

# **Companies Auditors Disciplinary Board**

Annual Report  
for the year ending 30 June 2018

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# TABLE OF CONTENTS

<b>CHAIRPERSON’S REVIEW .....</b>	<b>1</b>
<b>OVERVIEW.....</b>	<b>3</b>
CADB’s current role and purpose .....	3
Constitution of CADB and current membership .....	5
<b>OPERATIONAL INFORMATION 2017–18 .....</b>	<b>6</b>
Staff Resourcing .....	6
Premises .....	7
Applications received by CADB .....	7
Hearing days .....	7
Results by nature of sanction .....	8
Notification and publication of CADB decisions.....	8
Costs orders by CADB .....	9
Review/Appeal of CADB decisions .....	9
Financial information for the reporting year .....	10
Work health and safety and environmental matters.....	11
FOI Act and Section 13 AD(JR) Act requests .....	12
Ethics.....	12
External scrutiny and accountability .....	12
Management of human resources .....	16
Purchasing.....	16
Consultants.....	16
Competitive tendering.....	17
Australian National Audit Office access clauses.....	17
Exempt contracts.....	17
Advertising and market research .....	17
Discretionary grants.....	17
<b>GLOSSARY .....</b>	<b>18</b>
<b>APPENDIX 1.....</b>	<b>19</b>
CADB procedures with respect to applications .....	19
Panel of CADB members to hear and determine matters .....	21
<b>APPENDIX 2.....</b>	<b>23</b>
Details of current members of CADB .....	23



**Companies Auditors  
Disciplinary Board**

8 October 2018

The Hon. Stuart Robert MP  
Assistant Treasurer  
Parliament House  
Canberra ACT 2600

Dear Assistant Treasurer

I am pleased to present the Board's Annual Report for the year ended 30 June 2018 in accordance with section 214 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act).

Section 214(1) of the ASIC Act requires the Board to prepare a report describing its operations during the year and to give a copy of the report to the Minister as soon as practicable after 30 June and before 31 October, each year.

Section 214(2) of the ASIC Act provides that the Minister shall cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after he receives a copy of the report.

Yours Faithfully

A handwritten signature in cursive script that reads "M C McCrossin".

Maria McCrossin  
Chairperson

## Chairperson's Review

During the 2017–18 reporting year (“the reporting year”), the Board’s long serving Registrar, Mr Gary Hoare, retired and the opportunity arose to restructure the Board’s administrative support function with a more flexible arrangement. Our new arrangement, while reflecting the Board’s reduced administrative need overall, is designed to meet the Board’s requirements more efficiently and is capable of responding to the workflow fluctuations that arise due to the lower volume but more complex matter profile of CADB’s current work. We welcome our new part-time Registrar, Ms Mabel Say who has stepped into the role.

On behalf of my fellow members, all of whom understood and appreciated Mr Hoare’s valuable contribution to the Board over the years, I wish to express our gratitude for his long and dedicated public service, his commitment to the Board and our sadness at his recent sudden passing.

During the reporting year:

- (i) A panel of three CADB members conducted one matter. This matter involved significant case preparation and a hearing, which took place over ten days on various dates between September 2017 and March 2018. We expect this matter to be concluded in the next reporting year.
- (ii) There was one conduct matter filed with CADB, following correspondence with the parties, it was subsequently withdrawn by ASIC.
- (iii) The transfer of powers from CADB to ASIC with respect to registered liquidators proceeded smoothly following commencement of the ILR Act. The liquidator matter we reported in the previous reporting year that may subsequently have reverted to CADB under the relevant transitional provisions of the ILR Act was upheld on appeal by the AAT and is now finalised. I do not expect that the transitional provisions of the ILR Act will have any continuing impact on CADB’s responsibilities and functions.

At the conclusion of the reporting year, CADB comprised the Chairperson, the Deputy Chairperson, two accounting members and three business members. The number of members is less than prescribed by Section 203(1) of the

ASIC Act. That provision prescribes that CADB consist of a Chairperson, a Deputy Chairperson, six accounting members and six business members. I liaise regularly with the Department of Treasury regarding prospective suitable members to be recommended for appointment by the Minister to ensure that CADB is adequately resourced to convene panels of members to hear matters as required.

On behalf of CADB, I note our appreciation for the support and facilities provided by ASIC pursuant to Section 11(2)(a) of the ASIC Act and for the assistance provided by the Department of Treasury via its regular liaison with CADB.

Finally, I wish to acknowledge and thank each of the members of CADB and the Deputy Chairperson, all of whom, when called upon, generously contribute their significant experience and expertise, notwithstanding their other commitments.

