



## Submission by the Companies Auditors Disciplinary Board

Thank you for extending an invitation to the Company's Auditors Disciplinary Board (CADB) to provide input into the current inquiry 'Ethics and Professional Accountability, Structural changes in the Audit, Assurance and Consultancy Industry'. I apologise for the delay in making this submission.

### *Introduction and Historical Context*

CADB is a statutory body the existence of which deserves the attention of this Committee. It is an enforcement tool currently available to ASIC and APRA to sanction inadequate or improper performance of duties by registered company auditors and a 'fit and proper' requirement.

It is part of the existing legislative framework that provides a means for upholding a **professional competency standard** for registered company auditors. The objective of its jurisdiction is for the **protection of the public**.

Attachment A to this submission is a summary of some historical context about the purpose the CADB was designed to serve provided by the [MINCO Review](#), that was subsequently reflected in relevant CLERP 9 reforms enacted following that review, which the Inquiry may find helpful context in terms of the third area of the Committee's terms of reference as those terms relate to the audit industry.

### *The Scope of CADB's jurisdiction*

As currently structured under its governing legislation CADB's function involves hearing and deciding professional disciplinary applications brought by ASIC or APRA under Part 9.2 Division 3 of the Corporations Act with respect to registered company auditors.

CADB has power to order sanctions against a registered company auditor, if following a hearing, it is satisfied that the auditor: *has failed, whether in or outside this jurisdiction, to carry out or perform adequately and properly (i) the duties of an auditor; or (ii) any duties or functions required by an Australian law to be carried out or performed by a registered company auditor; or is otherwise not a fit and proper person to remain registered as an auditor.*

Sanctions it may order include to cancel or suspend an auditor's registration, to require undertakings of the registered auditor to engage in or refrain from specified behaviour, or to admonish or reprimand the registered auditor.

The operation of sub-paragraph 1292(1)(d) of the Corporations Act creates a professional competency standard that applies to all registered company auditors with respect to **any** audit duties they perform, inside or outside Australia and to any functions required by an Australian law to be carried out by a registered company auditor (Audit Duties and Functions). An effect of s1292(1)(d) therefore is that the sub-set of auditors within the audit industry in Australia who are registered have a legislatively underpinned obligation to carry out Audit Duties and Functions to an appropriate competency standard which must reflect compliance with current Auditing and Accounting standards and other relevant ethical standards, as well as proper professional practice. To the extent they fail to meet this competency standard they risk having their registration cancelled or suspended by CADB, if there is enforcement action by ASIC or APRA.

#### *CADB's jurisdiction is evaluative.*

One of CADB's distinctive attributes is the evaluative nature of its jurisdiction, founded on its expert knowledge of professional standards from its constituency. This enables CADB to address complex audit matters without the need for expert evidence, often required in other tribunals and courts. In this way CADB may contribute, through its written decisions to upholding and setting professional standards amongst registered company auditors. Its decisions are also a means for clarifying how auditing concepts are to be applied and identifying the standard of professionalism expected of auditors in their performance of Audit Duties and Functions.

It is well established that CADB's evaluation proceeds by reference to prevailing 'professional standards' and 'proper professional practice' applying within the auditing profession. To the extent the reasons for CADB's decisions, which are published, take into account the effect of the interaction of the range of matters relevant to identifying the relevant professional standard that prevails, these decisions can play a valuable role in contributing to increasing understanding and consensus within the profession and amongst government and regulators, about what is involved in meeting an appropriate standard of competency when carrying out audit duties.

#### *Areas that merit consideration*

There are two areas that may merit the Committee's consideration, within reference area 3 of the Inquiry's terms of reference as those terms apply to audit, because of their relevance as 'gaps' that limit the mechanisms available to governments and those other bodies identified by that paragraph to monitor and sanction misconduct and poor performance of auditors.

## **1. Enhanced utilisation of CADB**

The first is to consider ways to address the relatively infrequent utilisation of CADB's jurisdiction in the past by ASIC and APRA.

CADB's ability to fully realise its statutory mandate hinges on receiving applications from ASIC or APRA. CADB does not have control over whether or how many matters it receives and it has minimal control over its level of resourcing, which is provided via ASIC and affects the number of matters it can deal with at once.

Even taking account of periods of increased activity over the last decade, the number of matters that have been considered by CADB is insufficient to fully realise either CADB's potential to meaningfully impact regulatory settings in relation to auditors or the full scope of its legislative function.

How CADB's jurisdiction has and continues to be used by ASIC (and not utilised by APRA) will persist unless ways to better align the utilisation of CADB with its regulatory objectives are considered.

Such a shift could also fill a crucial gap in the current accountability framework for registered auditors. Over a sustained period relatively few registered auditors have faced disciplinary proceedings with the result that there is limited transparency about their compliance generally with professional standards. Such transparency is essential for maintaining public trust and confidence in the auditing profession, as well as ensuring a reasonable cost of capital in Australia.

