



Companies Auditors and  
Liquidators  
Disciplinary Board

**Annual Report  
for the year ended 30 June 2004**



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Liquidators  
Disciplinary Board

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## Overview

In the reporting year to 30 June 2004 the following were the highlights:

- The CLERP 9 legislation passed through Federal Parliament and took effect on 1 July 2004. The amendments made to the provisions governing the Board resulted in significant changes to the composition of the Board and the conduct of hearings.
- On 7 May 2004 the Chairman and Registrar appeared before the Joint Committee on Corporations and Financial Services. In response to questions they explained the manner in which the Board operates and how its jurisdiction is enlivened. Some questions were taken on notice and these were answered in writing.
- The number of “conduct” matters referred to the Board during the report year remained largely unchanged from the previous year, however there was a significant increase in the number of “administrative” matters which increased from 11 to 25.
- Overhead expenses increased marginally during the report year largely as a result of increased legal and travel costs. The large increase in people-related expenses was due mainly to the nature and complexity of the conduct matters dealt with by the Board during the report year.

The amendments made by CLERP 9 took effect on 1 July 2004 and were therefore, strictly, outside the period covered by this report. However, since those changes have now taken effect, because their effect is so far reaching and because all applications made to the Board on or after 1 July 2004 are to be dealt with under the amended provisions, the Board has decided to make a number of references to those changes throughout this report. It is believed that this will enhance the utility of this Report, as an information document, now and over the next twelve months.

## 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 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."

## **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.

Until 30 June 2004, the Board consisted of the following:

- a) a Chairperson who had to 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 had been so enrolled for a period of at least five years;
- b) a Member selected from a panel of five persons nominated by the National Council of the Institute of Chartered Accountants in Australia; and
- c) a Member selected from a panel of five persons nominated by the National Council of CPA Australia.

A deputy was appointed for each Member from the panels nominated by the specified accounting bodies. A deputy of a Member was entitled to attend meetings of the Board at which the Member was not present and while attending was deemed to be a Member. There was no provision for the appointment of a deputy for the Chairperson, but an Acting Chairperson had been appointed to act during a vacancy in the office or during any period when the Chairperson was absent from office.

The changes made by CLERP 9 have significantly affected the constitution of the Board.

From 1 July 2004, the Board comprises the following:

- a) a Chairperson;
- b) a Deputy Chairperson;

- c) 3 members selected from a panel of 7 nominated by the Board of the Institute of Chartered Accountants in Australia ("ICAA members");
- d) 3 members selected from a panel of 7 nominated by the Board of CPA Australia ("CPAA members"); and
- e) 6 business members selected by the Minister.

Each of the Chairperson and the Deputy Chairperson must be enrolled as a barrister, as a solicitor, or as a barrister and solicitor or as a legal practitioner of the High Court, any Federal Court or the Supreme Court of a State or Territory and must have been so enrolled for a period of at least five years.

ICAA members and CPAA members are collectively referred to as "accounting members". Business members represent the business community and have qualifications, knowledge or experience in business or commerce, the administration of companies, financial markets, financial products and services, economics or law.

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.

## **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 is otherwise ineligible to remain registered.

## **Applications to the Board**

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*. The categorisation has been adopted by the Board as a procedural policy and will be reviewed from time to time, particularly in light of the CLERP 9 changes.

Until 30 June 2004, the Board has categorised as **administrative matters** those matters which arose from applications pursuant to sections 1292(1)(a), 1292(2)(a), 1292(3)(a) or 1292(7) of the Corporations Act 2001 ("**the Act**").

Until 30 June 2004, section 1292(1)(a) provided that the Board may cancel or suspend for a specified period, an auditor's registration where the Board was satisfied that the person had failed to lodge a triennial statement required by s1288, or had ceased to be a resident of Australia. Sections 1292(2)(a) and 1292(3)(a) contained (and continue to

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.

From 1 July 2004 the Board categorises as administrative matters those matters which arise from applications pursuant to sections 1292(1)(a)(i) and (ii), 1292(2)(a)(i) and (ii), 1292(3)(a)(i) and (ii) and 1292(7) of the Act. The only change in substance in these provisions, as compared to those referred to above and in force before CLERP 9, has been brought about by the fact that registered auditors now no longer have an obligation to lodge a triennial statement under s1288. Instead, registered auditors now have an obligation to lodge an annual statement under new s1287A. Accordingly, the ground for an order under s1292(1)(a)(i) is now failure to lodge an annual statement under s1287A.

Until 30 June 2004, the Board has categorised as **conduct matters** those matters which arose from applications pursuant to sections 1292(1)(d), 1292(2)(d) or 1292(3)(d) of the Act.

These provisions (which were not affected by CLERP 9) 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 to be carried out or performed by a registered auditor or a registered liquidator or they are otherwise not a fit and proper person to remain registered as an auditor or liquidator.

From 1 July 2004 there are additional grounds on which applications may be made to the Board for orders under s1292. Those applications will also be treated as conduct matters. Those additional grounds are contravention of s324DB by playing a significant role in an audit without being eligible to do so (s1292(1)(a)(ia)), failing to comply with a condition of registration (s1292(1)(a)(ia) – both provisions have the same number) and not performing any (or any significant) audit work for five years and as a result ceasing to have the necessary practical experience (s1292(1)(b)).

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.

## **Operations**

The business and operations of the Board are conducted by its Registrar, Mr Paul Coleman, who is seconded from ASIC.

