



Parliamentary Joint Committee on Corporations and Financial Services

Report on the 2018–2019 annual reports of bodies
established under the ASIC Act

September 2020

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Chapter 1

Scrutiny of annual reports

Introduction

1.1 This report fulfils the committee's duties under subsection 243(b) of the *Australian Securities and Investments Commission Act 2001*, (ASIC Act):

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.¹

1.2 The committee has examined the annual reports of the eight bodies established by the ASIC Act:

- Australian Securities and Investments Commission (ASIC);
- The Takeovers Panel (the Panel);
- Companies Auditors Disciplinary Board (CADB);
- Financial Reporting Council (FRC);
- Australian Accounting Standards Board (AASB);
- Office of the Australian Accounting Standards Board (Office of the AASB);
- Auditing and Assurance Standards Board (AUASB); and
- Office of the Auditing and Assurance Standards Board (Office of the AUASB).²

1.3 The Senate Economics Legislation Committee also considers those annual reports under Senate Standing Order 25(20) and has stated that it:

... considers such aspects as timeliness of presentation and compliance with relevant reporting requirements.

... has examined the 2018–19 annual reports of the agencies ... and considers that they are apparently satisfactory.³

1.4 Therefore, in conducting its review of the annual reports of bodies established under the ASIC Act, the committee focussed on the statutory requirements and did not reconsider the timeliness and presentation requirements.

1 *Australian Securities and Investments Commission Act 2001*, ss. 243(b).

2 *Australian Securities and Investments Commission Act 2001*, Parts 2, 10–12.

3 Senate Economics Legislation Committee, *Annual reports (No. 1 of 2020)*, February 2020, pp. 3, 9.

Report structure

1.5 The remainder of the report is structured as follows:

- chapter two discusses the annual reports of CADB and the Takeovers Panel;
- chapter three examines the annual reports of the AASB, AUASB and FRC;
and
- chapter four examines ASIC's annual report.

Chapter 2

Takeovers Panel and CADB

Companies Auditors Disciplinary Board

2.1 The Companies Auditors Disciplinary Board (CADB) is an independent statutory body under Part 11 of the ASIC Act. CADB has functions and powers conferred on it by Part 9.2 of the Corporations Act. CADB's purpose is to hear applications about auditors who fail to carry out their duties adequately and to consider the cancellation or suspension of an auditor's registration. Applications may be brought to CADB by ASIC or the Australian Prudential Regulation Authority.¹

2.2 ASIC provides a part-time seconded registrar and facilities to CADB under subsection 11(2)(a) of the ASIC Act. CADB's funding allocations by the Federal Government are via the budget given to ASIC.²

Annual Report of CADB

2.3 Section 214 of the ASIC Act requires the annual report to describe the operations of CADB. During the reporting year:

- CADB did not receive any new applications and delivered one decision.³
- CADB adopted less formal procedures and updated its practice guidelines, following a review of the adequacy of auditor disciplinary processes which was recommended by the committee and conducted by the FRC.⁴

2.4 The form and contents of the CADB annual report are not set out in legislation or regulations. However, the CADB 2018–19 annual report provides information on most of the annual reporting requirements for non-corporate Commonwealth entities set out in sections 17AA to 17AJ of the Public Governance Performance and Accountability (PGPA) Rule.⁵

Committee view

2.5 The committee considers that CADB has fulfilled its annual reporting responsibilities for the 2018–19 financial year.

1 *Corporations Act 2001*, s. 1292.

2 Companies Auditors Disciplinary Board, *Annual Report 2018–19*, pp. 1, 6, 10, 14.

3 Companies Auditors Disciplinary Board, *Annual Report 2018–19*, pp. 1, 7.

4 Companies Auditors Disciplinary Board, *Annual Report 2018–19*, pp. 1, 13.

5 Companies Auditors Disciplinary Board, *Annual Report 2018–19*, p. iii.

The Takeovers Panel

2.6 The Takeovers Panel is a peer review body, whose primary purpose is the resolution of takeover disputes. The functions of the Takeovers Panel are conferred on it by the Corporations Act.⁶ During a takeover bid, the Takeovers Panel examines the changes in control of a company. If there are unacceptable circumstances from a public interest perspective, the Takeovers Panel can make orders to remedy those circumstances.⁷ The Takeovers Panel is also able to review decisions made by ASIC.⁸

2.7 Takeovers Panel members are statutory appointees and the executive are employed under the *Public Service Act 1999*. The Takeovers Panel executive is a division of Treasury and its funding is in Treasury's budget.⁹

