on the basis that his delegate had made these assurances. In any event, as we have explained in detail above, Mr Danieli knew or became aware of circumstances which indicated that Mr Phu was misrepresenting the situation by late August 2023 and on regular occasions thereafter.

824. ***The eighth matter on which Mr Danieli relied*** was that there was no suggestion that Mr Danieli had acted dishonestly or for the pursuit of personal interest or that he has prioritised his own interests over his clients.

825. We accept these propositions but, for reasons just given, do not consider that his conduct is appropriately characterised as, and confined to "lack of care and diligence".

826. ***The ninth matter on which Mr Danieli relied*** was that there could be no suggestion that Mr Danieli has a fundamental misunderstanding of, or disregard for his duties, or that he was in any way trying to circumvent the EQCR process.

827. We consider, for reasons just expressed, that Mr Danieli did have an indifference to the requirements of the standards, tantamount to a disregard of his duties, and a serious lack of the insight and judgment required of an auditor. We do not consider that Mr Danieli is a person of the character who can be relied upon to comply with mandatory auditing standards.

828. ***The tenth matter on which Mr Danieli relied*** was his assertion that he did and does take the CA ANZ findings seriously, and that he did seek to address them and is continuing to take steps to improve the firm's processes. He also relied on the firm's updated systems and processes, a range of "deliberate and meaningful steps to improve the audit quality and governance within his firm following the CA ANZ quality review in 2022". He asserted that he had taken proactive steps—internal reforms, external engagement, upskilling and new leadership— as part of his active and sincere effort to address past shortcomings and implement improvements to audit quality, including:

(a) The engagement of Quality Assurance for Accountants, a consultancy firm specialising in audit quality, to assist in reviewing and updating AD Danieli Audit PL's quality control manuals;

(b) Hiring Mr Arthur Kim, an experienced audit professional, although not a registered company auditor, to replace Mr Phu;

(c) Creating a dedicated internal quality control committee, comprising senior staff to monitor and guide quality improvements on an ongoing basis;

(d) Making training and development a priority, including taking greater advantage of CaseWare's training resources and webinars to enhance documentation and audit file management; and

(e) Remodelling the office layout to better support audit quality including creating a dedicated audit room—referred to as the "audit office"—to facilitate team-based collaboration, audit planning, and internal meetings.

829. Mr Danieli asserted that the Board can be satisfied that the issues will not arise against because he had implemented changes so that it does not happen again and because he had done an audit since where it didn't happen again.

830. We acknowledge that these steps are relevant to our assessment of the question under consideration and we have taken these into account. Nevertheless, in our view a key problem is that Mr Danieli's past conduct shows that, having been alerted in the CA ANZ letter to the key relevant requirements of the standards (which were not complex or difficult to apply) and having implemented an action plan in response to the CA ANZ letter, he went on to repeatedly breach the requirements of the standards in the FY23 and FY24 audits in the circumstances detailed above (which included numerous opportunities to take proactive action to adhere to the standards). In our view, Mr Danieli demonstrated a capacity to disregard the requirements of the standards in a serious way, notwithstanding having been forewarned of the

requirements and notwithstanding having professed to address the issues through his initial action. In our evaluation, notwithstanding the steps which Mr Danieli has taken, we consider that Mr Danieli's conduct reveals a character which is not consistent with fitness and propriety to remain a registered company auditor.

831. We also consider that there is merit in ASIC's submission that we could not be satisfied that, even at the time of the Hearing, Mr Danieli understood or could explain practically what ASA 220 required of him. The transcript records the following questions and answers[191], which took place at the end of the hearing, when it was reasonable to expect that Mr Danieli had, for some days or weeks, been focusing on the requirements of ASA 220, as a fundamental element in the case against him:

> "Q. Mr Danieli, at the time of the 2023 audits, you were the engagement partner on the audits, were you not?
>
> A. Yes, correct.
>
> Q. And you were the lead auditor?
>
> A. Yes.
>
> Q. And paragraph 19 of ASA 220 applied to you as the engagement partner, did it not?
>
> A. Yes.
>
> Q. What did you understand the obligations of the engagement partner under paragraph 19 to be as at the time of the 2023 audits?
>
> A. Exactly that, to engage the - engage the engagement quality reviewer, and to provide access to the file, and for the EQCR process to be completed and not sign the audit report before - before it was, yes.
>
> Q. I mean, as a practical matter, what steps did you need to take in order to satisfy those obligations?
>
> A. Well, the steps were that - to oversee what was happening and - and that's, in fact, what I did. I did delegate that function for someone to help me oversee, someone who's just as qualified as me in that regard, and that was James. And again, I was never given any indication by James or the engaged quality reviewer not to sign off, that they had any issues with my audit conclusions. They saw the reports that went to the audit committee. They saw the draft audit reports. James had sent that to them. So they didn't come back to me in any way saying, "You can't sign off, you can't sign off." So –
>
> Q. My question was, what, as a practical matter, what steps were required for you, as engagement partner, to carry out the obligations under paragraph 19?

[191] T280

A. To ensure that what the engagement quality reviewer had to do was going to - was being done.

Q. What steps did you regard as necessary, as a practical matter, in order to ensure that you didn't sign off the audit report prior to the completion of the review?

A. It was the process that we'd followed and that the engagement quality reviewer was given access to the files and to be kept up to date and to be informed of key audit issues during the audit, so that they could then feel comfortable to allow - or give clearance to me to sign off.

Q. I'm not sure that answers the question. I'm asking what, as a practical matter, you needed to do as engagement partner to ensure that you didn't date the auditor's report until the completion of the review?

A. Well, normally, you know, you do receive the report from the engagement quality reviewer, and also that the engagement quality reviewer signs off the appropriate section in the CaseWare file.

Q. Is that what you understood in 2023 as being the practical step that you needed to undertake in order to comply with your obligations under paragraph 19?

A. Well, first of all, I understood that we had to engage a suitable person to be able to undertake - the engagement quality review person, and that obviously that person would have to be a registered company auditor, they'd have to be properly engaged, given all the timeframes, provided access to our audit work papers, and then communicate as far as any key audit issues along the way, yes.

832. We consider that those answers revealed a very poor understanding of the requirements of the standards and an inability to articulate what they required Mr Danieli to do. The fact that Mr Danieli has taken internal steps to address shortcomings and make improvements to audit quality is of limited significance to our assessment, in those circumstances.

833. ***The eleventh matter on which Mr Danieli relied*** related to his acknowledgement of errors.

834. Mr Danieli certainly made some admissions of error and expressions of contrition and these are clearly relevant to the fit and proper question, and we have taken these into account.

835. However, we observe that in the witness box, he maintained, generally, that he signed off the audit reports because he believed that the EQCRs were complete, having been assured of this by Mr Phu. We do not accept this evidence for reasons explained in detail above.

836. His evidence as to acknowledgement of error was to the effect that, with hindsight, he should have picked up the phone and called the EQC Reviewers and he should have gone through the CaseWare file with Mr Phu to check the EQCR section.

837. This conflicted with his contention in paragraph 52 of the ACR, to the effect that he made a decision to sign off absent EQCR completion, being frustrated at the lack of action from Hayes Knight and, not knowing what to do, he ultimately chose to ensure that the clients met the ASX deadlines. Paragraphs 52 stated "I regret my actions and acknowledge that it was a poor decision".

838. Mr Danieli chose not to verify the factual assertions in the ACR and his submissions do not repeat the matters set out in paragraph 52.

839. We also note that Mr Danieli contested the matter on the basis that, amongst other things, he relied upon trusted professionals in relation to the EQCR process and was let down by them.

840. We consider that this showed that he did not accept full responsibility for his conduct. Mr Danieli had clear personal responsibility for discussing significant issues with the EQC Reviewers. It was no justification for him to say that he assumed there were no issues because Mr Raciti did not contact him. He was not entitled to avoid his responsibilities by asking Mr Phu whether the EQC Reviewers had raised any issues. He did not concede that he accepted responsibility for his failures regardless of what Mr Phu informed him and regardless of the fact that he had not been contacted by the EQC Reviewers.

841. ***The twelfth matter upon which Mr Danieli relied*** was the different approach which he took to the March 2025 audit of Epsilon for the period ending 31 December 2023 (noting that Epsilon was in administration for a period of time). For that audit, Mr Danieli engaged Scott Bennison, an RCA, to act as EQC Reviewer and Mr Danieli directly oversaw and participated in the process from beginning to end, arranging for Mr Bennison's attendance at the office, ensuring he had full access to the CaseWare file, discussing and addressing significant matters before the audit report was finalised, and ensuring that the EQCR process was completed before the audit report was signed.

842. We note this matter and have taken it into account, but, ultimately, it shows little more than the fact that Mr Danieli has done what the standards required all along.

843. ***The thirteenth matter on which Mr Danieli relied*** was the proposition that Mr Danieli's failing should not be viewed in a vacuum and that when viewed against the broader backdrop of Mr Danieli's extensive career, the evidence does not support a finding that he is not a fit and proper person to remain registered.

844. Mr Danieli submitted that he has practised as a registered company auditor for 36 years, has become a Fellow of the CPA and CA ANZ, and has built a successful practice with loyal staff and clients. He submitted that he is quite clearly an experienced, skilled and competent auditor and that whilst, he made errors, those errors are not so grave as to override the significant contribution Mr Danieli has made and will continue to make to the audit community.

845. We do not consider that the question we are required to consider requires us to weigh up Mr Danieli's past contributions to the audit community against the failings in the present case. The question is whether we are satisfied that Mr

Danieli is presently not a fit and proper person to remain registered. We consider that his conduct is very serious. The fact that he has engaged in this serious conduct, demonstrating an indifference to auditing standards and a lack of insight and judgment at this stage of his career may be said to make the position more serious, in the sense that Mr Danieli is not an inexperienced auditor who has not yet had the time to build up the experience necessary to develop the appropriate character, insight and judgment which is required of a fit and proper auditor.

Conclusion on fit and proper person

846. We consider that Mr Danieli repeatedly and without justification breached his duties as an auditor. He knew or ought to have known what was required of him. He was reminded by third parties of what was required of him. He had ample opportunities to show that he understood and respected the obligations imposed upon him and ample opportunities to comply with them and yet persisted in breaching them.

847. In our view, Mr Danieli's conduct was serious and prolonged and showed an indifference to the requirements of the standards. He is not a person of the character who can be relied upon to comply with mandatory auditing standards, despite his assertions to the effect that he has learnt his lessons.

848. Notwithstanding the matters which he put forward in support of his position, to which we have given due consideration, we are satisfied in all the circumstances, that Mr Danieli is not a fit and proper person to remain registered as an auditor.

