



Australian Government

CALDB

Companies Auditors and  
Liquidators Disciplinary Board

## **Annual Report**

For the year ended **30 June 2015**

# **Companies Auditors and Liquidators Disciplinary Board**

Annual Report  
for the year ending 30 June 2015

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Companies Auditors  
and Liquidators  
Disciplinary Board

08 October 2015

The Hon. Scott Morrison 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 2015 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

A handwritten signature in black ink that reads 'D. F. Castle'.

David Castle  
Chairperson

## Chairperson's Review

The 2014-15 reporting year was productive for the Board. During the year, the Companies Auditors and Liquidators Disciplinary Board (CALDB) activity has involved dealing with a steady flow of new applications brought by the Australian Securities and Investments Commission (ASIC) as well as activity associated with hearing and finalising existing matters, including conducting three hearings and dealing with two appeals from decisions issued by the Board.

During the reporting year, CALDB has sought to deal expeditiously with the current applications before it in accordance with its written procedures which are available on the CALDB website.

Of the three applications heard during the year, CALDB has delivered decisions in respect of two of those applications. Two hearings concerned auditors and one concerned a liquidator. In the first auditor matter, the auditor appealed CALDB's decision to the Administrative Appeals Tribunal (AAT). The AAT upheld CALDB's decision and a copy of the AAT decision and the Board's Decision now appear on the Board's website. A decision in the second auditor matter will be delivered early in the next reporting year. In the liquidator matter, the Board decided to exercise its power to admonish the relevant liquidator.

Copies of all the Board's decisions and reasons available for publication may be found on the Board's website, [www.caldb.gov.au](http://www.caldb.gov.au).<sup>1</sup>

Two new applications were received in the reporting year, one of which was heard in March 2014. The other is being dealt with in accordance with the Board's pre-hearing procedures and is set down for hearing early in the next reporting year.

For the whole reporting year, the Board has operated without its full complement of 14 members. The terms of the Chairperson Mr Howard Insall SC, accounting member George Georges and business member Mr Geoff Brayshaw expired during the year and were not renewed by the Treasurer. Together with my fellow members I wish to express our thanks and appreciation to each of the outgoing members for their substantial contribution to the work of CALDB. In particular the Board is indebted to the outgoing Chairperson, Mr Howard Insall SC, for his leadership in continuing to revitalise the Board as a relevant and effective disciplinary body for auditors and liquidators. He achieved this by streamlining the Board's pre-hearing procedures and introducing a greater level of transparency and accountability in respect of the Board's objective to hear matters expeditiously and deliver decisions as promptly as practicable. Further, his published decisions as Chairperson of the panels on which he presided add most significantly to the Board's body of precedent and provide a

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1 See also **Appendix 3** which contains notices of two decisions, as published in the *Gazette* as at the end of the reporting year.

valuable resource regarding the current scope and application of section 1292 of the Corporations Act both for the current Board members and registered auditors and liquidators generally. We thank him for this legacy.

The Board maintains regular contact with The Treasury regarding the appointment of new members to address the current deficiency of members and hopes that the issue will be rectified in the next reporting year.

In November 2014 I was appointed as the new Chairman of CALDB for a period of one year.

CALDB also wishes to record its appreciation for the support that ASIC provides, pursuant to s 11(2) of the ASIC Act and also for the assistance provided by Treasury through its regular consultation with the Board.

Finally I wish to acknowledge and thank each of the remaining members of CALDB, who so generously contribute their significant experience and expertise on a part time basis, and notwithstanding the demands of their practices or other professional or business commitments. As a result of the shortage of Board members referred to above, a high demand has been placed on existing members, particularly our one remaining business member, who deserves special thanks.

In the coming year, it is my hope that CALDB will continue to maintain its focus on dealing with matters effectively, fairly and expeditiously in order to ensure its continued contribution as a relevant and effective enforcement body within Australia's financial regulatory framework. CALDB will continue to use the process of reviewing and updating its procedures as an opportunity for continual improvement in this regard.

