

Chapter 2

Review of the 2010–11 annual reports of bodies established under the ASIC Act

2.1 This chapter considers the 2010–11 annual reports of the:

- Companies Auditors and Liquidators Disciplinary Board (CALDB) (paragraphs 2.2 – 2.12);
- Corporations and Markets Advisory Committee (CAMAC) (paragraphs 2.13 – 2.29); and
- Financial Reporting Panel (FRP) (paragraphs 2.30 – 2.35).

Companies Auditors and Liquidators Disciplinary Board

2.2 CALDB has been in operation since 1990, and is currently established by Part 11 of the ASIC Act. Its purpose in the administration of Australia's financial services system is to hear applications by the Australian Securities and Investments Commission (ASIC) or the Australian Prudential Regulation Authority (APRA) to cancel a liquidator's or an auditor's registration.¹ Accordingly, the Board operates as the disciplinary body for auditors and liquidators in Australia. The Board's casework is not self-generated. Rather, it is dependent on decisions by ASIC or APRA to refer matters for the Board's adjudication.

2.3 CALDB's annual report stated:

In Australia, the Board's role makes a significant contribution to a positive market perception of companies and other entities. The Board's responsibilities pursuant to the Corporations Act are intended to provide an incentive to registered auditors and liquidators to maintain high professional standards. The Board also has a public protective and educative role by virtue of its jurisdiction to cancel or suspend an auditor's or liquidator's registration.²

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2.4 The ASIC Act directs that the annual report is to 'describe the operations' of CALDB for the relevant financial year.³ There were three matters before CALDB during 2010–11. All were new applications referred between 1 April and

1 *Corporations Act 2001*, Part 9.2, Division 3.

2 CALDB, *Annual report: 2010-11*, p. 2.

3 *ASIC Act 2001*, s. 214.

30 June 2011.⁴ No matters were carried over from 2009–10.⁵ Accordingly, the Board was without casework for at least three quarters of the financial year.

2.5 Matters are categorised as either 'administrative' or 'conduct'. Of the three matters, two involved auditor conduct and one concerned liquidator administrative matters.⁶ No matters were concluded during the financial year. On the information provided, it is unclear whether matters were referred by ASIC or APRA.

2.6 The Board's decisions may be appealed to the Administrative Appeals Tribunal (AAT) or to the Federal Court of Australia.⁷ The annual report indicates that no decisions were the subject of judicial or AAT review during the 2010–11 financial year.⁸ This reflects the time in which the matters were referred in 2010–11 and the lack of matters referred to CALDB during 2009–10.⁹

2.7 Compared with previous financial years, the Board's caseload represents 'a significant reduction in the number of hearings and a decrease in hearing days'.¹⁰ The annual report provides the following statistics regarding the number of matters before the Board.

Figure 2.1: Breakdown of number of cases before CALDB¹¹

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

2.8 An analysis of data provided in previous annual reports indicates that the Board's caseload has significantly declined since 2003–04. It is also evident that matters relating to auditors consistently comprise the majority of the Board's caseload.

4 CALDB, *Annual report: 2010-11*, p. 1.

5 CALDB, *Annual report: 2010-11*, p. 13.

6 CALDB, *Annual report: 2010-11*, p. 13.

7 *Corporations Act 2001*, s. 1317B; *Administrative Decisions (Judicial Review) Act 1977*, s. 5; CALDB, *Annual report: 2010-11*, p. 8.

8 CALDB, *Annual report: 2010-11*, p. 14.

9 CALDB, *Annual report: 2009-10*, pp 14 - 15. For the 2009-10 financial year, orders were issued for one matter.

10 CALDB, *Annual report: 2010-11*, p. 12.

11 CALDB, *Annual report: 2010-11*, Table: 'Results by nature of sanction', p. 14.

Figure 2.2: Number of cases referred: 2002-03 to 2010-11¹²

Financial year	Auditors	Liquidators
2010-11	2	1
2009-10	0	0
2008-09	11	1
2007-08	5	0
2006-07	7	0
2005-06	9	3
2004-05	23	12
2003-04	32	1