PART G. SANCTIONS

Introduction

849. As referred to at the outset of these Reasons, after the Board issued its Determination in August 2025, finding that the grounds for the Application were made out, the Parties were given an opportunity to lodge evidence and submissions in relation to the appropriate sanction which should be imposed.

850. Mr Danieli lodged two statements of evidence. Both Parties lodged submissions in writing and made oral submissions at the Sanctions Hearing which took place on 25 November 2025.

Evidence at the Sanctions Hearing

ASIC

851. ASIC did not adduce evidence relating to sanctions at the Sanctions Hearing.

Mr Danieli

852. Mr Danieli relied upon two sworn statements of evidence in relation to sanctions at the Sanctions Hearing.

Statement of Mr Danieli

853. Mr Danieli relied upon his own sworn statement dated 6 November 2025 setting out matters on which he relied in relation to sanctions (**Sanctions Statement**). The affidavit was thorough and dealt with a number of matters which were important to our consideration.

854. In brief summary, Mr Danieli addressed the following matters in his affidavit.

855. In terms of reflections on the Board's Determination and on his conduct, he stated:

(a) After being shocked by the Board's findings in the Determination, he had carefully reflected on the Determination and understood that his conduct was far more problematic than he had previously accepted;

(b) He was deeply regretful that he did not take the ample opportunities provided by the CA ANZ letter to rectify the issues raised;

(c) He accepted that he ought to have recognised that the duties and obligations under the standard applied to him directly and required his own personal engagement with the EQCR process, on a real and active rather than superficial level, and that it was inappropriate for him to rely on others in the way he had done;

(d) He stated, in paragraph 8:

> "I have gone back to ASA 220 and read it carefully, particularly in relation to the EQCR requirements. Whilst I had believed I was familiar with the standard and its requirements, it has become clear to me that I only understood it at a high level. I now acknowledge and accept that the standards make clear that the responsibilities are on the engagement partner, and the engagement with the EQCR is not a role I can delegate, nor a stage of the auditing process that I should rush through or give limited attention."

(e) He accepted that the issues came about because he did not treat the requirements under the standard with appropriate seriousness and that this reflected poorly on his knowledge, attitude and professionalism;

(f) He stated that he was deeply embarrassed and that whilst he did not set about to deliberately breach standards, he acknowledged that he did and did so repeatedly;

(g) He stated that he believed he was a good and experienced auditor, and he thought that he had let that cloud his view on the EQCR process. He thought that the audits were not overly complex, that the EQCR process would be pretty straightforward and quick, causing him to treat the EQCR process as more administrative than a matter of substance;

(h) He accepted that this view overlooked the importance of the EQCR process — the purpose of which was to provide an additional layer of

protection to the audit clients and their stakeholders, and that he was doing them all a significant disservice by not engaging with it properly;

(i) He noted that the reality of company auditing was that one was working to tight deadlines and it was now apparent to him that he did not manage his time appropriately and delegated matters which he did not regard as overly important;

(j) He stated that he has since ensured that sufficient time is allowed for in the audit planning for engagement of and with the EQC Reviewer and that, if given the chance, he will factor this into planning for each audit;

(k) He stated that he hoped that the Board would recognise and take into account the fact that he has otherwise had a successful career and that there is nothing to suggest that he was not a skilled auditor; and

(l) He noted that ASIC had never made a suggestion that there were any errors in his audits or that he had failed to obtain appropriate audit evidence.

856. In relation to his conduct since the events in question, Mr Danieli gave the following evidence:

(a) In the past 12 months, he had sought to rectify his past failings;

(b) He had taken a number of steps to improve the firm's practices, including:

i. Engaging Quality Assurance for Accountants, a consultancy firm specialising in audit quality, to assist in reviewing and updating AD Danieli Audit PL's quality control manuals;

ii. Hiring Mr Arthur Kim to replace Mr Phu;

iii. Creating a dedicated internal quality control committee, comprising senior staff to monitor and guide quality improvements on an ongoing basis;

iv. Making training and development a priority, including taking greater advantage of CaseWare's training resources and webinars to enhance documentation and audit file management; and

v. Engaging a specialist in Assurance Consulting Services, Justin Reid Fellow Chartered Accountant, who is currently liaising with CA ANZ for approval of a course to help in satisfaction of an undertaking given to CA ANZ.

(c) He noted that he was continuing to hold weekly meetings and to require staff to send him 'plan of the day' emails so that he could provide oversight to all staff member activities;

(d) He stated that he had completed 7 ASX listed companies audits for the 2024/25 financial year and that those files were available for ASIC to review if necessary (and he attached the EQC Reviewer engagement letters and quality review reports for those audits);

(e) He stated that in each of these audits, he had directly engaged with the EQC Reviewer without delegation, he was in regular contact by phone, email and meetings in his offices, he took full control and responsibility for the EQCR process and he was given clearance before signing off on all audits;

(f) He stated that he had signed an undertaking with CA ANZ not to sign off on any ASX listed entity without a Review by an EQC Reviewer (which he acknowledged was his obligation in any event). The EQC Reviewer appointed must first be approved by the Professional Conduct Committee of CA ANZ. The EQC Reviewer is required to report to CA ANZ by 31 December each year on any audit undertaken by Mr Danieli. The undertaking also requires Mr Danieli to undertake additional training; and

(g) Mr Danieli stated that he truly hoped that the Board did not view this all as 'too little, too late" and recognises that he was able to learn from his mistakes and change his ways. He stated that he ultimately wished to continue auditing and running his practice and to do so at a high standard.

857. Mr Danieli stated that in his experience, small auditing firms struggle to provide their services to ASX Listed companies, usually as a result of the higher cost that is required to service these clients. He stated that if his registration as an auditor were cancelled, then the limited market for small cap ASX company auditors would be further limited. This would likely result in those companies having to engage a "Big 4" audit company which could be prohibitively expensive for such clients.

858. As to the appropriate sanction, Mr Danieli stated that he accepted that a sanction needed to be delivered which reflected not only the seriousness[192] of his conduct, but also as warning and deterrence for all others in the profession.

859. He stated that he was 66 years old and nearing the end of his career. He stated that he had hoped to work for a further 4 years before retirement. He accepted that a suspension is appropriate. Together with a suspension, he was willing to give undertakings to the effect attached as Appendix A to this Decision and stated that he was very open to various amendments to those conditions proposed by ASIC or the Board.

Statement of Arthur Kim

860. Mr Danieli relied upon a sworn statement by Mr Arthur Kim **(Mr Kim)**, an audit associate partner at AD Danieli Audit PL.

[192] There is an obvious typographical error in Mr Danieli's affidavit – a "not" before "seriousness".

861. Mr Kim joined AD Danieli Audit PL, following the resignation of Mr Phu.

862. Mr Kim stated that he had been informed by Mr Danieli about the substance of the CADB proceedings and the circumstances that had led to them, and that the firm had decided to enhance the previous Audit Manager position to an Audit Associate Partner role to lead the development and implementation of stronger quality control systems. Mr Kim stated that since that time, he had worked closely with Mr Danieli and had observed him take practical steps to strengthen the firm's engagement review structure — including the introduction of a more structured Engagement Quality Control Review (EQCR) process, the implementation of an internal audit quality review program, weekly workflow monitoring, and the enhancement of the firm's System of Quality Management (SOQM) documentation.

863. Mr Kim stated that since commencing employment with AD Danieli Audit PL in November 2024, he had worked closely with Mr Danieli in seeking to strengthen the firm's EQCR process and enhancing overall audit documentation standards. He stated that during his time with the firm, he had observed a number of tangible improvements implemented under Mr Danieli's leadership, including:

(a) The development and implementation of a more structured EQCR process review checklist within CaseWare, ensuring that reviewer sign-offs, management responses, and follow-up actions are properly documented and traceable;

(b) The introduction of planning-stage discussions between the EQC Reviewer and the engagement team, enabling early identification of key risk areas and ensuring that audit strategies are appropriately designed to address them;

(c) The establishment of weekly audit workflow meetings to monitor the progress of engagements, promote consistent application of audit methodologies, and ensure timely resolution of technical and quality issues;

(d) The introduction of an internal audit quality review program to provide independent assessments of completed engagements and identify areas for continuous improvement; and

(e) The enhancement and documentation of the firm's System of Quality Management (SOQM) in alignment with ASQM 1 requirements, ensuring that quality objectives, risks, and responses are clearly articulated and actively monitored.

864. Mr Kim stated that through these initiatives, he had noted a material improvement in the firm's overall quality culture. He stated that there was now a stronger emphasis on documentation discipline, transparency in review communications, proactive issue resolution, and consistent adherence to the firm's updated quality control policies and procedures.

865. Mr Kim stated that it was his professional observation that Mr Danieli had demonstrated a clear and sustained commitment to strengthening audit quality, fostering accountability, and embedding continuous improvement in the firm's EQCR, SOQM, and engagement performance processes. He stated that in his professional experience working with Mr Danieli, he had observed him to be a technically competent and diligent auditor with a constructive and pragmatic approach to audit and quality issues. He stated that:

(a) Mr Danieli maintains professional and cooperative relationships with clients and staff, promotes open communication within the audit team, and demonstrates a steady focus on improving quality and compliance;

(b) Mr Danieli had shown a clear willingness to address prior issues and to implement sustainable improvements in the firm's audit methodology and documentation practices;

(c) Mr Danieli encourages accountability within the team and had contributed to a more structured and transparent approach to audit execution and review; and

(d) Mr Kim considered Mr Danieli to be a capable practitioner who was committed to maintaining and improving audit quality within the firm.

Submissions

ASIC's submissions

866. ASIC submitted that it was appropriate, having regard to our findings above, that the Board should exercise its power to cancel Mr Danieli's registration.

867. ASIC's submissions concerning the relevant principles governing the jurisdiction to impose sanctions were to the following effect:

(a) The prime concern of the Board in considering an appropriate sanction is the "protection of the public". 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", relying on the Board's decision in *ASIC v Walker* CADB No 06/VIC07;

(b) Matters relevant to the Board's consideration of sanctions include the seriousness of the matters which have been found to be established, (*ASIC v McVeigh* CADB No 10/VIC08 (***McVeigh***) at [12.7]; *Re Young and CADB* (2000) 34 ACSR 425 at [82]-[83], [89], *ASIC v Walker* at [21.4]) and the Respondent's recognition of their breaches of duty, their attitude to compliance with professional standards generally and their willingness to improve (*ASIC v Walker* at [21.3]);

(c) ASIC's view as the regulator as to an appropriate sanction and its deterrent effect is relevant but not determinative (*ASIC v Loke*, CADB No 16/NSW20 at [104(g)]);

(d) The personal circumstances of the Respondent are to be given limited consideration (*ASIC v McVeigh* at [12.7(c)]); and

(e) The absence of evidence of loss resulting from the Respondent's conduct is not relevant (*McVeigh* at [14.8]).

