



Australian Government
CALDB

Companies Auditors and
Liquidators Disciplinary Board

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Annual Report
For the year ended **30 June 2010**

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Companies Auditors
and Liquidators
Disciplinary Board

7 October 2010

The Hon. Wayne Swan MP
Deputy Prime Minister and Treasurer
Parliament House
CANBERRA ACT 2600

Dear Deputy Prime Minister

I am pleased to present the Board's Annual Report for the year ended 30 June 2010 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

- During the reporting year three long-standing accounting members of the Board, Brian Morris, Patrick Ponting and David Olifent, retired. Since the end of the reporting year, Patrick Burroughs has retired as an accounting member. The Board wishes to record its gratitude for the considerable and valuable contribution which each in his own way has made over the years. Their collective professional experience and knowledge of industry practice has greatly enhanced and informed the Board's decision making.
- Simon Stretton, a business member of the Board, was on 4 February 2010 appointed as a judge of the South Australian District Court and subsequently resigned as a member of the Board. During his membership, Simon made a strong contribution, particularly on matters of a forensic nature, to the work of the Board, which has been greatly appreciated.
- Robert Ferguson, Bruce Gleeson and Eric Passaris were appointed as accounting members of the Board for a period of three years from 29 January 2010. We welcome these three new members and look forward to working with them.
- At the invitation of the Economics References Committee of the Senate, the Chairman attended a public hearing of that Committee to give evidence and to answer questions about the Board in connection with the inquiry into Liquidators and Administrators.
- On 14 September 2010 the Economics References Committee published a report entitled "The regulation, registration and remuneration of insolvency practitioners in Australia: the case for a new framework". That report included (among the committee's views and recommendations) the following paragraphs:

"11.25 The committee believes that the CALDB should be retained in its current form. The Board's focus will continue to be on determining the disciplinary action to take against practitioners.

11.26 The committee is concerned, however, that the CALDB's investigative and adjudicative processes lack transparency. It believes that the Board's deliberations and findings should be given in open unless there is a ruling otherwise. Past hearings and evidence of the CALDB should also be open to inspection by any person."

At present, the legislation under which the Board operates requires hearings to take place in private unless, in effect, the auditor or liquidator who is the subject of the hearing before the Board requests otherwise. In addition the legislation imposes a general obligation of confidentiality on the Board in relation to all information given to the Board. Since 1 January 2008 the legislation has given

the Board specific power to publicise any decision it makes to exercise its disciplinary powers and the reasons for that decision.

It is not appropriate for the Board to take any particular stance in relation to the changes proposed by the Senate Committee, but the Board looks forward to the opportunity to participate appropriately in any future discussions concerning these matters.

- During the year, Parliament passed some amendments to provisions of the *Australian Securities and Investments Commission Act 2001* (ASIC Act) governing the Board. In general terms, those changes are:
 - A change to the way in which accounting members of the Board are to be appointed.
 - The extension of the existing statutory immunity (which covers a hearing by a Panel) to include a pre-hearing conference conducted by the Chairman.
- The Board has been able to give publicity to a decision in a conduct matter (made in the previous reporting year) after the removal of a stay on publicity of that decision by the Administrative Appeals Tribunal.
- The Board has received no applications to deal with a conduct matter since 16 December 2008 and no applications to deal with an administrative matter since 4 February 2009. With the delivery of our last decision on 19 January 2010, the Board has had and continues to have no current applications to deal with. This absence of workload is reflected in the substantial reduction in expenditure for the year in review.

Role of the Board

The Board is an independent statutory body established by Part 11 of the ASIC Act which is given powers and functions by the *Corporations Act 2001* (the Corporations Act). The Minister responsible for the Board is the Deputy Prime Minister and 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 wake of the 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 Corporations 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

Until the end of the reporting year, the Board consisted 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.

On 28 June 2010, legislation passed into law making some amendments to the way in which accounting members of the Board are to be appointed. The amendments repealed the requirements for the appointment of ICAA and CPA Australia members and introduced a new provision for the Minister to select six accounting members. To

be eligible for such appointment a person needs to be a resident of Australia and a member of a professional accounting body or any other body prescribed by regulation. Transitional provisions maintain the position of existing accounting members.

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 Corporations Act to determine whether a registered auditor or registered liquidator has contravened certain provisions of the Corporations Act, has failed to carry out their duties or 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 Corporations 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 annual 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 Corporations 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 any 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 any 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 but to 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 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 include two accounting members 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 include 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 before delivering its decision. At that hearing, the parties will have an opportunity to present relevant evidence and to make submissions on 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 the decision 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, CPA Australia, National Institute of Accountants, Insolvency Practitioners Association of Australia 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
Howard Insall SC	Deputy Chairperson	30 November 2010
Patrick Burroughs	Accounting member ICAA	31 August 2010
Robert Ferguson	Accounting member CPAA	29 January 2013
Bruce Gleeson	Accounting member ICAA	29 January 2013
Philip Jefferson	Accounting member ICAA	5 October 2011
Jeffrey Knott	Accounting member CPA Australia	5 October 2011
Brian Morris	Accounting member CPA Australia	20 January 2010
Eric Passaris	Accounting member CPAA	29 January 2013
David Olifent	Accounting member ICAA	20 January 2010
Patrick Ponting	Accounting member CPA Australia	20 January 2010
David Barnett	Business member	30 November 2010
Tom Bostock	Business member	30 November 2010
Geoff Brayshaw AM	Business member	30 November 2010
John Keeves	Business member	30 November 2010
Professor Ian Ramsay	Business member	30 November 2010
Judge Simon Stretton	Business member	Resigned 28 June 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.