In the coming year, CADB will continue to maintain its focus on dealing with every matter that is referred to it effectively, fairly and expeditiously.

Maria McCrossin  
Chairperson

## Overview

CADB is an independent statutory body established under Part 11 of the ASIC Act. Its powers and functions are conferred under Part 9.2 of the Corporations Act (“the Act”) and Part 11 of the ASIC Act. It is constituted by part time accounting and business members appointed from time to time for terms of up to three years by the Assistant Treasurer, who is the Minister responsible for CADB. Along with several other bodies, including ASIC, APRA, the Financial Reporting Council, the Auditing and Assurance Standards Board and the Australian Accounting Standards Board, CADB is part of the regulatory framework for the maintenance of audit quality in Australia established by the Corporations legislation. CADB’s specific specialist function is to act as an independent tribunal to hear and determine disciplinary matters concerning registered auditors referred to it by ASIC or APRA. There are no investigative powers conferred on CADB by the relevant legislation.

Pursuant to Section 214(1) of the ASIC Act, CADB is required to prepare a report annually describing the operations of CADB and provide a copy of that report to the Minister as soon as practicable before 31 October each year. CADB is not required to comply with the PGPA Act in respect of preparation of its annual reports although notes the comments of the Senate Economics Legislation Committee in its first report on annual reports for 2018 published in March 2018 that it considers all annual reports should comply with the PM&C guidelines, *Requirements for Annual Reports* dated 30 June 2015, to the extent those requirements do not conflict with that body’s existing reporting requirements. CADB confirms its Annual Report has been prepared in accordance with the relevant PM&C requirements to the extent they do not conflict with CADB’s reporting obligations pursuant to Section 214(1) of the ASIC Act.

### **CADB’s current role and purpose**

CADB’s function is to act as an independent expert disciplinary tribunal to hear and determine applications regarding a registered auditor received from ASIC or APRA with respect to any of the matters that are set out in Section 1292(1) of the Act, subject to the requirement in Section 1294 of the Act that CADB must not exercise any of its sanction powers unless it has given the person an

opportunity to appear at a hearing held by CADB and to make submissions to, and adduce evidence before, CADB in relation to the matter.

Pursuant to Section 210A of the ASIC Act, a panel of CADB ("Panel") composed of one or two business members, one or two expert accounting members and the Chairperson or Deputy Chairperson, must be constituted to hear applications made.

Details of the specific procedures adopted by CADB in relation to applications it receives and how it conducts hearings before it are set out in **Appendix 1**. These procedures are governed by the relevant provisions in Part 11 of the ASIC Act and Part 9.2 Division 3 of the Act, the latter of which is the source of CADB 's powers with respect to registered company auditors.

On an application brought before it in relation to a registered auditor and after providing the auditor with an opportunity to be heard in relation to the allegations made and providing the parties with its reasons for decision, CADB may, if it is satisfied that any of the matters set out in Section 1292(1) of the Act have been established, impose a sanction on the registered auditor including an order either cancelling or suspending the registration of the auditor.

The primary purpose of a Panel's sanction power conferred by Section 1292 of the Act is the protection of the public. The published decisions of CADB are a source of guidance to registered auditors and industry bodies and form an important aspect of CADB's educative role.

As an independent disciplinary body with procedures designed to avoid technicality and delay that is subject to a requirement to publish reasons for its decisions, CADB provides a forum for expeditious and relatively cost-effective disciplinary outcomes within an independent and transparent framework. CADB's capacity to assess applications by reference to its own expert knowledge of professional standards places it in a unique position to deal with complex audit matters without the need for time consuming and costly expert evidence, often necessary in other tribunals and in the courts.

CADB has no power to initiate applications and while applications may be brought to CADB by ASIC or APRA, CADB has never received an application from APRA.



## Constitution of CADB and current membership

Section 203(1) of the ASIC Act provides that CADB consists of the following:

- A Chairperson;
- A Deputy Chairperson;
- Six accounting members; and
- Six business members.

The Chairperson and the Deputy Chairperson must each be enrolled as a barrister, solicitor, barrister and solicitor or a legal practitioner of the High Court, any Federal Court or the Supreme Court of a State or Territory and must have been so enrolled for a period of at least five years.

Accounting members are required to be a resident of Australia and a member of a professional accounting body or any other body prescribed by regulation.

Business members represent the business community and have qualifications, knowledge or experience in business or commerce, the administration of companies, financial markets, financial products and services, economics or law.

All appointments are made by the Minister and are part-time appointments. Appointments are for a period of no more than three years. Appointees are eligible for reappointment.

