



Companies Auditors and Liquidators Disciplinary Board

**Annual Report
for the year ended 30 June 2003**



Companies Auditors and
Liquidators
Disciplinary Board

**Annual Report
for the year ended 30 June 2003**

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ISSN 1037-3365

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21 October 2002

The Hon. Peter Howard Costello, MP
Treasurer
Parliament House
CANBERRA ACT 2600

Dear Treasurer

I am pleased to present the Board's Annual Report for the year ended 30 June 2003 in accordance with section 214 of the *Australian Securities and Investments Commission Act, 2001*.

Subsection 214(1) of that Act requires the Board to prepare a report describing its operations during the year and to give a copy of the report to the Minister as soon as practicable after 30 June and before 31 October, each year.

Subsection 214(2) provides that the Minister shall cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after he receives a copy of the report.

Yours sincerely

Donald Magarey
Chairman

Philip John Lethbridge King

It is with great regret that we commence this report by recording the untimely death of Philip King on 18 January 2003. Philip had been Chairperson of the Board since 31 July 1997 and was highly respected in that office and in his wider professional life. Philip's expertise, enthusiasm and energy have very significantly contributed to the success of the Board's work in recent years.

Overview

In the reporting year to 30 June 2003 the following were the highlights:

- The number of both “conduct” and "administrative" matters referred to the Board during the year (both of which had increased in the preceding year) reduced considerably. Conduct matters referred to the Board decreased from 12 to 7 and administrative matters from 27 to 11.
- Of matters pending before the Board during the year, five were successfully settled by direct negotiation, three were withdrawn by ASIC prior to a hearing and one was heard and determined.
- One matter was heard and determined in the report year but the sanction was not determined until after the end of the report year owing to the death of Philip King.
- During the report year one matter reported in a previous report year as having been dealt with was reinstated as a result of a successful appeal to the Federal Court
- Overhead expenses remained largely static when compared to previous years with the exception of some abnormal external legal costs, some of which may be recouped from outside parties.
- The apparent large discrepancy in administrative expenses between the report year and previous years resulted from a change by ASIC in the treatment of property expenses at the commencement of the report year.
- During the report year the government released its proposal paper relating to the ninth tranche of its Corporate Law Economic Reform Program (CLERP 9). The Board made submissions on matters on which the Board felt able to assist the legislative process in the light of the Board's experience.

The Board notes that on 8 October 2003, the Federal Treasurer released the draft CLERP 9 legislation which contains amendments to the current provisions governing the Board. The amendments will, among a wide range of other things, result in significant changes to the Board, in particular to the composition of the Board and the conduct of hearings.

Role Of The Board

The Working Party on the review of regulation of auditors which issued its final report in July 1997 noted that it is important that a disciplinary body “is, and is seen to be, independent, impartial, expert, informed and proactive.”

The Board sees itself as having an important role in the Australian economy. This perception is reflected in the following statement by the Board made in its 1997 Annual Report:

“The competence and independence of auditors are vital to the reliability of audited information concerning corporations and other business entities. This in turn underlies the confidence of investors and creditors in those entities and in the securities and other financial markets in which they operate.

Market perceptions, particularly of companies and of the business environment are also greatly influenced by the effectiveness and reliability of liquidators in maximising the returns to creditors of failed companies, ensuring early payment of recoverable moneys and identifying and reporting deficient conduct by company officers.

Market perceptions are a major determinant of the cost and availability of capital to companies. Increased capital cost and impaired ability to raise funds result in competitive disadvantage.

In Australia, the Companies Auditors and Liquidators Disciplinary Board makes a significant contribution to a positive market perception of companies and other entities. The Board’s responsibilities pursuant to the Corporations Law are intended to provide an incentive to registered auditors and liquidators to maintain high professional standards. The Board also has a public protective role by virtue of its jurisdiction to cancel or suspend an auditor’s or liquidator’s registration.”

Functions

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

Applications to the Board can be made only by either the Australian Securities and Investments Commission ("ASIC") or the Australian Prudential Regulation Authority ("APRA"). In addition, where the registration of a person is suspended the Board may on an application by the person or of its own motion, by order, terminate the suspension.

The Board categorises its matters as *administrative matters* and *conduct matters*.

Administrative matters are those matters which arise from applications pursuant to sections 1292(1)(a), 1292(2)(a), 1292(3)(a) or 1292(7) of the Corporations Act 2001 ("**the Act**").

Section 1292(1)(a) provides that the Board may cancel or suspend for a specified period, an auditor's registration where the Board is satisfied that the person has failed to lodge a triennial statement required by s1288, or has ceased to be a resident of Australia. Sections 1292(2)(a) and 1292(3)(a) contain corresponding provisions in respect of registered liquidators and liquidators of specified bodies corporate.

Section 1292(7) requires the Board to cancel an auditor's or liquidator's registration where the Board is satisfied that the person is disqualified from managing corporations under Part 2D.6 of the Act or is incapable, because of mental infirmity, of managing their affairs.

Conduct matters are those matters which arise from applications pursuant to sections 1292(1)(d), 1292(2)(d) or 1292(3)(d).

