



Companies Auditors and
Liquidators
Disciplinary Board

**Annual Report
for the year ended 30 June 2006**



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Liquidators
Disciplinary Board

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for the year ended 30 June 2006**

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1 September 2006

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 2006 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

Overview

In the reporting year to 30 June 2006 the following were the highlights:

- The powers of the Board were the subject of two constitutional challenges in the High Court of Australia by Messrs Albarran and Gould. Both of those applications were remitted to the Federal Court of Australia for hearing before the Full Court. Since the end of the reporting year the Federal Court has handed down its decision and has concluded that the exercise of power under s1292(2) of the Corporations Act 2001 ("the Act") by the Board does not involve the exercise of judicial power. Both applicants have sought special leave to appeal to the High Court of Australia.
- The Board has a full program of contested hearings as well as a smaller ongoing program of administrative hearings. Generally, contested hearings are becoming more time consuming as the issues involved in these matters become more complex. Some matters have been the subject of ongoing appeals to the Administrative Appeals Tribunal or to the Federal Court of Australia. Several conduct matters dealt with during the reporting year were completed in the new financial year and will be reported upon in the 2007 Annual Report.
- The expenses of the Board increased from the previous financial year partly because of the altered workload of the Board and the increase in the number of members as a result of the CLERP 9 amendments.
- The Board is pleased to have the services of a new Registrar (Gary Hoare) who commenced with the Board in November 2005. The new Registrar has had a long career in professional accountancy and brings to the Board a wide range of experience which is proving to be extremely useful.
- As part of his role the Registrar has, with the support of the Chairman, implemented or continued a broad and ongoing program of liaison with various stakeholders including ASIC, APRA, ICAA, CPAA, IPAA, NIA, AICD, and the newly formed Audit Quality Review Board.
- Two new members, Jeffrey Knott and Philip Jefferson, joined the Board during the year increasing the number of members to the full complement of 14 members.

Role of the Board

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 has an important role in the Australian economy, along with several other bodies including the Australian Securities and Investments Commission ("ASIC"), the Australian Prudential Regulation Authority ("APRA") and the Financial Reporting Council and various professional associations, in the regulation of auditors and liquidators.

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 their various roles in administration of companies in financial difficulties, in maximising the returns to creditors of failed companies, ensuring early payment of recoverable moneys and identifying and reporting deficient conduct by company officers.

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

Constitution

The Board consists of the following:

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

The Chairperson and the Deputy Chairperson must each 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 is required by the Act to determine whether a registered auditor or registered liquidator has contravened provisions of the Corporations Act, has failed to carry out their duties and functions adequately and properly, is not a fit and proper person to remain registered, is subject to disqualification or is otherwise ineligible to

remain registered. If the Board determines any of these matters to be established then the Board must decide whether to make any and, if so, what orders.

Applications to the Board

Applications to the Board can be made only by either ASIC or 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 the matters brought before it as *administrative matters* or *conduct matters*. The categorisation has been adopted by the Board as a procedural policy and will be reviewed from time to time.

Administrative Matters

The Board categorises as administrative matters those matters which arise from applications pursuant to the following provisions of the Act:

- s1292(1)(a)(i) - failing to lodge annual statement under s1287A (auditor)
- s1292(1)(a)(ii) - ceasing to be resident in Australia (auditor)
- s1292(2)(a)(i) - failing to lodge triennial statement under s1288 (liquidator)
- s1292(2)(a)(ii) - ceasing to be resident in Australia (liquidator)
- s1292(3)(a)(i) - failing to lodge a statement under s1288(5) (liquidator)
- s1292(3)(a)(ii) - ceasing to be resident in Australia (liquidator)
- s1292(7)(a) - becoming disqualified from managing corporations under Part 2D.6 (auditor or liquidator)
- s1292(7)(b) - becoming incapable because of mental infirmity of managing affairs (auditor or liquidator)

In general the Board has power to cancel or suspend the registration of a registered auditor or a registered liquidator, if any of these grounds has been established to the satisfaction of the Board. If a ground is established under s1292(7)(a) or (b) then the Board has no discretion, it must cancel the registration of the practitioner concerned.