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 *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 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 normally used unless it is considered not to be practicable. The parties are encouraged by the Board to meet each other 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.

The pre-hearing conference is also used as a means of agreeing on a timetable for finalisation of documentation and evidence and for fixing a hearing date.

## **Mediation**

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. Mediation has proved to be a successful tool in reducing costs, both for the Board and for the parties.

## **Hearings**

All matters referred to the Board (unless withdrawn) proceed to a hearing, at which the Board will make its determination and its orders. 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 who is entitled to be given an opportunity to appear at the hearing (other than ASIC and APRA).

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

## **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 and costs (if applicable) and, for that purpose, may hold a separate hearing and deliver a separate decision.

Pursuant to section 1296, written notice of the Board's decision and the reasons for it must be given to the practitioner concerned. 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.

## **CLERP 9 changes to procedure for hearings**

The changes made by CLERP 9 have significantly affected the way in which the Board will conduct hearings. These changes, however, only affect hearings of applications which are made to the Board on or after 1 July 2004. Applications made before that date will continue to be dealt with and heard in accordance with the old procedure.

The new procedure introduced by CLERP 9 is basically for hearings to be conducted and decisions to be made by a Panel of the Board rather than by the full Board. The membership of the Board has been expanded from 3 to 14 and the Chairperson will determine the members of the Board who are to constitute a Panel to conduct a particular hearing. That Panel will then make the determination and any orders under s1292 in relation to that particular application.

A Panel will normally consist of five persons including the Chairperson or Deputy Chairperson, an ICAA member, a CPAA member and two business members. On certain occasions (such as hearing administrative matters), the Chairperson may consider it appropriate to constitute a Panel with three members, in which case the members would be the Chairperson (or Deputy Chairperson), one accounting member and one business member.

## **Costs**

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 resulting in reduction of the time of parties and the Board and 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 were completed during the report 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.

The project was divided into two stages. Stage 1 involved the design and creation of the database of applications made to the Board and a database of all of the Board's previous decisions. Stage 2 will involve adding to that database summaries of the issues that have arisen in past applications and copies of all of the decisions of reviews of Board decisions by either the Administrative Appeals Tribunal or the Federal Court of Australia. At the end of the report year Stage 1 was substantially complete. It is intended to complete Stage 2 of the project during the 2004/2005 year.

## **Board Membership**

Board members during the report year were as follows:

|  |                      |
|--|----------------------|
| Donald Rees Magarey BA LLB (Hons)(Syd) LLM (Harv)<br>FAICD | Chairman             |
| David Frank Castle BA LLM (Syd)                            | Acting Chairman      |
| Brian Thomas Morris BA(Acc) FCPA                           | Member               |
| David John Olifent FCA                                     | Member               |
| Patrick Joseph Ponting BBus FCPA                           | Deputy to Mr Morris  |
| Peter Geoffrey Barrett BEc FCA                             | Deputy to Mr Olifent |

### **Donald Magarey**

Donald Magarey is a senior partner of Blake Dawson Waldron (a 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 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.

### **David Castle**

David Castle is a Consultant to the Sydney office of Dibbs Barker Gosling, a medium size national firm specialising in business law. He is the Chairman of the Tax Agents Board of NSW and a member of the Law Society Business Law Committee.

He has practised in business, revenue, commercial and company law for over 40 years and has extensive experience in disciplinary and conduct areas of the Law Society of

NSW, the Migration Agents Registration Authority, the Australian Stock Exchange and the Tax Agents Board of NSW. He is a qualified and experienced mediator and a costs assessor appointed by the Supreme Court of New South Wales.

**Brian Morris** (nominated by CPA Australia)

Brian Morris is an accountant. He is a senior partner of a well known Adelaide accounting firm who has specialised in forensic accounting and assurance services. 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 Board and has chaired the National Technical Standards Committee of CPA Australia.

**David Olifent** (nominated by the Institute of Chartered Accountants in Australia)

David Olifent is a Chartered Accountant and was formerly a partner of PricewaterhouseCoopers for 22 years specialising in insolvency and business reconstruction. He now acts as a consultant and director. He has been a member of both state and national committees of the Insolvency Practitioners Association of Australia and the South Australian regional liaison committee to the Australian Securities and Investment Commission.

**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.

Following the changes to the composition of the Board brought about by CLERP 9:

- David Castle has been appointed as Deputy Chairperson;

- Peter Barrett has been appointed as an ICAA member of the Board;
- Patrick Ponting has been appointed as a CPAA member of the Board.

In addition, the following members have been appointed as business members:

- Professor Ian Ramsay BA LLB (Hons) (Macq) LLM (Harv)
- David Barnett BComm (Acctg) CPA
- Tom Bostock LLB (Hons) (Melbourne) FAICD
- John Keeves LLB (Hons) BEc FSIA
- Simon Stretton LLB LLM GDLP
- John Story BA LLB FAICD

Patrick Burroughs BSSc (Hons) FCA FAICD (nominated by the Institute of Chartered Accountants in Australia) has been appointed as an accountant member.

At the date of this report one position for an accountant member (to be nominated by CPA Australia) remained vacant.