These provisions empower the Board to cancel an auditor's or liquidator's registration, or suspend him or her for a specified period, where the Board is satisfied that the person has failed to carry out or perform adequately and properly the duties of an auditor or liquidator or the duties or functions required by law of an auditor or a liquidator or they are otherwise not a fit and proper person to remain registered as an auditor or liquidator.

The Board has additional powers under section 1292(9) to admonish, reprimand or require undertakings. These powers may be exercised in addition to or instead of the powers to cancel or suspend registration.

Constitution

The Board is an independent statutory body established by Part 11 of the *Australian Securities and Investments Commission Act 2001* ("ASIC Act"). The Minister responsible for the Board is the Commonwealth Treasurer.

The Board consists of:

- a) a Chairperson who must be enrolled as a barrister, solicitor or legal practitioner of the High Court, any federal court or the Supreme Court of a State or Territory and who has been so enrolled for a period of at least five years;
- b) a Member selected from a panel of five persons, resident in Australia, nominated by the National Council of the Institute of Chartered Accountants in Australia; and
- c) a Member selected from a panel of five persons, resident in Australia, nominated by the National Council of the Australian Society of Certified Practising Accountants.

A deputy is appointed for each Member from the panels nominated by the specified accounting bodies. A deputy of a Member is entitled to attend meetings of the Board at which the Member is not present and while attending is deemed to be a Member. No deputy is appointed for the Chairperson, but an Acting Chairperson has been

appointed to act during a vacancy in the office or during any period when the Chairperson is absent from office.

All appointments are made by the Minister and are part-time appointments. Appointments are for a period of no longer than three years. The appointees are eligible for re-appointment.

It should be noted that with the impending introduction of CLERP 9 legislation, the composition of the Board is expected to change significantly.

Operations

The Board's hearings are required to be conducted with as little formality and technicality and as much expedition as possible. The Board is not bound by the rules of evidence, but the Board is required to observe the rules of natural justice. Hearings are recorded and a transcript is provided to the parties.

The Board's office is at Level 16, 60 Margaret Street, Sydney, as is the Board's principal hearing room. Hearings are also held, as needed, at other locations around Australia, and by telephone or videolink.

Procedures have been adopted by the Board and are contained in its *General Procedures Practice Note*. This sets out the mechanisms for mentions, pre-hearing conferences and hearings and the procedures to be followed in relation to the exchange of documents and other material between parties prior to a hearing.

The Board has also issued a *Costs Practice Note* and a *Mediation Guidelines* and a pro forma *Mediation Agreement*.

The *General Procedures Practice Note*, the *Costs Practice Note* the *Mediation Guidelines* and draft *Mediation Agreement* are provided to all parties involved in proceedings before the Board and are available on request to interested persons generally. All are updated from time to time.

Pre-Hearing Conferences

The Board encourages the parties in conduct matters, to exchange material and to meet and negotiate to refine and reduce the matters in dispute prior to a hearing. To assist this process and maximise its effectiveness, the Board offers a pre-hearing conference procedure which encourages contact between the parties as early as possible.

The aim is to reduce the length of the hearing and the overall costs of the proceedings. The Board's pre-hearing procedures are under constant review in order to ensure that pre-hearing procedures are as effective and efficient as possible and result in savings in costs and time for all parties.

Telephone conferencing is used where it is considered practicable. The parties are encouraged by the Board to meet in person to discuss their respective

contentions and determine common ground, and to submit their dispute to mediation.

The benefits which flow from these procedures include shortening of proceedings and in some cases, agreement on acceptable outcomes as a result of negotiation or mediation. Agreed terms of order are referred in draft to the Board. The Board retains the right to determine the appropriate order.

Mediation

Mediation has once again demonstrated itself to be a valuable tool. The Board encourages resolution of areas of dispute by mediation. This may be by an external mediator agreed upon by the parties or a Board Member (who does not thereafter have any role in relation to that application nor communicate with the Board concerning the mediation or the application generally).

In both the negotiation and mediation processes the Board stresses to the parties that the proceedings before the Board are disciplinary hearings and whilst the parties may develop a form of acceptable draft order it still remains a matter for the Board to make a determination in accordance with its statutory powers and to arrive at an appropriate order.

Mediation can significantly reduce the time taken for a hearing. Once again, mediation has proved to be a very successful tool in reducing costs, both for the Board and the parties. During the report year two complex matters were resolved following four days of mediation with significant savings to the Board and to the parties.

Hearings

All matters referred to the Board proceed to a hearing, at which the Board will make its determination. Occasionally, the Board may adjourn the hearing to enable it to consider and formulate its reasons for a determination. Hearings are required to be held in private unless a public hearing is requested by a person (other than ASIC and APRA) who is entitled to be given an opportunity to appear at the hearing.

For contested conduct matters, the Board will usually hold a hearing with all members and parties physically present. In all other matters, the Board may arrange hearings by videolink with one or more members or parties in different locations. Legal representation is permitted at hearings, for all parties.

Board Decisions

In relation to each application, the Board makes a decision whether or not to exercise any of its powers under section 1292 or whether or not it is required to make an order under section 1292(7). The Board will also make a decision on penalty (if applicable) and, for that purpose, may hold a separate hearing.

Pursuant to section 1296, written notice of the Board's decision and the reasons for it must be given to the practitioner. A copy of the notice must be lodged with ASIC.