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.

Robert Ferguson

Robert is a Chartered Accountant, Official Liquidator and Registered Trustee in Bankruptcy, specialising in insolvency practice. Robert's experience includes being an insolvency partner with both PricewaterhouseCoopers and Deloitte for 18 years after which he established his own specialist firm. Robert has more than 30 years experience in insolvency practice, is a member of the Insolvency Practitioners Association of Australia and former State Chair and National Board member of that organisation. Robert also holds a number of board positions.

Bruce Gleeson

Bruce Gleeson is a principal at Jones Partners Chartered Accountants, a specialist insolvency and business recovery firm. He is a Chartered Accountant, a member of CPA Australia and the Insolvency Practitioners Association of Australia (IPAA). Bruce has in excess of 15 years corporate and personal insolvency experience and is an Official Liquidator and a Registered Trustee in Bankruptcy. He is also currently the NSW Chair of the Institute of Chartered Accountants, as well as being the Junior Vice President of the Western Sydney Business Connection. Bruce has also held roles in commerce (with James Hardie and AMP) to broaden his experience.

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 a committee member of the Queensland branch of the IPAA. 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, 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.

Eric Passaris

Eric Passaris is a partner with BDO in Melbourne and has specialised in audit and assurance services for 25 years. Eric has been a member of CPA Australia's Disciplinary Committee for over 10 years and is called upon to provide expert evidence in auditor/accountant professional negligence cases for legal proceedings, commercial disputes, insurance claims and disciplinary proceedings.

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 was a partner of Mallesons Stephen Jaques from 1970 until 2004, and from 2005 until 2010 a special counsel to Gadens Lawyers, specialising in corporate law. He is a Fellow of the Australian Institute of Company Directors and is a member of that Institute's Law Committee. He was also chairperson, and remains a member, of the Corporate Law Committee of the Law Institute of Victoria 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, which has offices in Sydney, Melbourne, Brisbane, Adelaide and Perth, specialising in mergers and acquisitions, corporate and securities law and corporate governance. He is a member of the Takeovers Panel, a past chairperson 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 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.

Judge Simon Stretton

Simon Stretton was until recently 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. In February 2010 Simon was appointed as a judge of the District Court of South Australia.

Financial statements

The Board is allocated funding by the Federal Government through ASIC's budget. In addition the Board recovered certain legal costs, including interest, in relation to a matter taken to the Federal Court in previous years. 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:

	2009/10	2008/9
	\$	\$
Administrative expenses	173,417	325,018
Travel and accommodation including allowances	29,816	69,931
Salaries and members' fees	442,243	679,537
Total:	645,476	1,074,48

The decrease in the Board's administrative expenses during the reporting year was mainly a result of reductions in legal costs and in 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 significant reduction in the number of hearing days and a decrease in hearing days for matters being dealt with by the Board during the reporting 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 1/7/09	1	-
New applications		
Matters withdrawn	1	-
Matters dealt with — orders issued	-	-
Uncompleted matters at 30/6/10	Nil	Nil

Liquidators

	Conduct	Administrative
Uncompleted matters at 1/7/09	1	-
New applications		-
Matters withdrawn	-	-
Matters dealt with — orders issued	1	-
Uncompleted matters at 30/6/10	Nil	Nil

Hearing days during the report year

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. 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 actual hearing days.

Activity	Auditors 2010	Auditors 2009	Liquidators 2010	Liquidators 2009
Hearing days	0 man days	35 man days	9 man days	45 man days

Results by nature of sanction

Results of application	05/06	06/07	07/08	08/09	09/10
Registration cancelled	1	4	1	6	1
Registration suspended	1	2	1	2	2
Admonition	-	-	-	-	-
Reprimand	1	4	-	-	-
Undertakings required to be given	2	5	-	2	2
Dismissed	-	-	-	1	-
Withdrawn by ASIC	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 now all finalised on the basis that the Board's original order has been set aside.

Allan Gregory Walker

On 22 December 2008, the Board ordered that Mr Walker's registration as an auditor be cancelled pursuant to paragraph 1292(1)(d) of the Corporations Act. Mr Walker applied for a review of the Board's decision in the AAT under the AAT Act. On 9 October 2009 Mr Walker withdrew his application to the AAT.