## 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:

|                            | 2000/01        | 2001/02        | 2002/03        | 2003/04        |
|----------------------------|----------------|----------------|----------------|----------------|
|                            | \$             | \$             | \$             | \$             |
| Administrative Expenses:   | 102,506        | 81,025         | 244,588        | 278,260        |
| Salaries and sitting fees: | <u>205,259</u> | <u>116,898</u> | <u>130,787</u> | <u>196,013</u> |
| <b>Total:</b>              | 307,765        | 197,923        | 375,375        | 474,273        |

## 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 1/7/03  | 2        | 10             | 5           | 4              |
| Add applications        | 7        | 25             | 1           | -              |
| Deduct dealt with       | 3        | 1              | 4           | 2              |
| Deduct withdrawals      | -        | 15             | -           | 2              |
| Balance pending 30/6/04 | 6        | 19             | 2           | 0              |

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       |          |           |           |          |
|--------------|-----------|----------|----------|----------|-----------|-----------|----------|-----------|-----------|----------|
|              | 99/00     | 00/01    | 01/02    | 02/03    | 03/04     | 99/00     | 00/01    | 01/02     | 02/03     | 03/04    |
| Auditors     | 1         | -        | 1        | -        | -         | 16        | 3        | 15        | 4         | 5        |
| Liquidators  | -         | -        | -        | -        | -         | 3         | 2        | 5         | 7         | 2        |
| <b>Total</b> | <b>1</b>  | <b>0</b> | <b>1</b> | <b>0</b> | <b>0</b>  | <b>19</b> | <b>5</b> | <b>20</b> | <b>11</b> | <b>7</b> |
|              | NT        |          |          |          |           | QLD       |          |           |           |          |
|              | 99/00     | 00/01    | 01/02    | 02/03    | 03/04     | 99/00     | 00/01    | 01/02     | 02/03     | 03/04    |
| Auditors     | -         | -        | -        | -        | -         | 8         | 3        | 5         | -         | 2        |
| Liquidators  | -         | -        | -        | -        | -         | 2         | 1        | -         | 1         | -        |
| <b>Total</b> | <b>0</b>  | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b>  | <b>10</b> | <b>4</b> | <b>5</b>  | <b>1</b>  | <b>2</b> |
|              | SA        |          |          |          |           | TAS       |          |           |           |          |
|              | 99/00     | 00/01    | 01/02    | 02/03    | 03/04     | 99/00     | 00/01    | 01/02     | 02/03     | 03/04    |
| Auditors     | 2         | 1        | -        | 1        | -         | -         | -        | -         | 1         | -        |
| Liquidators  | -         | -        | 1        | -        | -         | -         | -        | 1         | -         | -        |
| <b>Total</b> | <b>2</b>  | <b>1</b> | <b>1</b> | <b>1</b> | <b>0</b>  | <b>0</b>  | <b>0</b> | <b>1</b>  | <b>1</b>  | <b>0</b> |
|              | VIC       |          |          |          |           | WA        |          |           |           |          |
|              | 99/00     | 00/01    | 01/02    | 02/03    | 03/04     | 99/00     | 00/01    | 01/02     | 02/03     | 03/04    |
| Auditors     | 10        | 8        | 5        | 4        | 22        | -         | -        | 3         | -         | 1        |
| Liquidators  | 2         | 1        | 3        | -        | 1         | -         | -        | -         | -         | -        |
| <b>Total</b> | <b>12</b> | <b>9</b> | <b>8</b> | <b>4</b> | <b>23</b> | <b>0</b>  | <b>0</b> | <b>3</b>  | <b>0</b>  | <b>1</b> |

### Results by nature of sanction

| Results of Application            | 99/00 | 00/01 | 01/02 | 02/03 | 03/04          |
|-----------------------------------|-------|-------|-------|-------|----------------|
| Registration cancelled            | 6     | 11    | 9     | 1     | 2 <sup>1</sup> |
| Registration suspended            | 9     | 12    | 5     | 4     | 4 <sup>2</sup> |
| Admonition                        | -     | -     | -     | -     | -              |
| Reprimand                         | -     | 3     | 1     | 1     | 1 <sup>3</sup> |
| Undertakings required to be given | 6     | -     | 3     | 5     | 5 <sup>4</sup> |
| Dismissed                         | -     | -     | -     | -     | -              |
| No action by Board                | 1     | -     | 1     | -     | -              |
| Withdrawn by Commission           | 16    | 10    | 15    | 3     | 15             |

### Notes

1. One auditor and one liquidator.
2. One auditor and three liquidators.
3. One auditor.
4. Two auditors and three liquidators were required to give undertakings (NB This may be in addition to other orders.)

The results shown are after review or appeal (if applicable) and 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 2004**

There were no reviews of decisions of the Board during the report year. At 30 June 2004 there were no reviews of Board decisions pending.

## **Other Proceedings**

### **David Ralph Goodman**

In June 2004 Mr Goodman made an application to the Board to have the application brought against him by ASIC struck out on the grounds that the Board lacked the jurisdiction to deal with the application.

On 28 June 2004, the Board ruled that it indeed had jurisdiction and ordered that the matter proceed to a hearing of the application in accordance with an agreed timetable.

## **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.

## **Contact Officer**

The contact officer for this Annual Report is the Registrar, Mr Paul Coleman, phone (02) 9911 2970, facsimile (02) 9911 2975, GPO Box 3731, SYDNEY 2001. Email: paul.coleman@caldb.gov.au.