Conduct Matters

The Board categorises as conduct matters those matters which arise from applications pursuant to the following provisions of the Act:

- s1292(1)(a)(ia) - contravening s324DB by playing a significant role in an audit without being eligible to do so (auditor)
- s1292(1)(a)(ia) - failing to comply with a condition of registration (auditor)
- s1292(1)(b)(i) - not performing any audit work for 5 years and as a result ceasing to have the necessary practical experience (auditor)
- s1292(1)(b)(ii) - not performing any significant audit work for 5 years and as a result ceasing to have the necessary practical experience (auditor)
- s1292(1)(d)(i) - failing to carry out the duties of an auditor (auditor)
- s1292(1)(d)(ii) - failing to carry out the duties or functions required to be carried out by a registered auditor (auditor)
- s1292(1)(d) - not being a fit and proper person to remain registered as an auditor (auditor)

- s1292(2)(d)(i) - failing to carry out the duties of a liquidator (liquidator)
- s1292(2)(d)(ii) - failing to carry out the duties or functions required to be carried out by a registered liquidator (liquidator)
- s1292(2)(d) - not being a fit and proper person to remain registered as a liquidator (liquidator)
- s1292(3)(d) - failing to carry out the duties of a liquidator of a body corporate or otherwise not being a fit and proper person to remain registered as a liquidator of that corporation (liquidator)

In general, the Board has power to cancel or suspend the registration of a registered auditor or registered liquidator where any of those grounds has been established to the satisfaction of the Board.

In relation to conduct matters under s1292(1)(d), (2)(d) or (3)(d) the Board has additional powers under s1292(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.

Registrar

The business and operations of the Board have been conducted by its Registrar, Mr Gary Hoare. Mr Hoare, who was formerly an audit partner with KPMG, was appointed Registrar on 14 November 2005.

Prior to Mr Hoare's appointment the acting Registrar was Mr Ron Swinney who was seconded from ASIC on 20 July 2005. The Board considerably appreciated the skills and experience which Mr Swinney brought to the role and is grateful for his contribution to the Board's functions while in the role of acting Registrar.

Operations

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. It is the policy of the Board that a hearing will normally be held in the capital city of the State or Territory of residence of the Respondent. The application of this policy may be varied in individual cases.

Procedures have been adopted by the Board and are contained in its *Manual of Practice and Procedure*. 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 Manual of Practice and Procedure, 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 reviewed and 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 Chairman conducts a pre-hearing conference 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 for pre-hearing conferences unless it is considered not to be practicable in any particular case. The parties are encouraged by the Board to meet each other in person to discuss their respective contentions and determine common ground.

The benefits which flow from these procedures include shortening of proceedings and in some cases, agreement on acceptable outcomes. 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 and exchange of documentation and evidence, for resolving preliminary matters 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 function and to arrive at an appropriate order.

Panels

Changes to the Board's governing legislation in recent years have significantly affected the way in which the Board now conducts hearings. Hearings are conducted and decisions are made by a Panel of the Board rather than by the full Board. The Chairperson determines the members of the Board who are to constitute a Panel to conduct a particular hearing. That Panel will then make a determination and make any orders under s1292 in relation to that particular application.

A Panel will normally consist of five persons and must include the Chairperson or Deputy Chairperson as Chairman of the Panel. The Panel will also include, 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 normally be

the Chairperson (or Deputy Chairperson), one accounting member and one business member.

Hearings

All matters referred to the Board (unless withdrawn) must proceed to a hearing, at which a Panel will make a determination and orders. A Panel may adjourn the hearing to enable it to consider and formulate its reasons for a determination or its orders. 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, a Panel will usually hold a hearing with all members and parties physically present. In other matters, a Panel may arrange hearings by videolink with one or more members or parties in different locations. Legal representation is permitted at all hearings, for all parties. Parties may also represent themselves.

Panel decisions

In relation to each application, the Panel makes a decision as to whether or not it is satisfied that the contentions have been established and, if so, whether or not to exercise any of the Board's powers under s1292 or whether or not it is required to make an order under s1292(7). The Panel 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 s1296, written notice of a 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 Panel has decided to refuse to exercise its powers under s1292 or has decided that it is not required to make an order under s1292(7) (see s1274(2)(a)(iii)).