The notice of decision is available for inspection at ASIC except when the Board has decided to refuse to exercise its powers under section 1292 or has decided that it is not required to make an order under section 1292(7) (see section 1274(2)(a)(iii)).

Where the Board has decided to exercise any of its powers under s1292 or has decided that it is required to make an order under s1292(7), the Board is required pursuant to section 1296 (1) to publish in the Commonwealth Gazette a notice setting out the decision. By arrangement with the ICAA, CPA Australia and the Tax Agents Registration Board, copies of the notices published in the *Commonwealth Gazette* are now provided to those bodies.

Decisions gazetted by the Board during the year are set out at the conclusion of this report.

Costs Practice Note

At the end of a hearing a party may seek an order for costs, and when the Board makes such an order, the Board refers the parties to its *Costs Practice Note*.

The Board may also order payment by a party of costs of and incidental to a hearing.

Review Of Board Decisions

When the Board makes a decision under section 1292, a review of that decision may be sought before the Administrative Appeals Tribunal ("AAT") by ASIC or by any person whose interests are affected by the decision.

A person who is aggrieved by a Board decision may also apply to the Federal Court of Australia or the Federal Magistrates Court under the provisions of the Administrative Decisions (Judicial Review) Act 1975 for an order of review in respect of a decision.

Generally, reviews before the AAT are re-hearings of the application while those by the Federal Court of Australia are based on questions of law arising out of the proceedings.

Procedural Initiatives

The Board has a policy of continuous improvement to its procedures which has resulted in reduction of the time of parties and the Board and consequently expenditure reductions.

Two major initiatives which commenced during the report year were a general update of the Board's General Procedures Practice Note and the systematic identification and recording of the role, duties and functions of the Registrar. Both of these projects will be completed in the 2003/04 year.

A further initiative which was first identified as desirable during the report year is a proposal to create an electronic database of all applications made to the Board and the issues raised by and the outcomes of these applications, before the Board and on any reviews. When that project is completed, Board members will have ready access to all the Board's previous decisions and summaries of the issues that arose in those applications.

Board Membership And Staffing

The first Board was appointed on 24 May 1991. The last general round of appointments was made on 5 September 2000. Board members during the report year were as follows:

Philip John Lethbridge King BA LLB FAICD FAIM	Chairman
Donald Rees Magarey BA LLB (Hons)(Syd.) LLM (Harv.) FAICD	Acting Chairman (to 31 May 2003)
	Chairman (from 1 June 2003)
David Frank Castle BA.LLM (Syd.)	Acting Chairman (from 1 June 2003)
Brian Thomas Morris BA(Acc) FCPA	Member
Bruce Malcolm Robertson BEc (Hons) FCA FAICD	Member
Peter Geoffrey Barrett BEc FCA	Deputy to Mr Robertson
Patrick Joseph Ponting BBus FCPA	Deputy to Mr Morris

All these appointments (other than the Chairman and the Acting Chairman) expired on 5 September 2003.

The Board is assisted by its Registrar, Mr Paul Coleman who is seconded from ASIC.

Donald Magarey

Donald Magarey is a senior partner in the Sydney office of a major national law firm specialising in corporate law and commercial transactions.

He is a Fellow of the Australian Institute of Company Directors and a member (former chairman) of the Corporations Law Committee of the Law Council of Australia. He has been a member of the Corporations and Securities Panel, a member of the Companies and Securities Law Review Committee and chairman of the Social Security Appeals Tribunal. He has also been a director of a number of companies and a part-time lecturer at the Law Schools of Sydney University and University of New South Wales.

David Castle

David Castle is a Consultant to the Sydney office of Dibbs Barker Gosling, a medium sized national firm specialising in business law.

He is accredited as a business law specialist by the Law Society of New South Wales, is Chairman of the Law Society Business Law Committee and is a member of the Taxation Agents Board of New South Wales. He has practised in business, commercial and company law for over 40 years and is a former member of the Law Society Statutory Committee and of the Legal Profession Disciplinary Tribunal. He is a qualified and experienced mediator and a costs assessor appointed by the Supreme Court of New South Wales.

Bruce Robertson

Bruce Robertson is a chartered accountant and company director. He has had a long association with the Sydney Office of one of the then "Big Eight" accounting firms, where he became Australian Managing Partner and a member of the Worldwide Board of Partners.

He is Chairman of Pro:NED Board Consultants, a consultant to a number of organisations, is a director of a number of public and proprietary companies and is chairman of public company audit committees. He is also a qualified mediator.

Brian Morris

Brian Morris is an accountant. He is the Managing Partner of a well known Adelaide accounting firm. He is also a qualified mediator and member of the Institute of Arbitrators and Mediators of Australia.

He has been a member of the Urgent Issues Group, has been an Australian representative to the International Accounting Standards Committee, a member of the Auditing Standards and has chaired the National Technical Standards Committee of CPA Australia.

Peter Barrett

Peter Barrett is an accountant. He is a sole practitioner specialising in the provision of accounting advice to not for profit entities. From July 1975 to September 2001 he was an audit partner in the Adelaide office of one of the "Big Five" accounting firms and spent a number of years as a member of that firm's National Assurance and Advisory Risk Management Group, which was responsible for professional standards.

