

Companies Auditors and Liquidators Disciplinary Board

Annual Report
for the year ending 30 June 2016

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**Companies Auditors
and Liquidators
Disciplinary Board**

16 September 2016

The Hon. Kelly O'Dwyer MP
Minister for Revenue and Financial Services
Parliament House
CANBERRA ACT 2600

Dear Minister

I am pleased to present the Board's Annual Report for the year ended 30 June 2016 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 she receives a copy of the report.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. McCrossin', written in a cursive style.

Maria McCrossin
Chairperson

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Chairperson's Review

The 2015-16 reporting year ("the year") was productive for the CALDB. Activity focused on conducting hearings and preparing written reasons for decision in respect of the matters heard, as well as managing the outworkings of earlier CALDB decisions such as two appeals lodged with the Administrative Appeals Tribunal (AAT) and taxation of costs orders which had been made in two previous matters.

One conduct hearing and two sanctions hearings were convened during the year. The conduct hearing took place over seven days between July and November 2015 and concerned a liquidator. CALDB's final decision was handed down in May 2016 following delivery to the parties of its written determination in February 2016 and a sanctions hearing that took place in April 2015. The liquidator involved has lodged an appeal with the AAT against CALDB's decision. There was one other sanctions hearing during the year. This matter involved an auditor and took place in Melbourne. That decision was delivered in October 2015 and a copy of the reasons for decision has been published on CALDB's website, www.caldb.gov.au.¹

An appeal to the AAT in respect of a matter concerning an auditor that had been decided by CALDB in the previous reporting year was finalised this year. The AAT upheld CALDB's decision, a copy of which, together with the related decision of the AAT, is now published on the Board's website. An appeal to the AAT in respect of a matter concerning a liquidator that had been decided by the CALDB in the 2013-2014 reporting year was also finalised this year. The AAT dismissed the appeal which had been published on the Board's website in July 2014.

One new application was received this year. This application is being dealt with in accordance with the Board's pre-hearing procedures and will be set down for hearing in the next reporting year.

A number of changes to CALDB's board membership took place this year. The terms of the Chairperson Mr David Castle and accounting members Ms Judith Downes and Mr David Sauer expired and were not renewed by the Assistant Treasurer. My fellow members and I wish to express our thanks and appreciation to Ms Downes and Messrs Castle and Sauer for their contribution to the work of CALDB.

The Assistant Treasurer re-appointed business member Karen O'Flynn for a further three year term in December 2015 and at the same extended the appointments of accounting members Messrs Bruce Gleeson, Robert Ferguson and Eric Passaris for a further 18 months. I thank each of these members for their valuable ongoing contribution to the work of CALDB.

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

There were three new appointments to CALDB made by the Assistant Treasurer this year. Ms Clare Lethlean has been appointed the Deputy Chairperson of CALDB for a three year term and Mses Kerrie Howard and Inge Kindermann were appointed as business members, also for three year terms. Mses Lethlean, Howard and Kindermann bring a wealth of legal and commercial experience to CALDB and I look forward to working with them during their terms.

In December 2015 the Assistant Treasurer appointed me to the office of Chairperson of CALDB for a three year term. I am honoured by the appointment and look forward to contributing to the important role that CALDB performs in the business community in my new role as the presiding member.

Currently the Board has three accounting members and three business members. This is less than the statutory mandate set out in section 203 of the Australian Securities and Investments Commission Act 2001 (ASIC Act) for the CALDB to be constituted by six accounting members, six business members and a Chairperson and Deputy Chairperson. CALDB maintains regular contact with the Treasury regarding the appointment of further members to address the current deficit. Treasury has advised that the matter is in hand.