CADB members during the reporting year:

<b>Name</b>	<b>Role</b>	<b>Term expires/expired</b>
Maria McCrossin	Chairperson	3 December 2018
Clare Lethlean	Deputy Chairperson	4 May 2019
Eric Passaris	Accounting member	2 August 2020
Tony Brain	Accounting member	2 August 2020
Karen O’Flynn	Business member	13 December 2018
Kerrie Howard	Business member	3 December 2018
Inge Kindermann	Business Member	3 December 2018

Biographical details of the current members are included in **Appendix 2**. Each of the current CADB members fulfils the requirements of Section 203 of the ASIC Act with respect to their membership of CADB.

Section 210A of the ASIC Act provides that Panels convened to hear applications must be constituted by either five members or three members, including either the Chairperson or the Deputy Chairperson as Panel chair, either one or two business members and one or two accounting members as the case may be. The Panel that was convened during the year fulfilled the requirements of Section 210A of the ASIC Act.

As may be noted from the above table, there are a number of CADB appointments due to expire in the next reporting year. CADB is liaising with the Department of Treasury regarding recommendations to the Minister for the appointment/reappointment of suitable candidates to those roles as well as for further member appointments to ensure that CADB may continue to carry out its functions and convene Panels as required.

## **Operational Information 2017-18**

### **Staff Resourcing**

During the year, the administrative business and operations of CADB were conducted by its Registrars, Mr Gary Hoare until his retirement and Ms Mabel Say with additional support from Ms Fiona Fisher when required. Mr Hoare was a full-time employee of ASIC permanently seconded to CADB. Ms Say and Ms Fisher are full-time employees of ASIC who have been seconded to CADB. Ms Say was primarily responsible for the administrative functions of the Board during the reporting year. The administrative support provided pursuant to the revised secondment arrangement is anticipated at the average level of 40% FTE.

CADB is satisfied that the revised staffing arrangements negotiated with ASIC pursuant to ASIC's obligation to provide CADB with staff and support facilities under Section 11(2)(a) of the ASIC Act effectively maintain CADB's statutory confidentiality obligations and appropriately recognise its status as an independent statutory body.

## Premises

During the reporting year, CADB has continued to occupy offices on level 10 of 100 Market Street in Sydney. It is CADB’s usual policy to conduct hearings in the capital city of the state of residence of the respondent in proceedings before it. The application of this policy may be varied in individual cases and, when feasible, hearings occur by telephone or video link.

A suitable venue was hired in Brisbane to conduct the one hearing that took place in the reporting year. That matter was heard for ten days over three separate periods in September 2017, November 2017 and March 2018.

## Applications received by CADB

One new application was received from ASIC during the reporting year.

The table below provides a summary of the status of the matters before CADB during the reporting year:

	Conduct	Administrative
Uncompleted matters at 1/07/17	1	-
New Applications received in 2017–18 year	1	-
Matters withdrawn	1	-
Matters dealt with — orders issued	-	-
Uncompleted matters at 30/06/18	1	-

## Hearing days

The overview in the table below provides data on the number of days CADB members were engaged in the hearing of applications:

Activity	2016–17	2017–18
Hearing days	12 person days	30 person days

In addition to attendance for formal hearing days, CADB members must spend time preparing for hearings. This involves the review and analysis of pleadings and evidence. Costs incurred also encompass travel time to hearing venues,

preparation and review of detailed written determinations, and usually a subsequent hearing and decision on sanction and appropriate orders.

With respect to any application that proceeds to a contested hearing, the Chairperson of the relevant Panel (who must either be the CADB Chairperson or Deputy Chairperson) plays the principal role in formulating a written decision that includes supporting reasons. The process includes consultation with other Panel members. The CADB Chairperson is responsible for conducting pre-hearing conferences relating to all matters before CADB and has oversight of the general affairs of CADB, supported by the Deputy Chairperson as necessary. In addition to the conduct of substantive disciplinary hearings and managing the administrative business of CADB, there is often ancillary work to be undertaken incidental to matters already heard, such as taxation of costs orders made if parties so apply and managing appeals by the parties from a decision of CADB.

## Results by nature of sanction

The table below records the results of matters before CADB during the reporting year and the preceding five years, by nature of sanction. Undertakings required to be given may be in addition to other orders.