868. ASIC went on to submit that in the light of the protective purpose of the Board's jurisdiction, the Board should set an appropriate sanction that provides the requisite degree of public protection and promotes the objectives of general deterrence. To do this, ASIC submitted that the Board should give greatest weight to the "gravity" or "seriousness" of Mr Danieli's noncompliance with his duties and the relevant aggravating features which led to the Board to conclude that Mr Danieli was not a fit and proper person to remain registered as a company auditor.

869. ASIC relied on the following particular aspects of our findings:

(a) That Mr Danieli's conduct was serious and prolonged (see paragraph [34] above);

(b) That Mr Danieli's conduct showed an indifference to the requirements of the auditing standards (see paragraph [34] above);

(c) That the nature of Mr Danieli's breaches of ASA 220 were "serious and repeated" (see paragraph [730] above) and that his failures related to serious matters and were many and were repeated (see paragraph [735] above); and

(d) The accepted evidence that Mr Danieli:

i. Had <u>first</u> received specific notice from CA ANZ[193] (prior to his breaches in FY23 and FY24) about his relevant obligations under ASA 220 (which did not prevent the conduct from occurring) (see paragraph [730], [745]); and

ii. <u>Second</u>, on 22 February 2024, was informed by email from Mr Raciti that the EQCR processes for the five listed entities had not been completed (referring to ASA 220 in that email) (see paragraph [773]).

(e) Despite Mr Danieli's oral evidence that he had found Mr Raciti's email "bizarre", the Board's expression that it was "particularly concerned by the fact that Mr Danieli took no further step to ascertain the correctness of Mr Raciti's assertion" (see paragraph [777] above);

(f) The Board's conclusion that Mr Danieli's taking no further step in response to Mr Raciti's email "reveals an approach which we do not consider any reasonably competent registered company auditor would regard as an appropriate course in the face of such a serious allegation of breach of the standards" (see paragraph [778] above). The Board

[193] From CA ANZ (prior to all the established conduct in FY23 and FY24); and, from Mr Raciti (prior to the established conduct in FY24).

described that it would have been a "very simple step" for Mr Danieli to have telephoned Mr Raciti "to ask him what he was talking about" (see paragraph [776] above) and the Board's conclusion that "any reasonably competent auditor would have done so" (see paragraph [817] above);

(g) In the context of the CA ANZ evidence and Mr Raciti's email evidence, the Board's conclusion that Mr Danieli's conduct was "not mere carelessness" (see paragraph [814] above);

(h) The Board's assessment that that Mr Danieli's assumption that work had been performed by others "without satisfying himself that in fact it had been done and properly documented on the audit file revealed a misunderstanding of and dereliction of his personal duties" (see paragraph [766] above). This is because he was "not entitled to delegate" the relevant obligations imposed on him under ASA 220 (see paragraph [757] above);

(i) That, even allowing latitude for the findings that the Board made about Mr Danieli's "reliance" on Mr Phu, such reliance was unreasonable in the Board's view (assessed from the perspective of a reasonably competent auditor). And that this was particularly so following Mr Raciti's email (referred to at paragraph 869(d)ii, above) (see paragraph [763] above).[194] On the whole, the Board considered that Mr Danieli's contention that he relied on others (Messrs Raciti, Poon and Marando) "did not reflect well on [him]" (see paragraph [798] above);

(j) The Board's description of Mr Danieli's "attitude in not taking the simple step of confirming completion of the EQCR" as "baffling and inconsistent with the actions of a person who is fit and proper to be registered as an auditor" (see paragraph [767(d)] above);

(k) The Board's impression of Mr Danieli's evidence that (see paragraph [780] above):

> "contrary to [Mr Danieli's] assertions to the contrary, he was unconcerned about the possibility that he had breached the requirements of ASA 220 in the FY23 audits. This was particularly concerning in the light of the history, including the notification he had received in the CA ANZ letter."

(l) For the FY24 audits, the Board's description that Mr Danieli "wrongly delegated all dealings with Mr Marando to Mr Phu and he made no attempt to contact Mr Marando" (see paragraph [794] above);

(m) That Mr Danieli's focus on meeting ASX lodgement dates for the entities was, in the Board's view, unconvincing and did not "withstand scrutiny" (see paragraph [800]-[807] above);

[194] See, also, in respect of FY23, BD[767(e)]. There, the Board refers to Mr Poon's email of 30 August 2023 which Mr Danieli should have understood as revealing that the EQCR process had not been completed for Urbanise (and noting that Urbanise's auditors report had been signed days earlier (22 August 2023)). Further, BD[769] (Love Group).

(n) The Board's conclusion that Mr Danieli (see paragraph [827] above):

> "did have an indifference to the requirements of the standards, tantamount to a disregard of his duties, and a serious lack of the insight and judgment required of an auditor. We do not consider that Mr Danieli is a person of the character who can be relied upon to comply with mandatory auditing standards."

(o) That although the Board accepted that Mr Danieli did not act dishonestly or in pursuit of his personal interest, the Board did not accept that his conduct could be described as merely "lack of care and diligence" (see paragraph [825] above); and

(p) That despite accepting and taking into account Mr Danieli's evidence of the strategies he implemented post the CA ANZ letter, the Board's following reasoning (see paragraph [830] above:

> "Nevertheless, in our view a key problem is that Mr Danieli's past conduct shows that, having been alerted in the CA ANZ letter to the key relevant requirements of the standards (which were not complex or difficult to apply) and having implemented an action plan in response to the CA ANZ letter, he went on to repeatedly breach the requirements of the standards in the FY23 and FY24 audits in the circumstances detailed above (which included numerous opportunities to take proactive action to adhere to the standards). In our view, Mr Danieli demonstrated a capacity to disregard the requirements of the standards in a serious way, notwithstanding having been forewarned of the requirements and notwithstanding having professed to address the issues through his initial action. In our evaluation, notwithstanding the steps which Mr Danieli has taken, we consider that Mr Danieli's conduct reveals a character which is not consistent with fitness and propriety to remain a registered company auditor".

870. In relation to Mr Danieli's contrition and remorse, ASIC noted that whilst the Board accepted that Mr Danieli had made some admissions of error and expressions of contrition, (which were relevant to fitness and propriety), the Board found that Mr Danieli did not fully acknowledge his failings or accept full responsibility for his conduct. ASIC submitted that to the extent that Mr Danieli has expressed any contrition or remorse, this would not secure protection of the public from the risk posed by Mr Danieli remaining registered as a company auditor.

871. In relation to Mr Danieli's evidence that he had read and considered the board's written determination and the findings that had been made against him. ASIC submitted that this would carry little weight, where it should have been reasonably clear at a very early point, particularly given Mr Danieli's acceptance that he did not comply with the obligations in his concise response.

872. In oral submissions, Mr Hartnett submitted that it was difficult to accept Mr Danieli's evidence in paragraph 8 of his Sanctions Statement that prior to the Board's Determination he only had a high level understanding of ASA 220, particularly in the light of what he had been told by CA ANZ and Mr Raciti.

873. The issue of comparable sanctions decisions was raised with Mr Hartnett in the course of his oral submissions. The Respondent had raised the issue in his written submissions, (in particular, the decision in *McVeigh*) and Mr Hartnett was asked whether he had any comments on those submissions. Mr Hartnett sought an opportunity to address this in writing and, after consulting Ms Bentley for the Respondent, the Panel permitted Mr Hartnett to address this issue in writing, with leave to Ms Bentley to respond. These submissions are dealt with in our consideration of the issue below.

874. In conclusion, ASIC submitted that:

(a) The Board's reasons showed a clear process of reasoning in arriving at the conclusion that Mr Danieli is not a fit and proper person to remain registered as a company auditor;

(b) There was no evidence before the Board that Mr Danieli would become fit and proper at some future point;

(c) This was not a matter in which a Respondent had given evidence about a proposed set of clear remediation strategies that would address any risk to the public to an acceptably low level;

(d) It was not clear even at the time of the hearing that Mr Danieli understood what ASA 220 required of him;

(e) Applying the principles referred to above, and having regard to the findings and reasons of the Board extracted in their submissions above, the only sanction appropriate, in all the circumstances, was that Mr Danieli's registration as a company auditor should be cancelled for public protection and general deterrence; and

(f) The Board could not be satisfied that suspension for any period would be sufficient to remediate against the risk to the public of Mr Danieli continuing to be registered as a company auditor.

Mr Danieli's submissions

875. Mr Danieli submitted that whilst there was no doubt that a serious sanction was warranted in the circumstances, the appropriate outcome was that Mr Danieli be suspended for a period of 2 years, together with undertakings in the form attached at Annexure A.

876. Mr Danieli submitted that the relevant principles to be applied by the CADB in considering the appropriate sanction, were not overly contentious and could be summarised as follows:

(a) The primary principle guiding the Board's exercise of discretion is the protection of the public; [195]

195 *ASIC v Walker* (06/VIC07) (**Walker**) at [20.7].

(b) The protection of the public is achieved through both specific and general deterrence;[196]

(c) The seriousness of the matters which have been established is a key consideration;[197]

(d) The personal circumstances of the practitioner and the impact of a decision on that practitioner are to be given only limited consideration;[198]

(e) A practitioner should not be penalised in sanction for legitimately contesting allegations and putting the regulator to proof, provided they ultimately accept the findings once made;[199]

(f) A practitioner's recognition and acceptance of breaches of duty, attitude to compliance generally and willingness to improve are relevant considerations;[200]

(g) The general position is that where the CADB finds an auditor not to be 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.[201]. That said, it is important to remember that irrespective of a finding of a practitioner not being presently fit and proper, the Board's power to cancel or suspend a person's registration under s 1292(1) remains discretionary.[202]

877. As to the relevant circumstances in this case, Mr Danieli accepted that our key findings were set out in paragraphs [11] to [16] of ASIC's submissions (reproduced, in substance, in paragraph [869] above).

878. Mr Danieli submitted that outside of the general fact that Mr Danieli failed to comply with his professional duties adequately and properly, and demonstrated that he is not a fit and proper person to remain registered, Mr Danieli acknowledged that:

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196 *Re Young and Companies Auditors and Liquidators Disciplinary Board* (2000) 34 ACSR 425 (**Re Young)** at [79]-[80] (McMahon DP). *ASIC v McVeigh* (01/VIC08) (**Mc Veigh)** at [12.7]. *ASIC v McDermott Re Conalpin Pty Ltd (In Liq)* [2016] FCA 1186 at [44] (Moshinsky J).