Geoffrey David McDonald

Mr McDonald applied for a review in the AAT under the AAT Act in relation to an order issued by the Board during the year ended 30 June 2009. The AAT set aside the decision of the Board and substituted a decision which the AAT made using the powers of the Board. That decision by the AAT becomes the decision of the Board and is dealt with as such in this report.

Other reviews

There were no reviews in progress at 30 June 2010.

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
Facsimile (02) 9911 2975
Email: gary.hoare@caldb.gov.au
Website: www.caldb.gov.au

Decisions Gazetted year ended 30 June 2010

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

At a hearing held on 22 December 2008 a Panel of the Companies Auditors and Liquidators Disciplinary Board being satisfied, on an application by the Australian Securities and Investments Commission that Allan Gregory WALKER ("Respondent"), a registered auditor, 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 decided to exercise its powers under section 1292 of the Corporations Act and ordered that the Respondent's registration as an auditor be cancelled.

Dated: 2 November 2009

Gary K Hoare
Registrar

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

On 24 November 2009 the Administrative Appeals Tribunal (the Tribunal) exercised the powers of the Companies Auditors and Liquidators Disciplinary Board set out in section 1292 of the *Corporations Act 2001* (Cth) (the Act) and IN RELATION TO Geoffrey David McDONALD (the Applicant), a registered liquidator and decided that:

- (a) the Applicant be suspended for a period of two years commencing on the date that these orders are made (24 November 2009) (Suspension Period).
- (b) the Applicant be required to give the following undertakings to the Tribunal in writing within 14 days after the date that these orders are made (24 November 2009):
 - (i) at the end of the Suspension Period and at his own expense, the Applicant must procure that an independent registered liquidator, to be approved by the Australian Securities and Investments Commission (ASIC) in advance, certify to ASIC that each of the following appointments of the Applicant have been conducted in accordance with acceptable standards (particularly as they apply to ethical matters):

- (A) the first ten (10) appointments regulated by the Act which require registration as a liquidator; and
- (B) the first five (5) appointments regulated by the Act which require registration as a liquidator and where fees or remuneration derived by the Applicant or any firm or partner associated with him are expected to be greater than \$100,000 (such appointments may also be counted in the first ten appointments).

Dated: 26 November 2009

Gary K Hoare
Registrar
Companies Auditors and Liquidators Disciplinary Board

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

At a hearing held on 29 October 2009 pursuant to section 1294 of the Corporations Act ("Act") a Panel of the Companies Auditors and Liquidators Disciplinary Board ("Board") was satisfied that on an application by the Australian Securities and Investments Commission ("ASIC") that Dean Royston McVEIGH, a registered liquidator, had failed within the meaning of section 1292(2)(d) to carry out or perform adequately and properly the duties of a liquidator and duties or functions required by the Act to be carried out or performed by a registered liquidator.

At a hearing held on 19 January 2010 the Panel decided to exercise its powers under section 1292 of the Act and ordered that:

1. the registration of Dean Royston McVeigh as a liquidator be suspended for a period of 18 months from the date which is 90 days after this order takes effect.
2. Mr McVeigh be required to give the following undertakings in writing within fourteen days after this order takes effect:
 - (a) that within 12 months after the date this order takes effect, or such further period as ASIC shall agree in writing, Mr McVeigh must, in addition to the normal requirements for continuing professional development, undertake and complete education (in forms to be agreed in advance by ASIC - which could include courses, lectures, seminars, workshops, mentoring programs) covering the areas of independence/conflicts, investigation,

reporting and office procedures and systems, on the completion of which Mr McVeigh must procure and lodge with ASIC a certificate (given by a person or entity agreed in advance by ASIC) or certificates of satisfactory completion;

- (b) that, if Mr McVeigh has not complied fully with his undertaking given under (a) above before the expiry of the period of suspension specified in order 1 above, Mr McVeigh will not accept appointment to any office required under the Corporations Act to be filled by a registered liquidator, until he has so complied.
- (c) with effect from the later of the expiry of the period of suspension specified in order 1 above and the date on which Mr McVeigh has fully complied with his undertaking given under (a) above:
 - (i) for each of the first five voluntary administrations to which he is appointed, he will (at his expense) furnish to ASIC within two months after the second meeting of creditors (under s439A of the Corporations Act) a written report prepared by a registered liquidator (approved in advance for that purpose by ASIC) reporting on the adequacy of compliance during that voluntary administration with all relevant requirements and professional standards relating to independence/conflicts, investigation and reporting; and
 - (ii) for each of the first five creditors' voluntary liquidations to which he is appointed, he will (at his expense) furnish to ASIC within two months after the earlier of the date of his first report to creditors and the date six months after his appointment a written report prepared by a registered liquidator (approved in advance for that purpose by ASIC) reporting on the adequacy and timeliness of the investigation and report (if any) relating to that liquidation.

Dated: 1 February 2010

Gary K Hoare
Registrar