

# **Companies Auditors Disciplinary Board**

Annual Report  
for the year ended 30 June 2020

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15 October 2020

The Hon Michael Sukkar 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 2020 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

Maria McCrossin

Chairperson

## Chairperson's Review

During the 2019–20 reporting year CADB continued its focus on repositioning to more effectively discharge its statutory objectives. To that end CADB finalised a comprehensive review and re-draft of its procedures and practice guidelines this reporting year and the updated practice notes are now published on its website. This was a substantial body of work and positions CADB well for undertaking new referrals within a more efficient framework.

CADB did not receive any referrals in the reporting year. ASIC has indicated that numerous are imminent and we have taken initial steps to ensure that we are properly resourced to deal with these matters when they are filed. Those steps include planning aimed at minimising any unnecessary delay arising from the current business as usual limitations presented by COVID19.

CADB has followed with interest the current Senate Inquiry into the regulation of auditing in Australia and participated via its submission on relevant aspects of the Inquiry's terms of reference. We look forward to publication of the Committee's final recommendations.

On behalf of the CADB members, 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.

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

In the coming year, we look forward to the opportunity to continue to provide relevant, fair and impartial decisions within our revised framework. Our aim is to continue building CADB's utility and relevance as an enforcement body within the existing regulatory framework, that effectively plays its part in upholding public confidence in audit quality in Australia.

Maria McCrossin  
Chairperson

## Overview

CADB is an independent statutory body established under Part 11 of the ASIC Act. CADB has the powers and functions conferred by Part 9.2 of the Corporations Act and Part 11 of the ASIC Act. At the end of the reporting year, CADB comprised the Chairperson, the Deputy Chairperson, two accounting members and two business members. Member appointments are for terms of up to three years and are made by the Minister responsible for CADB, currently the Honourable Michael Sukkar MP.

Together with ASIC, the Financial Reporting Council (FRC), the Auditing and Assurance Standards Board (AUASB), the Australian Accounting Standards Board (AASB), and the Offices of the AUASB and AASB, CADB is an administrative organ of the national financial services regulatory scheme established by the Corporations Act (the Scheme) and its specific function is to act as an independent tribunal to hear and determine disciplinary matters concerning RCAs referred to it by ASIC or APRA. No investigative powers are 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 to provide a copy of that report to the Minister as soon as practicable before 31 October each year.

## CADB's current role and purpose

Under the Scheme referred to above:

- (a) Only those auditors who satisfy prescribed requirements, including being fit and proper to become registered as an auditor may be registered by ASIC<sup>1</sup> as an RCA, and:
- (b) Auditors on whom ASIC confers registration **must** at all times comply with the relevant requirements of the Corporations Act<sup>2</sup>, which includes continuously maintaining proper professional standards when performing audit duties and functions, and maintaining fitness and propriety at all times, in order to retain their status as an RCA.

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<sup>1</sup> See Part 9.2 Corporations Act 2001

<sup>2</sup> Sub-Section 1292(2)(d) Corporations Act 2001

To the extent an RCA does not adequately meet relevant professional standards, or any of the requirements prescribed by the Scheme, ASIC or APRA may invoke CADB's jurisdiction to cancel or suspend registration under the Scheme by making an application to CADB. CADB must be an independent, transparent, impartial, fair and efficient decision maker and is empowered to make orders under Section 1292 of the Corporations Act with respect to an RCA when necessary.

CADB's procedures are governed by the relevant provisions in Part 11 of the ASIC Act and Part 9.2 Division 3 of the Corporations Act, the latter of which is the source of CADB's powers to impose sanctions on RCAs. Pursuant to Section 210A of the ASIC Act, a panel of CADB ("Panel") 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 may be found at <http://www.cadb.gov.au>.

CADB may, if it is satisfied that any of the matters set out in Section 1292(1) of the Corporations Act have been established, impose a sanction on an RCA, including an order either cancelling or suspending their registration under the Scheme.

The primary purpose of the power conferred on a Panel by Section 1292 of the Corporations Act is protection of the public. The published decisions of CADB are a source of guidance to RCAs and industry bodies and form an important aspect of the educative role also played by CADB.

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 time consuming and costly expert evidence, often necessary in other tribunals and in the courts.

