



Submission by Companies Auditors Disciplinary Board (CADB)

Australian National Audit Office (ANAO) Performance Audit The effectiveness of ASIC's regulation of registered company auditors

A. Introduction

The ANAO has commenced a performance audit assessing the effectiveness of the Australian Securities and Investments Commission's (**ASIC**) regulation of registered company auditors (**the Audit**).

On 12 February 2025, ANAO invited a contribution from CADB in relation to the Audit. The criteria posed in the Audit Overview are:

- (1) Are ASIC's governance arrangements and the design of regulatory activities for registered company auditors fit for purpose and
- (2) Has ASIC appropriately implemented regulatory activities for registered company auditors.

ANAO asked if CADB wished to contribute on the questions presented in the Audit overview, in particular, in relation to sub-criterion 2.5: "Has ASIC appropriately undertaken enforcement actions and referrals to other entities' disciplinary processes for registered company auditors".

ANAO noted that its audit team had reviewed a range of CADB related material relevant to the scope of the audit, including submissions, hearings and reports from the Parliamentary Joint Committee on Corporations and Financial Services inquiry into [Ethics and Professional Accountability: Structural Challenges in the Audit, Assurance and Consultancy Industry](#).

B. Summary of CADB's contribution

CADB's contribution may be summarised as follows:

- (a) *In relation to Criterion (1)*, CADB has no comment to make. CADB's substantial function is to operate as a tribunal deciding whether registered auditors have failed in their duties or are not fit to continue to operate as registered auditors (referred to hereafter as "non-compliance"). CADB is not involved in ASIC's governance arrangements or its regulatory activities for registered auditors, except to the extent that these involve bringing cases to CADB. CADB has no research or investigatory function which might permit it to provide any meaningful insights into ASIC's governance arrangements or regulatory activities.
- (b) *In relation to Criterion (2)*, CADB considers that the limited number of cases dealt with by CADB gives rise to a question whether ASIC is appropriately undertaking enforcement actions and

referrals to CADB. CADB is not in a position to say, one way or another, whether this is the case. The answer to this question would seem to depend on:

- (i) Whether ASIC has appropriate processes to detect non-compliance;
- (ii) Whether ASIC is appropriately implementing these processes;
- (iii) Whether, if the answer to (i) and (ii) is “yes”, ASIC is referring all appropriate cases of non-compliance to CADB.

CADB’s position is that if ASIC is detecting cases of auditor non-compliance where suspension or cancellation of their registration may be the appropriate sanction, these should be referred to CADB.

The results of applications in matters actually brought to CADB over recent years show that ASIC was justified in bringing the applications to CADB.

C. Brief background to CADB’s role in relation to the regulation of registered company auditors

An understanding of CADB’s role in the scheme for regulation of registered company auditors is useful in considering the questions posed by ANAO. CADB considers that ASIC’s ability to bring applications to the Board is a significant tool in its armoury for dealing with non-compliant registered company auditors, and that optimum use should be made of CADB.

CADB is an independent disciplinary board, established by Commonwealth Statute¹. The Board’s primary function is to conduct hearings in relation to applications brought to it by regulators (ASIC or APRA²) against registered company auditors, to determine whether grounds exist for the cancellation or suspension of the auditors’ registration, or for the imposition of other sanctions.

The position of a registered auditor is an important statutory position which is predicated upon possession of skill and probity. A person may only be registered as an auditor in the first place if, on application to ASIC, ASIC is 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 auditor³.

Where ASIC becomes aware that a registered auditor has not performed duties to this standard, ASIC has the power to bring an application to CADB and CADB may, on such application, make an order for cancellation or suspension of registration, if it is satisfied that the auditor concerned has failed to carry out adequately and properly the duties of an auditor or is not otherwise a fit and proper person to remain registered as an auditor⁴.

The High Court has endorsed the view that the function of CADB, at a hearing before it, is “to assess whether a person should continue to occupy a statutory position involving skill and probity, in circumstances where (not merely because) the board is satisfied that the person has failed in the performance of his or her professional duties in the past”⁵.

The constitution of the Board makes it particularly well qualified to make this assessment. The Board consists of its members: a Chairperson and Deputy Chairperson (each of whom must be legal

¹ See ss 1(1)(d) and 203 of the Australian Securities and Investments Commission Act 2001 (Cth) (**ASIC Act**).

² Whilst APRA is entitled to bring applications to CADB, it has never done so, and hereafter, we refer only to ASIC as the party responsible for bringing applications to CADB.

³ See s 1280(2) of the Corporations Act.

⁴ CADB also has powers in relation to more minor or technical matters but the substantial workload relates to cases involving failure to carry out duties adequately and properly or the fit and proper person ground.

⁵ *Albarran v Members of the Companies Auditors and Liquidators Disciplinary Board* (2007) 231 CLR 350 (**Albarran**) at [21].

practitioners), six members representing the accounting profession and six members representing the business community. Hearings are conducted by a panel of members, consisting of the Chairperson or Deputy Chairperson and an equal number of accounting and business members.

In making its assessment, the panel tests performance of duties by the auditor and it does so by making an evaluative and subjective judgment, by reference to a benchmark, being “accepted professional standards”. This is a task within the expertise of the panel, as a body with appropriate professional skills to make informed decisions on this question⁶.

If the panel is satisfied that the auditor has failed to carry out adequately and properly the duties of an auditor or is not otherwise a fit and proper person to remain registered as an auditor, the panel has a further important task of determining the appropriate sanction. Again, the panel is well qualified to make this assessment, particularly as it will often involve a judgment as to the nature and seriousness of a breach of duty by the auditor. A decision on sanctions has to be made in the context that cancellation or suspension may have significant impacts on the livelihood and reputation of a professional person.