**DECISIONS GAZETTED  
YEAR ENDED 30 JUNE 2004**

Matter No. 18/VIC02

CORPORATIONS ACT 2001  
SECTION 1296(1)(c)  
Notice of Decision

**Whereas:**

- A. The Australian Securities and Investments Commission (“ASIC”) made application to the Companies Auditors and Liquidators Disciplinary Board (“the Board”) pursuant to s1292(2) of the Corporations Act, 2001 ("the Act") to have **ANDREW WILLIAM BECK** (“the Respondent”), a registered liquidator, dealt with under s1292 of the Act on the basis that by reason of the matters set forth in the amended application and the amended statement of facts and contentions filed with the Board that the Respondent, amongst other matters, has contravened s1292(2)(d)(ii) of the Act in that he has failed to carry out or perform adequately and properly the duties or functions required by an Australian law to be carried out or performed by a registered liquidator as joint and several receiver and manager of Irlmond Pty Ltd (ACN 006 314 870) (**'Irlmond'**) and APS (Wholesale) Pty Ltd (ACN 062 248 962) (**'APS'**).
- B. The Board, pursuant to s1294 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.
- C. ASIC and the Respondent have conducted a lengthy mediation and have reached a settlement which ASIC and the Respondent have submitted to the Board for approval.
- D. The Respondent contests the allegations of ASIC other than those reflected in the findings of the Board set out below and in particular that he has breached s.232 of the Corporations Law as it was prior to 15 July 2000.

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

- (1) In the period between appointment on 12 February 1999 and 28 April 1999:
  - (a) the Respondent conducted the receiverships of Irlmond and APS as though the debts each owed to certain creditors were cross collateralised;
  - (b) the Respondent did not maintain separate records of receipts and payments of each of Irlmond and APS.
- (2) Subsequent to 28 April 1999 and at least until 22 November 1999 the Respondent did not conduct two separate receiverships of Irlmond and APS in a manner consistent with the declaration of Finkelstein J made on 28 April 1999 in Federal Court proceedings V74 of 1999.
- (3) In relation to the receiverships of Irlmond and APS the Respondent:

- (a) failed to keep such records as correctly recorded and explained all transactions entered as receiver and manager as required by s.421(1)(d) of the Act;
  - (b) failed to lodge accurate accounts with ASIC as required by s.432 of the Act;
  - (c) failed to lodge a report as required by s421A of the Act within two months of appointment;
  - (d) failed to ensure accounting entries in accounts lodged with ASIC were not false or misleading.
- (4) The Respondent:
- (a) failed to maintain records that enabled the affairs of the receivership of each of Irlmond and APS to be easily distinguished and separated;
  - (b) failed to lodge amended accounts with ASIC that accurately record and explain all transactions entered into as:
    - (i) receiver of Irlmond;
    - (ii) receiver of APS;
  - (c) failed to ensure the accounts lodged in relation to each of APS and Irlmond correctly recorded the amounts owing under the relevant charges upon the appointment of the Respondent and at the end of the initial six month period of the receiverships;
  - (d) since 12 November 1999 failed to take steps to ascertain whether Irlmond had in fact made payments to certain creditors that exceeded what was due to them.
- (5) The Respondent failed to fulfil the duties owed by the Respondent pursuant to section 421(1)(b) of the Act in relation to Irlmond.

## **DECISION**

It is the decision of the Board, being satisfied on the application of ASIC, that the Respondent has failed during the course of the receiverships to carry out or perform adequately and properly the duties or functions required by the Act to be carried out or performed by a registered liquidator as provided in s1292 (2)(d)(ii) of the Act.

## **ORDER**

1. The Board therefore orders (without any admissions of liability on the part of the Respondent as far as third parties are concerned) that pursuant to section 1292(9) of the Act the Respondent is required to undertake:
  - (1) that the Respondent will use his best endeavours to resign all his current appointments as a receiver, administrator, manager or liquidator for the holding of which he is required to be registered as a liquidator (each an “external administrator”) as soon as is reasonably practicable having

regard to the circumstances of each particular administration and the interests of the creditors concerned and in any event not later 8 August 2003;

- (2) that he will not accept any other or additional appointment as external administrator, whether solely or as joint appointee, up to and including 8 August 2004; and
  - (3) that for the 12 month period commencing 9 August 2004:
    - (a) he will not accept any appointments as sole external administrator; and
    - (b) that he will only accept appointments as external administrator where such appointments are joint appointments;
  - (4) that in each of the next three periods of 12 months commencing 8 August 2003 the Respondent shall attend ten 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; and
  - (5) that the Respondent shall provide ASIC with proof of compliance with paragraph (4) within 30 days of the completion of each 12 month period.
2. Pursuant to s223 of the ASIC Act, the Respondent within 30 days pay the costs of ASIC fixed at \$50,000.

Dated 18 August 2003  
Paul J Coleman  
Registrar

Matter No.: 19/VIC02

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

**Whereas:**

- By an amended application dated 2 April 2003, ASIC made application to the Companies Auditors and Liquidators Board ("the Board") pursuant section 1292 (2)(d)(ii) of the Corporations Act 2001 ("Act") to have the Respondent, **ANDREW STEWART HOME**, a registered liquidator, dealt with under s1292 of the Act, on the basis that the Respondent satisfies the criteria specified in s 1292(2)(d)(ii) of the Act in relation to his conduct as receiver and manager of Irlmond Pty Ltd ("Irlmond") and APS (Wholesale) Pty Ltd ("APS").

- The Board, pursuant to s1294 of the Act, has provided ASIC and the Respondent with an opportunity to appear, and adduce evidence before, the Board;
- ASIC and the Respondent have conducted negotiations and a mediation and have reached a settlement which ASIC and the Respondent have submitted to the Board for approval; and
- The Respondent contests the allegations of ASIC other than those reflected in the findings of the Board below and in particular contests that he has breached s.232(4) of the Corporations Law as it was prior to 15 July 2000.