David Castle  
Chairperson

# Board Overview

## Role and functions

CALDB is an independent statutory body established under Part 11 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act) with the powers and functions provided in Part 9.2 of the *Corporations Act 2001* (Corporations Act) and Part 11 of the ASIC Act. The Minister responsible for CALDB is the Treasurer (the Minister). Pursuant to section 214(1) of the ASIC Act, the Board is required to prepare a report annually describing the operations of the Board and provide a copy of that report to the Minister as soon as practicable before 31 October each year. CALDB notes the commencement of the Public Governance, Performance and Accountability Act on 17 April 2015 (PGPA Act) and has obtained legal advice confirming that CALDB is not required to comply with the PGPA Act in preparing its annual report for the 2014-15 year. CALDB notes the latest version of *Requirements for Annual Reports* issued by the Department of the Prime Minister and Cabinet dated 25 June 2015, as approved by the Joint Committee of Public Accounts and Audit under subsections 63(2) and 70(2) of the Public Service Act, and in accordance with Part 1, 3 (4) has referred to those requirements to the extent they are consistent with CALDB's reporting requirement pursuant to section 214(1) of the ASIC Act.

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

CALDB's role is to act as an expert disciplinary tribunal to consider applications for the cancellation or suspension of the registration of auditors or liquidators under the provisions of the Corporations Act. CALDB has no power to instigate applications. Applications may be brought to CALDB by ASIC or APRA although CALDB has never received an application from APRA.

On an application brought before it in relation to a registered auditor or registered liquidator, CALDB may impose sanctions, if satisfied of particular matters, including that the auditor or liquidator:

- has failed to carry out his or her duties or functions adequately and properly;
- is not a fit and proper person to remain registered; or
- has contravened certain provisions of the Corporations Act.

If CALDB determines any of these matters to be established, it may impose sanctions including orders for cancellation or suspension of the registration of auditor or liquidator.

The responsibilities conferred on CALDB by the Corporations Act provide an incentive to registered auditors and liquidators to maintain high professional standards. CALDB's jurisdiction to cancel or suspend the registration of an auditor or liquidator also has a public protective and educative role.

CALDB is a wholly independent body made up of part time professionals and business members appointed by the Minister, and so is able to fulfil the essential function of an independent and impartial tribunal, capable of ensuring that natural justice is accorded to parties appearing before it.

As a disciplinary board with procedures designed to avoid technicality and delay, CALDB has the ability to facilitate the expeditious and cost-effective resolution of matters within an independent and transparent framework. Moreover, as an expert tribunal with the ability to assess applications by reference to its own expert knowledge of professional standards, CALDB is in a unique position to deal with matters without the necessity for time consuming and costly expert evidence, necessary in other tribunals or courts.

The published decisions of CALDB provide an important resource to registered practitioners and industry bodies for identifying and upholding professional standards and applying them to particular fact situations, and they therefore form an important aspect of the educative function of the Board.

CALDB continues to utilise its revised procedures in relation to new matters, resulting in applications being set down for the earliest appropriate hearing dates. CALDB continues to seek to minimise the reliance on expert evidence and as noted, is in a unique position to adopt this course, as it possesses specialist expertise permitting it to assess applications by reference to its own knowledge of professional standards.

Details of the specific procedures adopted by CALDB in relation to applications it receives and how it conducts hearings before it are set out in **Appendix 1**. These procedures are governed by relevant provisions in Part 11 of the ASIC Act and Division 3 Part 9.2 of the Corporations Act.

## Constitution of CALDB and current Board membership

Section 203 of the ASIC Act provides that the CALDB consists of the following:

- (a) a Chairperson;
- (b) a Deputy Chairperson;
- (c) six accounting members selected by the Minister; and
- (d) 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.

Accounting members are required to be a resident of Australia and a member of a professional accounting body or any other body prescribed by regulation.

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 reappointment.