197 McVeigh at [13.4], Re Young at [89]; Walker at [21.4].

198 ASIC v Williams (01/QLD17) at [1338], [1340]; Walker at [20.5], [20.7]; McVeigh at [12.7].

199 McVeigh [14.1].

200 Walker [21.3]; *ASIC v Fiorentino* (03/NSW13) at [997(f)], [1005].

201 *NHPT v Members of the Companies Auditors and Liquidators Disciplinary Board* [2015] AATA 245 at [18]

202 *Birdseye v Companies Auditors and Liquidators Disciplinary Board* [2002] FCAFC 284 at [10] (Cooper, Carr and Finkelstein JJ).

(a) His blanket reliance on other professionals together with his submission that they let him down in the process demonstrated that he did not take responsibility for his conduct;[203]

(b) His conduct rose above mere carelessness and instead demonstrated indifference to the auditing standards;[204]

(c) The seriousness of his conduct was significantly aggravated by the fact that he had been alerted to the issue by CA ANZ and given an opportunity to rectify the situation, which he did not do;[205]

(d) His conduct showed disregard of his duties and lack of insight and the judgment required of an auditor;[206]

(e) His answers when questioned about the terms of ASA 220 showed a poor understanding of the requirements of the standard;[207] and

(f) As a practitioner of such experience, Mr Danieli should well have known and done better.[208]

879. Mr Danieli submitted that, in his favour, the Board has accepted that Mr Danieli did not act dishonestly or in the pursuit of his personal interest,[209] that he made at least some acknowledgment of his errors[210] and that he had taken action to improve his firm's systems and processes.[211]

880. Mr Danieli relied upon the matters set out in his and Mr Kim's statements.

881. He submitted that in his statement, he had set out his reflection on the CADB's decision. He stated that his remorse and regret was clear, but more than that, his statement contained a genuine recognition of his failings and insight into how and why they came about. He openly recognised that his reliance on others is no excuse for his conduct and he now fully understands and acknowledges that the standards apply to him personally. Mr Danieli had sought to interrogate on a personal and professional level why these failings came about. He submitted that this was essential, because without a true understanding of the root cause of a failing, there was a real chance it will be repeated.

882. In addition to emphasising the matters set out in his statement, which have been summarised above, Mr Danieli noted that at the liability stage, the Board had accepted the evidence of Mr Danieli's improvements to his business broadly, but had stated that "…ultimately, it shows little more than the fact that

[203] Decision at [840].
[204] Decision at [34], [818] and [847]
[205] Decision at [816]
[206] Decision at [845].
[207] Decision at [831]
[208] Decision at [845].

[209] Decision at [824].
[210] Decision at [834].

[211] Decision at [845]

Mr Danieli has done what the standards required all along." He submitted that whilst this was true, it also demonstrated that Mr Danieli was now complying strictly with his obligations and that it was demonstrative of his improved understanding of his obligations and his willingness and ability to improve. He submitted that it was evidence which spoke directly to the question of rehabilitation and the future protection of the public. He submitted that a similar sentiment was expressed by the Board in *McVeigh*. In that matter, the Board held that the professional improvements made by Mr McVeigh were "not substantially beyond what would be expected of a reasonably competent practitioner"[212] such that it did not regard those improvements as mitigating his misconduct, but went on to say that "…we believe that that evidence… is helpful at the sanction stage as tending to confirm the likelihood that rehabilitation by Mr McVeigh is a practical possibility."[213]

883. Mr Danieli went on to submit that there could be no clearer support for Mr Danieli's future fitness and propriety, than his recent performance: in eight further audits (almost as many as were the subject of the proceeding), he has demonstrated a sound understanding of his professional obligations and a consistent capacity and willingness to meet them.

884. In relation to other relevant factors, Mr Danieli submitted that:

(a) He had been cooperative with ASIC and its investigation. He did not contest that he failed to comply with his professional duties adequately and properly – he accepted this straight away. Mr Danieli confined his dispute to whether he is fit and proper and to a range of factual, contextual matters. Mr Danieli should not be penalised for having provided the context in which the matters occurred (particularly where Mr Raciti sought to deny he was ever engaged to perform the EQCRs and/or claimed to have done no work in respect of the reviews); and

(b) Mr Arthur Kim, Mr Danieli's colleague, had provided evidence in support of Mr Danieli. Mr Kim's evidence supported not only Mr Danieli's proactive steps to improve his and his firm's systems and processes, but also speaks to Mr Danieli's technical skills as an auditor and his relationship with his clients and staff

885. Mr Danieli made submissions by reference to the nature of sanctions imposed in other matters which have come before the Board. He submitted:

(a) In *ASIC v Loke* (16/NSW20), ASIC alleged and Mr Loke accepted, that he had failed to perform his duties as a registered company auditor adequately and properly in that he acted in conflict of interest in contravention of APES 110 and he failed to obtain reasonable assurance in relation a range of key audit matters. Mr Loke was found to have falsely marked "complete" on a CaseWare file in relation to certain procedures, including reviewing the previous auditors work, when he had not even obtained those files. Relevantly the Board noted that failures of

[212] McVeigh, [3.6.2(d) and [14.7]
[213] McVeigh, [14.7]

this type were serious and went to matters of fundamental importance for an auditor discharging their duty and observing professional standards of auditing. The Board noted that the contentions established reflected a moderately high, to high degree of seriousness, but did not rise to the highest degree of seriousness because they did not involve dishonesty. Mr Loke's registration was suspended for twelve months, he was ordered to undertake additional continuing professional development and peer-reviewed audits, and to pay ASIC's costs.

(b) In *ASIC v Mooney* (01/VIC22), Mr Mooney, a registered company auditor, was found to have, on multiple occasions failed to comply with basic audit requirements, particularly in relation to gathering sufficient appropriate audit evidence to support his audit conclusions. Whilst the failures related to a single audit year, they breached core auditing standards. Mr Mooney was required to undertake a voluntary suspension from audit practice until December 2023 (which appears to be a period of about 4 months), complete 20 hours of CPD addressing key audit principles, and have his next three company audits peer-reviewed at his own expense;

(c) In *ASIC v Spagnolo* (01/NSW23), Mr Spagnolo failed to comply adequately and properly with his duties as an auditor, in that he failed comply with a range of auditing standards and the Corporations Act, including failing to obtain sufficient appropriate audit evidence, failing to plan the audits appropriately and failing to report matters to ASIC as required. Mr Spagnolo's registration was suspended for 12 months and he was required to give undertakings as to training;

(d) In *ASIC v Dowsley* (03/VIC14), Mr Dowsley was found to have repeatedly made false statements in documents lodged with ASIC, by wrongly declaring that his registration was not subject to ASIC imposed conditions and that he had complied with those conditions, when in fact he had not. He failed to meet the review and training conditions attached to his registration and was found to have acted with gross carelessness. He was found not to be a fit and proper person to remain registered. Despite this, Mr Dowsley's registration was suspended for a period of 6 months and he was required to give a range of undertakings. It is noted that the seriousness of Mr Dowsley's conduct was mitigated by Mr Dowsley's depression, which is obviously a feature not present in Mr Danieli's matter. However, the Board's decision reflects an acceptance that in the appropriate circumstances, even those found to have engaged in serious misconduct and not to be fit and proper, may well rehabilitate with appropriate supports;

(e) In *McVeigh*, the CADB found that Mr McVeigh had failed to perform his duties as a registered liquidator adequately and properly in the conduct of 10 appointments as administration and liquidator. The Board found that his work demonstrated serious deficiencies in independence, record-keeping, and the management of trust funds, as well as failures to properly investigate and report on company affairs. Although his conduct did not involve dishonesty, it reflected a fundamental lack of

professional competence and judgment expected of a registered liquidator. Relevantly, the Board found that:

> "We do not believe that any of the failures by Mr McVeigh (with perhaps some minor exceptions) was some accidental mistake or oversight by Mr McVeigh or was a simple matter of carelessness or lack of attention to detail. The overall number of failures and the repetition involved in many of them and the number of instances where we found that Mr McVeigh adopted positions with no reasonable basis for doing so, all indicate to us a more serious problem with Mr McVeigh's knowledge of and attitude to his duties and with the general conduct of his practice"[214]. and

> "This is not a case involving any dishonesty. It is however a case of a series of significant failures over a period of years by a senior practitioner who should have known better, demonstrating an inadequate understanding of or an indifference to fundamental standards of professional conduct[215].

Mr Danieli submitted that these findings bear considerable similarity with the Board's finding in respect of Mr Danieli, in that he is a senior practitioner who should have known better, his conduct was more than mere carelessness, but rather consistent with indifference to the standards, and that his answers to certain questions revealed a fundamental misunderstanding of the standards and what was required of him. Nevertheless, the Board in *McVeigh* suspended Mr McVeigh's registration for a period of 18 months, taking into account, amongst other things, his genuine acceptance of responsibility and contrition, the absence of dishonesty or impropriety, his previously unblemished disciplinary record, the remedial steps he had taken to improve his firm's systems and compliance practice and the fact that the misconduct related to what was "a small percentage of the several hundred administrations Mr McVeigh had handled over the years"[216].

886. Mr Danieli submitted that the above applies appositely to him. He submitted that he is deeply remorseful, he has identified and accepts the areas in which he must improve, he did not act dishonestly, he is committed to reform and has demonstrated an ability and willingness to change, and outside of the significant professional failings identified by the Board, it should be recognised that there is no suggestion he is an unskilled auditor (as it applies to the technical auditing component) or that he has otherwise been the subject of professional complaint in his 37 years of auditing.

887. Ms Bentley for the Respondent made further written submissions relating to the *McVeigh* decision, in response to supplementary written submissions from Mr Hartnett, and these are addressed in our consideration of the issue below.

888. In conclusion, Mr Danieli submitted:

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[214] McVeigh at [14.9].
[215] McVeigh at [14.13]
[216] McVeigh at [14.9].