The passage of the Insolvency Law Reform Act 2015 (New Act) through the Senate in February 2016 is a significant development for CALDB. The New Act will devolve primary responsibility for the discipline of liquidators from CALDB to a committee comprising a representative of ASIC and ARITA and a Ministerial appointee. Following the partial commencement of the New Act, presently scheduled to occur not later than 1 March 2017, the functions and powers of CALDB will therefore thereafter be limited to auditors registered under the Corporations Act, subject to the finalisation by CALDB of any current liquidator matters in accordance with the transitional provisions in the New Act.

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

Finally I wish to acknowledge and thank each of the members of CALDB, who so generously contribute their significant experience and expertise on a part time basis, and notwithstanding the demands of their practices and/or other professional and business commitments.

In the coming year, 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 corporate financial regulatory framework.

Maria McCrossin
Chairperson

Overview

CALDB is an independent statutory body established under Part 11 of the ASIC Act with the powers and functions provided in Part 9.2 of the Corporations Act and Part 11 of the ASIC Act. It is constituted by part time accounting and business members appointed by the Minister. Alongside several other bodies, including ASIC, APRA, the FRC and various professional associations, CALDB plays an important role for the Australian economy in the regulation of auditors and liquidators.

The Minister responsible for CALDB is the Minister for Revenue and Financial Services (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 PGPA Act on 17 April 2015. Legal advice obtained confirms that CALDB is not required to comply with the PGPA Act in respect of preparation of its annual report for the 2015/16 year. CALDB notes the latest version of *Requirements for Annual Reports* issued by the Department of the Prime Minister and Cabinet dated 30 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.

Current role and purpose

CALDB's role is to act as an independent expert disciplinary tribunal. It hears and considers applications brought before it by ASIC or APRA for the cancellation or suspension of registration of auditors or liquidators under the provisions of the Corporations Act. CALDB has no power to instigate applications. While applications may be brought to CALDB by ASIC or APRA, CALDB has never received an application from APRA.

As a disciplinary board with procedures designed to avoid technicality and delay, CALDB provides a forum for expeditious and cost-effective disciplinary outcomes within an independent and transparent framework. As an expert body 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, often necessary in other tribunals and in the courts.

The published decisions of CALDB provide important guidance to registered practitioners and industry bodies and form an important aspect of the educative function of the Board.

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 the relevant provisions in Part 11 of the ASIC Act and Division 3 Part 9.2 of the Corporations Act.

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 on the registered auditor or liquidator including orders for cancellation or suspension of the registration of the auditor or liquidator.

CALDB's powers under the Corporations Act to cancel or suspend the registration of an auditor or liquidator in appropriate circumstances, provides a robust and effective disciplinary framework which at the same time embeds the right to fairness for those practitioners who face disciplinary action. It has a public protection element insofar as it both encourages the maintenance of high professional standards amongst auditors and liquidators and provides the means for a transparent disciplinary outcome with respect to those practitioners who do not meet appropriate standards.

Effect of New Act on CALDB's functions

The partial commencement of the New Act currently scheduled for 1 March 2017 ("commencement date") will remove from CALDB's mandate its role as an expert disciplinary tribunal considering applications for cancellation or suspension of the registration of liquidators

The New Act will transfer CALDB's disciplinary powers in respect of liquidators to:

- ASIC in the circumstances specified by the New Act; and
- disciplinary committees convened by ASIC and comprising ASIC, a registered liquidator chosen by a prescribed body such as ARITA and a Ministerial appointee.

In addition to the powers to suspend and cancel the registration of liquidators, a disciplinary committee's range of powers will include being able to issue public reprimands and impose conditions on the registration of the liquidator.

Where, at the commencement date, the Board has liquidator disciplinary applications before it in which a conference pursuant to section 1294A of the Corporations Act has

been held, those applications will remain with the Board and may not be dealt with under the New Act.

If, at the commencement date, the Board has applications before it in respect of which it has not made any orders or directions and has not refused the applications, the Board must cease its consideration of those applications. Such applications may be considered by the New Act disciplinary committees.

CALDB's statutory powers with respect to auditors registered under the Corporations Act remain unchanged.