Results of application	12–13	13–14	14–15	15–16	16–17	17–18
Registration cancelled	1	3	-	1	-	-
Registration suspended	-	3	1	1	1	-
Admonition	-	-	1	-	-	-
Reprimand	-	-	-	-	-	-
Undertakings required to be given	-	2	1	1	1	-
Dismissed	-	-	-	-	-	-
Withdrawn by ASIC	1	-	-	-	-	1

## Notification and publication of CADB decisions

Pursuant to Sections 1296(1) and (2) of the Act, written notice of a decision by a Panel either to exercise or refuse to exercise CADB’s powers under Section 1292 of the Act and the reasons for such decision must be provided to the practitioner concerned. A copy of either such notice must also be lodged

with ASIC. The notice of decision is available for inspection at ASIC **except** when a Panel has decided to refuse to exercise CADB's powers under Section 1292 of the Act or has decided that it is not required to make an order under Section 1292(7) of the Act (see Section 1274(2)(a)(iii) of the Act).

If a Panel has decided to exercise any of CADB's powers under Section 1292 of the Act or has decided that it is required to make an order under Section 1292(7) of the Act, CADB is required, pursuant to Section 1296(1) of the Act to publish in the Commonwealth Gazette a notice setting out the decision.

By arrangement with CAANZ, Institute of Public Accountants, CPA Australia, and the Tax Practitioners Board, copies of notices published in the Commonwealth Gazette are provided to those bodies of which the practitioner is a member. In addition, if the Panel decides to exercise any of CADB's powers under Section 1292 of the Act, it may take such steps as it considers reasonable and appropriate to publicise that decision and the reasons for that decision. This will include the power to post the decision and the reasons on the CADB website. CADB generally takes the view that it is appropriate to publish its decisions on the CADB website as this provides transparency of its decisions and processes as well as contributing to CADB's public educative role.

## **Costs orders by CADB**

At the end of a hearing a Panel may make an order for costs against the unsuccessful party. CADB has published a Costs Practice Note on its website. A Panel may also order payment by a party of all or part of CADB's costs of, and incidental to, a hearing. There is no power conferred on CADB to publish the costs orders it makes.

## **Review/Appeal of CADB decisions**

A review/appeal of any decision made under Section 1292 of the Act may be sought before the AAT by ASIC, APRA or any person whose interests are affected by the decision.

A person who is aggrieved by a decision of CADB may also apply to the Federal Court of Australia under the provisions of the AD (JR) Act for an order of review in respect of a decision.

When a decision of CADB is under review, CADB will often be restricted from publishing any notice of decision by reason of a stay order issued by the reviewing body. Such restriction may be sought by either of the parties and most often is sought by a respondent on the basis that they will suffer prejudice by reason of the publication of the decision if subsequently CADB's decision is reversed or altered.

There was one application for review of a CADB decision under Section 1292 of the Act made to the AAT during the 2015–16 reporting year that was finalised on 19 April 2018. CADB's decision was upheld by the AAT.

### Financial information for the reporting year

CADB is allocated funding by the Federal Government via the budget allocation to ASIC. Section 11(2)(a) of the ASIC Act provides that a function of ASIC is to provide staff and support facilities to CADB as are necessary or desirable for the performance and exercise by CADB of its respective functions and powers. Apart from some fixed overhead expenses, CADB's expenses are largely a function of the work referred to it, being applications received, and so vary from year to year depending on the number and complexity of the applications made. CADB endeavours to operate within the annual budget allocation made by ASIC, subject to these workflow fluctuations. It is noted that the removal of CADB's powers with respect to registered liquidators does not influence the volume of CADB's matters, which is simply dependent on referrals made by ASIC, or APRA.

CADB operated within the budget allocated to it by ASIC in the 2017–18 year. Expenditure for this and the previous financial year (extracted from the accounts of ASIC) was as follows:

	2016–17 (\$)	2017–18 (\$)
Administrative expenses (including staff costs and external legal costs)	353,630	157,927
Travel and accommodation including allowances	14,696	31,156
Members' fees	148,450	336,169
<b>Total:</b>	<b>516,776</b>	<b>525,252</b>

The decrease in overall administrative expenses was due to reduced staff costs as a result of the restructuring of CADB 's administrative support arrangements.

The year on year increase in expenses in relation to travel and accommodation was due to a hearing that took place in Brisbane over three separate periods which required the three members empanelled to travel from their domiciles in Sydney and Melbourne each time the hearing was reconvened.

Members' fees increased year on year as a result of the increased number of hearing days and consequent work arising from those hearing days this reporting year.

CADB spent \$22,743 (2016–17 - \$10,125) on external legal advice and legal representation at appeal proceedings by the Australian Government Solicitor during the reporting year.

