

Chapter 2

Bodies established under Parts 9–11 of the ASIC Act

2.1 This chapter considers the 2013–14 annual reports of the:

- Companies Auditors and Liquidators Disciplinary Board (CALDB);
- Corporations and Markets Advisory Committee (CAMAC); and
- The Takeovers Panel (the Panel).

Companies Auditors and Liquidators Disciplinary Board

2.2 CALDB was first established as an independent statutory body in 1989 and is currently established by Part 11 of the *Australian Securities and Investments Commission Act 2001*. Its primary purpose, in the administration of Australia's financial services system, is to hear applications and consider cancellation or suspension of a liquidator's or auditor's registration. The Board's casework is not self-generated as it holds no powers to instigate applications. Rather, applications are brought by either ASIC or the Australian Prudential Regulation Authority (APRA) for the Board's adjudication.¹ Accordingly, the Board operates as an expert disciplinary body for auditors and liquidators in Australia.

2.3 CALDB's 2013-14 annual report states:

The responsibilities conferred on CALDB by the Corporations Act are intended to 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.²

Annual report of CALDB

2.4 The ASIC Act directs that the annual report is to 'describe the operations' of CALDB for the relevant financial year.³

2.5 New applications received by CALDB are categorised as either 'administrative' or 'conduct'. There were four new applications to CALDB by ASIC in 2013–14. All four of these applications were conduct matters. No administrative applications were received. Two of the matters received related to auditors, and two related to liquidators.⁴

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

2 CALDB, *Annual report: 2013 –14*, p. 3.

3 *ASIC Act 2001*, s. 214.

4 CALDB, *Annual report: 2013 –14*, p. 6.

2.6 During 2013–14 six matters were dealt with, leading to orders being issued for either cancellation or suspension of registration. Two matters remained uncompleted and will carry over to the 2014–15 period.⁵

2.7 The report provides the following statistics regarding the number of matters before the Board.

Figure 2.1: Results by nature of sanction of cases before CALDB

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

Source: CALDB, *Annual report: 2013–14*, Table: 'Results by nature of sanction', p. 7.

2.8 An analysis of data provided in previous annual reports indicates that the Board's caseload has significantly declined since 2003–04 (see Figure 2.2). However, the annual report indicates that during 2013–14 an increased hearings workload from 33 to 71 person days contributed to a significant increase in member's fees, from \$175 thousand in the previous year to \$456 thousand in 2013–14.⁶

2.9 A decision of CALDB may be appealed to the Administrative Appeals Tribunal (AAT) or to the Federal Court of Australia.⁷ During the 2013–14 financial year, two applications for decisions made by CALDB were referred to the AAT. The first application was withdrawn prior to any decision of the AAT, and the outcome of the second application is not yet known. No applications for judicial review were made during this period.⁸

5 CALDB, *Annual report: 2013–14*, p. 6.

6 CALDB, *Annual report: 2013–14*, pp 6, 9.

7 *Corporations Act 2001*, s, 1317B; *Administrative Decisions (Judicial Review) Act 1977*, s. 5.

8 CALDB, *Annual report: 2013–14*, p. 8.

Figure 2.2: Number of cases referred: 2003–04 to 2013–14

Financial year	Auditors	Liquidators
2013–14	2	2
2012–13	1	4
2011–12	5	2
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

Source: CALDB, *Annual report: 2013–14*, p. 6; CALDB, *Annual report: 2012–13*, pp 7–8; CALDB, *Annual report: 2011–12*, p.13; 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.

Committee view

2.10 The committee considers that CALDB has fulfilled its regulatory and reporting responsibilities during the 2013–14 financial year. The committee notes that the CALDB has implemented recommendations of the committee on CALDB annual reports including:

- clarifying whether matters are referred by ASIC or APRA;
- information on whether any decisions were the subject of judicial or Administrative Appeals Tribunal reviews; and
- appropriate discussion of external scrutiny.⁹

2.11 The committee also notes that CALDB has implemented recommendations of the Senate Economics Legislation Committee which suggested that CALDB should

9 Parliamentary Joint Committee on Corporations and Financial Service, *report on the 2012–13 annual reports of bodies established under the ASIC Act*, March 2014, p. 8; CALDB, *Annual report: 2013–14*, pp 6, 8, 11.

include in the annual report a table of contents, information on lodging Freedom of Information requests and information on salary ranges and benefits.¹⁰

2.12 The committee 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.

Corporations and Markets Advisory Committee

2.13 The Corporations and Markets Advisory Committee (CAMAC) was first established in 1989 and was subsequently established by Part 9 of the *Australian Securities and Investments Commission Act 2001*.¹¹ CAMAC's role in the administration of Australia's financial services system is to provide informed and expert advice to the Minister about the content, operation and administration of the corporations legislation, corporations, financial products and markets.¹² 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
- a proposal to improve the efficiency of the financial markets.¹³

2.14 As detailed in the annual report, CAMAC states that its role was '...to promote a sound and effective regulatory framework for corporate activity and financial services and efficient financial markets'.¹⁴

2.15 CAMAC is divided into two committees, an Audit Committee and a Legal Committee.¹⁵ During the 2013–14 financial year there were sub-committees for managed investment schemes, crowd sourced equity funding and annual general meetings and shareholder engagement.¹⁶

10 Senate Economics Legislation Committee, *Annual report (No. 1 of 2013)*, March 2013, p. 28; CALDB, *Annual report: 2013–14*, pp iii, 9, 10.