The Board is satisfied on the application of ASIC that:

1. On 12 February 1999, the Respondent and Andrew William Beck ("Beck") were appointed joint and several receivers of Irlmond and APS;
2. The Respondent had little involvement in the receiverships of which his co-appointee had the carriage and in such circumstances:
  - (a) he did not take any steps to ensure that the report required by s421A was lodged on time;
  - (b) he did not keep himself informed on the progress of the receiverships of Irlmond or APS;
  - (c) he left the conduct of the receiverships largely to his co-appointor without supervision, reporting or intervention;
  - (d) he failed to ensure that his co-appointee kept records as required by s421(1)(d) of the Act;
3. the Respondent has failed during the course of the receiverships to carry out or perform adequately and properly the duties or functions required by the Act to be carried out or performed by a registered liquidator as provided in s1292 (2)(d)(ii) of the Act

## DECISION

The Board therefore orders (without any admissions of liability on the part of the Respondent as far as third parties are concerned) that:

1. Pursuant to section 1292(9) of the Act the Respondent is required to undertake:
  - (a) that save in relation to the liquidation of Duke Holdings Limited, he did by 20 July 2003 resign all his current appointments as external administrator;

- (b) that before 1 October 2003 he will not accept any appointment or re-appointment as a receiver, liquidator or administrator or in any capacity which requires him to be a registered liquidator; and
2. Pursuant to s223 of the ASIC Act, the Respondent within 30 days pay the costs of ASIC fixed at \$20,000.

Dated 8 August 2003  
Paul J Coleman  
Registrar

Matter No.: 22/NSW01

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

At a hearing held on 9, 10 & 11 September 2002, 8 October 2002, 12 December 2002 and 21 August 2003 pursuant to section 1294 of the Corporations Law ("Law"), the Companies Auditors and Liquidators Disciplinary Board ("Board") being satisfied, on an application by the Australian Securities and Investments Commission ("Applicant") for **GREGORY STEPHEN LOUREY** ("Respondent"), a registered Auditor, to be dealt with under section 1292(1)(d) of the Law in relation to the audit of National Textiles Limited for the year ended 30 June 1999, that the Respondent failed to carry out or perform adequately and properly the duties or functions of an Auditor by order reprimanded the Respondent.

The Board further ordered that pursuant to s223 of the ASIC Act, the Respondent is to pay 40% of the Applicant's costs in relation to the hearing.

Dated 5 September 2003  
Paul J Coleman  
Registrar

Matter No.: 38/NSW03

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

At a hearing held on 25 November 2003 pursuant to section 1294 of the Corporations Act, 2001 ("Act"), the Companies Auditors and Liquidators Disciplinary Board ("Board") being satisfied, on an application by the Australian Securities and Investments Commission ("Applicant") for **HELENA RULE** ("Respondent"), a registered Auditor, to be dealt with under section 1292(7) of the Act, that the Respondent was disqualified from managing corporations pursuant to Part 2D.6 of the Act by order cancelled the Respondent's registration as an Auditor.

The Board further ordered pursuant to section 223 of the Australian Securities and Investments Commission Act, 2001 that the Respondent pay the Applicant's costs in the sum of two thousand, eight hundred and fifty dollars (\$2,850).

Dated 28 November 2003

Paul J Coleman

Registrar

Matter No.: 41/VIC03

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 Act to have **MICHAEL BERNARD SHULMAN** ("the Respondent") a registered company 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 audits of three companies for the financial year ended 30 June 2001;
- 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.

It is the decision of the Board, being satisfied on the application of ASIC, that the Respondent has failed to carry out or perform adequately and properly the duties of an auditor as provided in subsection 1292(1)(d)(i) of the Act in that:

1. in respect of the audits of the three companies, the Respondent failed to adequately document the extent of audit procedures performed, the results thereof and the conclusions drawn from the audit evidence obtained in contravention of AUS 208 paragraphs .02, .05 & 06;
2. in respect of the audits of the three companies, there is insufficient evidence in the audit files and working papers of sufficient appropriate audit work being completed, between audit completion and signing of the audit report, to confirm that there have been no events in the intervening period that could have a material impact on the financial position of the company in contravention of AUS 706, paragraph .04;

3. in respect to the audits of the three companies, there is insufficient evidence in the audit files and working papers to indicate that sufficient appropriate audit work was performed in relation to unrecorded liabilities, creditors and accruals in contravention of AUS 208, paragraphs .02, .05 & .06; and AUS 502, paragraph .02;
4. in respect of the audit of one of the companies:
  - i. there is insufficient evidence in the audit files and working papers that verification of opening balances was considered or whether or not the work of the previous auditor would or could be relied upon as sufficient appropriate audit evidence that the opening balances were free of material misstatement. There is insufficient evidence in the audit files and working papers to indicate that other procedures were performed to verify opening balances in contravention of AUS 26,8, paragraphs .02, .05, & .06; AUS 510, paragraph .02; AUS 702, paragraphs .55 & .56; and AUS 704, paragraphs .02 & .07;
  - ii. there is insufficient evidence in the audit files and working papers supporting the revaluation of land & buildings by directors, and supporting whether or not registrable interests in property have been verified with external parties to confirm ownership in contravention of AUS 208, paragraphs .02, .05 & .06; and AUS 502, paragraph .02.
5. in respect of the audit of one of the companies:
  - i. there is insufficient evidence in the audit files and working papers to support the assertion that the company had the support of its ultimate parent entity. Insufficient evidence has been obtained to support the auditor's reliance on representations made by the ultimate parent entity in contravention of AUS 520, paragraphs .02, .05 & .11;
  - ii. there is insufficient evidence in the audit files and working papers in relation to an assessment of recoverability for deferred expenditure in contravention of AUS 208, paragraphs .02, .05 & .06; and AUS 502, paragraph .02;
  - iii. there is insufficient evidence in the audit files and working papers to support the assertion that the share value was valued at the lower of cost and net realisable value in contravention of AUS 208, paragraphs .02, .05 & .06; and AUS 502, paragraph .02;
6. in respect of the audit of one of the companies:
  - i. there is insufficient evidence in the audit files and working papers supporting the recoverability of receivables in contravention of AUS 208, paragraphs .02, .05 & .06; and AUS502, paragraph .02;