He has been chairman of the South Australian State Council of the Institute of Chartered Accountants in Australia ("ICAA") and is a member of a number of ICAA committees, including the Disciplinary Committee. He is a joint author of a text on auditing computer based accounting systems.

Patrick Ponting

Patrick Ponting is a CPA and Auditor and is in practice on his own account on the Gold Coast.

He was National President of CPA Australia in 1999-2000 and has been involved in the disciplinary processes of that body for 11 years including 3 years as chairman of the Discipline Committee in Queensland. He has chaired the CPA Professional Standards Committee and Public Practice Committee and is a member of the accounting profession's Joint Task Force on Audit Independence.

Financial Statements

The Board is provided with an allocation of funds from the budget of ASIC. The Board's expenditure for this and previous financial years, as audited in the accounts of ASIC, consisted of:

	1999/00	2000/01	2001/02	2002/03
	\$	\$	\$	\$
Administrative Expenses:	237,363	102,506	81,025	244,588
Salaries and sitting fees:	<u>247,628</u>	<u>205,259</u>	<u>116,898</u>	<u>130,787</u>
Total:	496,757	307,765	197,923	375,375

Activities

The following tables have been compiled from the records of the Board.

Matters before the Board during the report year

	Auditors		Liquidators	
	Conduct	Administrative	Conduct	Administrative
Balance pending 1/7/02	2	5	4	0
Add referrals	3	7	4	4
Add matters reinstated ¹	1	0	0	0
Deduct dealt with	4	0	2	0
Deduct withdrawals	0	2	1	0
Balance pending 30/6/03	2 ²	10	5	4

¹ One matter reported as being dealt with in a previous year (see: 'Review of Board Decisions' below) was reinstated following a successful appeal to the Federal Court of Australia. The matter was remitted back to the Board for determination in accordance with the law and was dealt with during the report year.

² One matter was heard and determined in the report year but the sanction was not determined until after the end of the report year owing to the death of Philip King.

Occasionally a person referred to the Board is registered as both an auditor and a liquidator. Where such a person is referred in respect of both registrations, this has been treated as two referrals in the above summary and in the following tables.

Matters referred to the Board according to State and Territory

	ACT					NSW				
	98/99	00/99	00/01	01/02	02/03	98/99	00/99	00/01	01/02	02/03
Auditors	1	1	-	1	-	3	16	3	15	4
Liquidators	-	-	-	-	-	6	3	2	5	7
Total	1	1	0	1	0	9	19	5	20	11
	NT					QLD				
	98/99	00/99	00/01	01/02	02/03	98/99	00/99	00/01	01/02	02/03
Auditors	-	-	-	-	-	5	8	3	5	-
Liquidators	-	-	-	-	-	1	2	1	-	1
Total	0	0	0	0	0	6	10	4	5	1
	SA					TAS				
	98/99	00/99	00/01	01/02	02/03	98/99	00/99	00/01	01/02	02/03
Auditors	1	2	1	-	1	-	-	-	-	1
Liquidators	-	-	-	1	-	-	-	-	1	-
Total	1	2	1	1	1	0	0	0	1	1
	VIC					WA				
	98/99	00/99	00/01	01/02	02/03	98/99	00/99	00/01	01/02	02/03
Auditors	4	10	8	5	4	1	-	-	3	-
Liquidators	-	2	1	3	-	-	-	-	-	-
Total	4	12	9	8	4	1	0	0	3	0

Results by nature of sanction

Results of Application	98/99	99/00	00/01	01/02	02/03
Registration cancelled	3	6	11	9	1
Registration suspended	2	9	12	5	4
Admonition	-	-	-	-	-
Reprimand	-	-	3	1	1
Undertakings required to be given	3	6	-	3	5
Dismissed	-	-	-	-	-
No action by Board	-	1	-	1	-
Withdrawn by Commission	5	16	10	15	3

Notes

- (1) At the end of the report year one matter had been heard and determined however the Board had not yet determined the sanction owing to the death of Philip King.
- (2) Undertakings may be required in addition to other orders.
- (3) The results shown are after review or appeal (if applicable).
- (4) The results shown include orders by consent.

ASIC Watchlist

ASIC has advised the Board that it has a Watchlist that is an intermediate measure for dealing with conduct which in ASIC's opinion, while significant, is not sufficiently serious to warrant formal enforcement action. The Board supports the use of those arrangements in relation to less serious conduct matters and believes that the arrangements have operated to date to complement the Board's role.

REVIEWS OF BOARD DECISIONS DURING THE YEAR ENDED 30 JUNE 2003

Nicholas Guy Birdseye (Auditor)

Mr Birdseye's registration as an Auditor was cancelled pursuant to section 1292(7) on 3 May 2001 as he was a person who was disqualified from managing corporations pursuant to Part 2D.6 of the Corporations Act. Mr Birdseye sought review of the Board's decision before the Administrative Appeals Tribunal and on 27 August 2001 the Tribunal affirmed the Board's decision.

Mr Birdseye sought a review of that decision under the Administrative Decisions (Judicial Review) Act before the Federal Court of Australia. That application was dismissed with costs in a judgment dated 19 March 2002 and the Board's decision affirmed. Mr Birdseye then appealed that decision to the full Federal Court and in a judgment dated 10 September 2002 Mr Birdseye's appeal was dismissed, with costs.