Members of CADB are remunerated in accordance with rates determined by the Commonwealth Remuneration Tribunal. The Remuneration Tribunal issued a new part-time determination (#2017/10) that took effect on 1 July 2017. The daily rates for CADB members during the 2017–18 financial year was as follows:

- Chairperson: \$ 1,440
- Deputy Chairperson: \$ 1,296
- Member: \$ 1,152

## **Work health and safety and environmental matters**

ASIC is responsible for work, health and safety and the working environment for staff seconded to CADB.

The Registrars, the only ASIC staff members seconded to CADB, monitor the workplace environment on an ongoing basis to ensure the health, safety and welfare of workers who carry out work for CADB. No accidents or dangerous occurrences, or relevant investigations took place during the 2017–18 financial year. When attending hearings and CADB meetings the Registrars and CADB members are covered either under Comcare or Comcover, or have their own arrangements in place.

Section 516A of the *Environment Protection and Biodiversity Conservation Act 1999* requires CADB to report on matters relevant to ecologically sustainable development ("ESD"). CADB reports that:

- The only activities relevant to ESD principles concern procurement of goods and services which is done through ASIC;
- CADB's legislative function is not related to ESD principles; and
- CADB is a small statutory body with two part-time staff members operating from a single location in Sydney and so has a limited environmental impact. CADB seeks to use minimum energy, water, paper and other resources necessary to perform its functions and keeps under constant review possible measures to reduce its environmental impact.

### **FOI Act and Section 13 AD(JR) Act requests**

CADB did not receive any applications for information under the FOI Act or any requests for reasons pursuant to Section 13 of the *Administrative Decisions (Judicial Review) Act 1977* during the year.

Applications under the FOI Act and the AD (JR) Act may be made to the Registrars who may be contacted at GPO Box 3731, Sydney NSW 2000.

CADB has updated its website to comply with the Information Publication Scheme under part II of the FOI legislation.

### **Ethics**

The Registrars are required to adhere to the Australian Public Service values and code of conduct under the *Public Service Act 1999*. The requirements of the code of conduct include honesty, care and diligence, courtesy, compliance with the law, avoiding conflicts of interest and proper use of Commonwealth resources and information.

### **External scrutiny and accountability**

During the financial year there were no judicial decisions or reports by the Auditor General or the Commonwealth Ombudsman, concerning the operations of CADB.

The Senate Economics Legislation Committee in its first report on annual



reports for 2018 published in March 2018 noted, in accordance with Standing Order 25(20)(a) that:

- (i) None of the annual reports examined by it had been the subject of comment or debate in the Senate.
- (ii) CADB's Annual Report for the 2016–17 reporting year had been examined and was considered satisfactory.

The Parliamentary Joint Committee on Corporations and Financial Services ("PJC") issued its report on the 2016–17 annual reports of bodies established under the ASIC Act, in July 2018 ("Report"). The PJC Report noted that the PJC considered that CADB had fulfilled its regulatory and reporting responsibilities for the 2016–17 financial year.

The PJC noted in its Report that it "remains concerned about the efficiency and effectiveness of CADB, being such a small body, with such a small and irregular workload" and recommended that the government review the adequacy of auditor disciplinary functions.

The PJC included further comments in its Report with respect to CADB's operations about which CADB provides the following clarification:

- (a) The PJC in paragraph 2.8 of the Report referred to the low number of matters referred to CADB in recent years compared to the 12 matters that were referred to CALDB in the 2005–06 reporting year.

The 2005–06 CALDB Annual Report (2005–06 Report) recorded that of the 12 matters referred in that year, 7 were "administrative" matters and 5 were "conduct" matters. It further recorded that activity in the year included 11 matters being withdrawn by ASIC, 3 hearings being held, 3 decisions being gazetted and total operational costs for the year were recorded as \$1,237,224.

A breakdown of data from the 2005–06 Report indicates that the headline number of matters referred to CALDB in 2005 is not necessarily a useful indicator of the efficiency and effectiveness of CALDB in that year, nor as compared to its performance in subsequent years.

The workload statistics included in CALDB/CADB's Annual Reports for the past five years shows that there has been a steady stream of complex conduct matters referred to and dealt with over each of those years. Every CALDB/CADB decision that was appealed in the last five year period has been upheld by the appellate body. Operational costs for CADB for each of the last 5 years have been significantly lower than for the 2005–06 reporting year.

In terms of its workload, CADB notes it has no control over whether and what type of matters are referred to it by either ASIC or APRA. When it does receive a matter, it may be a straightforward administrative matter or a complex claim; once filed the matter may be withdrawn or settled by ASIC; if there is a hearing the proceedings may be defended vigorously by the respondent or may proceed on agreed facts and take less hearing time.

