



Australian Government  
CALDB

Companies Auditors and  
Liquidators Disciplinary Board

**Annual Report**

For the year ended **30 June 2009**



# **Companies Auditors and Liquidators Disciplinary Board**

Annual Report  
for the year ended 30 June 2009

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ISBN 978-0-642-74545-3

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1 October 2009

The Hon. Chris Bowen MP  
Minister for Financial Services, Superannuation and Corporate Law  
Parliament House  
CANBERRA ACT 2600

Dear Minister

I am pleased to present the Board's Annual Report for the year ended 30 June 2009 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 2009 the following were the highlights:

- During the year the Board's Deputy Chairman, David Castle retired from that office after tenure of six years. The Board wishes to record its gratitude to David for his outstanding contribution to many aspects of the Board's operations during his term of office. He leaves with our thanks and with our good wishes for his future.
- Howard Insall SC was appointed Deputy Chairman of the Board for an 18-month period commencing 1 June 2009. We welcome Howard to his new role and we look forward to working with him.
- The Board's Chairman Donald Magarey has been re-appointed for a further 18-month term commencing on 1 June 2009. Accounting members Phil Jefferson and Jeff Knott have been re-appointed for further 3-year terms commencing 6 October 2008.
- The implementation of changes to the *Corporations Act 2001* which took effect from 1 January 2008 has resulted in the Board's making the decision and reasons for the decision for a number of matters available on the internet.
- 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 ('AAT') or to the Federal Court of Australia. Some appeals are still current and the Board is restricted by orders from publishing any details of the majority of those matters.
- The Board's website continues to make access to information about the Board and its functions more readily available. The website will include copies of decisions where they are made available under the new publicity provisions. The website may be accessed at [www.caldb.gov.au](http://www.caldb.gov.au).
- The Board has a continuing program of contested conduct cases. However, there were only two matters, which remained to be completed at 30 June. One of these matters has been heard but the final decision has not yet been issued. The other matter has been withdrawn since 1 July 2009. During the reporting year ten new applications were received for administrative matters and two new applications were received for conduct matters. Since the end of the reporting year no new applications were received in respect of administrative matters and no new applications have been received for conduct matters.

## Role of the Board

The Board is an independent statutory body established by Part 11 of the 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'), 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. This is particularly important in the context of the current Global Financial Crisis which has focussed attention on the financial performance and stability of many of Australia's corporate entities.

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, in ensuring early payment of recoverable moneys and in 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) three members selected by the Minister from a panel of seven nominated by the Board of the Institute of Chartered Accountants in Australia (*'ICAA members'*);
- (d) three members selected by the Minister from a panel of seven nominated by the Board of CPA Australia (*'CPA Australia members'*); and
- (e) six 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 CPA Australia 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 may be made 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.

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

subparagraph 1292(1)(a)(i)	failing to lodge annual statement under section 1287A (auditor)
subparagraph 1292(1)(a)(ii)	ceasing to be resident in Australia (auditor)
subparagraph 1292(2)(a)(i)	failing to lodge triennial statement under section 1288 (liquidator)
subparagraph 1292(2)(a)(ii)	ceasing to be resident in Australia (liquidator)
subparagraph 1292(3)(a)(i)	failing to lodge a statement under section 1288(5) (liquidator of a specified body corporate)
subparagraph 1292(3)(a)(ii)	ceasing to be resident in Australia (liquidator of a specified body corporate)
paragraph 1292(7)(a)	becoming disqualified from managing corporations under Part 2D.6 (auditor or liquidator)
paragraph 1292(7)(b)	becoming incapable because of mental infirmity of managing affairs (auditor or liquidator)

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

subparagraph 1292(1)(a)(ia)	contravening section 324DB by playing a significant role in an audit without being eligible to do so (auditor)
subparagraph 1292(1)(a)(ia)	failing to comply with a condition of registration (auditor)
subparagraph 1292(1)(b)(i)	not performing any audit work for five years and as a result ceasing to have the necessary practical experience (auditor)
subparagraph 1292(1)(b)(ii)	not performing any significant audit work for five years and as a result ceasing to have the necessary practical experience (auditor)
subparagraph 1292(1)(d)(i)	failing to carry out the duties of an auditor (auditor)
subparagraph 1292(1)(d)(ii)	failing to carry out the duties or functions required by an Australian law to be carried out by a registered auditor (auditor)
paragraph 1292(1)(d)	not being a fit and proper person to remain registered as an auditor (auditor)
subparagraph 1292(2)(d)(i)	failing to carry out the duties of a liquidator (liquidator)
subparagraph 1292(2)(d)(ii)	failing to carry out the duties or functions required by an Australian law to be carried out by a registered liquidator (liquidator)
paragraph 1292(2)(d)	not being a fit and proper person to remain registered as a liquidator (liquidator)
paragraph 1292(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 of a specified body corporate)

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 paragraph 1292(7)(a) or (b) then the Board has no discretion, it must cancel the registration of the practitioner concerned.