Where the Panel has decided to exercise any of the powers under s1292 or has decided that it is required to make an order under s1292(7), the Board is required pursuant to s1296 (1) to publish in the Commonwealth Gazette a notice setting out the decision. By arrangement with the ICAA, IPAA, CPA Australia, NIA 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 reporting year are set out at the conclusion of this report. Other decisions of the Board during the year are subject to restrictions on publication.

Costs

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

A Panel may also order payment by a party of all or part of the Board's costs of and incidental to a hearing.

Review Of Board Decisions

A review of any decision made under s1292 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.

When a decision of the Board is under review the Board will often be restricted from publishing any notice of decision. Such restriction may be sought by either of the parties and is often sought to avoid prejudice to a Respondent who may be successful in having a decision of the Board reversed or altered.

Procedural Initiatives

The Board has a policy of continuous improvement to its procedures which are intended to keep to a minimum the time of parties and the Board.

Stage 1 of the Board's database project has been completed resulting in the automation of a very large proportion of the Registry function.

Stage 2, which involved the creation of a database of all Board decisions and the decisions of the reviews of Board decisions by the AAT and Federal Court of Australia was also substantially completed and is being worked on in conjunction with the development of the Board's Website.

Board Membership

Board members during the reporting year were as follows:

Name	Role	Term Expires
Donald Magarey	Chairman	31 May 2009
David Castle	Deputy Chairman	31 May 2009
Patrick Burroughs	Accounting Member ICAA	31 August 2007
Philip Jefferson	Accounting Member ICAA	5 October 2008
Jeffrey Knott	Accounting Member CPAA	5 October 2008
Brian Morris	Accounting Member CPAA	20 October 2009
David Olifent	Accounting Member ICAA	20 October 2009
Patrick Ponting	Accounting Member CPAA	20 October 2009
David Barnett	Business Member	31 August 2007
Tom Bostock	Business Member	31 August 2007
John Keeves	Business Member	31 August 2007
Professor Ian Ramsay	Business Member	31 August 2007
John Story	Business Member	31 August 2007
Simon Stretton	Business Member	31 August 2007

Donald Magarey

Donald Magarey is a solicitor and was formerly a partner of Blake Dawson Waldron for 36 years specialising in corporate law and commercial transactions. He is a Fellow of the Australian Institute of Company Directors. Donald has previously been chairman of the Corporations Committee of the Law Council of Australia, 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 solicitor and consultant to the Sydney office of Dibbs Abbott Stillman, 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.

Patrick Burroughs

Patrick Burroughs is a chartered accountant and company director. He was a Senior Partner of one of the big four accounting firms, based in Melbourne and held various responsibilities during his career with that firm. These included major listed client responsibilities as well as firm management responsibilities. At the time of his retirement from the firm he was head of its Financial Services practice. During his career with that firm he served as a member of various external bodies, including committees of the ICAA and the Reserve Bank of Australia. He is currently a director of a number of companies operating in both the not-for-profit and for-profit sectors of the economy.

Philip Jefferson

Philip Jefferson is a Chartered Accountant, Official Liquidator and a Trustee in Bankruptcy who has been practising as an insolvency practitioner for over 30 years. He is a former partner of Coopers Lybrand, (now PricewaterhouseCoopers), currently a partner of JCJ Partners. He has undertaken a broad range of assignments involving insolvency and business reconstruction. He is an active committee member of the Queensland Branch of the IPAA, being vice president of that Branch and is in charge of the education portfolio for current and new members.

Jeffrey Knott

Jeff is an Assurance Services Partner of Deloitte. Jeff has been a partner in Chartered Accounting practices for the past 25 years specialising in audit but also involved in tax and accounting issues. Jeff's audit assignments include public and private companies operating in manufacturing, retail, media and service related industries. Several of these companies have had overseas reporting obligations, particularly in Europe and the US. Current obligations include reporting under Sarbanes Oxley. He also has had significant experience in the audits of NGO's both here and overseas. Jeff is a former member of the Australian Auditing and Assurance Standards Board and until recently a member of the Australian Urgent Issues Group, which was part of the Australian Accounting Standards Board. He is also the Chair of CPA Australia Financial Reporting and Governance Centre of Excellence.

Brian Morris

Brian Morris is a senior partner of a well known Adelaide accounting firm where he specialises 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

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.

