



Parliamentary Joint Committee on Corporations and Financial Services

Report on the 2008 – 09 annual reports of
bodies established under the ASIC Act

February 2010

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Duties of the Committee

Section 243 of the *Australian Securities and Investments Commission Act 2001* sets out the Parliamentary Committee's duties as follows:

- (a) to inquire into, and report to both Houses on:
 - (i) activities of ASIC 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 the corporations legislation (other than the excluded provisions), 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 the corporations legislation (other than the excluded provisions); and
- (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.

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Abbreviations

ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
AUASB	Auditing and Assurance Standards Board
AASB	Australian Accounting Standards Board
CALDB	Companies Auditors and Liquidators Disciplinary Board
CAMAC	Corporations and Markets Advisory Committee
Corporations Act	<i>Corporations Act 2001</i>
FMA Act	<i>Financial Management and Accountability Act 1997</i>
FRC	Financial Reporting Council
IFRS	International Financial Reporting Standards

Chapter 1

Introduction

1.1 The duties of the Parliamentary Joint Committee on Corporations and Financial Services, as set out in section 243 of the *Australian Securities and Investments Commission Act 2001* (the ASIC Act), include:

(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 ...

1.2 Committee members routinely examine the annual report of the Australian Securities and Investments Commission (ASIC) as part of their regular oversight hearings and reports. Committee members considered ASIC's 2008-09 annual report as part of their preparation for a public hearing held with ASIC on 25 November 2009.¹ The committee reported on this hearing during February 2010.²

1.3 A number of additional bodies are also established under the ASIC Act. These include:

- the Auditing and Assurance Standards Board (AUASB)
- the Australian Accounting Standards Board (AASB)
- the Companies Auditors and Liquidators Disciplinary Board (CALDB)
- the Corporations and Markets Advisory Committee (CAMAC)
- the Financial Reporting Council (FRC), and
- the Takeovers Panel.

1.4 The committee obtains the annual reports of these bodies and will from time to time report to the Parliament on matters in these reports to which it feels the Parliament's attention should be directed.

1.5 However, the committee notes that the annual reports of these bodies are also subject to scrutiny by the Senate Economics Legislation Committee. Senate Standing Order 20 requires the Economics Committee to:

1 The Hansard transcript of this hearing is available online at <http://www.aph.gov.au/hansard/joint/commttee/J12391.pdf>, as viewed on 14 January 2010

2 The committee's ASIC oversight reports can be viewed at http://www.aph.gov.au/senate/committee/corporations_ctte/asic/index.htm.

- (a) Examine each annual report referred to it and report to the Senate whether the report is apparently satisfactory.
- (b) Consider in more detail, and report to the Senate on, each annual report which is not apparently satisfactory, and on the other annual reports which it selects for more detailed consideration.
- (c) Investigate and report to the Senate on any lateness in the presentation of annual reports.
- (d) In considering an annual report, take into account any relevant remarks about the report made in debate in the Senate.
- (e) If the committee so determines, consider annual reports of departments and budget-related agencies in conjunction with examination of estimates.
- (f) Report on annual reports tabled by 31 October each year by the tenth sitting day of the following year, and on annual reports tabled by 30 April each year by the tenth sitting day after 30 June of that year.
- (g) Draw to the attention of the Senate any significant matters relating to the operations and performance of the bodies furnishing the annual reports.
- (h) Report to the Senate each year whether there are any bodies which do not present annual reports to the Senate and which should present such reports.

1.6 Therefore, in conducting its review of the annual reports of bodies established under the ASIC Act, the committee will confine itself to either raising urgent matters that it believes should be considered by the Parliament or highlighting operational matters of key interest. The committee does not consider any of the issues canvassed in this report to be urgent matters.

1.7 The committee did not hold any public hearings or seek written submissions during the preparation of this report.

Chapter 2

Annual reports of bodies established under the ASIC Act

Auditing and Assurance Standards Board

2.1 The 2008-09 annual report of the Auditing and Assurance Standards Board (AUASB) was received on 4 November 2009 and tabled in Parliament on 16 November 2009.

2.2 Under section 227B(1) of the ASIC Act, the functions of the AUASB include making legally enforceable auditing standards; formulating other auditing and assurance standards and guidance; contributing to the development of agreed international auditing standards; and communicating with stakeholders to promote the work of the AUASB.

2.3 Since 1 July 2008, the AUASB has been operating under a new structure under the *Financial Management and Accountability Act 1997* (the FMA Act). Its activities are now split between the AUASB itself, which makes auditing standards and prepares guidance, and the Office of the AUASB, a new entity (also established under the ASIC Act) which supplies administrative and technical support to the AUASB.

2.4 The AUASB's major work program for 2008-09 has been the revision of all Australian Auditing Standards in line with the 'clarity' format endorsed by the International Auditing and Assurance Standards Board. Following release of exposure drafts and consultation with stakeholders, the revised Australian standards will apply to reporting periods commencing on or after 1 January 2010. This will bring Australian standards into line with new International Standards on Auditing which took effect from December 2009.

Australian Accounting Standards Board

2.5 The 2008-09 annual report of the Australian Accounting Standards Board (AASB) was received on 4 November 2009 and tabled in Parliament on 16 November 2009.

2.6 Under section 227 of the ASIC Act, the functions of the AASB include making accounting standards; developing a framework for evaluating proposed standards; advancing the development of a set of internationally agreed accounting standards; and promoting the work of the AASB.

2.7 Since 1 July 2008, the AASB has also come under the FMA Act. The activities of the AASB are shared between the AASB itself and the Office of the Australian Accounting Standards Board.