In relation to conduct matters under paragraphs 1292(1)(d), (2)(d) or (3)(d) the Board has additional powers under subsection 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.

## Registrar

The administrative business and operations of the Board are conducted by its Registrar, Mr Gary Hoare, who was formerly an audit partner with KPMG.

## 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 occasionally 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 *Manuals of Practice and Procedure*. There are two manuals, one for conduct matters and one for administrative matters. The manuals set out the procedures to be followed in relation to the filing and exchange of documents and other material prior to a hearing and the procedures for pre-hearing conferences and for hearings. The Board has also issued a Costs Practice Note and Mediation Guidelines and a pro forma Mediation Agreement.

The Manuals of Practice and Procedure, the Costs Practice Note, the Mediation Guidelines and the draft Mediation Agreement are provided to all parties involved in proceedings before the Board. All these documents are also available on the Board's website 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 Chairperson conducts a pre-hearing conference that 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 or desirable 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 the length of time it takes to resolve matters and in some cases, agreement on acceptable outcomes. Agreed terms of order resulting from discussions between the parties are referred in draft to the Board. The Board does not participate in any settlement discussions or negotiations between the parties and 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.

The Chairperson has the power under s1294A of the Corporations Act, at a pre-hearing conference, to fix a hearing date and to give directions about the timing of the filing of evidence and submissions and about the procedure to be followed generally at or in connection with the hearing.

## Mediation

The Board encourages resolution of areas of dispute by mediation. This may be by an external mediator agreed upon by the parties or may be by 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 the mediation processes the Board stresses to the parties that the proceedings before the Board are statutory 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 appropriate orders.

## Panels

Hearings are conducted and decisions are made by a Panel of the Board rather than by the full Board. The Chairperson determines the size of the Panel (three persons or five persons) and the members of the Board who are to constitute the Panel to conduct a particular hearing. That Panel will then hold a hearing or hearings make a determination and make any decisions in relation to that particular application.

A Panel must include the Chairperson or Deputy Chairperson as Chairperson of the Panel. A five person Panel will normally include, an ICAA member, a CPA Australia member and two business members. On certain occasions 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 or telephone link 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 determination as to whether or not it is satisfied that the contentions raised in the application have been established and gives the parties a written determination which sets out the Panel's conclusions (with reasons) on each of the contentions. In the event that any of the contentions has been determined to be established, the Panel will proceed to make a decision whether or not to exercise any of the Board's powers under section 1292 or whether or not it is required to make an order under subsection 1292(7) and, for that purpose, may hold a final hearing and deliver a separate decision. At that hearing, the parties will have an opportunity to present relevant evidence and to make submissions in the questions of sanctions, publicity and costs.

## Publicity

Pursuant to subsection 1296(1), written notice of a decision by a Panel to exercise the Board's powers under section 1292 and the reasons for it must be given to the practitioner concerned. Pursuant to subsection 1296(2) written notice of a decision by a Panel to refuse to exercise the Board's powers under section 1292 must be given to the practitioner concerned. A copy of any such 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 the Board's powers under section 1292 or has decided that it is not required to make an order under subsection 1292(7) (see subparagraph 1274(2)(a)(iii)).

Where the Panel has decided to exercise any of the Board's powers under section 1292 or has decided that it is required to make an order under subsection 1292(7), the Board is required pursuant to subsection 1296(1) to publish in the Commonwealth Gazette a notice setting out the decision. By arrangement with the Institute of Chartered Accountants in Australia ('ICAA'), CPA Australia, National Institute of Accountants, Insolvency Practitioners Association of Australia ('IPAA') and the Tax Agents Registration Board, copies of the notices published in the Commonwealth Gazette are provided to those bodies of which the practitioner is a member.

In addition, if the Panel decides to exercise any of the Board's powers under section 1292, the Board may take such steps as it considers reasonable and appropriate to publicise that decision and the reasons for that decision. This will include the power to post the decision and the reasons on the Board's website.

