

**Parliamentary Joint Committee on Corporations and Financial Services**

**Inquiry into the regulation of auditing in Australia**

**Questions on Notice 017**

***Corporations Act 2001, Volume 2, Chapter 2M, Part 2M.3, Division 3—Audit and auditor's report***

1. Who is liable for criminal offences under Division 3? Is it limited to the individual auditor(s)? What liability does a company have? What liability do other partners in a partnership have?
2. Who is liable for any civil action taken as a result of offences under Division 3? Is it limited to the individual auditor(s)? What liability does a company have? What liability do other partners in a partnership have?

***Corporations Act 2001 Section 307A: Audit to be conducted in accordance with auditing standards***

1. If an auditor does not obtain reasonable assurance about whether the financial report as a whole is free from material misstatement, whether due to fraud or error:
  - a. Is the audit in accord with the auditing standards; and
  - b. Does this, *prima facie*, constitute a breach of Section 307A?
2. When ASIC reaches the view that an auditor did not obtain reasonable assurance:
  - a. What enforcement action does ASIC take?
  - b. Does ASIC inform the audited entity?
3. Does ASIC have 'practice notes' to guide its response when it reaches the view that an auditor did not obtain reasonable assurance?
4. In how many cases where ASIC formed the view that an auditor did not obtain reasonable assurance did ASIC refer the matter to the Companies Auditors Disciplinary Board?
5. In how many cases where ASIC formed the view that an auditor did not obtain reasonable assurance did ASIC accept a Court Enforceable Undertaking?
6. In how many cases where ASIC formed the view that an auditor did not obtain reasonable assurance did ASIC begin court proceedings?
7. In how many cases where ASIC formed the view that an auditor did not obtain reasonable assurance did this result in an auditor voluntarily cancelling their registration?
8. Is there anything preventing ASIC from publishing the audit inspection report for each firm in full? Why doesn't ASIC publish the audit inspection report for each firm in full?
9. Is there anything preventing ASIC from publishing the names of entities identified in an individual firm's audit inspection reports whose audits received an adverse finding? Why doesn't ASIC publish the names of entities whose audits receive an adverse finding?

10. In cases where ASIC forms the view that an auditor has not obtained reasonable assurance, does ASIC establish whether: an audit firm also provided other assurance or non-assurance work for that entity; and the value of any non-audit work? Please provide details, if possible the number of files that attracted an adverse finding in each of ASIC's audit inspection reports where the audit firm also provided non-audit work for the entity in question.

***Report 648 – Audit inspection report for 2018-19***

1. For each of the six time periods listed in Table 1 of Report 648, relating to individual audit inspection reports:
  - a. What number of key audit areas reviewed attracted an adverse finding?
  - b. What number of files were reviewed?
  - c. What number of files that were reviewed attracted an adverse finding, in part or as a whole?

***APES 110 Code of Ethics for Professional Accountants***

APES 110 requires auditors to be independent, including in appearance, which is defined as: The avoidance of facts and circumstances that are so significant that a reasonable and informed third party would be likely to conclude that a Firm's or an Audit or Assurance Team member's integrity, objectivity or professional scepticism has been compromised.

1. For each of the last five years, on how many occasions has ASIC identified an auditor to be in breach of the independence requirements of APES 110?
2. When ASIC reaches the view that an auditor is not independent:
  - a. What enforcement action does ASIC take?
  - b. Does ASIC inform investors in the audited entity?
3. Does ASIC have 'practice notes' to guide its assessment of whether an auditor is independent?

**Audit failures**

1. What analysis does ASIC undertake of the quality of audits where a company goes into receivership? In other words: does ASIC use corporate collapses as an opportunity to identify the nature and scale of any problematic audit practices?

## Answers

### ***Corporations Act 2001, Volume 2, Chapter 2M, Part 2M.3, Division 3—Audit and auditor's report***

1. The provisions of Division 3 of Part 2M.3 of the *Corporations Act 2001* (the Act) that contain criminal offences for any contraventions are outlined in the table below, including the parties that may be liable for those criminal offences. In this table, a reference to an individual auditor is to a sole trader appointed as auditor, a reference to an audit company is to an authorised audit company and a reference to an audit firm is to an audit partnership. The lead auditor is the registered company auditor primarily responsible to the audit firm or the audit company for the conduct of the audit (s324AF(1)).

Provision	Summary	Who does offence apply to?	Maximum penalty (Schedule 3 of the Act)	Is liability limited to the individual auditor (i.e. sole trader)?	What liability does a company have?	What liability applies to other partners in a partnership?
s307A(1)	Individual auditor or audit company to conduct audit or review of a financial report in accordance with the auditing standards.	The individual auditor or audit company that conducts the audit or review.	Fault based offence – 2 years imprisonment or \$50,400 or both (s307A(3)); offence of strict liability - \$10,500 (s307A(4))	Yes, where the auditor is not an audit company.	Fault based offence - \$504,000; Offence of strict liability - \$105,000	Not applicable.
s307A(2)	Audit firm or audit company to conduct audit or review of a financial report in accordance with the auditing standards.	The lead auditor for the audit or review.	Fault based offence – 2 years imprisonment or \$50,400 or both (s307A(3)); offence of strict liability - \$10,500 (s307A(4))	Not applicable.	Fault based offence - \$504,000; Offence of strict liability - \$105,000	Nothing in the Corporations Act imposes liability on the other partners.
s307B(1)	Individual auditor or audit company to retain audit working papers prepared in accordance with auditing standards for audit or review of a financial report for 7 years (or a shorter period determined by ASIC).	The individual auditor or audit company that conducts the audit or review.	\$10,500	Yes, where the auditor is not an audit company.	\$105,000	Not applicable.
s307B(3)	Where an audit firm conducts an audit, the audit working papers in accordance with auditing standards for an audit or review to be retained for 7 years (or a shorter period determined by ASIC).	A member of the audit firm, subject to a defence if not aware of the circumstances constituting the contravention or takes all reasonable steps to correct the contravention.	\$10,500	Only applicable to an audit firm.	Not applicable.	A member of the audit firm, subject to a defence if not aware of the circumstances constituting the contravention or takes all reasonable steps to correct the contravention.