CADB has no power to investigate potentially relevant matters nor initiate proceedings.

## 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 term of no more than three years. Appointees are eligible for reappointment.

CADB members during the reporting year:

Name	Role	Term expires/expired
Maria McCrossin	Chairperson	3 March 2022
Karen O’Flynn	Deputy Chairperson	4 May 2022
Tony Brain	Accounting member	2 August 2020
Kerrie Howard	Business member	3 March 2022

Name	Role	Term expires/expired
Inge Kindermann	Business member	3 March 2022
Eric Passaris	Accounting member	2 August 2020

Further details about each of the current members are included in **Appendix 1**. Each member fulfils the eligibility requirements for appointment to CADB set out in Section 203 of the ASIC Act.

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 may be noted from the above table, at the conclusion of the reporting year, the number of members is less than prescribed by Section 203(1) of the ASIC Act. CADB liaises regularly with the Department of Treasury regarding prospective suitable members to be recommended for appointment by the Minister to ensure that CADB is sufficiently resourced to convene Panels as needed.

## Operational Information 2019–20

### Staff Resourcing

The operation of the CADB Board is supported by a part time registrar who deals with the administrative aspects of the conduct of hearing applications and the administrative business of CADB. The Registrar position is resourced via a secondment arrangement with the Secretariat area of the General Counsel's office of ASIC. There are appropriate arrangements in place to ensure CADB's statutory confidentiality obligations and independence are continuously maintained. The administrative support provided pursuant to the secondment arrangement is approximately 40% FTE on average annually, assuming there are active applications.

The secondment arrangements in place during the last reporting year were adequate to allow CADB to undertake its duties and functions.

## Premises

During the reporting year, CADB 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 to an application and CADB hires an appropriate venue interstate when necessary. When feasible, hearings occur by telephone or video link.

## Applications received by CADB

No new applications were received 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 1/07/19	0	-
New Applications received in 2019–20 year	0	-
Matters withdrawn	0	-
Matters dealt with — orders issued	0	-
Uncompleted matters at 30/06/20	0	-

## 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	2018–19	2019–20
Hearing days	4 person days	0 person days

As well as attending hearings when necessary, CADB members must spend time preparing for hearings. This involves the review and analysis of applications and supporting evidence. Costs incurred include travel time to hearing venues, the preparation and review of detailed written determinations, and usually a subsequent hearing day and further decision on sanction and appropriate orders when applications are made.

The Chairperson of a Panel (who must either be the CADB Chair or Deputy Chair) is principally responsible for formulating the written reasons for CADB’s decision on the application following consultation with the other Panel members.

The CADB Chairperson is responsible for conducting pre-hearing conferences with respect to any applications that are made and for managing CADB’s affairs generally. As well as the conduct of substantive disciplinary hearings and managing general CADB business, there is often ancillary work to be undertaken incidental to matters decided by CADB, such as that which arises when a party appeals a CADB decision and/or taxation of a costs order is sought.

### 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	14–15	15–16	16–17	17–18	18–19	19–20
Registration cancelled	-	1	-	-	1	-
Registration suspended	1	1	1	-	-	-
Admonition	1	-	-	-	-	-
Reprimand	-	-	-	-	-	-
Undertakings required to be given	1	1	1	-	-	-
Dismissed	-	-	-	-	-	-
Withdrawn by ASIC	-	-	-	1	-	-

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### Notification and publication of CADB decisions

Pursuant to Sections 1296(1) and (2) of the Corporations Act, written notice of a decision by a Panel either to exercise or refuse to exercise CADB’s powers under Section 1292 and the reasons for such decision must be provided to the RCA 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 Corporations Act or has decided that it is not required to make an order under

Section 1292(7) of the Corporations Act (see Section 1274(2)(a)(iii) of the Corporations Act).

If a Panel decides to exercise any of CADB's powers under Section 1292 of the Corporations Act or decides that it is required to make an order under Section 1292(7) of the Corporations Act, CADB is required, pursuant to Section 1296(1) 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 will be 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, it may take such steps as it considers reasonable and appropriate to publicise that decision and the reasons for that decision. 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 Corporations 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 is one ongoing application for review of a CADB decision by the AAT which was commenced during the 2018-19 reporting year. While the AAT initially stayed CADB from publishing its decision, the stay lapsed in March 2019 and CADB's decision was gazetted and the decision and reasons were published on the CADB website in the usual course. The AAT has not yet held its hearing in this matter.