(a) A serious sanction was plainly warranted in this matter. It must reflect the gravity of the conduct and convey to the profession the importance of rigorous adherence to professional standards. However, it is not the case, as submitted by ASIC, that having regard to the finding of not fit and proper, "…only one appropriate sanction emerges: that Mr Danieli's registration as company auditor must be cancelled"[217]. The Board's discretion is not fettered in such a way;

(b) The Board's statutory function is ultimately protective, not punitive. That objective can be effectively achieved by a sanction that both safeguards the public through a suspension, followed by ongoing oversight and education of the practitioner. While Mr Danieli's failings were undoubtably serious as the Board has found, it did not involve dishonest or fraudulent conduct designed for self-enrichment, and therefore does not fall within the most egregious category of cases that necessitates permanent cancellation. In Mr Danieli's submission, his remorse, genuine reflection and demonstration of improved ways should give the Board comfort that, after a period of suspension, he will be fit and proper to continue practice as an auditor;

(c) The proposed sanction meets the Board's objectives. Principally, it is protective of the public in a number of important ways:

i. *First*, it excludes Mr Danieli from the profession for a significant period of time – protecting the public from someone who has not been deemed, at this stage, to be a fit and proper practitioner;

ii. *Secondly*, it occasions personal deterrence. Mr Danieli has been shaken by this action and the Decision, and is committed to reform. It has been communicated to him in no uncertain terms that his lax approach to his professional duties will not be accepted. He will continue to be reminded of this fact and have the opportunity to reflect on his conduct as he experiences exclusion from the profession for the period of his proposed suspension. He is highly unlikely to ever repeat these actions;

iii. *Thirdly*, it allows for further education – protecting the public by educating Mr Danieli. Whilst Mr Danieli is an experienced practitioner, it is nonetheless important that he remain up to date with professional development and changes to standards and practices;

iv. *Fourthly*, it allows for ongoing protection through rigorous peer oversight;

v. *Fifthly*, it achieves general deterrence. The publication of the Decision, coupled with a serious sanction communicates to the industry that they must be keenly aware of their professional and statutory duties. Mr Danieli is 66 years old. He is coming to the end

[217] ASIC's sanction submissions, [10].

of his career, which he had intended to last only 4 more years[218]. In light of that, a suspension of 2 years is a serious matter – it consumes a significant period the rest of his career. Further, Mr Danieli will suffer: (a) the consequences of the publication of this decision and the negative impact that it will have on his personal and professional reputation. It is not only deeply embarrassing, but has the real potential to impact other areas of his personal and professional life; and (b) The cost and burden of additional work required by the undertakings. The above is not advanced to highlight the adverse impact on Mr Danieli, which itself is a factor which has limited importance in the Board's decision making. Rather, the point is made to emphasise that the proposed sanction effects the necessary general deterrence – when viewed in context, it is not a trivial sanction in any sense;

vi. *Finally*, the proposed sanction is overall, rehabilitative and constructive. Whilst Mr Danieli failed in his duties in a grave way, he has a lot to offer the profession if he is rehabilitated appropriately. As noted at the liability hearing, Mr Danieli is a very experienced auditor. He has been a registered company auditor since May 1988. He is a Fellow of the Chartered Accountants Australia and New Zealand and of the CPA Australia. He is a registered tax agent and self-managed superannuation fund auditor. He is well regarded by his clients and staff. Some clients have remained with him for 43 years and over half of his staff have been with the firm for over 10 years. When his professional failings are rectified, there is benefit to him continuing to practice. As noted in his affidavit, there is a dearth of company auditors available to audit ASX listed entities outside of the "big 4" whose fees may be prohibitive for the smaller entities. There is a public benefit to a person of his overall skill and experience remaining in the profession so long as there is confidence that he has addressed his failings.

Consideration

889. We consider that the parties' submissions, as summarised above, have correctly stated key aspects of the principles governing the Board's jurisdiction in imposing sanctions under s 1292 of the Corporations Act.

890. The Board recently encapsulated the principles in *ASIC v Santangelo* 03/NSW23 at paragraphs [311]-[314] as follows:

> "311. …, 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].
>
> 312. 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

[218] Danieli statement, [30].

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]).

313. 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], albeit in relation an analogous jurisdiction of the Federal Court in relation to liquidators). Further, as revealed in the extract from *Walker*, cited by ASIC above, the protection of the public includes maintenance of a system under which the public can be confident that the Respondent and all other practitioners will know that breaches of duty will be appropriately dealt with. Middleton J in *Dunner* put the matter slightly differently, in stating that it was important to demonstrate to the public that there existed a regulatory regime applicable to auditors which was effective in maintaining high standards.

314. A useful summary of the legal principles applicable to the exercise of the Board's discretion in determining appropriate sanctions was made 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 (***NHPT***) at [18] as follows:

> "(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."

891. Ultimately however, the Board has a discretion under s 1292 which must be exercised in all the relevant circumstances of the case before it. Where the Board is satisfied that a person has failed to perform duties adequately and

properly and/or is not a fit and proper person, the Board has a discretion to impose a sanction of the type provided for in s 1292 and the section does not prescribe circumstances where one sanction (eg cancellation) must be imposed as opposed to another (eg suspension). Indeed, it may be observed that there is no presumption that cancellation will be imposed whenever the Board finds that a person is not fit and proper to remain registered (see *Williams v Companies Auditors Disciplinary Board* [2025] FCA 629 at [115]ff).

892. In the circumstances of the present case, we have no doubt that nothing less than suspension of Mr Danieli's registration would be an appropriate sanction, and Mr Danieli did not contend otherwise. The question is whether, having regard to the purpose of the Board's power to impose sanctions, namely protection of the public, and other relevant matters, we ought to impose a period of suspension or order cancellation of Mr Danieli's registration.

General

893. In considering an appropriate sanction, we take into account the matters which Mr Danieli has advanced in his Sanctions Statement and in his submissions. We have carefully considered the matters raised in that statement and those submissions.

894. Mr Danieli has been a registered company auditor for 37 years and there is no evidence that he has been subject to any professional complaint (excluding the present matter). He has been cooperative with ASIC in relation to the present proceedings. We do not consider that he is to be penalised for contesting the allegation that he was not a fit and proper person.

895. We note that ASIC did not suggest that there were any errors in Mr Danieli's audits or that he had failed to obtain appropriate audit evidence.

896. The case did not involve any allegation of dishonesty, nor was there any allegation that Mr Danieli attempted to profit from his conduct.

897. Mr Danieli has taken steps within his firm to address the EQCR issue and improve his firm's processes. He has performed 8 further listed company audits and undertaken the EQCR process in accordance with the Standard.

898. Mr Kim's evidence provides positive support for Mr Danieli's technical skills as an auditor and his relationship with his clients and staff. It also provides positive evidence of the steps which Mr Danieli has taken to improve his and his firm's systems and processes. We discuss this in more detail below.

899. Mr Danili is 66 years old and wishes to continue to practise for another 4 years.

900. We note Mr Danieli's evidence that small auditing firms struggle to provide their services to ASX Listed companies, usually as a result of the higher cost that is required to service these clients, and that if his registration as an auditor were cancelled, then the limited market for small cap ASX company auditors would be further limited. However, this issue is of limited significance compared to other issues impacting appropriate sanction.

901. We note Mr Danieli's evidence that he has signed an undertaking with CA ANZ and the terms of that undertaking.

The nature and seriousness of the breaches and failings

902. ASIC's submissions (referred to above) correctly summarise our findings as to the nature and seriousness of Mr Danieli's breaches and failings.

903. Amongst other things, we have formed the view that Mr Danieli's breaches were serious, many and repeated, that he was unconcerned about the possibility that he had breached the requirements of ASA 220 in the FY23 audits, and that he did have an indifference to the requirements of the standards, tantamount to a disregard of his duties, and a serious lack of the insight and judgment required of an auditor. We have stated that we are satisfied that Mr Danieli is not a person of the character who can be relied upon to comply with mandatory auditing standards. We have been satisfied that Mr Danieli both failed to carry out or perform adequately and properly the duties of an auditor and that he is otherwise not a fit and proper person to remain registered as an auditor.

904. Mr Danieli, in his statement and written submissions, acknowledged a number of these findings, but made no express reference to our important finding that Mr Danieli was not a person of the character who can be relied upon to comply with mandatory auditing standards. We regard this as an important finding which is central to our finding that Mr Danieli is not a fit and proper person to remain registered as an auditor.

905. We accept, as Mr Danieli submitted, that there is no finding that Mr Danieli acted dishonestly or in pursuit of personal interest and that his failings related to only one element of auditing practice, (namely his performance of his obligations as an Engagement Partner in relation to the EQCR process). However, that process is a very important process, and Mr Danieli's failings, including, in particular, his indifference to mandatory statutory obligations and the fact that he is not of a character who can be relied upon to comply with mandatory auditing standards, are very serious matters.

Recognition of failings and remorse

906. As Tamberlin DP said in *NHPT*, the respondent's recognition and acceptance of the breaches of duty, attitude to compliance generally and willingness to improve are relevant matters and "Genuine acceptance of failure, contrition and remorse are necessary requirements to rehabilitation."

907. In relation to this issue, ASIC submitted:

(a) Whilst the Board had accepted that Mr Danieli had made some admissions of error and expressions of contrition at the Hearing, we had found that Mr Danieli had not fully acknowledged his failings or accepted full responsibility for his conduct;

(b) That to the extent that Mr Danieli has expressed any contrition or remorse, this would not secure protection of the public from the risk posed by Mr Danieli remaining registered as a company auditor;

(c) In relation to Mr Danieli's evidence that he had read and considered the Board's written Determination and the findings that had been made against him, this would carry little weight, where it should have been reasonably clear at a very early point, particularly given Mr Danieli's acceptance that he did not comply with the obligations in his concise response; and

(d) It was difficult to accept Mr Danieli's evidence, in paragraph 8 of his Sanctions statement, that he had only fully understood ASA 220 after reading the Board's Determination, having regard to what he had earlier been told by CA ANZ and by Mr Raciti.

908. In relation to this issue, the Respondent submitted:

(a) Mr Danieli had set out his reflection on the Board decision in his statement, and his remorse and regret was clear;

(b) More than that, his statement contained a genuine recognition of his failings and insight into how and why they came about. He openly recognised that his reliance on others is no excuse for his conduct and he now fully understands and acknowledges that the standards apply to him personally. Mr Danieli had sought to interrogate on a personal and professional level why these failings came about. He submitted that this was essential, because without a true understanding of the root cause of a failing, there was a real chance it will be repeated;

(c) Mr Danieli was now complying strictly with his obligations and that it was demonstrative of his improved understanding of his obligations and his willingness and ability to improve and this was evidence which spoke directly to the question of rehabilitation and the future protection of the public.

909. The parties' submissions deal with two different periods:

(a) Mr Danieli's acknowledgments and contrition as at the time of the Hearing;

(b) His acknowledgments and contrition as at the time of the Sanctions Hearing, (that is, after having received our Determination).

910. ASIC's submissions dealt both with the first period, (drawing on the findings which were made in our Determination that, as at the time of the Hearing, Mr Danieli did not fully acknowledge or accept responsibility for his failings), and with the second period, (taking issue with some of Mr Danieli's evidence in his Sanctions Statement).