- ii. there is insufficient evidence in the audit files and working papers: that costs associated with inventory were vouched to supporting documentation; that the carrying value of inventory was considered; or to indicate that the legal or beneficial ownership was considered; in contravention of AUS208, paragraph .02, .05 & .06; AUS 502, paragraph .02; and AUS 506, paragraphs .02, .21 & .22.

The Board therefore orders that the registration of the Respondent as an auditor be suspended for a period of one (1) year commencing 1 April 2004. The Board also requires the following undertakings pursuant to section 1292(9) of the Act, and notes that the Respondent consents to give them:

1. The Respondent will attend an additional 30 hours of continuing professional education in relation to audit practice and procedure, in particular in relation to Auditing Standards (AUS's) issued by, or on behalf of, CPA Australia and the Institute of Chartered Accountants in Australia, in addition to that required by the Institute of Chartered Accountants in Australia Professional Development Program;
2. The Respondent will provide ASIC with proof of compliance with paragraph 1 by 30 April 2005;
3. The Respondent by 30 April 2004 will appoint Mr Ross Fraser a registered company auditor, to undertake a review equivalent to a CA peer review of two of his completed audit files for the financial year ended 30 June 2003 ("the Review"), such files to be selected by Mr Fraser from a list provided by the Respondent of all company audit files for the year ended 30 June 2003 showing the fees for each file;
4. The Respondent will provide ASIC with a copy of the Review referred to in paragraph 3 within 7 days of the receipt of the Review by the Respondent;
5. The Respondent and Stannards Accountants & Advisors Pty Ltd will implement all recommendations made in the Review by Mr Fraser; and
6. The Respondent will ensure that the terms of engagement of the person referred to in the undertaking referred to in paragraph 3 will require such person to report to ASIC, (Attention: Mr Nick Horspool) by 30 April 2005 on the action taken by the Respondent and Stannards Accountants & Advisors Pty Ltd to implement recommendations made in the Review.

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 \$20,000.00, payable in two monthly instalments of \$10,000.00, with the first instalment payable within 30 days of this order coming into effect and the second instalment payable within 60 days of this order coming into effect.

Dated 30 March 2004  
Paul J Coleman  
Registrar

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

At a hearing held on 9, 10 and 11 December 2003, 13 February, 22 March and 2 April, 2004 pursuant to section 1294 of the Corporations Act ("Act"), the Companies Auditors and Liquidators Disciplinary Board ("Board") being satisfied, on an application by the Australian Securities and Investments Commission ("Applicant") for **JOHN VOURIS** ("Respondent"), a registered Liquidator, to be dealt with under section 1292(2)(d) of the Law in relation to the external administration of Epromotions Pty Limited, that the Respondent has failed to carry out or perform adequately and properly the duties required by an Australian law to be carried out or performed by a registered liquidator, by order suspended the Respondent's registration as a liquidator for three months to commence 30 days after this order takes effect.

The Board further ordered pursuant to s223 of the Australian Securities and Investments Commission Act, 2001 that the Respondent pay 50% of the Applicant's costs in relation to the hearing on a party and party basis, such costs to be as agreed between the parties or, failing agreement within 60 days after this order takes effect, such costs to be determined in accordance with the Board's Practice Note on Costs.

Dated 6 April 2004  
Paul J Coleman  
Registrar

Matter No.: 22/SA02

Corporations Act  
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(1) of the Corporations Act ("Act") to have **GREGORY RICHARD WIESE** ("the Respondent"), a registered company auditor, 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(1)(d) of the Act in relation to audits of A C Insurance Brokers (SA) Pty Ltd ("ACIB") for the years ended 30 June 2000 and 30 June 2001;
- 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 the duties of an auditor as provided in sub-paragraph 1292(1)(d)(i) of the Act, in that he:

1. should have qualified his audit opinion to report a deficiency in the Insurance Broking Account operated by ACIB; and
2. failed to comply with auditing standards AUS 208 “Documentation”, AUS 302 “Planning” and AUS 502 “Audit Evidence”.

The Board therefore orders that the Respondent give an undertaking that he will not, for a period of 15 months, commencing on the date this order is served on him, sign an audit report required to be signed by a registered company auditor.

The Board further orders that the Respondent undertake 12.5 additional hours of professional development in audit practice and procedure during the period of the undertaking, above and beyond what is required by the Institute of Chartered Accountants Professional Development Program, and that the Respondent provide ASIC with proof his compliance with this order in writing, addressed to the Assistant Director, Enforcement, 8<sup>th</sup> floor, 100 Pirie Street, Adelaide, showing ASIC’s reference 02-50021, within 30 days of the completion of the 15 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 relation to the hearing in the sum of \$15,000 within 28 days of this order coming into effect.

