

25<sup>th</sup> June 2017



**JEN DALITZ**  
& Associates Pty Ltd

Mr Jim Dickson, Chair  
CPA Australia Ltd  
Level 20, 28 Freshwater Place  
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By email to: [boardofdirectors@cpaustralia.com.au](mailto:boardofdirectors@cpaustralia.com.au)

Dear Mr Dickson

As a member I was shocked to receive your announcement on Friday regarding the termination of our CEO, Mr Alex Malley and the appointment of Mr Adam Awty as acting CEO. I request an urgent response to this communication.

The CPA brand and the reputation of our professional body is in tatters, thanks to the decisions made by the Board that you Chair. The Board appoints the CEO. The board signs off on strategy. The Board has failed in its fiduciary obligations to members. How is the Board taking responsibility for those failures?

There is obviously much work to be done in restoring the CPA brand and reputation, which has been critically damaged by the Board that you Chair. It is now essential for members that every step of the remedial process is undertaken to the highest possible professional standard. Your announcement on Friday fails in that.

Given reports of pending investigations into matters at CPA Australia by ASIC, the PSC scheme debacle, and the independent review commissioned by the Board you announced last week, I respectfully urge the Board to urgently revisit its decision to terminate Mr Malley's employment effective 23<sup>rd</sup> June 2017.

Legally, the Board is inquorate and what remains of it does not have the authority to make this decision on behalf of members. You have failed to disclose the "emergency" under which you have appointed a new Director; your own inability to govern effectively, and media reporting of poor governance decisions, failing to satisfy that definition. There is ample common law precedent that defines an "emergency" and the disarray of the Board is not sufficient.

Members are now turning their thoughts to why – within the course of one week – the Board has gone from wholehearted support of Mr Malley, to terminating him. Our suspicions are that this action by you is an attempt to evade the "independent review" process.

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Why was Mr Malley not stood aside pending the outcome of investigations already in train, rather than being terminated with a \$4.9m golden parachute? He is after all a symptom of the Board that has directed him, and his removal does not address your incompetence. There is already significant member distrust in the review process you have announced and this action against the CEO only builds on that.

You are well aware that the two eminent gentlemen you announced to lead your “independent review” are on the public record in support of our past CEO and, by association, the strategy approved by your Board. Their published relationships with the organisation imposes an “advocacy threat” to their independence (Joint Accounting Bodies *Independence Guide*, Fourth Edition, February 2013).

#### 4.2 Step 1 – Identify threats

The first step is to identify situations that could threaten or appear to threaten a member’s independence. The Code contains examples of different circumstances and relationships that can cause threats, categorised as follows:

Threat category	Brief description	Examples in the Code
Self-interest threat	The threat that a financial or other interest will inappropriately influence the member’s judgement or behaviour	Para 200.4
Self-review threat	The threat that the results of a previous judgement or service performed by a member will not be appropriately evaluated by the member before it is relied upon in forming a judgement as part of the current service	Para 200.5
Advocacy threat	The threat that a member will promote a client’s position to the point that the member’s objectivity is compromised	Para 200.6
Familiarity threat	The threat that a member is sympathetic to a client’s interest or accepting of their work due to a long or close association with the client	Para 200.7
Intimidation threat	The threat that a member will be deterred from acting objectively because of actual or perceived pressure	Para 200.8

Figure 1 – Member Independence Threats, Joint Accounting Bodies Independence Guide, p12

As a guide of member sentiment, I conducted a member straw poll this past week on LinkedIn and within 48 hours received 215 responses. Only **7 per cent** of respondents believed that the panel members appointed by you pass the standards of independence expected of the accounting profession. Frankly this is embarrassing to the profession. It should be of grave concern to the Board.

### Do you feel the proposed panel members pass the standards of independence expected of the accounting profession?

Answered: 215 Skipped: 0

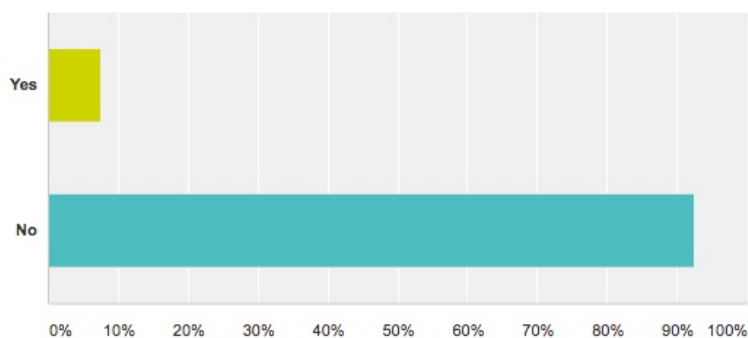


Figure 2 – Survey of perceived panel independence, conducted by Jen Dalitz on Survey Monkey

In light of the various reviews under way, it is a clear breach of your fiduciary responsibility to members to proceed with the \$4.9million termination payment you are proposing for Mr Malley. I would urge you to reconsider this.

I further draw your attention to The *Corporations Amendment (Improving Accountability on Termination Payments) Act 2009* (Cth) ("**Amending Act**") which made significant amendments to termination payment provisions in order to prevent excessive termination benefits being paid to senior executives without shareholder approval. The amendments came into effect on 24 November 2009. How has the Board sought member approval in authorising this payment? The short answer is you haven't.

Further, should any improper acts or wrongdoing be identified in the review processes already in train, this would constitute a breach of any reasonable employment contract and therefore negate any golden parachutes attached thereto. What did the Board have to hide from allowing the review to run its course? And if the funds have been paid already, how will you claw back those payments you have authorised while iniquorate?

In relation to Mr Awty's appointment as acting CEO, on what basis has the Board make this decision? How can he be appointed when his own actions as COO and company secretary – as regards the breaches of our Constitution – are under review? Who will perform the role of company secretary now that he has stepped into the acting CEO role?

I have referred these questions to ASIC for their investigation.

The **only** appropriate response from the Board now is to engage **with members** and work **with us** to understand our concerns and ensure they are addressed. We have been ignored for too long, and that is why the media has had an avalanche of support. That not one of the twelve board members of CPA Australia was prepared to stand up for members, and propose a vote of no confidence in the Board, is a disgrace and a reflection of the scale of damage now needing repair.

I call on you to show some common sense and call an Extraordinary General Meeting of members to pass resolutions to the constitution that give power back to the members. CPA Australia is **our** organisation. Only members have been able to lift the lid on the scale of self-interest and incompetence of the current board; and only members should have the power to decide who we want to guide our organisation through the reparation process.

I await your response.

Yours sincerely,



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