2.8 A focus of the AASB during 2008-09 has been keeping Australian accounting standards in line with changes to the International Financial Reporting Standards (IFRS) released by the International Accounting Standards Board.

2.9 The AASB has also maintained a focus on setting standards that treat like-transactions consistently, whether they occur in the for-profit sector or the not-for-profit sector (unless there is a sound reason to differ). IFRSs continue to be used as the starting point to determine Australian standards.

2.10 During 2008-09 the AASB developed a website that allows users to more readily identify the accounting standards, interpretations and conceptual frameworks that apply to all financial reporting periods since 1 January 2005. This should increase the ability of AASB constituents to prepare their financial reports appropriately.

Companies Auditors and Liquidators Disciplinary Board

2.11 The 2008-09 annual report of the Companies Auditors and Liquidators Disciplinary Board (CALDB) was received on 30 October 2009 and tabled in Parliament on 16 November 2009.

2.12 Under part 11 of the ASIC Act, the role of the CALDB is to:

... determine whether a registered auditor or registered liquidator has contravened provisions of the Corporations Act, has failed to carry out their duties and functions adequately and properly, is not a fit and proper person to remain registered, is subject to disqualification or is otherwise ineligible to remain registered.¹

2.13 During 2008-09 the CALDB has increased the visibility of certain of its decisions (and reasons for those decisions), in line with changes to the *Corporations Act 2001* which took effect on 1 January 2008. This has included making more information about the board, its functions and its work available via the board's website.² However, as noted in the annual report, some matters referred to the Administrative Appeals Tribunal or the Federal Court are the subject of orders restricting publication of any details.

2.14 Increased visibility of the board's work is timely as there has been substantial recent public interest in matters that may be referred to the board. A number of high-profile company collapses in Australia during 2008 and 2009 have seen the operation of Australia's insolvency provisions, and the actions of auditors and liquidators, move into the spotlight. The committee notes that the Senate Economics References Committee is currently conducting an inquiry into the role of liquidators

1 *Companies Auditors and Liquidators Disciplinary Board Annual Report for the year ended 30 June 2009*, p. 3.

2 www.caldb.gov.au

and administrators, their fees and their practices, and the involvement and activities of ASIC, prior to and following the collapse of a business.

Corporations and Markets Advisory Committee

2.15 The 2008-09 annual report of the Corporations and Markets Advisory Committee (CAMAC) was received on 4 November 2009 and tabled in Parliament on 16 November 2009.

2.16 Under section 148 of the ASIC Act, the functions of CAMAC include providing advice to the Minister for Financial Services, Superannuation and Corporate Law on matters relating to the operation, administration or proposed revision of corporations legislation; companies, securities or the futures industry; or improved efficiency of the securities or futures markets.

2.17 During the 2008-09 reporting year, CAMAC published the following reports:

- *Issues in external administration*
- *Shareholder claims against insolvent companies: implications of the Sons of Gwalia decision*
- *Diversity on boards of directors, and*
- *Aspects of market integrity.*

2.18 Work is ongoing on a review requested by the Minister into the adequacy of guidance for company directors in carrying out their role.

2.19 In its report, CAMAC flagged as noteworthy an increasing tendency by shareholders (and others) to take private actions, including some by way of class actions, and noted that this is a factor for consideration when evaluating the effectiveness of the regulatory environment for corporate, financial product and financial market matters.

Financial Reporting Council

2.20 The 2008-09 annual report of the Financial Reporting Council (the FRC) was received on 13 November 2009 and tabled in Parliament on 16 November 2009.

2.21 Under part 12 of the ASIC Act, the FRC's responsibilities include broad oversight of the processes for setting both accounting and auditing standards. The FRC also monitors the effectiveness of Australia's auditor independence requirements and reports to the Minister on related matters.

2.22 As noted earlier in this report, the AUASB and the AASB have been FMA Act agencies since 1 July 2008. Accordingly, 2008-09 marks the first year that they have provided separate annual reports to the Minister, rather than submitting their reports under the auspices of the FRC.

2.23 A key focus of the FRC during 2008-09 has been monitoring the robustness of Australia's financial reporting framework in the context of the global financial crisis and changes to international standards. The FRC took a lead role in the creation of the Asian-Oceania Standard Setters Group in early 2009 and during 2010 intends to focus on ensuring that Australia's financial reporting framework remains appropriate in a changing global environment.

2.24 In the annual report, the Chairman of the FRC notes that the FRC's auditor independence function is discharged by collecting information from ASIC and other bodies with which it has a memorandum of understanding. The Chairman suggests that Treasury review whether this function should be retained in future years.

2.25 The annual report further notes that, now that AASB and AUASB are FMA Act agencies, the FRC maintains only an advisory role in relation to the work of these two bodies.

Takeovers Panel

2.26 The 2008-09 annual report of the Takeovers Panel was received on 30 October 2009 and tabled in Parliament on 16 November 2009.

2.27 Under part 10 of the ASIC Act (and relevant provisions of the *Corporations Act 2001*), the Takeovers Panel deals with issues that arise during takeover bids. The Panel has powers to review ASIC decisions in relation to takeover bids and to make declarations of unacceptable circumstances. Deciding applications for declarations of unacceptable circumstances is the Panel's main work.

2.28 The global financial crisis and its impacts on company operations have tested the Panel during 2008-09, with some of the issues raised falling outside existing guidelines. As a result, redevelopment of guidance notes and policies will be a focus during 2009-10. However, despite the unusual economic circumstances, the number of applications received by the panel during 2008-09 (30 applications) was consistent with the number received in preceding years.

2.29 The committee notes the Panel's commitment to delivering outcomes which are 'commercially sensible and practical while consistent with the principles of ... the Corporations Act.'³

Mr Bernie Ripoll MP

Chairman