Dated 8 August 2003  
Paul J Coleman  
Registrar

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

At a hearing held on 25 November 2003 pursuant to section 1294 of the Corporations Act ("Act"), the Companies Auditors and Liquidators Disciplinary Board ("Board") made the following orders:

**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 **ANDREW HUGH JENNER WILY** ("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:

Amberday Pty Ltd ACN 079 683 024 ("Amberday")  
(Receivership & Liquidation);

Leunam Pty Ltd ACN 002 570 041 ("Leunam") (Liquidation);

A R & L M Marsh Pty Ltd ACN 062 005 529 ("Marsh")  
(Administrator appointed);

Next Generation Child Care Services Pty Ltd Pty Ltd ACN  
059 024 154 ("Next Generation") (Administrator appointed  
& Liquidation);

Lightmoves Technologies (NSW) Pty Ltd ACN 003 838 828  
(Liquidation); and

IM Raspberry Pty Limited ACN 002 670 055 ("IMR")  
(Liquidation);

- 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.

It is the decision of the Board, being satisfied on the application of ASIC, without any admissions on the part of the Respondent as far as liability to third parties is concerned, 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:

1. in respect of the Amberday external administrations during the period from January 1998 to October 1998

A. he failed to:

- a) detect a fraud committed in those external administrations by a staff member and the conduct undertaken by that staff member in those and other external administrations to cover up that fraud;
- b) identify trading losses which the staff member referred to in paragraph (a) had attempted to disguise;
- c) by reason of the matters identified in paragraph (a) and (b) above, close the business in question with the consequence that he traded the business in question where the trading losses exceeded the assets;
- d) properly and adequately implement or carry out his firm's internal control procedures; and
- e) properly supervise a partner and a member of his firm;

B. i) during the period in which he failed to properly supervise a partner and a member of his firm, he failed to identify the incurring of, and allowed to be incurred, trading losses which that staff member had attempted to disguise; and

- ii) whilst having a receiver's lien over the assets of the company, he agreed to compromise agreements with a number of creditors out of his firm's funds as well as liquidation funds in which they agreed to accept less than 100 cents in the dollar;

2. he was late in lodging minutes of meetings, reports and forms as required by the Law for the Amberday and Next Generation external administrations in 1998 and the Leunam external administration in 1999;

3. in respect of the Lightmoves and Next Generation external administrations, he failed to cap his remuneration in a resolution put to creditors in accordance with the Insolvency Practitioners Association of Australia ("IPAA") Guidelines;
4. he failed to convene and hold the annual meetings of members and creditors pursuant to section 508(1) of the Law which were due for the Next Generation external administration in September 2001 and 2002 and for the Marsh external administration in September 2002;
5. in respect of the IMR external administration, he accepted appointment as external administrator in circumstances where he failed to put a formal resolution to creditors obtaining their express consent for him to act as liquidator and thereby breached section 532(2)(c)(i) of the Law.

The Board therefore orders that the registration of the Respondent as a liquidator be suspended for a period of 4 months with effect from 60 days from the date of these orders. The Board also requires the following undertakings pursuant to section 1292(9) of the Act and notes that the Respondent consents to give them:

1. the Respondent will engage, within 30 days from the giving of this undertaking, at the expense of Armstrong Wily, Mr Michael Wayland of O'Brien Palmer Wayland Pty Ltd as an external compliance consultant ("the Compliance Consultant") whose appointment and terms of reference are to be approved by ASIC, to review, assess, make recommendations and report in writing within 60 days of his engagement by the Respondent, or such later date as may be approved in writing by ASIC, to Armstrong Wily in respect of Armstrong Wily's compliance systems and continuing education program for insolvency staff concerning compliance with Guidelines issued by IPAA and statutory obligations generally by the appointed external administrator in relation to any external administrations under Chapter 5 of the Act ("the Report");
2. the Respondent will provide ASIC (Attention: Mr Nick Horspool) with a copy of the Report covering the matters referred to in paragraph 1 within 7 days of the receipt of the Report by Armstrong Wily;
3. the Respondent and Armstrong Wily will implement all recommendations made by the Compliance Consultant in the Report within 60 days of receipt of the Report, or by such later date as may be agreed in writing by ASIC except to the extent that compliance with any recommendation may be excused by ASIC in writing;
4. the Respondent will ensure that the terms of engagement of the Compliance Consultant require the Compliance Consultant to report to Armstrong Wily and ASIC (Attention: Mr Nick Horspool) within 60 days of Armstrong Wily implementing the recommendations made in the Report, or such later date as may

be agreed in writing by ASIC, on the action taken by him and Armstrong Wily to implement recommendations made in the Report;

5. within the period of 12 months from the date of this order coming into effect, the Respondent will attend 15 hours of Continuing Professional Education in relation to insolvency practice and procedure in addition to that required by the Institute of Chartered Accountants Professional Development Program;
6. the Respondent will provide ASIC with proof of compliance with paragraph 5 within 30 days of the completion of the 12 month period beginning on the date of this order;
7. the Respondent will pay (or set-off from amounts owing to the Respondent in the case of Baiada Poultry Pty Ltd) unpaid creditors in the Amberday external administration as set out in the attached schedule;
8. the Respondent will advertise in a daily newspaper circulating generally in the State of New South Wales for all unpaid creditors in the Amberday external administrations, including creditors who may previously have compromised their debt, to submit proofs and will pay all debts that are admitted to proof, in addition to the payments specified in the attached Schedule; and
9. the Respondent undertakes to fulfil the obligations arising under paragraph 7 within 30 days of this order coming into effect, and to fulfil the obligations arising under paragraph 8 within 30 days of each such debt being admitted to proof and to provide ASIC with proof of compliance with paragraphs 7 and 8 within 14 days of the expiry of the relevant 30 day period.