Future of CALDB

2.9 The committee has previously noted the Senate Economics References Committee's 2010 inquiry into liquidators and administrators, which was critical of CALDB due to concerns with the Board's lack of independence from ASIC, the time taken for matters to be resolved, and the lack of transparency of CALDB's activities.¹³ While concluding that CALDB's disciplinary oversight of liquidators and auditors should continue, the Senate Economics Committee recommended the ASIC Act be amended to increase the transparency of the Board's deliberations and findings.¹⁴

2.10 The Government responded in June 2011, issuing a discussion paper outlining options to improve the regulatory framework applying to the corporate insolvency industry.¹⁵ In December 2011, this was followed by the commencement of a two-month public consultation process on reform proposals. The proposals appear to go

12 CALDB, *Annual report: 2010–11*, p.13; CALDB, *Annual report: 2009–10*, pp 14-15; CALDB, *Annual report: 2008–09*, pp 13 – 14; CALDB, *Annual report: 2007–08*, pp 13 – 14; CALDB, *Annual report: 2006–07*, pp 13 – 14; CALDB, *Annual report: 2005–06*, p. 11; CALDB, *Annual report: 2004–05*, p. 11; CALDB, *Annual report: 2003–04*, p. 10.

13 Senate Economics References Committee, *The regulation, registration and remuneration of insolvency practitioners in Australia: the case for a new framework*, September 2010, pp 78, 151.

14 Senate Economics References Committee, *The regulation, registration and remuneration of insolvency practitioners in Australia: the case for a new framework*, Recommendation 4, pp 151 – 152.

15 Australian Government, *Options paper: a modernisation and harmonisation of the regulatory framework applying to insolvency practitioners in Australia*, June 2011, available at: <http://www.treasury.gov.au/contentitem.asp?ContentID=2060&NavID>, (accessed 11 February 2012).

further than the recommendations of the Senate Economics References Committee, and include a proposal to remove liquidator matters from CALDB's jurisdiction.¹⁶

Committee view

2.11 The committee has previously noted its concern with the low number of referrals to CALDB.¹⁷ While the number of matters increased from the 2009–10 financial year, it would appear that the underutilisation of CALDB is continuing. The decline in CALDB's activity is particularly evident when viewed against its caseload in previous years.

2.12 The committee notes the Government's proposal to remove liquidator casework from the Board's jurisdiction. The committee will monitor developments in this area, including the introduction of any amending legislation.

Corporations and Markets Advisory Committee

2.13 The Corporations and Markets Advisory Committee (CAMAC) was established in 1989 by section 145 of the *Australian Securities Commission Act 1989*, and re-established in 2001 by Part 9 of the ASIC Act.¹⁸ The 2010–11 financial year marked the 21st year of the committee's operation.

2.14 CAMAC's role in the administration of Australia's financial services system is to advise the Minister on the operation and effectiveness of the financial services industry established by the ASIC Act and the *Corporations Act 2001* (the Corporations Act). On its own initiative or at the Minister's request, CAMAC may provide advice or recommendations about any matter connected with:

- a proposal to make corporations legislation, or to make amendments of the corporations legislation;
- the operation or administration of the corporations legislation;
- law reform in relation to the corporations legislation;
- companies or a segment of the financial products and financial services industry; or

16 Australian Government, *Proposals paper: A modernisation and harmonisation of the regulatory framework applying to insolvency practitioners in Australia*, December 2011, p. 2, available at: <http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=2264> (accessed 11 February 2012).

17 Joint Parliamentary Committee on Corporations and Financial Services, *Report on annual reports: 2009-10*, February 2011, p. 8.

18 Prior to 2001, CAMAC existed as the Companies and Securities Advisory Committee. Section 261 of the ASIC Act directs that bodies established under the *Australian Securities Commission Act 1989* continue in existence as if they had been established under the ASIC Act.