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 15 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 was a member of the accounting profession's Joint Task Force on Audit Independence.

David Barnett

David Barnett is the Assistant Manager of the Companies Department (Sydney), Australian Stock Exchange Limited. He has a Bachelor of Commerce (Accounting) and is a member of CPA Australia.

Tom Bostock

Tom Bostock is a special counsel to Gadens Lawyers specialising in corporate law. He was a partner of Mallesons Stephen Jaques from 1970 until 2004. He is a Fellow of the Australian Institute of Company Directors and is a member of the Institute's Law Committee. He is also chairman of the Companies and Business Organisations Committee of the Law Institute of Victoria and was a member of the Legal Committee of the Companies and Securities Advisory Committee.

John Keeves

John Keeves is a partner in the law firm Johnson Winter & Slattery, with offices in Sydney, Melbourne and Adelaide, specialising in corporate and securities law, corporate governance and commercial transactions. He is a member of the Takeovers Panel, the immediate past chairman of the Corporations Committee of the Law Council of Australia and a member of the Executive of the Business Law Section of the Law Council, a Fellow and National Councillor of the Financial Services Institute of Australasia (Finsia) (formerly the Securities Institute of Australia), as well as a member of the Australian Institute of Company Directors, Taxation Institute of Australia, and Banking and Financial Services Law Association.

Ian Ramsay

Ian Ramsay is the Harold Ford Professor of Commercial Law in the Faculty of Law at the University of Melbourne where he is Director of the Centre for Corporate Law

and Securities Regulation. He is a member of the Takeovers Panel, the Corporations and Markets Advisory Committee, the National Law Committee of the Australian Institute of Company Directors, the Corporations Committee of the Law Council of Australia and the Audit Quality Review Board. He was head of the Federal Government inquiry on auditor independence and a member of the International Federation of Accountants taskforce on rebuilding confidence in financial reporting. He has practised law with firms in New York and Sydney.

John Story

John Story is the non-executive Chairman of the Board of Corrs Chambers Westgarth. He has been a partner of the firm for more than 30 years, practising principally in the areas of corporate and commercial law, mergers and acquisitions, public trusts, public fundraising and commercial documentation. He is the chairman of Suncorp Metway Limited and a member of the Boards of Tabcorp Holdings Limited and CSR Limited. He is president of the Queensland Council of the Australian Institute of Company Directors and a member of the Institute's National Board of Directors.

Simon Stretton

Simon Stretton is Crown Solicitor for the State of South Australia and a member of the Corporations and Markets Advisory Committee. Formerly an ASIC Regional Commissioner, General Counsel to the NSW Independent Commission Against Corruption, and Chairman of the SA Law Society's Commerce Corporations and Taxation Committee, he has also had an extensive corporations, general insolvency and commercial litigation practice at the Independent Bar and spent several years as probity auditor of a range of major Government projects.

Financial Statements

The Board is allocated funding from ASIC's budget. The Board's expenses are, apart from some fixed overhead expenses, largely a function of the workload, which varies in accordance with the level of applications received.

The Board's expenditure for this and the previous financial year, as audited in the accounts of ASIC, consisted of:

	2004/05	2005/06
	\$	\$
Administrative Expenses:	274,967	383,233
Travel and Accommodation		
including allowances	<u>47,565</u>	<u>112,173</u>
Salaries and members' fees:	<u>358,253</u>	<u>741,818</u>
Total:	680,785	1,237,224

The increase in the Board's administrative expenses during the reporting year was a result of increased costs associated with the larger Board and increased Panel sizes for hearings as well as legal expenses mainly relating to the constitutional challenge. The increase in the size of the Board and the altered workload also impacted on the Board's expenses in relation travel and accommodation and in relation to salaries and members' fees. Current estimates indicate a further increase in expenditure for the 2006/07 financial year to accommodate expected further alterations in workload.