911. Mr Danieli's evidence in his Sanctions Statement as to acknowledgment and contrition has been summarised above. In essence, he stated:

(a) That he now understood that his conduct was far more problematic than he had thought at the time of the Hearing and he was deeply regretful that he did not take the opportunity to remedy the position at the time of the CA ANZ review;

(b) He understood that he had placed too much reliance on those around him, particularly James Phu and Mario Raciti, rather than appreciating that the duties and obligations under the standard applied to him directly and required his own personal engagement with the EQCR process on a real and active rather than superficial level;

(c) He said that he had gone back to ASA 220 and read it carefully, particularly in relation to the EQCR requirements. It had become clear to him that the Standard made clear the responsibilities are on the Engagement Partner and that the engagement with the EQC Reviewer was not a role he could delegate, nor a stage of the auditing process he should rush through or give limited attention;

(d) He stated that ultimately, the issues came about because he did not treat the requirements under the Standard with appropriate seriousness. He said that "That reflects poorly on my knowledge, attitude and professionalism and I am deeply embarrassed. I did not set about to deliberately breach standards, but I did, and repeatedly";

(e) He stated that he believed he was a good and experienced auditor, and he thought he had let that cloud his view on the EQCR process. He thought that if he was doing a good job of the actual audits, and that the audits did not raise overly complex issues, then the EQCR process would be pretty straight-forward and quick. "That made me treat the EQCR process as more administrative than a matter of substance". He said that that view overlooks the importance of the EQCR process — the purpose of which was to provide that additional layer of protection to the audit clients and their stakeholders, and that he was doing them all a significant disservice by not engaging with it properly; and

(f) He said that it was apparent to him now that he failed to manage his time appropriately and sought to deal with that by delegating and not paying sufficient attention to matters that he did not regard as overly important. He said he did not allow sufficient time in his audit planning for the engagement of and with the EQC Reviewer and that he had since ensured that appropriate time was allocated for that, and if given the chance, he would factor this into the planning for each audit.

912. We do have some difficulty with this evidence.

913. In the first place, the relevant aspects of the Standard were not complex or difficult to apply. The relevant requirements of the Standard were:

> " the engagement partner shall:
>
> (a) …;

> (b) Discuss significant matters arising during the audit engagement, including those identified during the engagement quality control review, with the engagement quality control reviewer; and
>
> (c) Not date the auditor's report until the completion of the engagement quality control review."

914. In view of the clarity and relative simplicity of the statement of obligations, we find it hard to accept that a reasonably competent auditor would have formed a "high level", yet incorrect, understanding of these straightforward obligations, or would have believed that the Standard did not oblige the Engagement Partner to personally engage in discussions or confirm that the EQCR had been completed before dating the audit report. It is even harder to accept this in the present circumstances, where, as happened here, the auditor's professional body had undertaken a review of Mr Danieli's practice and had specifically drawn to his attention the relevant obligations.

915. Secondly, Mr Danieli's Sanctions affidavit suggested that he held the high level (and incorrect) understanding of the Standard at the time of the Hearing ("before the Board") and, in effect, that he only recognised he was incorrect when he reflected on the Determination. If this is correct, this suggests that Mr Danieli conducted his defence of the Application without having taken the time to read and understand these simple obligations.

916. Moreover, Mr Danieli's understanding of the Standard at the time of the Hearing, as revealed in his Concise Response, was that he accepted that the Standard required him to engage properly with an EQC Reviewer and not to sign the audit reports without the necessary review having occurred (see paragraph 7(c) of Mr Danieli's ACR). On that basis, we have concerns about Mr Danieli's explanation about how the breaches came about.

917. Thirdly, Mr Danieli's evidence about his understanding is, at least to some extent, inconsistent with the findings we made in our Determination concerning Mr Danieli's state of mind at the time of the audits. Our analysis of the chronology above shows that Mr Danieli progressively became aware during the audits that issues were being raised in the EQCR process, and that he became aware that the EQCRs had not been completed when he dated the audit reports. We found that he elected to date the audit reports despite the fact that he knew that the EQCRs were incomplete. We repeat what Mr Danieli set out in paragraph [52] of his Amended Concise Response:

> "At the time I made the decision to sign the reports absent the EQCR completion, I was feeling time pressures of meeting the ASX deadlines and frustration at the lack of action from Hayes Knight, despite clearly outlined and known deadlines. I did not know what to do, and I ultimately chose to ensure the clients met the ASX deadlines. I regret my actions and acknowledge that it was it a poor decision."

918. We do not accept Mr Danieli's evidence that his failings arose because of a high-level mistaken understanding of the Standard. We do not accept that Mr Danieli has properly addressed our findings, particularly those as to his indifference to auditing standards and his character. It is central to our Decision

that by reason of Mr Danieli's repeated decisions to sign and date audit reports knowing that the EQCR had not been completed, over a period of two years, and having been previously warned by his professional body that he had not been complying with the Standard and that disciplinary action would be undertaken if he did not remedy the position, Mr Danieli had an indifference to the requirements of mandatory auditing standards and was not a person of the character who can be relied upon to comply with such standards. Mr Danieli's Sanctions Statement did not expressly address these findings nor did it acknowledge these findings, or express remorse about them or explain how Mr Danieli intended to address them. Whilst Mr Danieli's written submissions accepted that a finding of indifference to auditing standards had been made, the submissions did not refer to the character finding, nor explain how Mr Danieli intended to address this finding. These matters were matters which Mr Danieli ought to have addressed in his sworn statement.

919. In this context, it is also relevant to refer to a statement made by Mr Danieli at the conclusion of the Sanctions Hearing.

920. After counsel had apparently concluded submissions at the Sanctions Hearing, Mr Danieli himself sought to address the Board. The Chairperson informed him that he had better talk to his counsel about that, but Mr Danieli proceeded, and said:

> "Ah no well to the board members, I just wanted to say that I don't need a period of suspension to prove that I'm a fit and proper person, because in the last 12 months, anything that I have done …, so there are eight ASX-listed audits that I have completed that will show that I have made substantial changes and that I'm certainly a fit and proper person to carry on as a registered company auditor, as I have done for the last 36 years.
>
> Now, I made those files, they are available for ASIC to review, um so I just wanted to assure you that um I don't need a period of suspension because I have already made the changes that are necessary. And these (indistinct) of the fact that we are - yeah what I've done and that we are here today. But I can assure you that I don't need a period of suspension, I have already done that in the last 12 months. At great cost and I don't wanna see a cancellation because that is basically a wipeout of my business and my 18 staff after being 43 years in public practice –"

921. At that point, the Chairperson interrupted Mr Danieli to indicate that Mr Danieli had his own counsel putting submissions on his behalf, that very considered submissions and evidence had been presented already, and that he was not able to give further evidence. The Chairperson said that if Mr Danieli wished, he could have an opportunity to speak to his counsel and apply to the Board to present further evidence or submissions. Mr Danieli agreed to speak to his counsel. The Board has subsequently received no such application.

922. Accepting that Mr Danieli's statement was almost certainly an impromptu statement without the benefit of legal advice, Mr Danieli chose to make it, despite having been warned to speak to his counsel first. We consider that Mr Danieli's statement confirmed that Mr Danieli had not truly accepted our deeper

findings and that it undermined rather than strengthened any case for suspension as opposed to cancellation.

923. We do not accept that the reason for Mr Danieli's breaches was that he proceeded on a high level but mistaken understanding of the Standard, but rather, we have found that he elected to proceed to sign and date audit reports, knowing that the EQCR had not been completed. We do not consider that Mr Danieli has accepted and/or reflected upon our deeper findings (that he had an indifference to the requirements of mandatory auditing standards and was not a person of the character who can be relied upon to comply with such standards). We do not consider that he believes that he is required to address these findings. Mr Danieli's statement at the Sanctions Hearing suggests that he believes that he is already fit and proper and that no suspension is necessary, on the basis that he has performed 8 ASX listed audits over the last 12 months in accordance with the requirements of the Standard.

Willingness to improve

924. Mr Danieli's Sanctions Statement contains details of the steps he has taken to address his failings, in particular, the steps he has taken in relation to the EQCR process. We accept that Mr Danieli has taken steps to ensure that the EQCR process is carried out properly and is willing to continue to do so.

925. Mr Kim's statement provides additional evidence of the steps Mr Danieli has been taking to improve the way the firm conducts the EQCR process, audit documentation standards and to improve audit quality more generally. It contains evidence of Mr Kim's observations of Mr Danieli's commitment to strengthen audit quality fostering accountability, and embedding continuous improvement in the firm's EQCR, SOQM, and engagement performance processes. We accept that Mr Kim's evidence supports the view that Mr Danieli has been willing to improve in relation to these matters.

926. We note, however, that Mr Kim's statement refers to observations of Mr Danieli as from November 2024 but this evidence does not undermine our finding that Mr Danieli is presently not a fit and proper person to remain registered as a company auditor. Further, (and perhaps for obvious reasons) although Mr Kim gave evidence that he was aware of the substance of the CADB proceedings and the circumstances which led to it, Mr Kim does not give evidence to the effect that he is aware of all the evidence which we heard on this Application, the chronological analysis of Mr Danieli's conduct referred to above or that we have found that Mr Danieli has an indifference to the requirements of mandatory auditing standards, is not a person of the character who can be relied upon to comply with such standards and is not a fit and proper person to remain registered as an auditor. Neither Mr Danieli's statement nor Mr Kim's statement dealt with how Mr Danieli intends to address these findings.

927. We consider that it would have been possible for Mr Danieli to have adduced some evidence about this. Without evidence, it has not been possible to test the evidence or give consideration to the likely effectiveness of any proposed steps to address these findings.

928. ASIC submitted, in their written submissions: “This was not a matter in which a Respondent had given evidence about a proposed set of clear remediation strategies that would address any risk to the public to an acceptably low level”. In oral submissions, Mr Hartnett submitted that the Respondent's proposed undertakings did not deal with the issue that the Board has made findings about.

929. We agree with these submissions, at least in relation to the deeper issues of indifference and character. Mr Danieli’s proposed undertakings concentrate on compliance with ASA 220 and did not include a strategy to deal with our other deeper findings. Further, we note that Mr Danieli’s proposed undertakings provide for steps to be taken *after* the period of suspension, ie, at a time *after* which Mr Danieli would already be required to be a fit and proper person.

Suspension - fitness and propriety at the end of the period of suspension.

930. In oral submissions, both parties accepted that Tamberlin DP’s dictum in paragraph [18](g) of *NHPT*[219] does not involve a fetter on the Board’s discretion. However, the parties accepted that the requirement followed as a matter of logic. Having regard to the fact that the purpose of imposing sanctions is protection of the public, the Board should not, by suspending rather than cancelling, permit a person to resume practice if the Board were not confident that the person would be fit and proper at the end of the period of suspension.

931. We are not confident that if a period of suspension were imposed that the respondent would be fit and proper after the period of suspension.