- a proposal to improve the efficiency of the financial markets.¹⁹

2.15 CAMAC 'seeks to promote a sound and effective regulatory framework for corporate activity and financial services and efficient financial markets' through providing the Minister 'informed, objective and independent advice'.²⁰ As detailed in the annual report, CAMAC states that its role is to:

...stimulate and lead the debate on the enhancement of standards for corporations and participants in financial markets and propose suitable regulatory reform where necessary.²¹

2.16 To administer its functions more effectively, CAMAC is divided into two committees; namely, an audit committee and a legal committee.²² The annual report notes that the 2010-11 financial year witnessed a new phase in the management of CAMAC, with the introduction of sub-committees for each inquiry.²³

2.17 The committee is supported by a full time executive, which for the 2010–11 financial year consisted of an SES officer, an Executive Level 2 officer and an APS level 6 officer.²⁴

2.18 There is a high degree of interaction between ASIC and CAMAC, with CAMAC reportedly receiving administrative assistance from ASIC's finance section, payroll section, library and fraud control section.²⁵

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2.19 The annual report details CAMAC's activities during 2010–11. These included an inquiry into the regulation of managed investment schemes, which is due to report by 30 June 2012, and an inquiry into the definition of derivatives. During the financial year, CAMAC also presented a report on Australia's executive remuneration framework.²⁶

2.20 CAMAC continues to have a measurable impact on Australia's financial system. During the 2010–11 financial year, CAMAC's reviews influenced the criminal

19 ASIC Act 2001, s. 148.

20 CAMAC, *Annual report: 2010–11*, p. 17.

21 CAMAC, *Annual report: 2010–11*, p. 67.

22 CAMAC, *Annual report: 2010–11*, p. 23.

23 CAMAC, *Annual report: 2010–11*, p. 27.

24 CAMAC, *Annual report: 2010–11*, p. 30.

25 CAMAC, *Annual report: 2010–11*, pp 28 – 29.

26 CAMAC, *Annual report: 2010–11*, pp 3 – 10.

penalty provisions in the *Corporations Amendment (No 1) Act 2010* and the Australian Securities Exchange listing rules regarding blackout trading.²⁷

2.21 The annual report raised three matters of significance concerning CAMAC's financial statements. First, the reporting of monies spent on auditor services lacks sufficient clarity. Note 14 to the financial statements records an expenditure of \$15 100 for auditor services provided by the Auditor-General. However, the accompanying text states that the auditing services were provided free of charge. This apparent anomaly is clarified by line two of the *Statement of comprehensive income*, which records a gain of \$15 100 from resources provided free of charge and by note 1.4 which states that '[u]se of these resources is recognised as an expense'. However, as neither the statement nor note 1.4 directly refers to the auditing services, the link between the expenditure on auditing services and the resources which CAMAC received free of charge can only be inferred. It is not expressly stated. It would improve the clarity of the annual report were note 14 to directly refer the reader to note 1.4 and to line two of the *Statement of comprehensive income*.

2.22 Second, for the 2010–11 financial year remuneration for CAMAC members totalled \$45 549. While noting that \$2042 of the \$45 549 represents the aggregated amount of superannuation payments for committee members, the annual report does not provide further breakdown of the remuneration paid during the financial year. The ASIC Act requires the committee's remuneration to be calculated in accordance with determinations of the Remuneration Tribunal.²⁸ According to information published by the Remuneration Tribunal, from 1 August 2010 the CAMAC Convenor was entitled to a daily rate of \$779. Other members were entitled to a daily rate of \$709.²⁹ Entitlements differed for July 2010, during which the daily rate for the Convenor was \$748 and \$681 for other members.³⁰ This information could usefully be included in the annual report. It would assist with monitoring the activities of CAMAC were the monies spent reported against the remuneration entitlements as determined by the Remuneration Tribunal and according to the number of committee meetings per year.

2.23 Third, the annual report notes that CAMAC's expenditure for the 2010–11 financial year included the payment of \$69 000 to ASIC.³¹ The annual report does not provide an explanation for this payment.

2.24 The annual report also comments that during the 2010–11 financial year there were no parliamentary committee reports regarding CAMAC's activities.

27 CAMAC, *Annual report: 2010–11*, p. 10.

28 ASIC Act 2001, s. 152.

29 Remuneration Tribunal, *Determination 2010/11: Remuneration and allowances for holders of part-time public office*, 1 August 2010, p. 10.

30 Remuneration Tribunal, *Determination 2009/14: Remuneration and allowances for holders of part-time public office*, 1 October 2009, p. 10.

31 CAMAC, *Annual report: 2010–11*, p. 63.

Committee view

2.25 The committee considers that CAMAC fulfilled its regulatory responsibilities during the 2011–12 financial year. The committee commends CAMAC for the contributions it has made, and continues to make, to the regulation of Australia's financial system. The committee is interested in CAMAC's review of executive remuneration, the regulation of managed investment schemes and the definition of derivatives, and will monitor the outcome of these reviews.