Board members during the reporting year:

Name	Role	Term expires/expired
David Castle	Chairperson	27 November 2015
Howard Insall SC	Chairperson	30 August 2014
Maria McCrossin	Deputy Chairperson	5 August 2016
Judith Downes	Accounting member	14 December 2015
Robert Ferguson	Accounting member	28 January 2016
George Georges	Accounting member	30 August 2014
Bruce Gleeson	Accounting member	28 January 2016
David Sauer	Accounting member	14 December 2015
Eric Passaris	Accounting member	28 January 2016
Geoff Brayshaw AM	Business member	30 August 2014
Karen O'Flynn	Business member	14 December 2015

Biographical details of the current members are included in **Appendix 2**.

Section 210A of the ASIC Act provides that panels convened to hear applications must be constituted by either five members or three members, including either the Chair or the Deputy Chair as the panel chair, and either one or two business members and one or two accounting members as the case may be.

As may be noted from the above table, the Board had only one business member and five accounting members for most of the reporting year. While the Board managed to convene panels within suitable timeframes despite the deficit of appointed members, Treasury is aware that the need to deal with the appointments of new members and where appropriate, the re-appointment of existing members is important for the Board to enable it to continue to function effectively.

Section 205 of the ASIC Act provides that CALDB Members may be appointed for terms of up to three years, and are eligible for re-appointment. Matters can take up to a year to finalise from commencement as the parties' case preparation and availability for hearings must be accommodated, two hearings for each matter are usually required and detailed reasons for CALDB decisions must be written and provided to the parties once hearings take place. If a member is empanelled to hear and decide a matter (panels must always comprise three or five members), and their term expires before the matter can be concluded, then unless all parties agree, the matter must be reheard (s 210A ASIC Act). As is evident from the table on page 5 herein, the expiry dates of current members' terms vary because CALDB appointments are not made by the Minister at set times. Allowing for the possible exigencies that may arise in specific matters, in order to provide CALDB with a workable mix of members with sufficient time left in their current term from which it may convene its panels as necessary, member appointment terms of three years, with varying expiry dates throughout the three year period, would be desirable.

## Operational Information 2014-15

### Registrar

The administrative business and operations of CALDB are conducted by its Registrar, Mr Gary Hoare. Mr Hoare is a full time employee of ASIC permanently seconded to CALDB.

### Premises

During the year, CALDB moved to level 10 of 100 Market Street in Sydney. CALDB no longer has a dedicated hearing room available on its premises. An appropriate hearing venue is hired, as needed, in Sydney and other locations in Australia. It is CALDB's policy that a hearing will normally be held in the capital city of the state of residence of the respondent. The application of this policy may be varied in individual cases and, when feasible, hearings may be held by telephone or video link.

## Applications received by CALDB in the reporting year 2014–15

Two new applications were received during the reporting year. All applications received during the year were received from ASIC.

The tables below provide a summary of the status of the matters before CALDB during the reporting year:

### Auditors

	Conduct	Administrative
Uncompleted matters at 1/7/14	1	-
New Applications received in 2014/2015 year	1	-
Matters withdrawn	-	-
Matters dealt with — orders issued <sup>2</sup>	1	-
Uncompleted matters at 30/6/15	1	-

### Liquidators

	Conduct	Administrative
Uncompleted matters at 1/7/14	1	-
New applications received in 2014/2015 year	1	-
Matters withdrawn	-	-
Matters dealt with — orders issued	1	-
Uncompleted matters at 30/6/15	1	-

## Hearing days during the reporting year

The overview in the table below provides data on the number of days Board members were engaged in the hearing of applications.

Activity	Auditors 14–15	Auditors 13–14	Liquidators 14–15	Liquidators 13–14
Hearing days	12 person days	3 person days	14 person days	68 person days

In addition to attendance for formal hearing days, CALDB members must spend time preparing for hearings, which involves the review and analysis of pleadings and evidence. There is also travel time to hearing venues and the preparation and review of determinations, subsequent decisions and orders.

<sup>2</sup> This matter was the subject of an appeal to the Administrative Appeals Tribunal. CALDB's decision was upheld and CALDB will publish its decision early in the next reporting year.