While there was only one matter referred to CADB in the 2016–17 reporting year, that matter was a large and complex matter which in the subsequent 2017–18 reporting year involved 3 members sitting for 10 days of hearing time. In order to deal with the many issues raised by ASIC in its application and by the respondent in its response, a lengthy determination has subsequently been required from CADB that is still in the process of being completed.

- (b) The PJC noted in paragraph 2.9 of its report that CADB continued to operate under transitional provisions relating to the ILR Act until the commencement date of 1 March 2017. The PJC further stated that this included CADB having general powers of investigation in relation to liquidators who failed to comply with duties before commencement day.

CADB notes that the ILR Act has no continuing effect on CADB's responsibilities and functions. In its 2016–17 Annual Report, CADB reported that at the relevant commencement date there were no liquidator matters in train at CADB to which the transitional provisions of the ILR Act applied and reported that there was one liquidator matter the subject of appeal proceedings in the AAT that it was possible would be remitted to CADB for re-hearing. This matter has now been finalised and CADB's decision was upheld.

CADB also wishes to clarify that the reference to CADB having general powers of investigation is incorrect. CADB’s or CALDB’s statutory powers have never included a power of investigation in relation to either registered liquidators or registered auditors.

- (c) The PJC noted in paragraph 2.11 that the costs incurred by CADB include travel time to hearing venues, consideration of written determinations and frequently, a final hearing and decision on sanction and appropriate orders and referred to page 5 of CADB’s 2016–17 Annual Report.

CADB notes that the description of the activities required of CADB members contained on page 5 of the 2016–17 CADB Annual Report, in respect of which CADB incurs costs, was considerably more detailed than the summation recorded by the PJC in paragraph 2.11 of its report. The description in the 2016–17 CADB Annual Report was as follows:

*“In addition to attendance for formal hearing days with respect to matters filed with the CADB, CADB members must spend time preparing for hearings. This involves the review and analysis of pleadings and evidence. Costs incurred also encompass travel time to hearing venues, preparation and review of detailed written determinations, and usually a subsequent hearing and decision on sanction and appropriate orders. With respect to any application that proceeds to a contested hearing, the Chairperson of the relevant Panel (who must either be the CADB Chairperson or Deputy Chairperson) plays the principal role in formulating a written decision that includes supporting reasons. The process includes consultation with other Panel members. The Board Chairperson is responsible for conducting pre-hearing conferences relating to all matters before CADB and has oversight of the general affairs of CADB, supported by the Deputy Chairperson as necessary. In addition to the conduct of substantive disciplinary hearings and managing the administrative business of the Board, there is often ancillary work to be undertaken incidental to matters already heard, such as taxation of costs orders made if parties so apply and managing appeals by the parties from a decision of the Board.”*

- (d) The PJC noted that for this reporting period, CADB continued to operate without its full complement of 14 members. As also noted by CADB in its 2016–17 Annual Report, the Chairperson regularly liaises with the Department of Treasury to identify suitable candidates to be recommended to the Minister for appointment to the Board.
- (e) Finally, the PJC, in the context of reporting its view on CADB, noted that ASIC has continued to raise concerns about audit quality in its audit inspection program.

CADB clarifies that CADB’s role is as an independent decision-making body in respect of applications made by ASIC or APRA. Except insofar as decisions in matters referred to it may provide useful industry guidance and deterrence to other registered auditors, its regulatory role in the maintenance of audit quality in Australia is confined to an enforcement body in appropriate matters that are referred to it.

### **Management of human resources**

As noted there are two part-time ASIC employees, the Registrars, who are seconded to CADB and whose salary and entitlements are linked to the relevant ASIC officer salary scales and entitlements, which are determined under a collective agreement for ASIC staff.

The Chairperson of CADB evaluates the performance of the part-time Registrars annually.

### **Purchasing**

All required items are purchased through arrangement with ASIC, which follows the Commonwealth Procurement guidelines. CADB did not have any major capital purchases in 2017–18.

### **Consultants**

During 2017–18, CADB did not enter into any consultancy contracts and there are no ongoing consultancy contracts.

### **Competitive tendering**

CADB did not undertake any competitive tendering or contracting during the 2017–18 financial year.

### **Australian National Audit Office access clauses**

CADB has not entered into any contract of \$100,000 or more during the reporting period.

### **Exempt contracts**

CADB has no contracts or standing offers that have been exempted from being published in AusTender on the basis that publication would disclose exempt matters under the FOI Act.

### **Advertising and market research**

CADB does not carry out any advertising or market research.

### **Discretionary grants**

CADB does not administer any discretionary grant programmes.