2.26 The committee considers that there are three areas in which CAMAC's annual reports could be enhanced. First, as noted, there are three instances where further information could usefully be provided regarding CAMAC's expenditure. The committee asks CAMAC to attend to these matters in the preparation of the annual report for the 2011–12 financial year.

2.27 Second, the committee would be interested in further information about the interaction between ASIC and CAMAC. Further information about administrative or other arrangements between CAMAC and ASIC, and the funding of such arrangements, could usefully be included in both agencies' annual reports.

2.28 Third, the committee draws CAMAC's attention to the reports on annual reports prepared by this committee and the Senate Economics Legislation Committee. It would be appropriate for these reports to be referred to in the discussion in the annual report regarding external scrutiny of CAMAC.

2.29 Subject to the issues raised with the financial statements and external scrutiny of CAMAC, the committee was satisfied with the 2010–11 annual report.

Financial Reporting Panel

2.30 The Financial Reporting Panel was established in 2006 by Part 13 of the ASIC Act to provide cost-effective expert dispute resolution services for disputes between ASIC and lodging entities.³² The Panel's jurisdiction is narrow, confined to disputes regarding the application of accounting standards in financial reports. The Panel's exercise of its jurisdiction is also constrained, as disputes cannot be referred to the Panel without ASIC's consent.³³

2.31 Since commencing operation in 2006, the Panel has been referred five matters. Of these, the Panel has provided a determination in only four matters, with the fifth matter being withdrawn before a determination was made.

32 Explanatory Memorandum, Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003, p. 146.

33 *Corporations Act 2001*, paragraph 323EG(1)(c).

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2.32 Of the five matters, four were referred in the 2010–11 financial year. The matters were concluded 'in a little over two months' from the date of referral.³⁴ From the information contained in the annual report, it is unclear whether this complies with the 60 day timeframe required by section 323EK of the Corporations Act.

2.33 The 2010–11 annual report does not provide a breakdown of monies spent per matter. It is evident, however, that the Panel was overspent for 2010–11, ending the financial year with a \$64 381 deficit from an allocated budget of \$233 000.³⁵ This is in contrast to all other years of operation for which the FRP ended the financial year with surplus funds.³⁶

2.34 On 7 February 2012, the Government announced its decision to terminate the FRP due to 'lower than expected referral rates'.³⁷ The decision was foreshadowed in the *Mid Year Economic and Fiscal Outlook 2010–11*³⁸ and announced following a one-month public consultation process.³⁹ To disband the Panel, the Government will introduce amendments to the Corporations Act⁴⁰ and, presumably, the ASIC Act. In announcing the decision, the Government did not indicate the timeframe for the introduction of the amending legislation.

Committee view

2.35 The committee was satisfied with the FRP's annual report, noting the Government's decision to disband the Panel. The committee extends its thanks to Panel members for their contribution to financial services regulation.

34 FRP, *Annual report: 2010–11*, p. 1.

35 FRP, *Annual report: 2010–11*, p. 12.

36 2006–07: balance of \$361 589 of \$1 000 000 appropriated revenue (source: FRP, *Annual report: 2006–07*, p. 22); 2007–08: balance of \$467 652 of \$1 000 000 appropriated revenue (source: FRP, *Annual report: 2007–08*, p. 9); 2008–09: balance of \$624 268 of \$780 000 appropriated revenue (source: FRP, *Annual report: 2008–09*, p. 11); 2009–10: balance of \$286 758 of \$388 000 appropriated revenue (source: FRP, *Annual report: 2009–10*, p. 11).

37 The Hon David Bradbury MP, Parliamentary Secretary to the Treasurer, 'Closure of the Financial Reporting Panel', Media release 003, 7 February 2012.

38 Australian Government, *Mid-Year Economic and Fiscal Outlook 2010–11*, Appendix A: Part 2: Policy decisions taken between the 2010–11 Budget and the 2010 PEFO, p. 262.

39 The Treasury, *Discussion Paper – Financial Reporting Panel*, <http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=2220> (accessed 7 February 2012).

40 The Hon. David Bradbury MP, Parliamentary Secretary to the Treasurer, 'Closure of the Financial Reporting Panel', Media release 003, 7 February 2012.