Provision	Summary	Who does offence apply to?	Maximum penalty (Schedule 3 of the Act)	Is liability limited to the individual auditor (i.e. sole trader)?	What liability does a company have?	What liability applies to other partners in a partnership?
s307C(1)	Auditor's independence declaration by individual auditor to set out whether contraventions of independence requirements of Act and professional code of conduct in relation to an audit or review, and details of any contraventions.	Individual auditor.	\$4,200	Yes.	Not applicable.	Not applicable.
s307C(3)	For audits by an audit firm or audit company, auditor's independence declaration by lead auditor to set out whether contraventions of independence requirements of Act and professional code of conduct in relation to an audit or review, and details of any contraventions.	The lead auditor for the audit or review.	\$4,200	Only applicable to an audit firm or audit company.	\$42,000	Nothing in the Corporations Act imposes liability on the other partners.
s308	Auditor's report is required to cover certain matters in relation to the audit of a financial report for a financial year.	The auditor, being the individual auditor, audit company or audit firm.	\$10,500	Yes, where the auditor is not an audit company or audit firm.	\$105,000	Nothing in the Corporations Act imposes liability on the other partners.
s309	Auditor's report is required to cover certain matters in relation to the audit of a financial report for a half- year.	The auditor, being the individual auditor, audit company or audit firm.	\$10,500	Yes, where the auditor is not an audit company or audit firm.	\$105,000	Nothing in the Corporations Act imposes liability on the other partners.
s311(1)	Reporting to ASIC as soon as practicable but within 28 days by an individual auditor where aware of: (i) certain suspected contraventions of the Act; (ii) attempts in relation to the audit to unduly influence, coerce or manipulate or mislead a person involved in the conduct of an audit; or (iii) attempt by any person to otherwise interfere with the proper conduct of an audit to the auditor.	Individual auditor.	1 year imprisonment or \$2,520 or both.	Yes, where the auditor is not an audit company or audit firm.	Not applicable.	Not applicable.
s311(2)	Reporting to ASIC as soon as practicable but within 28 by audit company where lead auditor aware of: (i) certain suspected contraventions of the Act; (ii) attempts in	Audit company.	1 year imprisonment (this penalty enables the corporate fine to be calculated using the	Not applicable.	\$25,200	Not applicable.

Provision	Summary	Who does offence apply to?	Maximum penalty (Schedule 3 of the Act)	Is liability limited to the individual auditor (i.e. sole trader)?	What liability does a company have?	What liability applies to other partners in a partnership?
	relation to the audit to unduly influence, coerce or manipulate or mislead a person involved in the conduct of an audit; or (iii) attempt by any person to otherwise interfere with the proper conduct of an audit to the auditor.		formula in s1311C) .			
s311(3)	Reporting to ASIC as soon as practicable but within 28 days by lead auditor where aware of: (i) certain suspected contraventions of the Act; (ii) attempts in relation to the audit to unduly influence, coerce or manipulate or mislead a person involved in the conduct of an audit; or (iii) attempt by any person to otherwise interfere with the proper conduct of an audit to the auditor.	Lead auditor.	1 year imprisonment or \$25,200 or both.	Not applicable.	Not applicable.	Nothing in the Corporations Act imposes liability on the other partners.
s313(1)	The auditor of a debenture issuer or guarantor must send any report, certificate or other document required to be sent to the borrower or its members to the trustee for debenture holders.	An individual auditor, audit company or audit firm.	\$6,300	Yes, where the auditor is not an audit company or audit firm.	\$63,000	Nothing in the Corporations Act imposes liability on the other partners.
S313(2)	The auditor of a debenture issuer or guarantor must report to the trustee for debenture holders within 7 days, any matter that is or is likely to be prejudicial to the interests of debenture holders if that matter is relevant to the exercise of the trustee's powers	An individual auditor, audit company or audit firm	\$6,300	Yes, where the auditor is not an audit company or audit firm.	\$63,000	Nothing in the Corporations Act imposes liability on the other partners

The above table does not include provisions of s311 and s312 concerning contraventions by officers of an audited entity. We note that there is no specific offence in s311 for those who seek to coerce or inappropriately influence an auditor.

The penalties outlined in the above table are calculated by reference to sections 1311 to 1311C and Schedule 3 of the Act. Monetary penalties are expressed in penalty units and a penalty unit is currently \$210. On 1 July 2020 the value of a penalty unit will increase in accordance with the formula set out in s4AA(3) and s4AA(4) of the *Crimes Act 1914* (and the formula uses an index number that will not be known until the end of the quarter ending 31 March 2020).

2. If a civil action is taken in relation to a matter that gives rise to a matter that is also an offence under Division 3, liability would, depending on the circumstances, fall on:
  - a. the individual auditor only in the case of a sole trader;
  - b. the audit company; or
  - c. all of the partners in an audit firm (i.e. partnership) jointly and severally at the time of the contravention.