## Glossary

AAT	Administrative Appeals Tribunal
AD (JR) Act	<i>Administrative Decisions (Judicial Review) Act 1977</i>
APRA	Australian Prudential Regulation Authority
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
ASIC	Australian Securities and Investments Commission
CAANZ	Chartered Accountants Australia and New Zealand
CADB	The Companies Auditors Disciplinary Board
CALDB	Companies Auditors and Liquidators Disciplinary Board
ESD	Ecologically sustainable development
FOI Act	<i>Freedom of Information Act 1982</i>
FTE	Full time equivalent
ILR Act	<i>Insolvency Law Reform Act 2016</i>
Minister	The responsible Minister within the Government
Panel	A panel of CADB composed of one or two business members, one or two expert accounting members and the Chairperson or Deputy Chairperson
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>
PJC	Parliamentary Joint Committee on Corporations and Financial Services
PM&C	Department of Prime Minister & Cabinet
the Act	<i>The Corporations Act 2001 (Cth)</i>
the Board	The Companies Auditors Disciplinary Board

## APPENDIX 1

### CADB procedures with respect to applications

Applications to CADB may be made by either ASIC or APRA.

Provisions of the Act and ASIC Act prescribe the essential procedures. These provide, importantly, that CADB is required to provide a respondent with the opportunity to appear at a hearing held by CADB and to make submissions to and adduce evidence before CADB in relation to a matter. Hearings are conducted by a panel of CADB members convened by the Chairperson as required by the ASIC Act.

CADB categorises the matters brought before it as either *an administrative matter* or a *conduct matter*. The categorisation has been adopted by CADB as a procedural policy and will be reviewed from time to time. In general terms, administrative matters involve less complexity and are less time consuming than conduct matters.

CADB categorises matters that arise from applications pursuant to the following provisions of the Act as **administrative** matters:

Provision	
section 1292(1)(a)(i)	failing to lodge annual statement under Section 1287A
section 1292(1)(a)(ii)	ceasing to be resident in Australia
section 1292(7)(a)	becoming disqualified from managing corporations under Part 2D.6
section 1292(7)(b)	becoming incapable because of mental infirmity of managing affairs

CADB categorises matters that arise from applications pursuant to the following provisions of the Act as **conduct** matters:

Provisions	
section 1292(1)(a)(ia)	contravening Section 324DB by playing a significant role in an audit without being eligible to do so
section 1292(1)(a)(ia)	failing to comply with a condition of registration
section 1292(1)(b)(i)	not performing any audit work for five years and, as a result, ceasing to have the necessary practical experience
section 1292(1)(b)(ii)	not performing any significant audit work for five years and, as a result, ceasing to have the necessary practical experience
section 1292(1)(d)(i)	failing to carry out the duties of an auditor
section 1292(1)(d)(ii)	failing to carry out any duties or functions required by an Australian law to be carried out by a registered auditor
section 1292(1)(d)	not being a fit and proper person to remain registered as an auditor

CADB's detailed procedures are available on CADB's website, [www.cadb.gov.au](http://www.cadb.gov.au), including manuals for 'conduct' matters and 'administrative' matters. The manuals set out procedures to be followed in relation to the filing and exchange of documents and other material prior to a hearing and the procedures for pre-hearing conferences and for hearings. Parties involved in proceedings before CADB are referred to the procedure manuals.

In general, CADB may cancel or suspend the registration of a registered auditor if relevant grounds under Section 1292 of the Act are established to its satisfaction. However, if grounds are established under either Section 1292(7)(a) or (b) of the Act, CADB must cancel the registration of the auditor concerned.

CADB has additional powers under Section 1292(9) of the Act to admonish, reprimand or require undertakings from auditors in conduct matters pursuant to Section 1292(1)(d) of the Act. These powers may be exercised in addition to, or instead of, the powers to cancel or suspend the registration of an auditor.



Where the registration of a person has been suspended, CADB may, on an application by the person or of its own motion, by order under Section 1295 of the Act, terminate the suspension.

Section 1294A of the Act provides that the Chairperson may, if he or she considers that it would assist the conduct of the hearing, convene one or more pre-hearing conferences with the parties. The Chairperson uses the pre-hearing conferences to:

- Fix a hearing date;
- Give directions about the timing of the filing of evidence and submissions; and
- Give directions about the procedure to be followed generally at, or in connection with, the hearing.

The Chairperson also uses the pre-hearing conferences to:

- Refine and reduce the matters in dispute to reduce the length of the hearing and overall costs of the proceedings; and
- Resolve any preliminary matters.

CADB's pre-hearing procedures are regularly reviewed to ensure that they remain effective and efficient so as to minimise cost and time for parties.

