

DEPARTMENT OF THE SENATE

PAPER No. 7064

DATE
PRESENTED

19 JUN 1992

Murray Evans



The Parliament of the Commonwealth of Australia

THE SENATE

19 JUN 1992

2406
TABLED
PAPER

REPORT ON THE ANNUAL REPORTS OF
THE AUSTRALIAN SECURITIES COMMISSION
THE COMPANIES AND SECURITIES ADVISORY COMMITTEE
THE COMPANIES AUDITORS & LIQUIDATORS
DISCIPLINARY BOARD
AND THE
AUSTRALIAN ACCOUNTING STANDARDS BOARD

A Report by the Joint Statutory Committee
on Corporations and Securities

June 1992

The Parliament of the Commonwealth of Australia

**REPORT ON THE ANNUAL REPORTS OF
THE AUSTRALIAN SECURITIES COMMISSION,
THE COMPANIES AND SECURITIES
ADVISORY COMMITTEE, THE COMPANIES
AUDITORS AND LIQUIDATORS DISCIPLINARY
BOARD AND THE AUSTRALIAN ACCOUNTING
STANDARDS BOARD**

JUNE 1992

**A report of the Joint Statutory Committee
on Corporations and Securities**

© Commonwealth of Australia 1992
ISBN 0 642 18041 5

This document was produced from camera ready copy and
printed by the Senate Printing Unit, Parliament House,
Canberra.

**JOINT PARLIAMENTARY COMMITTEE ON
CORPORATIONS AND SECURITIES**

MEMBERS

Senator Michael E. Beahan Chairman

Senator Austin W. Lewis Deputy Chairman

Senator Ian Campbell

The Hon Janice A. Crosio MP

Senator Barney Cooney

Mr Frank A. Ford MP

Senator Sid Spindler

Mr Duncan J. Kerr MP

The Hon John C. Moore MP

The Hon Gary Punch MP

Secretary

Mr D. Abbott
The Senate
Parliament House
CANBERRA ACT 2600

DUTIES OF THE COMMITTEE

Section 243 of the Australian Securities Commission Act 1989 reads as follows:

The Parliamentary Committee's duties are:

- (a) to inquire into, and report to both Houses on:
 - (i) activities of the Commission or the Panel, or matters connected with such activities, to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed; or
 - (ii) the operation of any national scheme law, or of any other law of the Commonwealth, of a State or Territory or of a foreign country that appears to the Parliamentary Committee to affect significantly the operation of a national scheme law;
- (b) to examine each annual report that is prepared by a body established by this Act and of which a copy has been laid before a House, and to report to both Houses on matters that appear in, or arise out of, that annual report and to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed; and
- (c) to inquire into any question in connection with its duties that is referred to it by a House, and to report to that House on that question.

CONTENTS

	Page
Membership of the Committee	iii
Duties of the Committee	iv
Introduction	1
Reporting Requirements	1
Were the Reporting Requirements met?	2
Additional Information in Future Annual Reports	4
Attachment 1 - ASC Mission Statement and Corporate Goals	7

1. INTRODUCTION

1.1 The *Australian Securities Commission Act 1989* established the ASC, the Companies and Securities Advisory Committee [s.145], the Corporations and Securities Panel, the Companies Auditors and Liquidators Disciplinary Board, the Australian Accounting Standards Board (AASB) and the Parliamentary Joint Committee¹.

1.2 The Act requires annual reports from the ASC, the Advisory Committee, the Panel, the Disciplinary Board and the Standards Board². The Panel did not table a report as it was not constituted before the end of the reporting period (30 June 1991).

1.3 The Parliamentary Joint Committee is required 'to examine each annual report that is prepared by a body established by [the ASC] Act ... and to report to both Houses on matters ...to which ... the Parliament's attention should be directed'³.

1.4 The annual reports under review refer to the period January - June 1991. The organisations formally came into being on 1 January 1991. Thus the period under consideration represents the establishment phase of each body. The committee appreciates that these reports are therefore of limited use in assessing the effectiveness of each of the agencies. However in future years the scrutiny of these annual reports will play a central role in the committee's scrutiny of the bodies. The committee has made a number of suggestions in part 4 of the report on matters that should be included in future annual reports. The committee believes that the inclusion of the information suggested will enhance the value of the reports as a mechanism for accountability to the Parliament.