In respect of each application that proceeds to a contested hearing, the Chairperson of the relevant Panel (who must either be the CALDB Chairperson or Deputy Chairperson) usually plays the principal role in drafting the decision and supporting reasons, albeit in close consultation with other Panel members. The Board Chairperson is responsible for conducting pre-hearing conferences relating to all matters before CALDB and is also involved in the general affairs of CALDB, as is the Deputy Chairperson as necessary.

## Results by nature of sanction

The table below records the results of matters before CALDB during the reporting year and the preceding five years, by nature of sanction. Undertakings required to be given may be in addition to other orders. The outcomes of some of the new matters brought to CALDB during the reporting year are not reflected in this year's report.

Results of application	09-10	10-11	11-12	12-13	13-14	14-15
Registration cancelled	1	-	1	1	3	-
Registration suspended	2	-	-	-	3	1
Admonition	-	-	-	-	-	1
Reprimand	-	-	-	-	-	-
Undertakings required to be given	2	-	-	-	2	1
Dismissed	-	-	-	-	-	-
Withdrawn by ASIC	-	-	-	-	-	-

Decisions reviewed in the reporting year are detailed on page 8 below and decisions gazetted during the year are set out in **Appendix 3**.

## Publication of CALDB decisions

Pursuant to subsection 1296(1) of the Corporations Act, written notice of a decision by a Panel to exercise CALDB's powers under section 1292 and the reasons for the decision must be provided to the practitioner concerned. Pursuant to subsection 1296(2), written notice of a decision by a Panel to refuse to exercise CALDB's powers under section 1292 or a decision that it is not required to make an order under subsection 1292(7) in relation to a person, 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 CALDB'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 CALDB's powers under section 1292 or has decided that it is required to make an order under subsection 1292(7), CALDB is required pursuant to subsection 1296(1) to publish in the Commonwealth Gazette a notice setting out the decision.

By arrangement with Chartered Accountants Australia and New Zealand, CPA Australia, Institute of Public Accountants (formerly National Institute of Accountants), Australian Restructuring Insolvency and Turnaround Association (formerly Insolvency Practitioners Association of Australia) and the Tax Practitioners Board, copies of 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 CALDB's powers under section 1292, it 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 CALDB website. CALDB generally takes the view that it is appropriate to publish its decisions on the CALDB website as this provides transparency of its decisions and processes as well as contributing to the public educative role played by CALDB. In the reporting year there were two decisions gazetted and publicised pursuant to CALDB's powers under section 1292. Details are included in Appendix 3. One additional decision made during the reporting year was gazetted and publicised after the end of the reporting year with the auditor in question having his registration suspended for one year and providing certain undertakings in relation to additional professional education and peer review. Copies of the decisions and reasons issued during the reporting year are set out on the Board's website: [www.caldb.gov.au](http://www.caldb.gov.au).

## Costs orders by CALDB

At the end of a hearing a Panel may make an order for costs. CALDB has published a Costs Practice Note on its website. A Panel may also order payment by a party of all or part of the CALDB's costs of, and incidental to, a hearing. There is no power conferred on CALDB to publish costs orders it makes.

## Review of CALDB decisions

A review of any decision made under section 1292 of the Corporations Act 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 decision of CALDB 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 CALDB.

When a CALDB decision 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.

During the year, two applications were made by respondents for decisions made by CALDB to be reviewed by the AAT.

The first application was in respect of the Board's decision in respect of Mr Pino Fiorentino. This decision was handed down on 24 June 2014 and published in the Gazette on 8 July 2014 (see Appendix 3). This appeal is still the subject of proceeding before the AAT.

The second application was in respect of a decision of the Board handed down on 10 December 2014. The AAT fully affirmed the Board's decision on 24 June 2015 and following the lifting of a stay on publication in July 2015 the decision will be gazetted in late July 2015.

Apart from these two matters, no other applications for review of a CALDB decision under section 1292 were made during the reporting year.