Activities

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

Matters before the Board during the report year

Auditors

	Conduct	Administrative
Uncompleted Matters at 1/7/05	3	9
New Applications	2	7
Matters withdrawn	-1	-7
Matters dealt with – Orders issued	-1	-1
Uncompleted matters at 30/6/06	3	8
Comprising:		
Orders made since 30/6/06	3	
Matters withdrawn since 30/6/06		5
Hearings scheduled to be held		3

Matters before the Board during the report year

Liquidators

	Conduct	Administrative
Uncompleted Matters at 1/7/05	8	1
New Applications	3	
Matters withdrawn	-2	-1
Matters dealt with – Orders issued	-1	
Matters Dealt with –Subject to Appeal	-2	
Uncompleted matters at 30/6/06	6	0
Comprising:		
Orders made since 30/6/06		
Hearings held /Orders yet to be made	3	
Hearings scheduled to be held	3	

Results by nature of sanction

Results of Application	01/02	02/03	03/04	04/05	05/06
Registration cancelled	9	1	2	4	1
Registration suspended	5	4	4	6	1
Admonition	-	-	-	1	-
Reprimand	1	1	1	3	1
Undertakings required to be given	3	5	5	9	2
Dismissed	-	-	-	-	-
No action by Board	1	-	-	-	-
Withdrawn by Commission	15	3	15	26	11

Notes

1. Undertakings required to be given may be in addition to other orders.
2. The results shown are after review or appeal and include orders by consent.

Status of Reviews of Board decisions

Vanda Russell Gould

On 21 December 2004, the Board ordered that Mr Gould's registration as a liquidator be suspended for a period of three months pursuant to s 1292(2)(d) of the Corporations Act and that certain undertakings be given pursuant to s 1292 (9). Mr Gould sought a review of the Board's decision in the Administrative Appeals Tribunal under the Administrative Appeals Tribunal Act, 1975.

At the reporting date, Mr Gould's application to the Tribunal remained outstanding.

Boushra Kaddis Gadallah

On 4 August 2005, the Board ordered that Mr Gadallah's registration as a liquidator be suspended for a period of six months pursuant to s 1292(1)(d) of the Corporations Act and that certain undertakings be given pursuant to s 1292(9). Mr Gadallah sought a review of the Board's decision in the Administrative Appeals Tribunal under the Administrative Appeals Tribunal Act, 1975.

At the reporting date, Mr Gadallah's application to the Tribunal remained outstanding.

Other Reviews

The Respondent to an order made by the Board during the year ended 30 June 2006 has sought a judicial review pursuant to section 5 of the Administrative Decisions (Judicial Review) Act 1977. The Federal Court has ordered that the Board's decision be suspended until 28 days after the Court's judgment is handed down. The Federal Court also restrained the Board from giving notice of its decision or otherwise making it public.

The matter remains outstanding.

Another Respondent to an order issued by the Board during the year ended 30 June 2006 has sought a review of the Board's decision in the Administrative Appeals Tribunal under the Administrative Appeals Tribunal Act, 1975. The decision of the Board has been stayed until the substantive application is heard and determined by the Tribunal. In addition the operation or implementation of any decision of the Board to publish the order has been stayed until the substantive application is heard and determined by the Tribunal.

The matter remains outstanding.

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 s13 of the Administrative Decisions (Judicial Review) Act 1977 during the year.

Contact Officer

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

**DECISIONS GAZETTED
YEAR ENDED 30 JUNE 2006**

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

At a hearing held on 18 July 2005 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 **Graham Kevin CASH** ("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.

Dated: 27 July 2005
Paul J Coleman
Registrar

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

At a hearing held on 22 June 2005 and 22 July 2005 pursuant to section 1294 of the Corporations Act ("Act"), the Companies Auditors and Liquidators Disciplinary Board ("Board") was satisfied on an application from the Australian Securities and Investments Commission ("Applicant") that **Hugh Sutcliffe MARTIN** a registered liquidator ("Respondent"), had failed, within the meaning of section 1292(2)(d)(ii) of the Act, 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 in relation to the administration of Southscape Civil Pty Limited ("Southscape") in that:

- (a) he performed professional services for Southscape between 29 July 2004 and 1 August 2004 to the value of \$12,394 for which he intended to render an account in his capacity as administrator when he was not entitled to do so;
- (b) he made an application to the Supreme Court to abridge time in circumstances where he did not attempt to negotiate a longer period of delay in performance of contract works with Southscape's customers;
- (c) his investigation of Southscape and his s439A Report to Creditors were inadequate in the following respects (our summary of Contention 4 in the Amended SOFAC):
 - (i) **Investigation:**
 - (A) failed to keep adequate records of the collectability of debtors and work in progress;
 - (B) failed to seek independent advice in relation to the amount of the director's unencumbered assets; and