2. REPORTING REQUIREMENTS

2.1 All statutory authorities are required to report in accordance with the Government's 1982 'Guidelines for the content, preparation and presentation of annual reports by statutory authorities'. These require a draft report to be available for the Senate Estimates Committee hearings; identification of the legislation under which the body operates; details of any Ministerial directions; information on staffing; and comment on interaction with other agencies.

2.2 In addition to these requirements, some statutory authorities are urged by the government to comply with the 1991 'Guidelines for the preparation of departmental annual reports'. The guidelines state that they apply to statutory authorities only where

¹ *Australian Securities Commission Act 1989*, sections 7, 145, 171, 202, 224, and 241 respectively.

² *ibid.*, sections 138, 164, 183, 214, 234 respectively.

³ *ibid.*, section 243.

an agency's operations 'are similar to those of departments' and only where 'the office-holder responsible for the authority's annual report judges it reasonable to do so'. The guidelines require additional information to be provided (over that required by the 1982 guidelines) about documents available on the agency's operations, costs and benefits of significant new or amended business regulations falling under the agency's responsibility, financial claims and losses, staff training, fraud control, purchasing arrangements, consultants, capital work projects, administrative law decisions affecting the agency, complaints made about the agency, 'the women's unit or mechanism of the agency' and environmental matters.

2.3 The ASC is specifically directed by the Act to report on its goals, progress toward achieving those goals, priorities, and problems⁴. The goals of the ASC are clearly stated in the ASC's Annual Report at page 5⁵. The requirement to report on problems is particularly explicit: the annual report is to 'describe any matters that, during the year, have adversely affected the Commission's effectiveness or have hindered the Commission in pursuing any of those goals and objectives'⁶.

3. WERE THE REPORTING REQUIREMENTS MET?

3.1 The draft annual reports of the ASC and related agencies were not available for the estimates committee hearings. The explanation given is that the Auditor-General had not audited the accounts by the time of the estimates hearings. However the bodies should still have supplied draft reports containing all but the accounts; such information would facilitate questioning at estimates. The annual reports identify the legislation under which the bodies operate. The ASC report states that no Ministerial directions were given in the reporting period⁷ and that issue does not arise for the other agencies.

3.2 Information on staffing is limited in two of the reports presented. The report of the Disciplinary Board does not elaborate on the background and qualification of Board Members. The report of the Australian Accounting Standards Board lists the Members but - in relation to staffing - simply notes that:

Under the arrangement agreed by the Ministerial Council and the professional accounting bodies AARF [the Australian Accounting Research Foundation] provided research and administrative support to the ASRB

⁴ *ibid.*, sub-section 138(2).

⁵ Australian Securities Commission, *Annual Report, 1990/91*, page 5, reproduced as Attachment 1 to this report.

⁶ ASC Act, *op cit*, sub-section 138(2).

⁷ ASC Annual Report, p.4.

[the Accounting Standards Review Board, predecessor of the AASB]. This arrangement continued in respect of the AASB during the year.⁸

More information on the role of the AARF is desirable.

3.3 By comparison, the report of the ASC provides very good staffing information⁹. More information could have been included on the use of consultants and on the extent and benefits flowing from the secondment of members of private firms to the ASC¹⁰.

3.4 Three references to staffing matters are particularly praiseworthy because of the useful information they contain. The first is the statement about priorities for policy development in the coming year (namely, occupational health and safety, engaging consultants, and permanent part-time work)¹¹. The second is the clear reference to staffing difficulties associated with the transfer of staff from the State and Territory Corporate Affairs Commissions to the ASC when that body took over the responsibilities of the Corporate Affairs Commissions¹². The third reference concerns the ASC's policy on participation in public debate: 'the ASC believes that it should participate in public debate, and senior officers regularly participate in industry conferences and other forums, and comment on key issues through the media'¹³.

3.5 Section 120(3) of the ASC Act permits the ASC to employ staff 'under written agreements' (presumably a reference to staff on contract and consultants); however, s.120(4) requires the ASC to have the Minister's written approval for such staffing. There is no information in the report about whether the ASC has approached the Minister on this issue.