Linden John Gulson (Auditor)

On 8 June 2001 the Board ordered that Mr Gulson be reprimanded pursuant to section 1292(1)(d) and that he give certain undertakings to the Board pursuant to section 1292(9). Both ASIC and the auditor sought review of the Board's decision in the Federal Court of Australia under the Administrative Decisions (Judicial Review) Act, 1975.

The applications were heard by Whitlam J on 30 and 31 October 2001 and his decision was handed down on 28 August 2002, setting aside the Board's decision in respect of the review sought by ASIC and dismissing Mr Gulson's application. The matter was remitted back to the Board and was re-heard by the Board on 28 October 2002.

As a result of that re-hearing, the reprimand previously imposed by the Board was withdrawn and replaced by an order suspending Mr Gulson's registration for a period of 60 days and further requiring Mr Gulson to give an undertaking that he would attend a course or courses, at an advanced level of not less than 10 hours duration dealing with Australian accounting standards and financial reporting requirements generally.

At 30 June 2003 there were no reviews of Board decisions pending.

Other Proceedings

John Greer

In December 2002, Mr Greer commenced proceedings in the Federal Court of Australia naming all of the then members of the Board and its Registrar as Respondents. The proceedings arose following a series of letters between the Registrar and solicitors acting for Mr Greer during August and September 2002.

Mr Greer also applied to the Administrative Appeals Tribunal (AAT) for an extension of time within which to file an application for a review of a purported decision of the Registrar in relation to the correspondence mentioned above.

The application to the Federal Court was heard by Justice Hely who on 24 December 2002 dismissed the application with costs. Mr Greer subsequently withdrew the application to the AAT prior to any hearing.

FOI And Section 13 AD(JR) Act Requests

The Board did not receive any applications for information under the Freedom of Information Act 1982 nor any requests for reasons pursuant to section 13 of the Administrative Decisions (Judicial Review) Act 1977 during the year.

CLERP 9 Amendments

On 8 October 2003, the Federal Treasurer released a draft of the Bill for the CLERP 9 legislation. As a result of the amendments contained in the Bill:

- the new Board will consist of twelve people instead of three. The twelve will be a Chairperson, a Deputy Chairperson (with legal qualifications), three members chosen from seven nominees put forward by each of the ICAA and the CPAA and four members appointed by the Minister representing the business community;
- the Board itself will no longer conduct hearings. Instead, hearings will be conducted by up to two Panels of the Board, chosen from the overall membership of the Board. A Panel will normally comprise five persons, namely the Chairperson or Deputy Chairperson, two accountants, one from each of the ICAA and the CPAA, and two members from the business community.

Contact Officer

The contact officer for this Annual Report is the Registrar, Mr P J Coleman, phone (02) 9911 2970, facsimile (02) 9911 2975, GPO Box 3731, SYDNEY 2001.

**DECISIONS GAZETTED
YEAR ENDED 30 JUNE 2003**

Matter No.: 20/TAS02

Corporations Law
SECTION 1296(1)(c)
NOTICE OF DECISION

Whereas:

- the Australian Securities and Investments Commission (“ASIC”) made application to the Companies Auditors & Liquidators Disciplinary Board (“the Board”) pursuant to section 1292(1)(d) of the Corporations Act 2001 (Corporations Act) to have **JOHN WILLIAM BYE** (“the Respondent”) a registered auditor, dealt with under section 1292 of the Corporations Act, on the basis that the Respondent satisfies one or more of the criteria specified in paragraph 1292(1)(d) of the Corporations Act in relation to his continuing to act as auditor of Investment Nominees Limited ACN 009 503 315 (“INL”) and his signing of an Independent Review Report for INL dated 28 March 2002 that was included in the INL Half Yearly Reports lodged with ASIC.
- the Board, pursuant to section 1294 of the Corporations Act, has provided ASIC and the Respondent with an opportunity to appear and make submissions to, and adduce evidence before, the Board in relation to the matter; and
- ASIC and the Respondent have conducted negotiations and reached agreement on draft terms of order which ASIC and the Respondent have submitted to the Board for approval.

It is the decision of the Board, that it is satisfied that the Respondent did fail as the auditor of INL to carry out or perform adequately and properly a duty or functions required by an Australian Law to be carried out or performed by a registered company auditor, as provided in paragraph 1292(1)(d)(ii) of the Corporations Act in that the Respondent:

- (i) remained the registered auditor of INL notwithstanding he was prohibited from doing so when he became indebted to INL on 12 March 2002 in a sum in excess of \$5,000 contrary to paragraph 324(1)(e) of the Corporations Act 2001; and
- (ii) signed an Independent Review Report for INL dated 28 March 2002 that was included in the INL Half Yearly Reports lodged with ASIC notwithstanding he was prohibited from doing so when he became indebted to INL on 12 March 2002 for a sum in excess of \$5,000 contrary to section 324(1)(e) of the Corporations Act 2001;

AND THE BOARD ORDERS pursuant to section 1292 of the Corporations Act, (and the Board notes that the Respondent consents to these orders):

1. that the Respondent be reprimanded;
2. that the Respondent give the following undertakings:
 - (a) to attend within the period of 12 months from the date of this order coming into effect, 12 hours of Continuing Professional Education in relation to audit practice and procedure in addition to that required by the Institute of Chartered Accountants' Professional Development Program with leave to the Respondent to apply for an extension of the period of 12 months up to a maximum further 6 months; and
 - (b) to provide ASIC with proof of compliance with paragraph (a) within 30 days of the completion of the 12 month period;
3. That the Respondent pay ASIC's costs in the amount of \$300.