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
Maria McCrossin	Chairperson	3 December 2018
David Castle	Chairperson	27 November 2015
Clare Lethlean	Deputy Chairperson	4 May 2019
Maria McCrossin	Deputy Chairperson	4 December 2015
Judith Downes	Accounting member	14 December 2015

Name	Role	Term expires/expired
Robert Ferguson	Accounting member	28 July 2017
Bruce Gleeson	Accounting member	28 July 2017
Kerrie Howard	Business member	3 December 2018
Inge Kindermann	Business member	3 December 2018
David Sauer	Accounting member	14 December 2015
Eric Passaris	Accounting member	28 July 2017
Karen O'Flynn	Business member	13 December 2018

Biographical details of the current members are included in **Appendix 2**. Each of the current CALDB members fulfil the requirements of s203 of the ASIC Act with respect to their membership of the CALDB.

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. Each of the Panels convened during the year fulfilled the requirements of s210A of the ASIC Act.

As may be noted from the above table, the Board had three business members and three accounting members current at the end of the reporting year. While the Board has managed its operations adequately with the deficit of members, Treasury has been made aware of the need for further member appointments and re-appointments to ensure the Board operates within its legislative mandate.

Operational Information 2015-16

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 continued to occupy offices on level 10 of 100 Market Street in Sydney. Appropriate hearing venues are 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 of the proceedings. 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 2015–16

One new application was received from ASIC during the reporting year.

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

Auditors

	Conduct	Administrative
Uncompleted matters at 1/7/15	1	-
New Applications received in 2015/2016 year	-	-
Matters withdrawn	-	-
Matters dealt with — orders issued	1	-
Uncompleted matters at 30/6/16	-	-

Liquidators

	Conduct	Administrative
Uncompleted matters at 1/7/15	1	-
New applications received in 2015/2016 year	1	-
Matters withdrawn	-	-
Matters dealt with — orders issued ²	1	-
Uncompleted matters at 30/6/16	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 15–16	Auditors 14–15	Liquidators 15–16	Liquidators 14–15
Hearing days	4 person days	12 person days	26 person days	14 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 written determinations, as well as the subsequent decision on sanctions and orders to be made.

² This matter was the subject of an appeal to the Administrative Appeals Tribunal.

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) plays the principal role in preparing the decision and supporting reasons in writing, in consultation with other Panel members. The Board Chairperson is responsible for conducting pre-hearing conferences relating to all matters before CALDB and has oversight of the general affairs of CALDB, supported by 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	10-11	11-12	12-13	13-14	14-15	15-16
Registration cancelled	-	1	1	3	-	1
Registration suspended	-	-	-	3	1	1
Admonition	-	-	-	-	1	-
Reprimand	-	-	-	-	-	-
Undertakings required to be given	-	-	-	2	1	1
Dismissed	-	-	-	-	-	-
Withdrawn by ASIC	-	2	1	-	-	-

Decisions reviewed in the reporting year are detailed on page 9 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 CAANZ, Institute of Public Accountants, CPA Australia, ARITA 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 CALDB's public educative role. 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. Copies of the decisions and reasons issued during the reporting year are set out on the Board's website: 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 most often is sought by a Respondent on the basis that they will suffer prejudice by publication if subsequently the Board's decision is reversed or altered.

There was one application for review of a CALDB decision under section 1292 made to the AAT during the reporting year. During the year the Board's decision in relation to an application which had been subject to review in 2014-15 and was upheld by the AAT, was gazetted and is included in Appendix 3.

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:

	2015–16 \$	2014–15 \$
Administrative expenses (including staff costs and external legal costs)	267,281	304,615
Travel and accommodation including allowances	7,698	16,957
Members’ fees	365,390	349,166
Total:	640,369	670,738

CALDB operated within the budget allocated to it by ASIC in the 2015–16 year. There was a year on year decrease in expenses in relation to travel and accommodation during the current year due to the hearing that took place being the domicile of each of the three members empanelled to hear the matter. Members’ fees increased year on year as a result of the increased number of hearing days this reporting year compared to the last reporting year.