## CALDB financial information for reporting year

CALDB is allocated funding by the Federal Government through ASIC's budget. CALDB's expenses are, apart from some fixed overhead expenses, largely a function of the workload, being applications received, and so vary from year to year depending on the number and complexity of the applications made.

CALDB's expenditure for this and the previous financial year, (extracted from the accounts of ASIC), was as follows:

	2014-15 \$	2013-14 \$
Administrative expenses (including staff costs and external legal costs)	304,615	508,947
Travel and accommodation including allowances	16,957	38,632
Members' fees	349,166	456,838
<b>Total:</b>	<b>670,738</b>	<b>1,004,417</b>

CALDB operated within the budget allocated to it by ASIC in the 2014-15 year. The location of, and decrease in number of hearings resulted in a year on year decrease in expenses in relation to travel and accommodation during the current year. Members' fees also decreased as a result of the decreased number of hearing days for matters being dealt with by CALDB during the reporting year. There has also been a permanent decrease in administrative expenses in the 2015 year, resulting from a reduction in full time staff from two to one, as reported in the previous year, and the full year effect of the relocation to smaller premises and a consequent reduction in property costs.

Members of CALDB are remunerated in accordance with rates determined by the Commonwealth Remuneration Tribunal. In early November 2013 the Remuneration Tribunal completed a review of part-time offices which foreshadowed a new part-time determination which was issued in early 2014 (2014/3) and took effect 1 March 2014. The daily rates effective for CALDB members from 1 March 2014 are as follows:

Chairperson	\$1,383
Deputy Chairperson	\$1,245
Member	\$1,107

CALDB briefed the AGS in relation to appeal proceedings commenced by two respondents against the Board. CALDB spent \$36,264 on external legal advice and legal representation at appeal proceedings during the reporting year.

While CALDB endeavours to operate within the budget allocated to it through ASIC, a significant portion of the costs incurred by CALDB is dependent on the number of applications received and the hearing time and complexity of matters heard. Variation of those factors from year to year introduces some uncertainty into the task of projecting the annual operating costs of CALDB.

## Work health and safety and environmental matters

ASIC is responsible for work health and safety and the working environment for staff seconded to the CALDB.

The Registrar, the only staff member seconded to CALDB, monitors the workplace environment on an ongoing basis to ensure the health, safety and welfare of workers who carry out work for CALDB. No accidents or dangerous occurrences, or relevant investigations took place during the 2014–15 financial year. The Registrar and CALDB Board members when attending hearings and Board meetings are covered either under Comcare or Comcover, or have their own arrangements in place.

Section 516A of the *Environment Protection and Biodiversity Conservation Act 1999* requires CALDB to report on matters relevant to environmentally sustainable development (ESD). CALDB reports that:

- the only activities relevant to ESD principles concern procurement of goods and services which is done through ASIC;
- CALDB's legislative function is not related to ESD principles; and
- CALDB is a small statutory body with only one full time staff member operating from a single location in Sydney and has a limited environmental impact. CALDB seeks to use minimum energy, water, paper and other resources necessary to perform its functions and keeps under constant review possible measures to reduce its environmental impact.

## **FOI Act and section 13 AD(JR) Act requests**

CALDB did not receive any applications for information under the *Freedom of Information Act 1982* (FOI Act) or any requests for reasons pursuant to section 13 of the *Administrative Decisions (Judicial Review) Act 1977* (AD(JR) Act) during the year.

Applications under the FOI Act and the AD(JR) Act may be made to the Registrar who may be contacted at GPO Box 3731, Sydney NSW 2000.

CALDB has updated its website to comply with the Information Publication Scheme (IPS) under part II of the FOI legislation.

## **Ethics**

The Registrar is required to adhere to the Australian Public Service values and code of conduct under the Public Service Act. The requirements of the code of conduct include honesty, care and diligence, courtesy, compliance with the law, avoiding conflicts of interest and proper use of Commonwealth resources and information.