Annual report of the Takeovers Panel

2.8 Section 183 of the ASIC Act requires the annual report to describe the operations of the Takeovers Panel. The Takeovers Panel noted that shareholders are the most common source of applications over the last ten years. Shareholder applications can often require more resources as a result of them being unrepresented. The Takeovers Panel indicated that it had managed the increased workload by improving its information technology and guidance to participants.¹⁰

2.9 The form and contents of the Takeovers Panel annual report are not set out in legislation or regulations.¹¹ However, the 2018–19 annual report provides information on most of the annual reporting requirements for non-corporate Commonwealth entities set out in sections 17AA to 17AJ of the PGPA Rule.¹²

Committee view

2.10 The committee considers that the Takeovers Panel has fulfilled its annual reporting responsibilities during the 2018–19 financial year.

6 *Australian Securities and Investments Commission Act 2001*, Part 10, s. 174.

7 *Corporations Act 2001*, s. 657A.

8 *Corporations Act 2001*, s. 656A.

9 Takeovers Panel, *Annual Report 2018–19*, pp. 12, 28, 31.

10 Takeovers Panel, *Annual Report 2018–19*, pp. 3–4.

11 *Australian Securities and Investments Commission Act 2001*, s. 183.

12 Takeovers Panel, *Annual Report 2018–19*, p. vii.

Chapter 3

FRC, AASB and AUASB

3.1 This chapter considers the 2018–19 annual reports of the:

- Financial Reporting Council (FRC);
- Australian Accounting Standards Board (AASB); and
- Auditing and Assurance Standards Board (AUASB).

3.2 The AASB and the AUASB presented their financial reports jointly. The AASB and the AUASB implement a joint operating model and share administrative staff.¹

The Financial Reporting Council

3.3 The FRC is responsible for overseeing the effectiveness of the financial reporting framework in Australia.² The FRC's role includes providing broad oversight for setting both accounting and auditing standards in Australia and advising the Minister about these matters.³

FRC annual report

3.4 The FRC is not subject to annual reporting requirements under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and PGPA Rule. The FRC's annual reporting requirements are in section 235B of the ASIC Act. The three parts of those requirements are discussed below.

Operations of the FRC

3.5 Paragraph 235B(1)(a) of the ASIC Act requires the FRC annual report to describe the operations of the FRC and its committees and advisory groups. The 2018–19 FRC Annual Report discusses activities including:

- the Review of Adequacy of Auditor Disciplinary Functions;
- the FRC Audit Quality Action Plan;
- monitoring of other national and international standards organisations;
- a survey of professional investors' views on audit quality; and
- a review of academic literature on audit quality.⁴

1 AASB and AUASB, *Annual Report 2018–19*, pp. iii, 81, 83.

2 *Australian Securities and Investments Commission Act 2001*, Part 12.

3 *Australian Securities and Investments Commission Act 2001*, ss. 225(1).

4 Financial Reporting Council, *Annual Report 2018–19*, pp. 1, 11–12, 13.

The objects of section 224 of the ASIC Act

3.6 Paragraph 235B(1)(b) of the ASIC Act requires the FRC annual report to address 'the achievement of the objects set out in section 224' of the ASIC Act which includes:

- (a) facilitating the development of accounting standards;
- (aa) facilitating the development of auditing and assurance standards;
- (b) facilitating the Australian economy by:
 - (i) reducing the cost of capital;
 - (ii) enabling Australian entities to compete effectively overseas;
 - (iii) having accounting and auditing standards that are clearly stated and easy to understand;
- (c) maintaining investor confidence in the Australian economy (including its capital markets).⁵

3.7 The transmittal letter of the FRC 2018–19 Annual Report refers to a narrower scope for the annual report:

Subsection 235B(1) of the ASIC Act requires the FRC to prepare a report on its operations during the year, and on the achievement of the objects of Part 12 of the ASIC Act relating to accounting and auditing standards.⁶

3.8 It is unclear what the basis is for the narrower scope in the transmittal letter with the reference relating solely to accounting and auditing standards in section 224 of Part 12 of the ASIC Act. The annual report quotes most of the text of section 224 and does discuss achievements on auditing and accounting standards.⁷ However, other objects under section 224 such as reducing the cost of capital and enabling Australian entities to compete effectively overseas receive limited attention in the annual report.