The Board notes that ASIC will issue a no-action letter to the Respondent in respect of the matters the subject of the Report within 14 days of receiving a request from the Respondent.

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 relation to the hearing in the sum of \$80,000 within 30 days of this order coming into effect.

Dated 2 December 2003

Paul J Coleman

Registrar

This is the Schedule referred to in undertaking number 7 in the Board's order of 25 November 2003 relating to Andrew Hugh Jenner Wily.

| <b>Name of Creditor</b> | <b>Total Debts</b>  | <b>Rate<br/>Cents<br/>&amp;<br/>Dollars</b> | <b>Amount Paid</b> | <b>Balance</b>      |
|-------------------------|---------------------|---|--------------------|---------------------|
| Pendle Ham & Bacon      | \$1077.70           | .65   | \$700.50           | \$377.20            |
| Pre-Pak Carton Meats    | \$3968.57           | .69   | \$2,750.00         | \$1,218.57          |
| Gills Meat              | \$59,933.73         | .68   | \$40,000.00        | \$19,933.73         |
| R & M Meats             | \$23,187.88         | .95   | \$22,000.00        | \$1,187.88          |
| Lesnies                 | \$4,330.07          | .81   | \$3,500.00         | \$830.07            |
| MO & CA Bailey          | \$563.85            | .89   | \$502.00           | \$61.85             |
| Intergral Energy        | \$6,822.50          | .33   | \$2,251.00         | \$4,571.50          |
|                         | <b>\$99,884.30</b>  |   | <b>\$71,703.50</b> | <b>\$28,180.80</b>  |
| Melrina P/L             | \$2,056.32          | -   | -                  | \$2,056.32          |
| Birds Smallgoods        | \$3,310.18          | -   | -                  | \$3,310.18          |
| Cowra Freezing Works    | \$10,498.74         | -   | -                  | \$10,498.74         |
| Micris Packaging        | \$505.72            | -   | -                  | \$505.72            |
| Baiada Poultry          | \$46,106.10         | -   | -                  | \$46,106.10         |
| Binnars Eggs            | \$2,625.00          | -   | -                  | \$2,625.00          |
| Denco Engineering       | \$471.40            | -   | -                  | \$471.40            |
| 198 FM                  | \$1,760.00          | -   | -                  | \$1,760.00          |
| ATO – Group Tax         | \$14,460.38         | -   | -                  | \$14,460.38         |
| Superannuation          | \$4,423.98          | -   | -                  | \$4,423.98          |
| Fiora Distributors      | \$3,788.00          | -   | -                  | \$3,788.00          |
| Royal & Sun Alliance    | \$4,077.50          | -   | -                  | \$4,077.50          |
| Bulli Printery          | \$255.00            | -   | -                  | \$255.00            |
| Rob Adam Refrigeration  | \$783.00            | -   | -                  | \$783.00            |
| CR Cavenagh & Sons      | \$1,600.00          | -   | -                  | \$1,600.00          |
|                         | <b>\$196,605.62</b> |   | <b>\$71,703.50</b> | <b>\$124,902.12</b> |

Matter No 29/NSW03

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

At a hearing held on 25 November 2003 pursuant to section 1294 of the Corporations Act, 2001 ("Act"), the Companies Auditors and Liquidators Disciplinary Board ("Board") being satisfied, on an application by the Australian Securities and Investments Commission ("Applicant") for **Adam Richard Field** ("Respondent"), a

registered Liquidator, to be dealt with under section 1292 of the Act, that the Respondent:

1. had failed to carry out or perform adequately and properly any duties or functions required by an Australian law to be carried out or performed by a registered liquidator within the meaning of section 1292(2)(d)(ii) in that he had contravened section 1284 of the Act; and
2. had contravened section 1288 of the Act

by order cancelled the Respondent's registration as a Liquidator.

Dated 4 December 2003  
Paul J Coleman  
Registrar

Matter No 28/NSW03

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

At a hearing held on 9 December 2003 pursuant to section 1294 of the Corporations Act, 2001 ("Act"), the Companies Auditors and Liquidators Disciplinary Board ("Board") was satisfied, on an application by the Australian Securities and Investments Commission ("Applicant") for **Glendon Michael Green** ("Respondent"), a registered Liquidator, to be dealt with under section 1292 of the Act, that the Respondent had failed to carry out or perform adequately and properly any duties or functions required by an Australian law to be carried out or performed by a registered liquidator within the meaning of section 1292(2)(d)(ii) in that he had contravened section 1284 of the Act.

The Board ordered that the Respondent's registration as a Liquidator be suspended for a period of three months.

The Board further ordered that the Respondent undertake not to practise as a liquidator or accept any appointments as a liquidator until all documents have been lodged with the Applicant, including a certificate of currency, and all of the Applicant's requirements have been complied with.

The Board also ordered that the Respondent pay the Applicant's costs in the amount of \$600 pursuant to section 223 of the Australian Securities and Investments Commission Act.

Dated 11 December 2003  
Paul J Coleman  
Registrar