Dated 19 December 2002
Paul J Coleman
Registrar

Corporations Act, 2001
SECTION 1296(1)(c)
NOTICE OF DECISION

WHEREAS:

- the Australian Securities and Investments Commission (“ASIC”) made application to the Companies Auditors & Liquidators Disciplinary Board (“the Board”) pursuant to section 1292(1) of the Act to have **JOHN GREER** (“the Respondent”) a registered auditor dealt with under section 1292 of the Act, on the basis that the Respondent:
 - i) has contravened section 1288 of the Act;
 - ii) satisfies one or more of the criteria specified in paragraph 1292(1)(d) of the Act in relation to the audit of Rural & General Insurance Limited ACN 000 007 492 (“R & G”) for the financial years ended 30 June 1996, 1997, 1998, 1999 and 2000 and the audit of the Griffiths Forrest & Greer Administration Pty Limited Superannuation Fund (“the Fund”) for the period 1 July 1994 to 30 June 1995;
 - iii) is not a fit and proper person to remain registered as an auditor;
- ASIC made application to the Board pursuant to section 1292(2) of the Act to have the Respondent, a registered liquidator, dealt with under section 1292 of the Act on the basis that the Respondent:
 - (i) has contravened section 1288 of the Act; and
 - (ii) is not a fit and proper person to remain registered as a liquidator;
- the Board, pursuant to section 1294 of the Act, has provided ASIC and the Respondent with an opportunity to appear and make submissions to, and adduce evidence before, the Board in relation to the matter; and
- ASIC and the Respondent have conducted negotiations and reached a settlement which ASIC and the Respondent have submitted to the Board for approval.

The Board is satisfied on the application of ASIC, that the Respondent:

- A. has contravened section 1288 of the Act by failing to lodge a triennial statement;
- B. has failed to carry out or perform adequately and properly:

- (i) the duties of an auditor in respect of the audit of R & G for the year ended 30 June 1996 in that:
- (a) he failed to consider and/or document previous audit qualifications and the directors' notes in response to the previous auditor's qualifications;
 - (b) he failed to consider and/or document proceedings in the Administrative Appeals Tribunal involving R&G and an Insurance and Superannuation Commissioner review of R&G;
 - (c) there were deficiencies and inaccuracies in the Respondent's working papers so as to constitute breaches of AUP 16;
 - (d) he failed to qualify the 30 June 1996 financial statements of R&G in respect of their failure to comply with section 297(1) of the Law, (the Act, as it then was) in particular, clause 15(1)(d) of Schedule 5 of the Corporations Regulations (details of share issues during a period), as prescribed by regulation 3.6.02(2)(a); and
 - (e) he failed to qualify the 30 June 1996 financial statements of R&G in respect of their failure to comply with section 298(1) of the Law (financial statements to be in accordance with accounting standards), in particular, paragraph 24 of AASB 1026;

(ii) the duties of an auditor in respect of the audits of R & G for the years ended 30 June 1996, 1997, 1998, 1999 and 2000 in that:

- (a) there are deficiencies and inaccuracies in the Respondent's working papers in relation to his audit of the financial statements of R&G for the years ended 30 June 1996, 1997, 1998, 1999 and 2000 in that:
 - (1) he failed to plan a direct confirmation of accounts receivable in contravention of then paragraph 6 of AUP 14 Supplement 1 (re 30 June 1996) and AUS504.02 (re 30 June 1997);
 - (2) he failed to apply analytical review procedures in contravention of then paragraph 5 of AUP 17 (re 30 June 1996) and AUS512.08 (re 30 June 1997);

- (b) he failed to qualify the 30 June 1996, 1997, 1998 1999 and 2000 financial statements of R&G in respect of their failure to comply with section 298(1) of the Law (financial statements to be in accordance with accounting standards), in particular, AASB 1026 (financial statements must disclose a reconciliation of cash flows from operating activities to operating profit or loss after income tax as reported in the profit and loss account);
 - (iii) the duties of an auditor in respect of his audit of the Fund for the period 1 July 1994 to 30 June 1995 with the requisite independence, competence and integrity in contravention of AUS1 as it applied at the relevant time; and
- C. is not a fit and proper person to remain registered as an auditor on account of having lodged with ASIC a triennial statement that contained a false statement;

The Board therefore orders that the registration of the Respondent as an auditor be suspended for a period of four (4) years commencing on 1 April 2003 and that it requires, pursuant to section 1292(9) of the Act, and the Board notes that the Respondent consents to give, the following undertakings:

1. within each of the next four (4) periods of twelve (12) months commencing 1 April 2003, to attend 10 hours of Continuing Professional Education in relation to audit practice and procedure in addition to the Continuing Professional Education required by the Institute of Chartered Accountants Professional Development Program; and
2. to provide ASIC with proof of compliance with paragraph 1 within 30 days of the completion of each 12 month period.