FRC advice or feedback to the AASB and AUASB

3.9 Subsection 235B(2) of the ASIC Act states that the FRC annual report 'must include details of any advice or feedback that the FRC gave' to the AASB and AUASB under paragraphs 225(2)(b) or (ba) or (2A)(b) or (ba). Pages eight to nine of the FRC 2018–19 Annual Report provides a list of AASB and AUASB documents and activities that the FRC considered. However, the annual report does not give details of any advice or feedback given by the FRC.

5 *Australian Securities and Investments Commission Act 2001*, s. 224.

6 Financial Reporting Council, *Annual Report 2018–19*, p. v.

7 Financial Reporting Council, *Annual Report 2018–19*, pp. 1–6.

Committee view

3.10 Based on the above discussions, the committee considers that:

- The FRC has fulfilled its annual reporting responsibilities about its operations under paragraph 235B(1)(a) of the ASIC Act.
- The FRC could include more explicit statements in its annual report on the achievement of all the objects of the Australian financial reporting system as required under paragraph 235B(1)(b) of the ASIC Act.
- The FRC could include more explicit information in its annual report on details of any advice or feedback that the FRC gave to the AASB or AUASB as required under subsection 235B(2) of the ASIC Act.

The Australian Accounting Standards Board

3.11 The ASIC Act establishes the AASB and the Office of the AASB, to provide the AASB with administrative and technical support.⁸ The AASB makes accounting standards for the corporations legislation. The AASB's functions also include the development of a conceptual framework to evaluate proposed accounting standards and international accounting standards.⁹

Annual report of the AASB

3.12 The finance law requires the Chair of the AASB to prepare an annual report and give it to the Minister. The annual report should comply with the annual reporting requirements for non-corporate Commonwealth entities under sections 17AA to 17AJ of the PGPA Rule.¹⁰ Appendix E of the annual report provides a compliance index which demonstrates that the AASB has complied with its annual reporting requirements.¹¹

Committee view

3.13 The committee considers that the AASB has fulfilled its annual reporting responsibilities during the 2018–19 financial year.

8 *Australian Securities and Investments Commission Act 2001*, Part 12, Division 1, Subdivision B, s. 226A. Section 261 of the ASIC Act directs that bodies established under the *Australian Securities and Investments Commission Act 1989* continue in existence as if they had been established under the *Australian Securities and Investments Commission Act 2001*.

9 *Australian Securities and Investments Commission Act 2001*, s. 227.

10 Sections 17AA to 17AJ of the PGPA Rule apply to non-corporate Commonwealth entities. Under section 226 of the ASIC Act the AASB is not separate legal entity from the Commonwealth and is therefore a non-corporate Commonwealth entity under section 11 of the PGPA Act. Commonwealth entities include listed entities under section 10 of the PGPA Act. The Office of the AASB is considered a listed entity for the purposes of the finance law under Clause 17 of Schedule 1 of the PGPA Rule. Under section 8 of the PGPA Act the finance law includes the PGPA Act and the PGPA Rule. The Chair of the AASB is the accountable authority under Clause 17 of Schedule 1 of the PGPA Rule. Sections 39 and 46 of the PGPA Act require the accountable authority to prepare an annual report and give it to the minister.

11 Australian Accounting Standards Board, *Annual Report 2018–19*, pp. 113–119.

The Auditing and Assurance Standards Board

3.14 The ASIC Act establishes the AUASB and the Office of the AUASB, which provides technical services and administrative support to the AUASB.¹² The AUASB's responsibilities include facilitating an Australian financial reporting system that guides auditors.¹³ The AUASB formulates auditing standards, in the form of legislative instruments, which operate under the *Corporations Act 2001*.¹⁴

AUASB annual report

3.15 The finance law requires the Chair of the AUASB to prepare an annual report and give it to the Minister. The annual report should comply with the annual reporting requirements for non-corporate Commonwealth entities under sections 17AA to 17AJ of the PGPA Rule.¹⁵ Appendix E of the annual report provides a compliance index which demonstrates that the AUASB has complied with its annual reporting requirements.¹⁶

Committee view

3.16 The committee considers that the AUASB has fulfilled its annual reporting responsibilities during the 2018–19 financial year.

12 *Australian Securities and Investments Commission Act 2001*, Part 12, Division 1, Subdivision C, s. 227AB.

13 *Australian Securities and Investments Commission Act 2001*, s. 224, 227A, 227B.

14 *Australian Securities and Investments Commission Act 2001*, s. 227B; *Corporations Act 2001*, s. 336.