Decisions gazetted by the Board during the reporting year are set out at the conclusion of this report. Some decisions of the Board 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 section 1292 may be sought before the AAT by ASIC or by APRA 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 under the provisions of the *Administrative Decisions (Judicial Review) Act 1977* 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 concerned with a review of questions of law arising out of the proceedings before the Board.

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 later be successful in having a decision of the Board reversed or altered.

## Board membership

Board members during the reporting year were as follows:

Name	Role	Term expires/expired
Donald Magarey	Chairperson	30 November 2010
David Castle	Deputy Chairperson	31 May 2009
Howard Insall SC	Deputy Chairperson (from 1 June 2009)	30 November 2010
Patrick Burroughs	Accounting member ICAA	31 August 2010
Philip Jefferson	Accounting member ICAA	5 October 2011
Jeffrey Knott	Accounting member CPA Australia	5 October 2011
Brian Morris	Accounting member CPA Australia	20 October 2009
David Olifent	Accounting member ICAA	20 October 2009
Patrick Ponting	Accounting member CPA Australia	20 October 2009
David Barnett	Business member	31 August 2010
Tom Bostock	Business member	31 August 2010
Geoff Brayshaw AM	Business member	31 August 2010
John Keeves	Business member	31 August 2010
Professor Ian Ramsay	Business member	31 August 2010
Adjunct Professor Simon Stretton	Business member	31 August 2010

### Donald Magarey

Donald Magarey is a solicitor and was formerly a partner of Blake Dawson for 36 years specialising in corporate law and commercial transactions. Donald has previously been chairperson 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 chairperson of the Social Security Appeals Tribunal.

### David Castle

David Castle is a solicitor and was previously a partner of Dibbs Abbott Stillman, specialising in business law. He is the chairperson of the Tax Agents Board of NSW.

He 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.

### **Howard Insall SC**

Howard Insall is a barrister practising at the New South Wales bar. He was called to the bar in 1981 and was appointed senior counsel in 2001. He practises in the field of commercial/equity with particular emphasis on corporations and insolvency law. He has appeared in a number of major cases involving significant corporate collapses and the duties of directors and auditors, and is an author of the Winding Up chapter in the Butterworths Corporations Service.

### **Patrick Burroughs**

Patrick Burroughs is a chartered accountant and company director. He was a senior partner of KPMG, 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 and Official Liquidator who has been practising as an insolvency practitioner for over 30 years. He is a former partner of PricewaterhouseCoopers, and of Horwath. He currently is a consultant to Vantage Performance a specialist turnaround firm. He has extensive experience involving both corporate and personal insolvency and 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. He is also a member of the ICAA Advisory Group.

### **Jeffrey Knott**

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



### **Brian Morris**

Brian Morris is a senior partner of Adelaide accounting firm Edwards Marshall & Co 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 re-construction. He now acts as a consultant. He has been a member of both state and national committees of the IPAA 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 was involved in the disciplinary processes of that body for 15 years. He has chaired the CPA Professional Standards Committee and CPA Public Practice Committee and was a member of the accounting profession's Joint Task Force on Audit Independence.

### **David Barnett**

David Barnett is the General Manager, Issuers, ASX Markets Supervision with ASX 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 was also chairperson, and remains a member, of the Companies and Business Organisations the Corporate Law Committee and was a member of the Legal Committee of the Companies and Securities Advisory Committee.

### **Geoff Brayshaw**

Geoff Brayshaw is a Chartered Accountant and company director. He has spent 35 years in the accounting profession and was a former audit partner and managing partner of the Perth practice of BDO Kendalls retiring from public practice in 2005. He now has a number of directorship roles including non-executive director and Chairperson of the audit committee of each of Fortescue Metals Group Limited, Poseidon Nickel Limited and Fortron Insurance Group Limited, and board member of the Small Business Development Corporation in Western Australia.

He was formerly Chairperson of Gumala Investments Pty Ltd, an aboriginal corporation trustee company. He was National President of the Institute of Chartered Accountants in Australia for 2002 and was made a Member of the Order of Australia in 2007.

### **John Keeves**

John Keeves is a partner in the law firm Johnson Winter & Slattery, with offices in Sydney, Melbourne, Adelaide and Perth, specialising in mergers and acquisitions, corporate and securities law and corporate governance. He is a member of the Takeovers Panel, the immediate past chairperson of the Corporations Committee of the Law Council of Australia and a former member of the Executive of the Business Law Section of the Law Council, a Senior Fellow and former Director 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, Banking and Financial Services Law Association and AMPLA.