3.6 In reporting on interaction with other organisations the Disciplinary Board's report simply notes that 'its level of activity will be determined by the number of references made to it by the ASC'¹⁴. Comment has already been made about the desirability of the Standards Board annual report elaborating on its relationship with the

⁸ Australian Accounting Standards Board, *Annual Report 1990-91*, p.5.

⁹ ASC Annual Report, pp.24-26, p.30 and p.32.

¹⁰ These matters are referred to briefly on page 26 of the ASC's Annual Report.

¹¹ ASC Annual Report, p.24.

¹² *ibid.*, pp.24-25. Note also the Chairman's reference to the 'traumatic', 'unsettling' and 'insensitive' transfer arrangements in his foreword to the report at page 2.

¹³ *ibid.*, p.18.

¹⁴ Companies Auditors and Liquidators Disciplinary Board, *Annual Report for the year ended 30 June, 1991*, page 2.

Australian Accounting Research Foundation. The Standards Board report could also elaborate on some additional matters including how speedily it provides comment to the ASC on applications for relief from the requirements of an approved accounting standard and how auditors are cooperating with the requirement to notify the Board of qualifications made to a company's accounts¹⁵. More information about the Board's cooperation with the Public Sector Accounting Standards Board would also be useful.

3.7 The ASC's annual report provides a succinct run-down on its interaction with other agencies including the Director of Public Prosecutions (DPP), Cash Transactions Reports Agency (CTRA), Australian Taxation Office, Australian Federal Police, National Crime Authority, Australian Stock Exchange (ASX), foreign countries and International Organisation of Securities Commissions¹⁶. The report mentions that Memoranda of Understanding (MOU) exist or are being developed between these agencies and the ASC. The report should have referred a reader to where copies of these MOU can be obtained.

3.8 The ASC's annual report addresses the requirement to report on goals¹⁷, priorities and problems. Statements about priorities include:

- enforcement of the Corporations Law is, without doubt, the prime task of the ASC;
- the ASC has adopted the policy that certain investigations should be designated matters of national priority. These are matters which affect the integrity of the securities and financial markets, involve a considerable loss or hardship to shareholders or creditors, or require the allocation of significant resources by the ASC...;
- the investigation of complaints is to 'have regard to the effective use of the ASC's resources';
- the ASC's policy on intervention 'in proceedings of a purely commercial nature' is to intervene only 'where a case may affect the integrity of financial markets or has a particular financial or commercial significance, where the ASC wishes to make submissions to the Court on the interpretation of the Law; where the ASC has relevant information acquired through its investigations; or where the ASC considers it would be in the public interest';
- 'significant' policy developments affecting the ASC are prospectuses, unlisted property trusts and redeemable listed trusts, ASX clearing and

¹⁵ AASB Annual Report, p.3.

¹⁶ ASC Annual Report, pp.9-11.

¹⁷ See Attachment 1 to this report.

settlement procedures, warrants and law reform¹⁸.

3.9 The report identified the following problems facing the ASC:

- staff transfer arrangements;
- constraints on the credibility of the ASC's database due to inaccurate information acquired from State and Territory Corporate Affairs Commissions and to legal impediments in amending the database where companies have not lodged the appropriate forms;
- client complaints 'about the accuracy of the database, difficulties in obtaining copies of documents, the accuracy and timeliness of items in the ASC Digest, the clearance time for administration reports, the imposition of late fees on documents lodged on time but processed late by the ASC, and lack of availability of some information';
- the very wide ambit of administrative law review of ASC decisions: "The ASC is unique in that every decision under the Corporations Law, including litigation decisions, could potentially go to the Administrative Appeals Tribunal (AAT). The ASC believes this goes too far"¹⁹.

4. ADDITIONAL INFORMATION IN FUTURE ANNUAL REPORTS.

4.1 Apart from the matters already mentioned, certain additional material would have been of assistance to Parliament if it had been included in the ASC's Report. These matters should be reported on in future Annual Reports.