Should the parties reach consensus regarding an acceptable outcome, they can refer draft agreed terms of order to the Panel. CADB does not participate in any settlement discussions or negotiations between the parties and retains the right to determine the appropriate orders.

### **Panel of CADB members to hear and determine matters**

As noted, hearings are conducted and decisions are made by a panel of members of CADB convened by the Chairperson in accordance with the Act.

A Panel must include the Chairperson or Deputy Chairperson as Chairperson of the Panel. Three or five members — including one or two accounting members and one or two business members, may constitute a Panel.

All matters referred to CADB (unless subsequently withdrawn by ASIC) must proceed to a hearing following which the Panel will issue a written determination and orders. Hearings are required to be held in private unless a public hearing is requested by the respondent.

For contested conduct matters, a Panel will usually hold a hearing with all members and parties physically present. In other matters, the Panel may arrange hearings by video link or telephone link with one or more members or parties in different locations. The ASIC Act permits legal representation at all hearings, for all parties. Parties may also represent themselves.

The Panel must determine whether or not it is satisfied that the contentions raised in the application have been established. The Panel provides the parties with a written determination that sets out the Panel's conclusions (with reasons) on each of the contentions.

If the Panel determines a contention is established, it must decide whether or not to exercise any of CADB's powers under Section 1292 of the Act and/or whether or not it is required to make an order under Section 1292(7) of the Act. For that purpose, the Panel may hold a final hearing before delivering its decision.

At any final hearing, the parties will have an opportunity to present relevant evidence and make submissions on the questions of sanction, publicity and costs.

## APPENDIX 2

### Details of current members of CADB

#### **Maria McCrossin**

Maria McCrossin is an experienced lawyer with expertise in financial services, capital markets, commercial litigation, dispute resolution and regulatory enforcement. She has held senior roles in private legal practice and within the Australian commercial sector. Maria is a Fellow of the Australian Institute of Company Directors and holds appointment as a member of the compliance panel of an Australian market operator and is a proprietary company director. Maria was appointed as Deputy Chairperson of CADB in August 2013 and was appointed as Chairperson of CADB in December 2015.

#### **Clare Lethlean**

Clare Lethlean is a lawyer with extensive dispute resolution and insolvency experience. She has held senior roles in private legal practice, with the United Nations (Geneva), with statutory disciplinary and complaint bodies and a national accounting firm. Clare has held directorships in the education and disability sectors. She currently holds appointments in the education sector and for a disciplinary body in the health sector. Clare is a member of a Commonwealth Ministerial pool of persons to be selected to form an Insolvency Practitioner Registration and Disciplinary Committees under *The Corporations Act 2001*. Clare was appointed as Deputy Chairperson of CADB in May 2016.

#### **Tony Brain**

Tony Brain was a registered company auditor and approved auditor of superannuation funds. Tony was an audit partner with Deloitte Touche Tohmatsu in Melbourne and specialised in audit and assurance services for nearly 30 years, with a particular focus on the financial services sector. Tony is a member of CAANZ. Since retiring from the Deloitte Touche Tohmatsu Partnership, Tony has been Head of Risk Management at AustralianSuper until November 2016 and now holds various directorships in the financial services and education sectors. Tony was appointed to CADB as an Accounting member in August 2017.

### **Kerrie Howard**

Kerrie Howard is a lawyer, governance, risk and compliance executive with an extensive background in financial services, she has worked in the public and private sectors including having worked in the regulatory sector and has held external directorships in government-related entities and the community sector. Kerrie was appointed to CADB as a Business member in December 2015.

### **Inge Kindermann**

Inge Kindermann is a lawyer with extensive experience in restructuring, corporations and insolvency law. She is currently the Head of Legal – Lending Services at ANZ and previously held a senior position in private practice (Minter Ellison). Inge was appointed to CADB as a Business member in December 2015.

### **Eric Passaris**

Eric Passaris is a partner of Grant Thornton in Melbourne and has specialised in audit and assurance services for over 25 years. Eric is a registered company auditor and a member of CAANZ and CPA Australia. He is a member of CPA Australia's Disciplinary Committee and is called upon to provide expert evidence in auditor/accountant professional negligence cases for legal proceedings, commercial disputes, insurance claims and disciplinary proceedings. Eric was first appointed to CADB as an Accounting member in January 2010.

### **Karen O'Flynn**

Karen O'Flynn is a partner of Clayton Utz and leads that firm's restructuring and insolvency practice. Karen is a member of the Insolvency Section of the International Bar Association and a member of the International Insolvency Institute. Karen was first appointed to CADB as a Business member in December 2012.