11 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.

12 *ASIC Act 2001*, s. 1(1)(c).

13 *ASIC Act 2001*, s. 148.

14 CAMAC, *Annual report: 2013–14*, p.18.

15 CAMAC, *Annual report: 2013–14*, pp 24–26.

16 CAMAC, *Annual report: 2013–14*, p. 24.

2.16 CAMAC was supported by a full time executive, which for the 2013–14 financial year consisted of three officers.¹⁷

2.17 There was interaction between ASIC and CAMAC, with CAMAC receiving administrative assistance from ASIC's finance section, information technology officers, payroll section and library.¹⁸

Proposal to abolish CAMAC

2.18 The Commission of Audit considered that CAMAC's functions could be consolidated into the Department of the Treasury.¹⁹ In May 2014 the Commonwealth Government, as part of the budget, announced its decision to abolish CAMAC and its Legal Committee during the 2014–15 financial year.²⁰ On 24 September 2014, the government released an exposure draft of legislation to abolish CAMAC.²¹ The Australian Securities and Investments Commission Amendment (Corporations and Markets Advisory Committee Abolition) Bill 2014 (the CAMAC Bill) was introduced into the Representatives on 4 December 2014. The CAMAC Bill was passed by the House of Representatives on 2 March 2015 and introduced into the Senate on 3 March 2015.²²

2.19 The CAMAC Bill would amend the *Australian Securities and Investments Commission Act 2001* (the Act) to:

- abolish the Corporations and Markets Advisory Committee (CAMAC) by repealing Part 9 of the Act; and
- provide transitional and savings arrangements reflecting the cessation of CAMAC, including transferring CAMAC's records to the Department of the Treasury.²³

2.20 The cessation of CAMAC is expected to have a positive impact on the fiscal balance of \$2.8 million and an underlying cash of \$3.1 million over the forward

17 CAMAC, *Annual report: 2013–14*, p. 26.

18 CAMAC, *Annual report: 2013–14*, pp 26–27.

19 Commission of Audit, *Towards Responsible Government: Appendix to the Report of the National Commission of Audit*, Volume 3, March 2014, p. 171.

20 Budget 2014–15, *Budget Measures*, Budget Paper No. 2, 2014–15, p. 71.

21 Treasury, *Cessation of the Corporations and Markets Advisory Committee (CAMAC)*, exposure draft, <http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2014/CAMAC>, (accessed 30 March 2015).

22 Australian Securities and Investments Commission Amendment (Corporations and markets Advisory Committee Abolition) Bill 2014, http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r5386, (accessed 30 March 2015).

23 Australian Securities and Investments Commission Amendment (Corporations and markets Advisory Committee Abolition) Bill 2014, *Explanatory Memorandum*, p. 5.

estimates. These estimates make allowances for the costs of shutting down CAMAC, such as employee redundancies and contract termination costs.²⁴

2.21 The Parliamentary Secretary to the Treasurer indicated that the business environment had also changed and industry would continue to express its views to government on the operation of corporations laws:

The professionalism and capacity of industry representative groups is now much stronger, and business is quite capable of putting its views to government without the need for an additional layer of taxpayer funded bureaucracy.²⁵

2.22 The government also indicated that the services that had been provided by CAMAC would be provided in other ways, including:

- the Department of the Treasury, as the policy agency that advises the government in relation to corporate law, financial markets and financial services;
- the Australian Securities and Investment Commission (ASIC), which has capacity to make recommendations on matters connected with corporate law, financial products and service providers, and financial markets more broadly; and
- the Productivity Commission and the Australian Law Reform Commission, in relation to undertaking reviews into the corporate regulatory framework as referred by the government.²⁶

2.23 On 12 February 2015, the Senate referred the provisions of the CAMAC Bill to the Senate Economics Legislation Committee for inquiry and report by 16 March 2015.²⁷ The inquiry received evidence on issues including:

- the high regard for CAMAC's work and processes;
- value for money provided by CAMAC;
- the replication of CAMAC's functions by other agencies; and
- the continuing ability for states and territories to have input into the reform of corporations law.²⁸

24 Australian Securities and Investments Commission Amendment (Corporations and markets Advisory Committee Abolition) Bill 2014, *Explanatory Memorandum*, p. 3.

25 The Hon Steven Ciobo, *House of Representatives Hansard*, 4 December 2014, p. 14245.

26 The Hon Steven Ciobo, *House of Representatives Hansard*, 4 December 2014, p. 14246.

27 *Journals of the Senate*, No. 78, 12 February 2015, p. 2156.