## 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 primarily linked to the volume of 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 the workflow fluctuations. We note that the removal of CADB's powers with respect to registered liquidators in 2017 does not necessarily influence the potential volume of work for CADB, which is simply dependent on the number of referrals made by ASIC or APRA.

CADB operated within the budget allocated to it by ASIC in the 2019–20 year. Expenditure for this and the previous financial year (extracted from the accounts of ASIC) was as follows:

	2018–19 (\$)	2019–20 (\$)
Administrative expenses (including staff costs and external legal costs)	122,993	343,016*
Travel and accommodation including allowances	9,790	4,686

	2018–19 (\$)	2019–20 (\$)
Members' fees	293,884	153,844
<b>Total:</b>	426,667	501,546

\*The increase in administrative expenditure for the 2019-20 reporting year with \* in the table above is due to a provision for \$250,000 representing a claim for the back-payment of superannuation contributions to certain affected CADB members. The exact amount that will be required to address this issue is subject to final calculation following resolution of discussions currently in train between ASIC and CADB on this matter.

CADB spent \$3,208 (2018–19 - \$8,467) 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 rates applicable in the 2019–20 financial year under the Remuneration Tribunal's determination for part time members were as follows:

- Chairperson: \$ 1,499
- Deputy Chairperson: \$ 1,350
- Member: \$ 1,200

These rates will continue to apply during the next reporting year under the Remuneration Tribunal's latest determination which took effect on 1 July 2020.

## **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 Registrar monitors the workplace environment to ensure the health, safety and welfare of those who carry out work for CADB. No accidents or dangerous occurrences, or relevant investigations took place during the 2019–20 financial year. When attending hearings and CADB meetings the Registrar 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 one part-time staff member 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 AD (JR) Act during the year.

Applications under the FOI Act and the AD (JR) Act may be made to the Registrar 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 Registrar is bound to adhere to the Australian Public Service values and code of conduct under the *ASIC Act 2001*. 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 2019 published on 26 February 2020 noted, in accordance with Standing Order 25(20)(a), that the Committee had examined all annual reports referred

under the Treasury portfolio (including CADB) during the reporting period and considered that they were satisfactory and had been presented in a timely manner.

## **Management of human resources**

As noted CADB has an ASIC employee seconded to perform registrar duties equivalent to approximately 40% FTE. 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 provides feedback to ASIC annually on staff performance.

## **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 2019–20.

## **Consultants**

During 2019–20, 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 2019–20 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 program.

## 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
Corporations Act	<i>The Corporations Act 2001 (Cth.)</i>
FOI Act	<i>Freedom of Information Act 1982</i>
Minister	The Minister responsible for CADB, currently the Honourable Michael Sukkar MP.
Panel	A panel of CADB Members convened in accordance with Section 210A of the ASIC Act.
PJC	Parliamentary Joint Committee on Corporations and Financial Services
RCA	An auditor registered under s1283 of The Act

## APPENDIX 1

### Details of current members of CADB

#### **Maria McCrossin**

Maria McCrossin is a 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.

#### **Karen O’Flynn**

Karen O’Flynn is a Partner of Clayton Utz with extensive experience in commercial litigation and restructuring and insolvency. Karen is the Chair of the Clayton Utz Board. She is the Co-Chair of the Insolvency Section of the International Bar Association. Karen was appointed as Deputy Chairperson of CADB in May 2019.

#### **Tony Brain**

Tony is a Chartered Accountant with extensive experience, providing audit and other assurance services to various entities, from large corporations, not-for profit entities, managed investments and superannuation funds and trustees, including self-managed superannuation funds. Tony’s executive leadership experience also includes nearly 3 years as Head of Risk Management at AustralianSuper.

In addition to the CADB role, Tony’s holds a number of Non-Executive Director appointments across public sector financial services and health and education organisations.

Tony was appointed to CADB as an Accounting member in August 2017

#### **Kerrie Howard**

Kerrie Howard is a lawyer and experienced governance professional with an extensive background in financial services 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 30 years. Eric is a registered company auditor and a member of CAANZ and CPA Australia. He is a past 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