15 Sections 17AA to 17AJ of the PGPA Rule apply to non-corporate Commonwealth entities. Under section 227AA of the ASIC Act the AUASB is not separate legal entity from the Commonwealth and is therefore a non-corporate Commonwealth entity under section 11 of the PGPA Act. Commonwealth entities include listed entities under section 10 of the PGPA Act. The Office of the AUASB is considered a listed entity for the purposes of the finance law under Clause 16 of Schedule 1 of the PGPA Rule. Under section 8 of the PGPA Act the finance law includes the PGPA Act and the PGPA Rule. The Chair of the AUASB is the accountable authority under Clause 17 of Schedule 1 of the PGPA Rule. Sections 39 and 46 of the PGPA Act require the accountable authority to prepare an annual report and give it to the minister.

16 Auditing and Assurance Standards Board, *Annual Report 2018–19*, pp. 113–119.

Chapter 4

ASIC's 2018–19 annual report

4.1 This chapter covers the compliance of ASIC's 2018–19 Annual Report with the requirements set out in Table 4.1 (below). Those requirements arise from the ASIC Act, the ASIC Regulations, the Corporations Agreement,¹ the PGPA Act and the PGPA Rule. ASIC is a non-corporate Commonwealth entity for the purposes of the public governance and accountability finance law only.² The committee examines ASIC's activities in a separate Statutory Oversight report under paragraph 243(a)(i) of the ASIC Act.

Table 4.1: ASIC's Annual reporting requirements

Paragraph/ Subsection/ Section	Reporting requirement	2018–19 Annual Report
136(1)(a) ASIC Act	Exercise of ASIC's powers under Part 15 of the <i>Retirement Savings Accounts Act 1997</i> and under Part 29 of the <i>Superannuation Industry (Supervision) Act 1993</i> (SIS Act).	Page 247
136(1)(b) ASIC Act	ASIC's monitoring and promotion of market integrity and consumer protection in relation to: <ul style="list-style-type: none"> i. the Australian Financial System; and ii. the provision of financial services. 	Pages 81–111
136(1)(c) ASIC Act	In relation to ASIC's functions under subsection 11(14), and each agreement or arrangement entered into by ASIC under that subsection, information about the activities that ASIC has undertaken during the period in accordance with that agreement or arrangement.	Page 247
136(1)(ca) ASIC Act	Information about the activities that ASIC has undertaken during the period in exercise of its powers, and performance of its functions, under Chapter 5 of, or Schedule 2 to, the Corporations Act and any provisions of that Act that relate to	Not included in the compliance index page 283

1 Corporations Agreement 2002 as amended by Corporations Amendment Agreement 2017 (No. 1).

2 *Australian Securities and Investments Commission Act 2001*, s. 8(1), 8(1A), s. 9A; *Public Governance, Performance and Accountability Act 2013*, s. 10, 11, 39, 46.

	that Chapter or Schedule.	
136(1)(cb) ASIC Act	Information about any instances during the period where ASIC failed to consult as required by section 1023F of the Corporations Act or section 301F of the <i>National Consumer Credit Protection Act 2009</i> .	Not included in the compliance index page 283
136(1)(d) ASIC Act	Operation of the <i>Business Names Registration Act 2011</i> .	Pages 70–77
136(1)(e) 136(2A), ASIC Act ASIC Regulation 8AAA(1)	Information relating to the exercise by ASIC, members of ASIC, or staff members, of prescribed information-gathering powers.	Pages 242–245
136(4) ASIC Act	Provide a copy of the annual report to the Attorney-General of each state and territory.	ASIC confirmed that it complied with subsection 136(4) for ASIC's 2018–19 Annual Report. ³
603(2–3) Corporations Agreement	(2) The Commission will maintain a system of performance indicators in relation to the levels of service in each referring State and the Northern Territory. (3) The Commission will include, in its annual report, a statement on the performance of the Commission against those performance indicators during the relevant period.	Pages 117–121
46 PGPA Act, 17AA-17AJ PGPA Rule	The annual report must comply with requirements prescribed by the PGPA rule for non-corporate Commonwealth entities.	See compliance index pages 274–282

³ Australian Securities and Investments Commission, answer to question on notice, 2 March 2020 (received 3 March 2020).

Committee view

4.2 The committee considers that ASIC has fulfilled its annual reporting responsibilities during the 2018–19 financial year, aside from the requirements under sections 136(1)(ca) and 136(1)(cb) of the ASIC Act.⁴ The committee expects ASIC will meet both those requirements in future annual reports.

Senator James Paterson**Committee Chair**

4 *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019*, s. 2; Schedule 2, Part 2, s. 18.