- (C) failed to keep records to demonstrate whether he investigated uncommercial transactions, insolvent transactions and unfair loans.
- (ii) **Section 439A Report:**
- (A) inappropriately including in recommending the DOCA a comment regarding “the possibility of creditors being paid in full” from the Indonesian venture;
 - (B) his comments as to estimated realisable value of assets and liability in the Report were limited and unclear;
 - (C) the Report did not contain:
 - a) adequate comments on the merits of the legal claims from which funds the creditors were being paid;
 - b) direct commentary about the viability of the proposed DOCA;
 - c) a financial analysis or comments on the Company’s historical financial results;
 - d) information about the indebtedness of related entities;
 - e) discussion about uncommercial transactions, insolvent transactions or unfair loans;
 - f) the likely timing of the return to creditors from the proposed DOCA;
 - g) any monitoring arrangements to ensure the terms of the DOCA were met and the creditors were fully informed of progress;
 - h) a summary of financial information relied upon for the DOCA and the assumptions relied upon in the preparation of that financial information;
 - i) details of the creditors holding guarantees from the Company’s director and the quantum of the debt secured by the guarantees; and
 - j) the basis upon which the liquidators or Deed Administrator’s remuneration would be sought if the Company was liquidated or entered a DOCA.

The Board, by order severely reprimanded the Respondent. The Board further ordered, pursuant to section 1292(9) of the Act, that the Respondent be required to undertake that:

- (1) in addition to any other continuing professional education requirements of the Insolvency Practitioners Association of Australia and any other professional body, he will, within 12 months after this order becomes effective, attend and satisfactorily complete a course or courses (at an advanced level) dealing with the practice and procedure of administrations under Part 5.3A of the Corporations Act, of not less than ten hours duration, and that he will provide to ASIC proof of his compliance with this Order in writing, addressed to the Assistant Director, Enforcement, 8th floor, 100 Pirie Street, Adelaide, within 30 days of the completion of the 12 month period; and
- (2) that his next two administrations conducted under Part 5.3A of the *Corporations Act 2001* (Act) will be reviewed by Robert Anthony Ferguson, or another registered liquidator approved by ASIC. Such review must include

an assessment of the investigation undertaken pursuant to s438A and the report provided to creditors under s439A(4) of the Act. The review is to be commenced within 45 days after the conclusion of the meeting of creditors held under s439A of the Act. The reviewing liquidator is to provide a written report to ASIC of his opinion as to Mr Martin's compliance with the Act and with the professional standards of best practice published by the Insolvency Practitioners Association of Australia. Mr Martin shall pay the costs of the reviews.

The Board further ordered, pursuant to s223 of the ASIC Act, that the Respondent pay the Applicant's costs in the sum of \$8,000.

Dated: 29 July 2005

Paul J Coleman
Registrar

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

At a hearing held on 2 May 2005 pursuant to section 1294 of the Corporations Act ("Act"), the Companies Auditors and Liquidators Disciplinary Board ("Board") was satisfied on an application by the Australian Securities and Investments Commission ("Applicant") that **Boushra Kaddis GADALLAH** a registered auditor (Respondent) had failed, within the meaning of section 1292(1)(d)(i) of the Act, to carry out or perform adequately and properly the duties of an auditor while acting as auditor of AAA Mortgage Finance Limited (AAA).

The Board ordered:

- (a) that the registration of the Respondent as an auditor be suspended for a period of six months commencing 14 days after this order takes effect.
- (b) that the Respondent is required to give Undertakings
 - (i) that he will not sign off on any public company audit reports for 18 months after his suspension without ASIC's prior authorisation.
 - (ii) that he will not sign off on his first 5 audit reports after his suspension without prior approval from an independent reviewer approved by ASIC.
 - (iii) that he will undertake an additional 20 hours of auditing CPD over 2 years (beyond what is required by the rules of any professional association of which he is a member) and will produce evidence to ASIC of compliance with this undertaking.
- (c) that the Respondent pay 40% of ASIC's costs,

Dated 9 August 2005

Ron Swinney
Acting Registrar