## **External scrutiny and accountability**

During the financial year there were no judicial decisions or reports by the Auditor General, a parliamentary committee or the Commonwealth Ombudsman concerning, or that could have a significant impact on, the operations of CALDB.

The parliamentary joint committee on Corporations and Financial Services (PJC) and the Senate Economics Legislation Committee review and prepare reports on the annual reports of statutory bodies that come under the Treasury portfolio including CALDB.

The PJC, in its report tabled in the Senate on 30 April 2015 that examined the annual reports of bodies established under the ASIC Act, considered that CALDB fulfilled its regulatory and reporting responsibilities during the 2013–14 financial year. The PJC further noted that the CALDB had implemented the PJC recommendations made in the prior year and also noted that CALDB had implemented the recommendations of the Senate Economics Legislation Committee that CALDB include in its annual report a table of contents, information on lodging freedom of information requests and information on salary ranges and benefits. Finally, the PJC noted that it will continue to monitor the capacity of CALDB to operate independently from ASIC following the co-location with ASIC and the provision of administrative support by ASIC.

## **Management of human resources**

As noted there is one full time ASIC employee, the Registrar, who is permanently seconded to CALDB and whose salary and entitlements are linked to the relevant ASIC officer salary scales and entitlements, which are determined under a collective agreement for ASIC staff.

The Registrar's performance is evaluated annually by the Chairperson of CALDB. The Registrar received a performance bonus in the current reporting year.

No work and safety issues arose during the 2014-15 financial year.

## **Purchasing**

All required items are purchased through arrangement with ASIC, which follows the Commonwealth Procurement guidelines. CALDB did not have any major capital purchases in 2014-15.

## **Consultants**

During 2014-15 CALDB did not enter into any consultancy contracts and there are no ongoing consultancy contracts.

## **Competitive tendering**

CALDB did not undertake any competitive tendering or contracting during the 2014-15 financial year.

## **Australian National Audit Office access clauses**

CALDB has not entered into any contract of \$100,000 or more during the reporting period.

## **Exempt contracts**

CALDB has no contracts or standing offers that have been exempted from being published in AusTender on the basis that publication would disclose exempt matters under the FOI Act.

## **Advertising and market research**

CALDB does not carry out any advertising or market research.

## **Discretionary grants**

CALDB does not administer any discretionary grant programmes.



## Glossary

AAT	Administrative Appeals Tribunal
AD(JR) Act	<i>Administrative Decisions (Judicial Review) Act 1977</i>
AGS	Australian Government Solicitor
APRA	Australian Prudential Regulation Authority
APS	Australian Public Service
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
CALDB	Companies Auditors and Liquidators Disciplinary Board
Corporations Act	<i>Corporations Act 2001</i>
ESD	Environmentally sustainable development
FOI Act	<i>Freedom of Information Act 1982</i>
IPS	Information Publication Scheme
PJC	Parliamentary Joint Committee on Corporations and Financial Services



# APPENDIX 1

## CALDB procedures with respect to applications

Applications to CALDB may be made by either ASIC or APRA.

Provisions of the Corporations Act and ASIC Act prescribe the essential procedures. These provide, importantly, that CALDB is required to provide a respondent with the opportunity to appear at a hearing held by CALDB and to make submissions to and adduce evidence before CALDB in relation to a matter. Hearings are conducted by a panel of board members convened by the Chairperson as required by the ASIC Act.

More detailed procedures adopted by CALDB are contained in its *Manuals of Practice and Procedure* available on CALDB's website, [www.caldb.gov.au](http://www.caldb.gov.au). There is a manual for 'conduct' matters and a manual for 'administrative' matters. The manuals set out 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 Manuals are provided to all parties involved in proceedings before CALDB. These documents are reviewed and updated from time to time.

CALDB categorises the matters brought before it as *administrative matters* or *conduct matters*. The categorisation has been adopted by CALDB as a procedural policy and will be reviewed from time to time. In general terms, administrative matters involve less complexity and are less time consuming than conduct matters.