The Board is further satisfied on ASIC's application pursuant to subsection 1292(2) of the Act to have the Respondent, also a registered liquidator, dealt with under section 1292(2) of the Act that the Respondent is not a fit and proper person to remain registered as a liquidator as provided in section 1292(2)(d) of the Act on account of the implications that can be drawn from the orders of the Board suspending the Respondent's registration as an auditor for a period of four (4) years commencing on 1 April 2003 and on account of the Respondent having lodged with ASIC a triennial statement that contained a false statement.

And the Board therefore orders that the Respondent's registration as a liquidator be suspended for four (4) years commencing on 1 July 2003 and that it requires, pursuant to section 1292(9) of the Act, and the Board notes that the Respondent consents to give, the following further undertakings:

3. within each of the next four (4) periods of twelve (12) months commencing 1 July 2003 to attend 10 hours of Continuing Professional Education in relation to insolvency practice and procedure in addition to the Continuing Professional Education required by the Institute of Chartered Accountants Professional Development Program;
4. to provide ASIC with proof of compliance with paragraph 3 within 30 days of the completion of each 12 month period; and
5. that in the period from the date of this order to 30 June 2003 the Respondent will not accept any appointments as an external administrator and that he will not act as an external administrator other than as the external administrator of Rhino Hardware Tools Pty Limited ACN 073 419 539; H R Pacific Pty Limited ACN 060 802 280; and Emperor Technology (Aust) Pty Limited ACN 072 441 966.

The Board further orders, pursuant to section 223 of the Australian Securities and Investments Commission Act 2001 that the Respondent pay the totality of ASIC's external costs provided they are supported by Memoranda of Fees and Tax Invoices, such costs to be payable in full by 1 April 2003.

Dated 10 March 2003
Paul J Coleman
Registrar

Corporations Law
SECTION 1296(1)(c)
NOTICE OF DECISION

WHEREAS:

- the Australian Securities and Investments Commission (“ASIC”) made application to the Companies Auditors & Liquidators Disciplinary Board (“the Board”) pursuant to section 1292(1) of the Act to have **PAUL MERVYN MELDRUM** (“the Respondent”) a registered auditor, dealt with under section 1292 of the Act, on the basis that the Respondent satisfies one or more of the criteria specified in paragraph 1292(1)(d) of the Act in relation to the audit of Clifford Corporation Limited ACN 000 750 103 (“CCL”) and its controlled entities, Austral Pacific Group Limited ACN 000 049 874 (“APG”), Signature Group Australia Limited ACN 064 732 529 (“SGAL”), Ansair Limited ACN 067 383 037 (“Ansair”) and Austchas Limited ACN 074 547 854 (“Austchas”) for the year ended 30 June 1997 in respect of which the Respondent signed audit reports dated 10 October 1997 (“the Audit”);
- the Board, pursuant to section 1294 of the Act, has provided ASIC and the Respondent with an opportunity to appear and make submissions to, and adduce evidence before, the Board in relation to the matter; and
- ASIC and the Respondent have conducted negotiations and reached a settlement which ASIC and the Respondent have submitted to the Board for approval.

The Board is satisfied on the application of ASIC, that the Respondent has failed during the course of the Audit 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;

as provided in paragraph 1292(1)(d) (i) and (ii) of the Act, in that he failed in respect of the Audit to:

1. qualify his audit report on SGAL in relation to a \$1.5M dividend, paid otherwise than out of profits to CCL, in contravention of section 201 of the then Corporations Law (“the Law”);
2. independently verify the underlying circumstances and validity of three pre-acquisition fees, totalling \$2,502.3M, relating to subsidiary companies, Ansair and APG, acquired during the year;

3. independently verify the underlying circumstances, commerciality and recoverability of an exclusivity fee of \$2,801M relating to the exclusive right of a director related company to undertake fit-out work on SGAL properties and draw an appropriate conclusion that without the fee, SGAL was unprofitable and would be unable to pay a dividend to CCL;
4. properly consider a debt defeasance transaction of \$10.2M which was accounted for as a profit in the accounts of a subsidiary, acquired during the year, in contravention of Accounting Standard AASB 1013 – Accounting for Goodwill; and
5. qualify his audit report on SGAL in relation to a \$2.606M adjustment made to retained earnings in contravention of Urgent Issues Group Abstract UIG 3 – Lessee accounting for Lease Incentives Under Non cancellable Operating Leases;

The Board therefore orders that the registration of the Respondent as an auditor be suspended for a period of four (4) years and that it requires, pursuant to section 1292(9) of the Act, and the Board notes that the Respondent consents to give, the following undertakings:

- (a) within each of the next four (4) periods of twelve (12) months from the date of this order coming into effect, to attend 10 hours of Continuing Professional Education in relation to audit practice and procedure in addition to the Continuing Professional Education required by the Institute of Chartered Accountants Professional Development Program; and
- (b) to provide ASIC with proof of compliance with paragraph (a) within 30 days of the completion of each 12 month period.