Members of CALDB are remunerated in accordance with rates determined by the Commonwealth Remuneration Tribunal. The Remuneration Tribunal completed a review of part-time offices and issued a new part-time determination in early 2016 (#2015/20) and took effect 1 January 2016. The daily rates effective for CALDB members from 1 January 2016 are as follows:

Chairperson	\$1,411
Deputy Chairperson	\$1,270
Member	\$1,129

CALDB briefed the AGS in relation to appeal proceedings commenced by one respondent against the Board. CALDB spent \$10,222 (2015 - \$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 2015–16 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 FOI Act or any requests for reasons pursuant to section 13 of the 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 4 May 2016 that examined the annual reports of bodies established under the ASIC Act, considered that CALDB fulfilled its regulatory and reporting responsibilities during the 2014–15 financial year. The Senate Economics Review Committee did not select the CALDB Annual Report for review in this reporting year.

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 2015-16 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 2015-16.

Consultants

During 2015-16 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 2015-16 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
ARITA	Australian Restructuring Insolvency & Turnaround Association
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
CALDB	Companies Auditors and Liquidators Disciplinary Board
CAANZ	Chartered Accountants Australia and New Zealand
Corporations Act	<i>Corporations Act 2001</i>
ESD	Environmentally sustainable development
FRC	Financial Reporting Council
FOI Act	<i>Freedom of Information Act 1982</i>
New Act	Insolvency Law Reform Act 2015
IPS	Information Publication Scheme
PGPA Act	Public Governance, Performance and Accountability Act 2013
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 available on CALDB's website, 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 or she 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

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.

Clare Lethlean

Clare Lethlean is a lawyer with extensive dispute resolution and insolvency experience. She has held senior roles in private legal practice, with the United Nations (Geneva), with statutory disciplinary and complaint bodies and is currently employed in a professional practice role at McGrathNicol. Clare has held directorships in the education and disability sectors and currently holds appointments in the education sector and for a disciplinary body in the health sector.

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 was also on the ARITA NSW/ACT Committee during 2015. 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.

Kerrie Howard

Kerrie Howard is the General Counsel and Company Secretary of Victorian Funds Management Corporation. Kerrie has an extensive background in financial services including having worked in the regulatory sector and has held external directorships in government-related entities and the community sector.

Inge Kindermann

Inge Kindermann is a lawyer with extensive experience in restructuring, corporations and insolvency law. She is currently the Head of Legal – Lending Services at ANZ and has previously held a senior position in private practice (Minter Ellison).

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 2016

Richard Langley Stewart HILL

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 4 August 2014 a Panel of the Companies Auditors and Liquidators Disciplinary Board ("Board") decided that it was satisfied, on an application by the Australian Securities and Investments Commission that **Richard Langley Stewart HILL**, a registered auditor, failed to carry out or perform adequately and properly the duties of an auditor and was not a fit and proper person to remain registered as an auditor. On 9 December 2014 the Board decided to exercise its powers under section 1292 of the Act by ordering:

- (a) The registration of Richard Langley Stewart Hill as an auditor be suspended for a period of twelve months from the date this order takes effect (being 24 July 2015);
- (b) Mr Hill be required to give the following undertakings to the Board in writing within 14 days following the date these orders take effect; That Mr Hill will do the following acts:
 - (i) in addition to the normal minimum annual requirement for continuing professional education to which he is subject, Mr Hill will at his own expense successfully complete by 30 November 2015 at least 25 hours of professional training in independence and ethics covering the current APES 110 requirements and any additional requirements of the Act and other relevant legislation. This course/s must involve face to face teaching and be approved in writing in advance by ASIC. An especially tailored course prepared by an independent consultant commissioned by Mr Hill at his cost, and approved in advance by ASIC, is capable of meeting the requirements of this undertaking. Mr Hill is to notify ASIC in writing of successful completion (supplying supporting third party documentation) by no later than four weeks before the end of the suspension period;
 - (ii) within 30 days of the date these orders take effect, submit to ASIC for its written approval a detailed compliance plan in relation to:

- (1) fulfilment of the normal requirements for continuing professional education to which Mr Hill is subject by virtue of his membership of Chartered Accountants Australia and New Zealand (and/or any another professional accounting body);
 - (2) the completion and lodgement of Forms 912A; and
 - (3) fulfilment of the auditor rotation requirements under the Act,
and he will implement the approved compliance plan within his firm as soon as it is approved in writing by ASIC;
- (iii) at his own expense engage Korda Mentha or another suitable service provider approved by ASIC in writing in advance:
- (1) to provide training to all affected staff within his firm in the procedures set out in the approved compliance plan within 60 days of ASIC's approval of the compliance plan;
 - (2) to conduct at least one six-monthly written review of Mr Hill's observance of the approved compliance plan within the next twelve months to be provided to ASIC within 30 days of the review occurring.

Mr Hill is required to give the following further undertakings in respect of acts to be done by him following resumption of his status as a registered auditor:

- (iv) to engage, at his own expense, Korda Mentha or another suitable service provider approved by ASIC in writing in advance to conduct 6 monthly reviews of Mr Hill's observance of the approved compliance plan for a period of 2 years following resumption of his registration as an auditor. Each review is to be in writing and must be provided by Mr Hill to ASIC within 30 days of the review occurring.

In order to give effect to these undertakings, ASIC will notify Mr Hill of a nominated contact within 7 days of the date this order takes effect (and at least 7 days before any proposed change of that contact person during the period of these undertakings) to whom Mr Hill is to submit any plan or course for approval or any certifications or reviews as required by these undertakings.

Dated: 24 July 2015

Gary K Hoare
Registrar

Philip James DOWSLEY

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 23 March 2015 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 **Philip James Dowsley**, a registered auditor, has failed to comply with a condition of his registration as an auditor, has failed to carry out or perform adequately and properly the duties of an auditor and is otherwise not a fit and proper person to remain registered as an auditor and decided on 15 October 2015 to exercise its powers under section 1292 of the Act by ordering:

- (a) that the registration of Philip James Dowsley as an auditor be suspended for a period of six (6) months from the date this order takes effect, which will be 14 days from the date hereof; and
- (b) that Mr Dowsley will give the following undertakings to the Board in writing within 14 days of the date on which this Order takes effect:

Undertaking as to Current Conditions on Audit Registration

- (1) He will, within 30 days of the date of the Order, take all reasonable steps to fully comply with the Amended Conditions attached to his registration as a company auditor (as detailed in ASIC's letter to him dated 12 September 2013). That is, he will engage Mr Michael Cain or such other registered company auditor, as agreed in writing by ASIC in advance ("Review Auditor"), to conduct a review of the two audit files referred to in the third dot point of the Amended Conditions, namely Java Dale Pty Ltd (ACN 077 379 367) for the financial year ended 30 June 2013 and Total Care Funeral Plan Pty Ltd (ACN 003 876 622) for the financial year 30 June 2013. The Review Auditor is to provide a statement to ASIC as to whether, in the Review Auditor's opinion, each of the audits has been conducted in all material respects in accordance with the Australian Auditing Standards (effective as of the date of the audits).

Undertaking as to Further Education

- (2) In addition to the normal minimum annual requirement for continuing professional education to which he is subject, Mr Dowsley will at his own expense successfully complete within 12 months of the date of this Order at least 25 hours of professional training about audit-related matters, of which at least 15 hours

must involve face to face teaching. The training provider and the training content to be approved in writing in advance by ASIC. Mr Dowsley is to notify ASIC in writing of successful completion (supplying supporting third party documentation) by no later than 4 weeks after completion of the education.