932. The Panel adverted to this issue at the Sanctions Hearing, specifically asking the Respondent’s counsel whether, in view of the Panel’s findings that Mr Danieli had an indifference to auditing standards, and that he was a person of a character who could not be relied upon to comply with mandatory auditing standards, the Panel could be satisfied that after a period of suspension, Mr Danieli would be a person who could be relied on to comply with auditing standards. Ms Bentley responded in the affirmative, on the basis that Mr Danieli had reflected on why he held that indifference and she submitted that he held that indifference because

> “he perhaps arrogantly felt well that's not important, because I'm a good auditor let's not worry about those administrative tasks. And this has given him a good wake up that it's not up to you to decide which standard to give importance and which not to, they're there for a reason and you follow them all equally, irrespective of your confidence in yourself. And I think it's that reflection that goes deeper than: 'yes, I acknowledge I did the wrong thing', but it's to interrogate the why. That should give the board some confidence that Mr Danieli is reflecting more broadly as to what's required of him as a professional”.

933. There was an element of supposition in this submission and we are not confident that after a period of suspension, Mr Danieli would be a person who could be relied upon to comply with auditing standards. As already stated

[219] “(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”.

above, we are not satisfied that Mr Danieli has acknowledged and reflected on our deeper findings or considered how these will be addressed.

934. Mr Danieli's written submissions (set out above) also contended that

> "Mr Danieli has been shaken by this action and the Decision, and is committed to reform. It has been communicated to him in no uncertain terms that his lax approach to his professional duties will not be accepted. He will continue to be reminded of this fact and have the opportunity to reflect on his conduct as he experiences exclusion from the profession for the period of his proposed suspension. He is highly unlikely to ever repeat these actions."

935. In any other case, there may be some force in this submission. However, it is relevant to consider Mr Danieli's conduct after receiving previous warnings. The CA ANZ review was a very serious procedure and the February 2023 letter raised significant issues and warned Mr Danieli of serious consequences if he did not address the issues raised in the letter. It said:

> "If the issues raised in this review results letter have not been adequately addressed at the time of your follow up review, your practice will be referred to the Conduct and Discipline team for possible disciplinary action".

936. One would have thought that Mr Danieli would have been shaken by this letter and would understand that any further lax approach to his duties would not be acceptable.

937. Mr Danieli's response to CA ANZ included the following (in the right hand column, responding to the issues raised by CA ANZ in the left hand column):

Your practice did not document evidence of discussions of significant matters with the engagement quality control reviewer as required by ASA 220 *Quality Control for an Audit of a Financial Report and Other Historical Financial Information.*	We have now created a Planning Memo for the discussions of significant matters with the Quality Reviewer in addition to the CaseWare schedules.
The engagement quality control reviewer's sign off was dated significantly later than the auditor's report. ASA 220 *Quality Control for an Audit of a Financial Report and Other Historical Financial Information* requires an auditor's report not be dated prior to completion of the engagement quality control reviewer review	We acknowledge there was a timing issue in this instance. However, this was an isolated incident and certainly not the case with our audits when outsourcing this function.

938. Yet some six months later, Mr Danieli repeatedly breached the Standard in relation to the FY23 audits.

939. Then, a further six months later, on 22 February 2024, Mr Danieli received Mr Raciti's email stating that Hayes Knight had been made aware that the audit reports for the five Listed Companies had been signed off and:

> "I need to draw your attention to paragraph 36(d) of ASA 220 which sets out that for audit engagements for which an engagement quality review is required, the engagement partner shall not date the auditor's report until the completion of the engagement quality review.
>
> In each instance, the engagement quality review has not been completed.
>
> Can I suggest you seek guidance on this matter".

940. One may have thought that Mr Danieli would have been shaken by this communication and that he would have investigated the position (to the extent he needed to), and that it was highly unlikely that he would ever repeat his FY23 conduct.

941. Yet some six months later, Mr Danieli again repeatedly breached the requirements of the Standard.

942. Against this background, and in circumstances where Mr Danieli has not fully acknowledged our findings concerning his indifference to auditing standards and his character or explained how he intends to address these matters, we are not confident that if we were to suspend Mr Danieli, that he would be a fit and proper person to be registered when the period of suspension came to an end.

Comparable decisions

943. Mr Danieli supported his contention that suspension rather than cancellation was appropriate by referring to the outcome of other applications to the Board.

944. We accept that it is relevant to give consideration to comparable decisions although, as Tamberlin J said in *Dean-Willcocks v Companies Auditors and Liquidators Disciplinary Board* [2006] FCA 1438 at [46] (***Dean-Willcocks***), only the most general guidance can be obtained from this type of "precedent" cases because they cannot be readily compressed into a template which permits reasonable comparison.

945. The decisions to which the Respondent referred are set out in paragraph [885] above. For the reasons which follow, despite some comparable features in those cases, we do not consider that these decisions are compelling in relation to the appropriate sanction in the circumstances of the present case.

946. In relation to the decision of *ASIC v Loke* (CADB 16/NSW20) (***Loke***), the decision is clearly distinguishable:

(a) In the first place, ASIC did not allege, and the Board did not find, that Mr Loke was not a fit and proper person;

(b) Secondly, whilst ASIC had initially sought cancellation, the parties came to an agreement prior to the hearing and lodged an agreed statement of facts and proposed consent orders, by which they proposed suspension rather than cancellation. The principles which apply to the determination of appropriate sanctions in the case of consent orders are different to those which apply in the present case (see *Loke* at paragraph [105], and see *ASIC v Santangelo* (03/NSW23) at [315]*ff*). Where the parties agree on proposed sanctions, the primary question for the Panel is whether those proposed sanctions are within the permissible range of sanctions;

(c) Thirdly, unlike the position in the present case, Mr Loke had agreed to undertake education to address his failings during his period of suspension. The Panel stated (at paragraph [107]):

> ".. the suspension will protect the public until, pursuant to the undertakings proposed, Mr Loke will have engaged in education and learning *that covers all of the areas identified as a result of these proceedings*. This gives the Panel confidence that by the time the twelve month suspension of his registration has expired, Mr Loke will be equipped with appropriate knowledge and understanding in order to perform his duties and functions as an RCA at a standard appropriate to satisfy the Relevant Benchmark" (emphasis added)

947. Thus, the position in *Loke* was quite different to the position in this matter. Importantly, the Panel in *Loke* was not strictly required to consider whether Mr Loke would be a fit and proper person at the end of the period of suspension because they had made no finding that he was not a fit and proper person to remain registered.

948. The second decision on which the Mr Danieli relied (*ASIC v Mooney* (CADB 01/VIC22) (***Mooney***)) involved similar distinguishing features. *Mooney* was also a consent matter. There was no finding that Mr Mooney was not a fit and proper person to remain registered. Further, the sanctions imposed by the Board required Mr Mooney to undertake further education during the period of suspension to address his failings. At paragraph [118](t), the Panel said:

> "After 1 January 2024, by reason of the proposed undertakings as to further education, Mr Mooney will have engaged in education covering the subject matter of the standards with which he admits he did not comply. Together with the proposed undertaking regarding supervision of his first three listed company audits, the CADB can have confidence that after 1 January 2024, Mr Mooney will have the appropriate knowledge and understanding to perform his duties and functions as a registered company auditor at a professional standard appropriate to satisfy the Relevant Benchmark."

949. The Panel also noted (at paragraph [118](p), that Mr Mooney's consent to the proposed orders reflected his acknowledgement of the failure on his part to properly and adequately perform his duties as a registered company auditor within the meaning of s1292(1)(d)(i).

950. The third matter relied upon by Mr Danieli (*ASIC v Spagnolo* CADB 01/NSW23 (***Spagnolo***)), is distinguishable on the same basis. It involved proposed consent orders and no allegation or finding that Mr Spagnolo was not a fit and proper person to remain registered.

951. Further, in *Spagnolo*, ASIC accepted that Mr Spagnolo had shown remorse and insight, such that there was limited need for personal deterrence (paragraph [142](d)).

952. As with *Loke* and *Mooney*, the sanctions in *Spagnolo* included targeted education during the period of suspension and the Panel stated (at paragraph [151]):

> "The suspension of Mr Spagnolo's registration as an auditor for twelve months provides time for him to complete further targeted education to ensure he will in future be equipped with appropriate specialist audit knowledge and understanding to perform his duties at an appropriate professional standard."

953. As to the fourth decision relied upon by Mr Danieli, *ASIC v Dowsley* (CADB 03/VIC14) (***Dowsley***), the circumstances in that case were unique. In one respect, the decision was similar to the present case, (in that the Panel had made a finding that the respondent was not a fit and proper person). However, in other respects, the case was quite different. The Panel found, on the basis of medical evidence, that Mr Dowsley had depression which contributed to the impugned conduct. The Panel found that Mr Dowsley's moral culpability (affecting both the seriousness of his conduct and the need for general and specific deterrence) was mitigated by his Depression.

954. The Panel found that the appropriate sanction was suspension together with certain undertakings. Ultimately, this result flowed from the Panel's decision that, upon compliance with the undertakings, Mr Dowsley would be fit to resume practise (at paragraph [248]). We consider that the decision provides little, if any, meaningful assistance in this case. The decision in *Dowsley* is one which rests on its own rather unusual facts.

955. The fifth decision relied upon by Mr Danieli was *ASIC v McVeigh* (CADB 10/VIC08) (***McVeigh***). This decision was the subject of supplementary written submissions from the parties following the Sanctions Hearing, as referred to above.

956. Mr Danieli, in his initial written submissions (set out in paragraph [885] above), contended that the findings in *McVeigh* bore considerable similarity with the Board's finding in respect of Mr Danieli, in that he is a senior practitioner who should have known better, his conduct was more than mere carelessness, but rather consistent with indifference to the standards, and that his answers to certain questions revealed a fundamental misunderstanding of the standards and what was required of him. Mr Danieli contended that despite this, the Board in *McVeigh* suspended Mr McVeigh's registration for a period of 18 months, taking into account various other matters.

957. In Mr Hartnett's supplementary written submissions addressing *McVeigh*, Mr Hartnett submitted, in substance:

(a) The Board in *McVeigh* had categorised Mr McVeigh's conduct (at [14.13]) as 'a case of a series of significant failures over a period of years by a senior practitioner who should have known better, demonstrating an inadequate understanding of or an indifference to fundamental standards of professional conduct';

(b) The Board did not decide between these two 'complexions' nor, in reasoning to its sanction decision, did it state that it had made any findings Mr McVeigh's state of mind which would have been relevant to arriving at a decision as to sanction;

(c) The reasons for the Board's ultimate decision to impose a period of suspension in *McVeigh* reflect that the Board was satisfied that Mr McVeigh could be rehabilitated within a suitable timeframe, noting that at [14.13], the Board in *McVeigh* asked itself "whether there is a *realistic possibility* that the deficiencies which we have found in Mr McVeigh's

understanding and observance of his professional duties are *likely* to be rectified […] within a suitable timeframe" (italics added)

(d) The present matter was different in that the Board had made extensive findings as to Mr Danieli's state of mind and Mr Danieli's "knowing" breaches of the standards was a feature in the Board's ultimate conclusion that Mr Danieli was not a fit and proper person although the Board said that if it were wrong about those knowledge findings, it would still have ultimately arrived at the same fitness and propriety conclusion;

(e) The distinction was highlighted in paragraph [846] of the Determination where the Board said that Mr Danieli:

> "knew or ought to have known what was required of him. He was reminded by third parties of what was required of him. He had ample opportunities to show that he understood and respected the obligations imposed upon him and ample opportunities to comply with them and yet persisted in breaching them"

(f) The findings as to Mr Danieli's character, militated strongly against the Board being "confident" or finding as a matter of "realistic possibility" that after a period of suspension Mr Danieli would become a fit and proper person.