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

### **Simon Stretton**

Simon Stretton is Crown Solicitor for the State of South Australia, a member of the Corporations and Markets Advisory Committee and an Adjunct Professor of Law at the University of South Australia. Formerly an ASIC Regional Commissioner, General Counsel to the NSW Independent Commission Against Corruption, and Chairperson 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 by Treasury through 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 number and complexity of applications received.

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

	2007/08	2008/09
	\$	\$
Administrative expenses	479,459	325,018
Travel and accommodation including allowances	84,250	69,931
Salaries and members' fees	724,925	679,537
<b>Total:</b>	<b>1,288,634</b>	<b>1,074,486</b>

The decrease in the Board's administrative expenses during the reporting year was mainly a result of reductions in legal costs and transcription costs for hearings. Savings were also made in a number of other areas. The location and number of the Board's hearings resulted in a reduction in the Board's expenses in relation to travel and accommodation during the current year. The decrease in salaries and members' fees is a result of a reduction in the number of hearing days and a decrease in hearing days for matters being dealt with by the Board during the current year. Members of the Board are remunerated in accordance with rates determined by the Commonwealth Remuneration Tribunal.

## 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 1/7/08	2	4
New applications	1	10
Matters withdrawn	-	-8
Matters dealt with — orders issued	-2	-6
Uncompleted matters at 30/6/09	1	-
Comprising:	-	-
Matter withdrawn after 1/7/09	1	-

## Matters before the Board during the report year

### Liquidators

	Conduct	Administrative
Uncompleted matters at 1/7/08	1	-
New applications	1	-
Matters withdrawn	-	-
Matters dealt with — orders issued	-1	-
Uncompleted matters at 30/6/09	1	-
Comprising:	-	-
Hearings held/orders yet to be made	1	-

### Hearing days during the report year

The time of Board members is substantially involved in the preparation for and the hearing of matters and the preparation of determinations and decisions (each with reasons) in relation to those matters. As matters can extend over the end of a financial year the table below is presented to give the users of this report an understanding of the number of days in which Board members were involved in hearings.

Activity	Auditors 2009	Auditors 2008	Liquidators 2009	Liquidators 2008
Hearing days	35 man days	85 man days	45 man days	10 man days

In addition to formal hearing days, members of the Board are involved in preparation for hearings including travel to hearing venues, review and analysis of evidence, preparation and review of determinations and subsequent decisions and orders. In respect of each application that goes to a contested hearing, the Chairperson of the relevant Panel plays the principal role in drafting the determination and any orders, together with the supporting reasons for each. In addition, the Board Chairperson is responsible for conducting pre-hearing conferences relating to all matters before the Board and is also involved in the general affairs of the Board.

### Results by nature of sanction

Results of application	04/05	05/06	06/07	07/08	08/09
Registration cancelled	4	1	4	1	6
Registration suspended	6	1	2	1	2
Admonition	1	-	-	-	-
Reprimand	3	1	4	-	-
Undertakings required to be given	9	2	5	-	2-
Dismissed	-	-	-	-	1-
Withdrawn by ASIC	26	11	10	-	8-

#### 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.
3. The results shown do not include cases still subject to review or appeal where publication has been stayed by order.

## 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 paragraph 1292(2)(d) of the Corporations Act and that certain undertakings be given pursuant to subsection 1292(9). Mr Gould sought a review of the Board's decision in the AAT under the *Administrative Appeals Tribunal Act 1975* ('AAT Act'). The AAT issued a decision in relation to this matter on 12 September 2008 in which it affirmed the Board's decision under review and adjourned the question of appropriate orders to be made. Mr Gould appealed to the Federal Court of Australia under the provisions of the *Administrative Decisions (Judicial Review) Act 1977* on questions of law and also commenced proceedings in the Court applying for an order of review and relief under the Judicial Act 1903. These proceedings are not yet finalised.

### Other reviews (subject to restrictions on publicity)

A Respondent in relation to an order issued by the Board during the year ended 30 June 2007 sought a review of the Board's decision in the AAT under the AAT Act. The decision of the Board was stayed until the application was heard and determined by the Tribunal. In addition the operation or implementation of any decision of the Board to publish the order was stayed until the application was heard and determined by the Tribunal. During the reporting year the Tribunal set aside the decision of the Board and noted undertakings from the Respondent in relation to his conduct and from the Respondent and ASIC in relation to publicity. The Board does not have any power to publish the undertaking accepted by the Tribunal.