CALDB categorises as administrative matters those matters that arise from applications pursuant to the following provisions of the Corporations Act:

Provision	
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)

CALDB categorises as conduct matters those matters that arise from applications pursuant to the following provisions of the Corporations Act:

Provisions	
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 CALDB 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 its satisfaction.

If a ground is established under paragraph 1292(7)(a) or (b) then CALDB 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), CALDB 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.

Where the registration of a person has been suspended, CALDB may, on an application by the person or of its own motion, by order under section 1295, terminate the suspension.

Section 1294A of the Corporations Act provides that the Chairperson may, if he considers that it would assist the conduct of the hearing, convene one or more pre-hearing conferences with the parties. The Chairperson uses the pre-hearing conferences to:

- fix a hearing date;
- give directions about the timing of the filing of evidence and submissions; and
- give directions about the procedure to be followed generally at, or in connection with, the hearing.

The Chairperson also uses the pre hearing conferences to:

- refine and reduce the matters in dispute to reduce the length of the hearing and overall costs of the proceedings; and
- resolve any preliminary matters.

CALDB's pre-hearing procedures are regularly reviewed to ensure that they remain effective and efficient so as to minimise costs and time for all parties.

Should the parties reach consensus regarding an acceptable outcome they can refer draft agreed terms of order to the CALDB panel. CALDB does not participate in any settlement discussions or negotiations between the parties and retains the right to determine the appropriate orders.

## **Panel of CALDB members to hear and determine matters**

As noted, hearings are conducted and decisions are made by a panel of members of CALDB determined by the Chairperson (Panel).

A Panel must include the Chairperson or Deputy Chairperson as Chairperson of the Panel. Generally, a Panel is constituted by five members – including two accounting members and two business members. The Chairperson may consider it appropriate to convene a Panel with three members, in which case one accounting and one business member would be selected.

Matters are heard by a duly constituted Panel that will make a determination and decisions as necessary in relation to a particular application.

All matters referred to CALDB (unless subsequently withdrawn by ASIC) must proceed to a hearing following which the Panel will make a determination and orders. Hearings are required to be held in private unless a public hearing is requested by the respondent.

For contested conduct matters, a Panel will usually hold a hearing with all members and parties physically present. In other matters, the Panel may arrange hearings by video link or telephone link with one or more members or parties in different locations. The ASIC Act permits legal representation at all hearings, for all parties. Parties may also represent themselves.

The Panel must determine whether or not it is satisfied that the contentions raised in the application have been established. The Panel provides the parties with a written determination that sets out the Panel's conclusions (with reasons) on each of the contentions.

If the Panel determines a contention is established it must decide whether or not to exercise any of CALDB's powers under section 1292 of the Corporations Act and/or whether or not it is required to make an order under subsection 1292(7). For that purpose, the Panel may hold a final hearing before delivering its decision.

At any final hearing, the parties will have an opportunity to present relevant evidence and make submissions on the questions of sanctions, publicity and costs.

## APPENDIX 2

### Details of current members of the Board

#### **David Castle**

David Castle is a solicitor and was previously a partner of Dibbs Barker, specialising in business law. He was formerly deputy chairperson of the CALDB from June 2003 to May 2009 and December 2012 to March 2013 and formerly chair of the Tax Agents Board of New South Wales. He is a member of the Law Society of New South Wales business law committee. He has practised 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 ASX and the Tax Agents Board of New South Wales. He is a qualified and experienced mediator.

#### **Maria McCrossin**

Maria McCrossin is a lawyer with extensive financial services, capital markets and commercial litigation experience. She has held senior roles in private legal practice (Clayton Utz) and within the commercial sector (AMP, ASX, ANZ). Maria is a Fellow of the Australian Institute of Company Directors and a current member of the ChiX Australia Compliance Panel.

#### **Judith Downes**

Judith Downes is a non-executive director with extensive experience in senior finance roles in listed Australian companies, including as chief financial officer. She is a past member of the IFRS Advisory Council and the AASB. Judith is a Fellow of CAANZ, CPA, and AICD, and has an honorary appointment as Fellow at the University of Melbourne.