(g) This is so whether the Board required, by way of an undertaking, Mr Danieli to undergo a period of monitoring or other remediation. The position can be contrasted with a situation where, for example, the fitness and propriety finding was significantly contributed to by an external factor (such as ill health) which the evidence shows is likely to improve (e.g.: *ASIC & Dowsley* 03/VIC14. See, the Board's reasons at [195]-[197]; [247]).

958. In response to these submissions, Ms Bentley on behalf of Mr Danieli submitted:

(a) It was not correct to suggest that *McVeigh* could be distinguished on the basis that the Board made no findings about Mr McVeigh's state of mind which were relevant to sanction, referring amongst other things to the Board's conclusion that instances of Mr McVeigh's conduct "*all indicate to us a more serious problem with Mr McVeigh's knowledge of* ***and attitude to his duties*** *and with the general conduct of his practice.*"[220] and "*For Mr McVeigh to sign statutory forms without giving them proper or any consideration suggests a worrying attitude to the fulfilling of statutory obligations."*[221]*;*

(b) The Board's description of Mr McVeigh's conduct as demonstrating "*an inadequate understanding of or an indifference to fundamental standards of professional conduct*" should not be read, as ASIC advances, as an unresolved choice between two alternative

220 [14.9], emphasis added.
221 [8.4(c)(iii)]

"complexions", but rather, it reflected that across the breadth of breaches, different aspects of that formulation may have applied to different failures: some arising from an inadequate understanding, others from what the Board characterised as an indifference to the standards. This is supported by the fact that later in the McVeigh decision, the Board refers to their findings about deficiencies in Mr McVeigh's "…understanding **and observance of** his professional duties";[222]

(c) The Board's conclusion in this matter that Mr Danieli "*knew or ought to have known what was required of him*" was entirely consistent with the findings as against Mr McVeigh. In both cases, the Board's conclusions reflect the same evaluative characterisation: an experienced practitioner whose knowledge of *and* attitude to his duties were deficient;

(d) A key matter underpinning the Board's confidence in Mr McVeigh's rehabilitative prospects was the evidence of Mr Morrow, described as a witness who had given evidence to the effect that Mr McVeigh had taken steps to ensure he complies with standards and requirements .[223] The Board noted as to Mr Morrow's evidence that: "*we believe that that evidence (now including Mr Morrow's later letter) is helpful at the sanction stage as tending to confirm the likelihood that rehabilitation by Mr McVeigh is a practical possibility;*"

(e) The same conclusion follows here. Like Mr McVeigh, Mr Danieli has now demonstrated active engagement with the issues raised against him, has undertaken substantial steps to improve his practice, and has demonstrated consistent compliance with the standards in the audits of listed entities over the past 12 months. There is no reason to doubt that Mr Danieli can and will carry through on what he says he intends to do in the future. The considerations that led the Board in *McVeigh* to determine that suspension (with conditions) adequately protected the public apply with equal force in Mr Danieli's case.

959. We accept that it is possible to point to similarities between *McVeigh* and the present case, but there are important differences. These include:

(a) *McVeigh* did not involve a finding that Mr McVeigh was not a person of the character who could be relied upon to comply with mandatary auditing standards;

(b) *McVeigh* did not involve a contemporaneous "not fit and proper" finding;

(c) The decision to suspend was underpinned by clear evidence that rehabilitation was practically likely within a finite timeframe. We contrast this situation to the position in the present case.

222 [14.13], emphasis added.
223 [14.7].

960. Further, it appears that the Panel in *McVeigh* was particularly impressed by a personal statement lodged by Mr McVeigh at the Sanctions Hearing, which, they said, "impressed us as sincere and a genuine indication of acceptance and contrition and has had a significant impact on our thinking about sanctions" (paragraph [14.5]). We contrast this position with the position in the present case (see paragraph [918], [923] above).

Protection of the public

961. Ultimately, as already stated above, the guiding principle adopted by the Board in exercising its powers is "protection of the public".

962. Notwithstanding Mr Danieli's submissions on this topic, we consider that cancellation of Mr Danieli's registration will serve that purpose but suspension as proposed by Mr Danieli will not.

963. In the first place, for reasons already discussed (particularly where Mr Danieli has not fully accepted and acknowledged our findings and indicated how he intends to address them), we are not confident that after a period of suspension, Mr Danieli would be a fit and proper person to be registered as an auditor.

964. Unless we can be confident of this, a suspension risks exposing the public to a person who will not be fit and proper.

965. Secondly, as noted above, the protection of the public includes maintenance of a system under which the public can be confident that the Respondent and all other practitioners will know that breaches of duty will be appropriately dealt with. We consider that it is important to emphasise to auditors that an attitude of repeated indifference to auditing standards of the type which occurred in the present case, and particularly in connection with the audit of listed companies, is corrosive of the auditing process on which the public depends, and that it justifies cancellation of registration.

966. We accept that suspension is not a "trivial" sanction, but it is a sanction which conveys less deterrence than cancellation.

967. Whilst every case depends upon its own facts, we consider that cancellation of Mr Danieli's registration is appropriate in all the circumstances of this case.

968. We recognise, of course, that an order for cancellation will have serious negative consequences for Mr Danieli and we have given full consideration to the impact of such an order. However, at the end of the day, Mr Danieli had it in his own power to avoid these consequences by acting on the warnings he received. His conduct has led us to find that he is not a person of the character who could be relied upon to comply with mandatary auditing standards and that he is not a fit and proper person to remain registered as an auditor. We are not confident that after a period of suspension, he would be fit and proper, and in those circumstances, notwithstanding the negative consequences for Mr Danieli, the public is entitled to the protection which an order for cancellation will provide.

Appropriate sanction

969. For the above reasons, we consider that the appropriate sanction, in all the circumstances of the case, is to order the cancellation of Mr Danieli's registration. Accordingly we have decided to exercise our powers under s 1292 of the Act by making the orders in paragraph 970 (1) and (2) below.

970. We make the following orders:

1. Pursuant to s 1292(1) of the Corporations Act, the registration of Mr **Sam DANIELI (Mr Danieli)**, with auditor registration number 4303, as an auditor be cancelled.
2. Pursuant to s 1297(1)(a) of the Corporations Act, the order for cancellation in paragraph 1 will come into effect at the end of the day on which the Board gives Mr Danieli a notice of the decision in accordance with s 1296(1)(a) of the Corporations Act.

Howard K Insall SC

Panel Chairperson

16 December 2025

Appendix A

ANNEXURE A – UNDERTAKING PROFERRED BY MR DANIELI

1. This undertaking is given pursuant to s 1292(9)(b) of the Corporations Act 2001 (Cth) and will take effect upon the conclusion of the two-year suspension period ordered by CADB.

PEER REVIEW

2. I will, at my expense, engage another registered company auditor as an independent peer reviewer (**Peer Reviewer**) on the terms set out below:

   (a) I will make the necessary arrangements to enable the Peer Reviewer to undertake a review of the first three (3) company audits for which I undertake the role of either Lead Auditor or Engagement Partner (**the Audits**) following the expiry of my suspension.

   (b) The Peer Reviewer shall be independent and have no business, professional, or personal connection with me or with my firm or any related entity.

   (c) The Peer Review must first be approved by the Australian Securities and Investments Commission (**ASIC**). In order to enable ASIC to consider whether a prospective Peer Reviewer is suitable, I shall, no later than sixty (60) days prior to the expiry of my suspension period, provide ASIC with:

      (i) a curriculum vitae of at least one proposed Peer Reviewer; and

      (ii) draft written terms of the proposed engagement of the Peer Reviewer.

   I acknowledge that the written terms of engagement must be approved in writing by ASIC before the engagement is finalised and that I shall not proceed to engage a Peer Reviewer until ASIC's written approval has been obtained.

(d) I shall ensure that the engagement terms require the Peer Reviewer to provide to ASIC, as soon as practicable and no later than three (3) months after the completion of each Audit, a written opinion (**Peer Reviewer's Statement**) stating whether, in the Peer Reviewer's opinion, each Audit has been conducted in all material respects in accordance with:

(i) the Auditing Standards made by the Auditing and Assurance Standards Board;

(ii) the Accounting Standards made by the Australian Accounting Standards Board; and

(iii) the APES 110 Code of Ethics for Professional Accountants (including Independence Standards).

The Peer Reviewer's Statement shall include the reasons on which the opinion is based.

(e) I acknowledge that should any Peer Reviewer's Statement not conclude that an Audit has been conducted in all material respects in accordance with the relevant professional and ethical standards, ASIC shall be entitled to take such action as it considers appropriate.

(f) I further acknowledge that ASIC may publish or otherwise rely upon the Peer Reviewer's Statement for any regulatory or disciplinary purpose consistent with its statutory functions.

CPD REQUIREMENT

3. I shall complete additional continuing professional development education activity (CPD) over a period of two (2) years commencing upon the conclusion of the two-year suspension of my registration.
4. For each of those two years, I shall complete not less than twenty (20) hours of CPD in addition to the CPD I am otherwise required to complete to maintain my membership of my professional accounting body and to retain my registration as a company auditor (**the Additional CPD Requirement**).
5. The Additional CPD shall include training content specifically covering ASA

220 – Quality Management for an Audit of a Financial Report and Other Historical Financial Information, including the role and responsibilities of the engagement partner and engagement quality reviewer; The training provider(s) and course content for the Additional CPD must be approved in writing by ASIC prior to commencement. I shall submit to ASIC, no later than sixty (60) days before commencing the CPD program, details of the proposed training provider(s) and course content for ASIC's review and approval.

6. I shall ensure that the CPD is delivered by an independent, external training provider with demonstrable expertise in audit quality management and professional standards for auditors.
7. I shall provide ASIC with documentary evidence of satisfactory completion of the CPD each year within thirty (30) days of completion. The documentary evidence will include:

   (a) certificates of completion or attendance;

   (b) a summary of the learning outcomes achieved; and

   (c) confirmation that the CPD completed is distinct from and in addition to the CPD required to maintain my professional membership and auditor registration.