A Respondent in relation to an order issued by the Board during the year ended 30 June 2009 has sought a review of the Board's decision in the AAT under the AAT Act. The decision of the Board was 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 application is heard and determined by the Tribunal.

A Respondent in relation to an order issued by the Board during the year ended 30 June 2009 has sought a review of the Board's decision in the AAT under the AAT Act. Whilst the Board's decision to exercise its powers has been implemented and has taken effect, the operation or implementation of any decision of the Board to publish the order has been stayed until the application is heard and determined by the Tribunal.

## 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 Gary Hoare  
GPO Box 3731  
SYDNEY NSW 2001  
Phone (02) 9911 2970  
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## Decisions Gazetted year ended 30 June 2009

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

At a hearing held on 16 September 2008 pursuant to section 1294 of the Corporations Act ('Act'), a Panel of the Companies Auditors and Liquidators Disciplinary Board decided that it was satisfied, on an application by the Australian Securities and Investments Commission for **Walter Sante DINALE** ('Respondent'), a registered auditor, to be dealt with under section 1292 of the Act, that the Respondent had contravened section 1287A of the Act. The Panel ordered that the Respondent's registration as an auditor be cancelled with effect 30 days after the order takes effect.

Dated: 30 September 2008

Gary K Hoare  
Registrar

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

At a hearing held on 16 September 2008 pursuant to section 1294 of the Corporations Act ('Act'), a Panel of the Companies Auditors and Liquidators Disciplinary Board decided that it was satisfied, on an application by the Australian Securities and Investments Commission for **Hendrik WAMSTEKER** ('Respondent'), a registered auditor, to be dealt with under section 1292 of the Act, that the Respondent had contravened section 1287A of the Act. The Panel ordered that the Respondent's registration as an auditor be cancelled with effect 30 days after the order takes effect.

Dated: 30 September 2008

Gary K Hoare  
Registrar

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

At a hearing held on 7 October 2008 pursuant to section 1294 of the Corporations Act ('Act'), a Panel of the Companies Auditors and Liquidators Disciplinary Board decided that it was satisfied, on an application by the Australian Securities and Investments Commission for **Geoffery John GILLMORE** ('Respondent'), a registered auditor, to be dealt with under section 1292 of the Act, that the Respondent had contravened section 1287A of the Act. The Panel ordered that the Respondent's registration as an auditor be cancelled with effect 30 days after the order takes effect.

Dated: 21 October 2008

Gary K Hoare  
Registrar

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

At a hearing held on 7 October 2008 pursuant to section 1294 of the Corporations Act ('Act'), a Panel of the Companies Auditors and Liquidators Disciplinary Board decided that it was satisfied, on an application by the Australian Securities and Investments Commission for **Claudio TROPEA** ('Respondent'), a registered auditor, to be dealt with under section 1292 of the Act, that the Respondent had contravened section 1287A of the Act. The Panel ordered that the Respondent's registration as an auditor be cancelled with effect 30 days after the order takes effect.

Dated: 21 October 2008

Gary K Hoare  
Registrar



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

At a hearing held on 24 February 2009 pursuant to section 1294 of the Corporations Act ('Act'), a Panel of the Companies Auditors and Liquidators Disciplinary Board decided that it was satisfied, on an application by the Australian Securities and Investments Commission for **Gregory John HARDY** ('Respondent'), a registered auditor, to be dealt with under section 1292 of the Act, that the Respondent had contravened section 1287A of the Act. The Panel ordered that the Respondent's registration as an auditor, be cancelled with effect 30 days after the order takes effect.

Dated: 10 March 2009

Gary K Hoare  
Registrar

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

At a hearing held on 24 February 2009 pursuant to section 1294 of the Corporations Act ('Act'), a Panel of the Companies Auditors and Liquidators Disciplinary Board decided that it was satisfied, on an application by the Australian Securities and Investments Commission for **Michael John KANE** ('Respondent'), a registered auditor, to be dealt with under section 1292 of the Act, that the Respondent had contravened section 1287A of the Act. The Panel ordered that the Respondent's registration as an auditor be suspended for a period of one month or until such time as he had lodged his outstanding annual statement and notice of change of address with, and such documents had been received and accepted by, ASIC, whichever is the longer, with effect 30 days after the order takes effect.

Dated: 10 March 2009

Gary K Hoare  
Registrar





Companies Auditors and  
Liquidators Disciplinary Board

**Annual Report**  
For the year ended **30 June 2009**