#### **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 Australian Restructuring Insolvency & Turnaround Association (ARITA) and former State Chair and National Board member of that organisation.

#### **Bruce Gleeson**

Bruce is a Principal at Jones Partners Insolvency & Business Recovery – a specialist insolvency firm based in NSW. He holds a Bachelor of Commence Degree from the University of Western Sydney, NSW and has also completed a Diploma of Financial Planning with the Financial Planning Association of Australia (FPA). Bruce is both a Fellow of the Chartered Accountants Australia & New Zealand (CAANZ) and CPA

Australia, as well as being a member of the Australian Restructuring Insolvency & Turnaround Association (ARITA). He is a Registered Liquidator, Official Liquidator, Registered Trustee in Bankruptcy and a Justice of the Peace (NSW). Bruce was on the NSW State Council of the CAANZ (previously being Chairman) from 2007 to 2011, as well as being a former Junior Vice President of the Western Sydney Business Connection. He has been assisting the CAANZ regarding the Senate Inquiry and other insolvency reforms proposed by the federal Treasury and other state agencies. He is presently the Chairman of the Insolvency Management Committee which is a specialist committee of the CAANZ. He has also recently been appointed to the ARITA NSW/ACT Committee. Bruce has in excess of 15 years corporate insolvency and re-organisation and bankruptcy experience. Bruce has also held roles in commerce with several Top 100 Companies (James Hardie and AMP) to further add to his professional skills in areas such as compliance and project management.

### **David Sauer**

David Sauer is a Chartered Accountant and Registered Company Auditor, specialising in professional standards – financial reporting, assurance and ethics. He provides professional education for accountants and independent advice on the application of standards in transactions, commercial disputes and regulatory compliance. He has worked in public practice since 1983 and now assists mid-tier and smaller accounting firms to develop and monitor their quality assurance and audit policies and procedures. David was a member of the Institute of Public Accountants' Legislation and Standards Committee from 2000 to 2009.

### **Eric Passaris**

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

### **Karen O'Flynn**

Karen O'Flynn is a Partner of Clayton Utz and leads that firm's restructuring and insolvency practice. Karen is a member of the Clayton Utz board, Vice-Chair of the Insolvency Section of the International Bar Association and a member of the International Insolvency Institute.

## APPENDIX 3

### Decisions gazetted during the year ended 30 June 2015<sup>3</sup>

#### **Pino FIORENTINO**

*Corporations Act 2001*

SECTION 1296(1)(c)

NOTICE OF DECISION

At a hearing held pursuant to section 1294 of the *Corporations Act 2001* ('Act'), commencing on 18 November 2013 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 that **Pino FIORENTINO**, a registered liquidator, has failed to carry out or perform adequately and properly the duties of a liquidator and decided on 24 June 2014 to exercise its powers under section 1292 of the Act by ordering:

- (a) That the registration of Pino Fiorentino as a liquidator be cancelled;
- (b) That this order will come into effect 14 days after the date of the decision.

Dated: 24 June 2014

Gary K Hoare

Registrar

#### **Jonathan Paul MCLEOD**

*Corporations Act 2001*

SECTION 1296(1)(c)

NOTICE OF DECISION

At a hearing held pursuant to section 1294 of the *Corporations Act 2001* ('Act'), commencing on 25 November 2014 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 that **Jonathan Paul MCLEOD**, a registered liquidator, has failed to carry out or perform adequately and properly the duties of an liquidator and decided on 12 June 2015 to exercise its powers under section 1292 of the Act by ordering:

- (a) that Mr Jonathan Paul McLeod is admonished by this Board under section 1292(9) of the Act.

Dated: 12 June 2015

Gary K Hoare

Registrar

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3 Notice of a further Decision made on 9 December 2014 has been the subject of an appeal to the Administrative Appeals Tribunal and was gazetted on 28 July 2015.

Companies Auditors and  
Liquidators Disciplinary Board

**Annual Report**

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