That said, the longstanding guiding principle adopted by the Board in exercising its powers to issue sanctions is “protection of the public”. This involves two aspects: *first*, protection of the public from the actions of the person who has been found to have been in breach of duties, and *secondly*, protection of the public by encouraging other auditors to adhere to proper standards.

This principle reflects another important feature of the role performed by CADB, namely an educative and deterrent role. The availability of CADB decisions on its website provides a source of guidance for registered auditors in relation to professional standards. Further, it is axiomatic that the negative publicity which accompanies the publication of an adverse finding by CADB would have a deterrent effect on the registered auditor concerned and others in the profession who may be inclined to breach standards.

In short, CADB takes the view that CADB has been well designed by the legislature to perform an important role, within the overall scheme for regulation of auditors, namely, to act as an independent and expert tribunal to determine whether an auditor should continue to occupy an important statutory position involving skill and probity, a question with serious consequences for both the auditor concerned and the wider community. In performing this role, CADB’s decisions:

- (a) perform an educative function in relation to the duties of auditors and professional standards; and
- (b) provide a deterrence to potential breach of standards by registered auditors.

D. Activity at CADB

Number of applications to CADB in the last five years

There have been relatively few applications to CADB over the past few years.

In discussing the number of applications brought to CADB, it is necessary to distinguish between two types of application:

- (a) *First, there are Conduct Applications.* CADB’s substantive jurisdiction concerns applications where ASIC contends that an auditor has failed to carry out adequately and properly the duties of an auditor or is not otherwise a fit and proper person to remain

⁶ *Albarran* at [42].

registered as an auditor under s 1292(1)(d) of the Corporations Act. Applications relying on this ground tend to be the more serious type of matter heard by CADB and are categorised by CADB as “Conduct Matters”;

- (b) *Secondly, there are Administrative applications.* CADB also has jurisdiction to consider applications involving more technical failures, (such as a failure to lodge an annual statement required by s1287A of the Corporations Act – see s 1292(1)(a)). CADB categorises these matters as “Administrative Matters”. They usually involve a simple breach and a short hearing.

CADB’s more important work, within the overall scheme of audit regulation, is concerned with Conduct Matters.

Over the last five years, ASIC brought 11 Conduct Matters to CADB, of which two were withdrawn. Judged over this period, there was an average of about two Conduct applications brought to the Board per year.

It is difficult to give meaningful information about an average number of Administrative Applications per year. Over the last 15 years, 40 Administrative Applications have been made but 30 were withdrawn. Of the 40 applications made, 36 were made in August/September 2020 and related to failure of auditors to lodge Annual Returns. These applications seemed to be part of a “blitz” by ASIC in relation to this issue.

Results of applications brought to CADB

The results of applications in Conduct matters brought to CADB over recent years show that ASIC was justified in bringing the applications to CADB.

Apart from the two applications which were withdrawn by ASIC, all of the applications in the Conduct matters were successful, resulting in CADB making orders cancelling or suspending the registration of the auditors concerned, and making additional orders.

Nature of audit firms involved in CADB applications

None of the applications determined by CADB in the last five years concerned members of the “Big Four” accounting firms. Indeed, no application has ever been pressed by ASIC in relation to an auditor from one of the Big Four accounting firms.

In the last five years, about half of the applications determined by CADB concerned auditors from small or one-person practices and about half concerned auditors from medium or large firms.

E. Has ASIC appropriately undertaken enforcement actions and referrals to CADB?

As just observed, ASIC has brought relatively few applications to CADB in recent years.

However, it is very difficult for CADB to express any view about whether ASIC is bringing a sufficient or appropriate number of applications to CADB. The answer to this question would seem to depend on:

- (i) Whether ASIC has appropriate processes to detect non-compliance;
- (ii) Whether ASIC is appropriately implementing these processes;
- (iii) Whether, if the answer to (i) and (ii) is “yes”, ASIC is referring all appropriate cases of non-compliance to CADB.

To answer these questions would require analysis with input from ASIC. CADB does not have the resources or the research or investigatory functions to permit it to carry out such analysis. However, CADB's position, as a matter of principle, is that if ASIC's processes are revealing instances of auditor non-compliance which would be appropriate to refer to CADB, ASIC should be making an application to CADB.

CADB is aware that ASIC has contended that proceedings before CADB can be time-consuming and expensive. To the extent that CADB can improve the timeliness and cost-effectiveness of proceedings before it, CADB will seek to do so. Indeed, CADB is in the process of preparing a revised Practice Note, in an attempt to streamline procedures and avoid unnecessary cost, where possible. However, CADB is bound by the Corporations Legislation to provide parties with the opportunity to present their cases at a hearing before CADB, at which the rules of natural justice apply. Sometimes, cases are complex and a certain level of cost and time is inevitable. Thus, to some extent, time and cost is part and parcel of the CADB process, designed by Parliament. To the extent that ASIC needs additional resources to fulfil its role in bringing matters to CADB, such resources should be made available.

There are some alternative enforcement actions which are available to ASIC. These include the use of Enforceable Undertakings and Infringement Notices under s 1317DAM of the Corporations Act. CADB's position is that where circumstances are apparent to ASIC which justify an application to CADB, such an application should be made. As discussed above in Section C, CADB is the entity which is specifically charged with, and qualified to deal with, determining whether there has been non-compliance by registered auditors and, if so, whether and which sanctions should be imposed. Further, the CADB process provides the educative and deterrent effects, also discussed above.

In contradistinction, the use of enforceable undertakings or infringement notices do not involve the judgment of an independent expert panel, nor do they involve any admission of breach by the auditor. They do not result in the educative and deterrent effects which result from a CADB Hearing.

Howard Insall SC
Chairperson

Howard.Insall@cadb.gov.au