Undertakings as to Ongoing Medical Treatment

- (3) He will, at his own expense, not earlier than 60 days and no later than 30 days prior to the conclusion of the period of suspension, obtain reports from his treating psychologist and an independent psychologist ("Psychologist") as to whether he is fit to practise either generally or in a limited way ("Medical Reports"). The terms of engagement of the Psychologist shall include a copy of and direction to comply with the requirements of Federal Court of Australia Practice Note CM7 "Expert witnesses in proceedings in the Federal Court of Australia".
- (4) He will provide a copy of the Medical Reports to ASIC no later than 14 days prior to the conclusion of the period of suspension. In the event that either or both of the Medical Reports:
 - (A) fails to certify that Mr Dowsley is fit to practise, or certifies that he is only fit to practise in a limited way Mr Dowsley acknowledges that ASIC is entitled to take such action as it thinks fit as a result thereof; or
 - (B) certifies that he is fit to practise, the report is to provide details as to the treatment regime (if any) that Mr Dowsley is to follow to ensure that he remains fit to practise ("Treatment Regime").
- (5) Mr Dowsley will comply with the Treatment Regime.
- (6) Mr Dowsley will, at his own expense, obtain and provide to ASIC, on no later than the date 12 months from the conclusion of the period of suspension, a certification from each of his treating psychologist and the Psychologist that he remains fit to practise.

Undertaking as to Audit Reviews Post Suspension

- (7) He will, at his own expense, engage a registered company auditor, subject to paragraph (9) below ("Peer Reviewer") to review the next 4 company audits for which he is responsible following the resumption of his status as a registered company auditor as soon as practicable after completing those audits and, in any event no later than 3 months after completing the audits. If Mr Dowsley has not

completed 4 company audits within 6 months following resumption of his status as a registered company auditor, he will engage the Peer Reviewer to review such audits as have been completed by him during that period and engage the Peer Reviewer to review the remaining company audits as soon as practicable after completing each audit and, in any event no later than 3 months after completing each audit.

- (8) The Peer Reviewer will:
 - (A) provide an opinion as to whether the audits reviewed in accordance with Mr Dowsley's undertaking in paragraph (7) have been conducted in all material respects in accordance with Australian Auditing Standards, Australian Auditing Guidance Statements and applicable professional requirements; and
 - (B) provide to Mr Dowsley and to ASIC a statement ("Peer Reviewer's Statement") setting out his/her opinion as to these matters and the reasons for that opinion as soon as practicable after Mr Dowsley completes the audits referred to in paragraph (7).
- (9) The engagement of the Peer Reviewer and his/her terms of engagement must be approved in writing by ASIC before they are engaged to conduct the review. To enable ASIC to consider whether the proposed Peer Reviewer should be engaged, Mr Dowsley must, within 30 days of the expiration of the period of suspension, provide to ASIC a curriculum vitae of the proposed Peer Reviewer and a draft of the terms of engagement.
- (10) In the event that the Peer Reviewer's Statement does not state that the audits have been conducted in all material respects in accordance with Australian Auditing Standards, Australian Auditing Guidance Statements and applicable professional requirements, Mr Dowsley acknowledges that ASIC is entitled to take such action as it thinks fit as a result thereof.
- (11) He will, on becoming aware of any non-compliance with any of the above undertakings notify ASIC in writing within 5 business days of such non-compliance occurring. Mr Dowsley acknowledges that in the event that he fails to comply with any of these undertakings, ASIC is entitled to take such action as it thinks fit in relation to any such non-compliance.
- (12) The documents required to be provided to ASIC by virtue of these undertakings are to be directed to the attention of Senior Executive Leader, Financial Reporting & Audit team, ASIC, Level 5, 100

Market Street, Sydney 2000 and service of those documents is also to be effected by email to the attention of doug.niven@asic.gov.au.

Dated: 15 October 2015
Gary K Hoare
Registrar