Two means of better utilising CADB's jurisdiction could be:

- **Accountability Framework:** Consider establishing an accountability framework or a supervising body that monitors utilisation by ASIC and APRA of CADB's jurisdiction. The objective of this oversight mechanism could encourage more frequent and effective utilisation.
- **Expanded Access:** Explore the possibility of expanding the entities that may make applications to CADB regarding registered auditors. This broadened access could encourage a more diverse range of applications and promote accountability and transparency within the auditing profession.

## **2. Expanded coverage of 'auditors'**

The second matter deserving of the Committee's consideration is the possibility of legislating (and enforcing) a minimum competency standard for anyone who holds themselves out as an auditor.

While the designations of registered company auditor and SMSF auditor are legislatively defined, there are no other legislative requirements in Australia about who may perform

audits. Furthermore, there is no public regulatory oversight concerning the quality or compliance with professional standards of those who perform audits other than those performed by a registered company auditor or an SMSF auditor.

This absence of a legislated consistent minimum requirement for education, training and experience before an accountant may hold themselves out to the public as an auditor, besides posing obvious challenges for consumers of audit services, does seem to be a gap or inconsistency in the current regulatory framework.

If a minimum competency standard for those who use the professional designation 'auditor' were legislated it could have several benefits such as to:

- Increase the professional standing of auditing as a profession by unifying auditors as a professional group.
- Standardise those who may deliver of audit services.
- Safeguard the public interest and increase confidence in auditors.
- Significantly enhance transparency and integrity within the audit industry.

CADB is an existing statutory body that could be utilised to form part of the regulatory oversight and enforcement mechanism for such a scheme.

I would be happy to provide further information about CADB or otherwise assist the Committee.

Yours Sincerely,

Maria McCrossin  
Chair  
Companies Auditors Disciplinary Board

## Attachment A - CADB submission to Senate Inquiry

1. In July 1997 a Ministerial Council for Corporations working party reviewed the requirements then existing for registration and regulation of auditors in Australia [MINCO Review](#). The MINCO Review in its report identified:
  - (a) That the need for the Corporations Law to establish a mechanism for the regulation and supervision of company auditors was largely a reflection of the fact that Australia did not have a legislative regime for the registration of all individuals who provide accounting services to the public, although there had formerly been public accountants registration boards in NSW and QLD before the Commonwealth Corporations Law was enacted in 1989.
  - (b) That while there had been various proposals for the enactment of legislation both to prevent unqualified persons from holding out to the public that they had accounting skills and to bring accountancy into line with other professions such as law and medicine, such legislation had not been promulgated (*CADB note: this remains the case today*).
  - (c) The absence of a legislation-based framework for the registration of public accountants had created problems for state and territory legislation that imposed audit requirements. This was overcome by amendments to such legislation to provide that audits required must be undertaken by an registered company auditor, notwithstanding that the subject matter of the relevant legislation might not directly relate to the administration of companies - (*CADB note: such state and territory legislation still exists today as well as other Commonwealth Acts which specify the utilisation of a registered company auditor, although since 1997 some such legislation has been amended*). It was because of this practice that registration as a company auditor became a de-facto benchmark for identifying a competent auditor for many non-Corporations Act audits.
  - (d) That a strength of the institutional arrangements that then existed (and we note, continue) was that the professional disciplinary body for registered company auditors, CALDB (as it then was) was independent of the ASC (as ASIC then was) and the professional accounting bodies, which enabled it to be totally impartial in considering evidence and making determinations.
  - (e) Having regard to the nature of the audit function as, in essence an extension of an executive government responsibility to ensure continuing confidence in the capital and securities markets, the responsibility for discipline should be undertaken by a statutory body, such as CALDB.
2. Several of the recommendations of the MINCO Review were incorporated into the Audit Reform and Corporate Disclosure Bill 2003. Relevantly, under the CLERP 9 amendments CADB was increased from 3 to 14 members to allow for the increased

demand anticipated following the legislative reforms to audit that occurred at this time, as well as several consequential amendments that would allow CADB to sit in more than one division. A further amendment introducing s1292(11) of the Corporations Act was passed allowing CADB disciplinary proceedings to take place concurrently with civil penalty proceedings because of the perceived importance of CADB's protective jurisdiction.

3. Following the CLERP 9 reforms referred to which increased the size of the Board and bolstered aspects of its jurisdiction, there was an uptick in audit matters referred to CALDB as it then was which lasted until approximately 2009. Then, in the following ten years there were very few applications brought to the Board with respect to registered auditors. From 2020 there was another uptick (although the very high volume in 2019 was largely attributable to administrative matters which are a class of matters that do not involve the question of whether conduct has met an appropriate professional standard). Since the second quarter of 2023 filings from ASIC are again on the ebb.
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