The Board further orders, pursuant to section 223 of the Australian Securities and Investments Commission Act 2001 that the Respondent pay ASIC's costs in the sum of \$15,000 payable in three (3) equal payments of \$5,000, the first payable within 28 days of this order coming into effect and the second and third payments payable on the second and third anniversary respectively of the due date of the first payment. The Respondent acknowledges that if he fails to comply with the Board's order as to costs in respect of the first and second payments, the total balance remaining outstanding of the costs order becomes due and payable immediately and that ASIC reserves the right to take whatever action it deems appropriate to recover the total balance outstanding.

Dated 13 March 2003
Paul J Coleman
Registrar

Corporations Law
SECTION 1296(1)(c)
NOTICE OF DECISION

WHEREAS:

- the Australian Securities and Investments Commission (“ASIC”) made application to the Companies Auditors and Liquidators Disciplinary Board (“the Board”) pursuant to subsection 1292(2)(d) of the Act to have **IAN MELVILLE WEST** (“the Respondent”), a registered liquidator, dealt with under section 1292 of the Act, on the basis that the Respondent satisfies one or more of the criteria specified in subsection 1292(2)(d) of the Act in relation to the external administrations of:

Computer Solutions (Tas) Pty Ltd ACN 060 321 217;

Peter Joy & Company Pty Ltd ACN 061 556 901;

Somerville & Partners Pty Ltd ACN 010 971 383;

Harney Electrical Pty Ltd ACN 056 154 977;

Logan Lions Limited ACN 060 338 758;

The IMB Group Pty Ltd ACN 050 411 946;

Australian Fund and Property Managers Pty Ltd ACN 062 035 974; and

Watlington Pty Ltd ACN 010 166 784 (“the Companies”);

- the Board, pursuant to section 1294 of the Act, has provided ASIC and the Respondent with an opportunity to appear and make submissions to, and adduce evidence before, the Board in relation to the matter; and
- ASIC and the Respondent have conducted negotiations and reached a settlement which ASIC and the Respondent have submitted to the Board for approval.

The Board is satisfied on the application of ASIC, that the Respondent has failed to carry out or perform adequately and properly:

- (i) the duties of a liquidator; or
- (ii) any duties or functions required by an Australian law to be carried out or performed by a registered liquidator;

as provided in subsections 1292(2)(d)(i) and (ii) of the Act, in that he:

1. in respect of Peter Joy & Company Pty Ltd ACN 061 556 901 failed to set out his opinion in a statement to creditors whether the alternative courses of action available in section 439A(4)(b) were in their interests and his reasons for those opinions;

and in respect of some of the Companies over which he was appointed external administrator:

2. failed to comply with various lodging requirements as provided in the Act, namely:
 - failed to lodge reports as required by sections 438D and 533 of the Act in relation to possible offences by officers of the said Companies;
 - failed to lodge notifications of change of address of administrator as required by Regulation 5.3A.04;
 - failed to lodge copies of Deeds of Company Arrangement as soon practicable as required by section 450B of the Act;
 - failed to lodge minutes of meetings required to be held by section 436E of the Act in breach of Regulation 5.6.27(3);
 - failed to lodge minutes of meetings required to be held by section 439A(1) of the Act in breach of Regulation 5.6.27(3);
 - failed to lodge notification of terminations of Deeds of Company Arrangement;
 - failed to lodge notification of Administrator becoming liquidator as required by section 446A(5)(a) and Regulation 5.3A.07(5);
 - failed to lodge accounts as required by section 432 of the Act within the timeframes required by that section; and
 - failed to lodge accounts as required by section 539(1) of the Act within the timeframes required by that section.
3. failed to hold annual meetings of creditors as required by section 508 of the Act;
4. failed to make up accounts and convene meetings as soon as the affairs of the Companies were fully wound up and lodge a return of the holding of the meeting as required by section 509; and
5. failed to finalise liquidations in a timely manner;

The Board therefore orders that the registration of the Respondent as a liquidator be cancelled with effect from 31 March 2003 but only if the Respondent has by 12 noon on 28 March 2003 confirmed to the Board in writing his agreement to the order.

The Board further orders that the Respondent pay ASIC's costs in relation to the hearing in the sum of \$8,000 within 50 days of this order coming into effect.

Dated 3 April 2003
Paul J Coleman
Registrar

Corporations Law
SECTION 1296(1)(c)
NOTICE OF DECISION

At a hearing held on 28 October and 12 December 2002 pursuant to section 1294 of the Corporations Law ("Law"), the Companies Auditors and Liquidators Disciplinary Board ("Board") was satisfied, on an application by the Australian Securities and Investments Commission ("Applicant") for **LINDEN JOHN GULSON** ("Respondent"), a registered Auditor, to be dealt with under section 1292(1)(d) of the Law, that the Respondent failed to carry out or perform adequately and properly the duties or functions of an Auditor by order suspended the Respondent's registration as an Auditor for a period of 60 days.

The Board further ordered that in addition to any other continuing professional education requirements of the Institute of Chartered Accountants in Australia, Mr Gulson give an undertaking that he will attend within 12 months after the date this order becomes effective, a course or courses (at an advanced level) dealing with Australian accounting standards and other Australian financial reporting requirements generally, of not less than ten hours total duration, and that he provide to the Applicant appropriate evidence of that attendance.

The Board further ordered that the Respondent pay an amount equivalent to seventy five per centum (75%) of the Commission's costs in relation to the hearing of the application.

Dated 13 December 2002
Paul J Coleman
Registrar