4.2 The extent to which the ASC is meeting its corporate goals is not discussed in its Report. The ASC's corporate plan lists performance criteria to assess achievement of these goals but the annual report does not systematically comment on performance. The Senate Finance and Public Administration Committee has commented that the annual reports of many organisations 'fell at the final hurdle of reporting on their performance in meeting the objectives they had identified'²⁰. Given that the report under consideration covers only the first six months of the ASC's existence - from January to June 1991 - it is premature to expect a statement of the organisation's success in achieving its goals. However this should be dealt with in detail in future reports.

¹⁸ ASC Annual Report, pages 3, 7, 8, 9, 17 and 18 respectively.

¹⁹ *ibid.*, pages 2 and 24-25, 14, 21 and 27 respectively.

²⁰ Senate Standing Committee on Finance and Public Administration, *Report on Annual Reports Tabled July 1990-June 1991*, p.6.

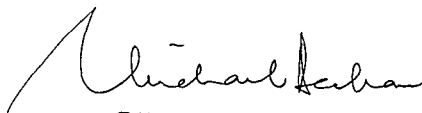
4.4 Legal matters affecting the ASC have been mentioned in the Report but little detail has been included. A detailed litigation report, for example, listing each case, whether it is a civil or criminal matter, and what stage it has reached would be of assistance to the Parliament. The ASC might also specifically comment on all actual and proposed legislative amendments as well as enlarging on the options that exist for discretionary action by the ASC. Further, the ASC might enlarge on its comment in this year's report that 'the most significant barrier to equity of access to ASC services is the complexity of corporate law'²¹. The ASC might also enlarge on whether significant test cases or small shareholder cases are not being brought because they do not appear sufficiently serious or would use excess staff resources²².

4.5 The provision of interpretative comment on the information on Australian business contained in Appendix 2 of the report might have been included. This information lists company registrations, corporate insolvencies, securities licences and authorisations on issue, and takeover statements registered. Readers of the annual report would benefit from some comment by the ASC on what these developments mean for itself as a regulator and for the Government's general approach to corporate law.

4.6 Some comment about the outlook for the ASC and for companies generally in the year ahead would be of assistance to the Parliament. Such comment might elaborate, for example, on expected levels of new corporate registrations, fundraising, profitability, emerging regulatory issues and the extent and smoothness of arrangements between the ASC and the ASX.

4.7 The Committee believes that more detailed information on the performance of the Information Processing Centre would be useful. This would facilitate assessment by the Parliament of its effectiveness. As the arrangements for information brokers and local ASC representatives are put in place similar information could be provided on these services²³. Information should also be included about the breakup of charges levied on companies and individuals for use of the ASC's database.

4.8 A list of significant publications and speeches of the ASC and its staff should be included. This would indicate the extent of the ASC's participation in public debate and would also enable the reader to locate documents that expand on points mentioned in the report.



CHAIRMAN

²¹ ASC Annual Report, p.23.

²² *ibid.*, p.8.

²³ *ibid.*, p.22.

ATTACHMENT 1

ASC Mission Statement and Corporate Goals

Within the framework of the Corporations Law and the ASC Law, the ASC has developed a Mission Statement and Corporate Plan.

Our mission is to achieve maximum credibility of Australian corporations and securities markets.

This mission will be achieved by

- providing a timely, accurate and comprehensive record about corporate bodies reporting under the Corporations Law
- ensuring Australian securities and futures markets are credible because they are efficient, well-informed and serviced by honest, competent and financially sound advisers, dealers and brokers
- ensuring that primary securities markets are efficient and credible by
 - having a uniform national system through which issuers can get speedy and efficient access to investors in Australia and overseas
 - promoting a market-based consensus on information needed for investment decisions
 - stringently reviewing fundraising documentation to ensure that investors are able to make sound investment decisions
- developing a deterrent net against contravention of the Corporations Law, with investigation of all perceived serious breaches of that Law and, where appropriate, taking action quickly to
 - preserve property
 - obtain civil remedies, including recoveries and other public protection
 - prosecute or discipline offenders
- providing, as a responsible employer, clear leadership to staff and stimulating, equitable and safe environment while maintaining the highest professional standards
- fostering high standards of conduct in relation to corporations and capital markets