28 Senate Economics Legislation Committee, *Australia Securities and Investments Commission Amendment (Corporations and Markets Advisory Committee Abolition) Bill 2014 [Provisions]*, March 2015, p. 5.

2.24 While the Economics committee recognised that CAMAC had contributed extensively to the development of reforms to corporations law in Australia, it came to the following conclusions and supported the passage of the bill:

...the consolidation of the functions of CAMAC into the Department of the Treasury is expected to improve coordination and accountability and reduce the costs associated with separate governance arrangements. It is also anticipated that this move will increase efficiency in how public funds are used to deliver services to the community.

In addition, ASIC may on its own initiative, or when requested by the Minister, advise or make recommendations to the Minister about matters concerned with corporations legislation, the financial services industry and financial markets.

The committee has considered the evidence and formed the view that the abolition of CAMAC would generate savings as intended. It should also be noted that the government would also retain the ability to access expert advice on corporations legislation and related matters through the Department of the Treasury and ASIC.²⁹

Annual report of CAMAC

2.25 The annual report details CAMAC's activities during 2013–14. Following the first stage of its inquiry into the regulation of managed investment schemes, CAMAC published a report in August 2012. In March 2014 CAMAC published a discussion paper into proposals to improve Chapter 5C of the Corporations Act. CAMAC invited public submissions; however, the Government requested that this existing work be referred to Treasury.³⁰

2.26 In September 2012, CAMAC published a discussion paper concerning the future of the annual general meeting and shareholder engagement in Australia. CAMAC conducted roundtable discussions and received submissions throughout 2013–14. CAMAC was moving toward completion of a broad-ranging report when it was requested by government not to report but to transfer this work to Treasury.³¹

2.27 CAMAC was conducting a review of the regulation of Crowd Sourced Equity Funding (CSEF). A discussion paper published in September 2013 took into account the current position in Australia as well as international developments. CAMAC delivered its report in May 2014, which noted that:

The report proposes a regulatory structure specifically designed for CSEF, noting that this form of fundraising has the potential to encourage and stimulate the innovative start-up and other small-scale enterprise sector,

29 Senate Economics Legislation Committee, *Australia Securities and Investments Commission Amendment (Corporations and Markets Advisory Committee Abolition) Bill 2014 [Provisions]*, March 2015, p. 12.

30 CAMAC, *Annual report: 2013–14*, pp 8–9.

31 CAMAC, *Annual report: 2013–14*, pp 4–5.

with its significance for productivity, competitiveness and growth in the Australian economy.

CAMAC's proposals are deregulatory in that they seek to overcome current legal impediments to Australian companies (issuers) raising funds through CSEF.

In developing this structure, CAMAC closely considered recent initiatives in key overseas jurisdictions, including the United States of America, Canada, the United Kingdom and New Zealand, as well as developments at the European Union level.³²

2.28 The CAMAC annual report also noted progress towards the implementation of its recommendations in its report, *Shareholder Participation in the Modern Listed Public Company*. In April 2014 an exposure draft of the Corporations Legislation Amendment (Deregulatory and Other Measures) Bill 2014 was released which addressed CAMAC's recommendations on the obligation to hold a general meeting on the request of 100 shareholders and improving the executive remuneration disclosure regime in Australia.³³ That bill was passed by the House of Representatives in November 2014 and the Senate in March 2015.³⁴

Committee view

2.29 The committee considers that CAMAC has fulfilled its regulatory and reporting responsibilities during the 2013–14 financial year. The committee will continue to monitor the progress of the proposal to abolish CAMAC, and the way in which its previous functions are executed by the Treasury.

The Takeovers Panel

2.30 The Takeovers Panel (the Panel) was established by Part 10 of the *Australian Securities and Investments Commission Act 2001* as a peer review body largely comprised of takeover experts, whose main purpose is the resolution of takeover disputes. During a takeover bid, the Panel is able to declare unacceptable circumstances with respect to the public interest in relation to the affairs of a company, in addition to establishing orders to remedy those circumstances.³⁵

2.31 The Panel is also able to review decisions made by ASIC³⁶ and maintains its operations with a rule making power.³⁷ The Panel's annual report states that:

32 CAMAC, *Annual report: 2013–14*, pp 5–6.

33 CAMAC, *Annual report: 2013–14*, p. 10.

34 Corporations Legislation Amendment (Deregulatory and Other Measures) Bill 2014, http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r5359, (accessed 31 March 2015).

35 *Corporations Act 2001*, s. 657A. *Corporations Act 2001*, s. 657A.

36 *Corporations Act 2001*, Part 6.10, Division 2.

37 *Corporations Act 2001*, s. 658C.

The Panel improves the certainty, efficiency and fairness of Australia's takeovers market by:

- resolving disputes in a fair, timely, consistent, informal and sound manner; and
- publishing clear, well-developed guidance.³⁸

2.32 As at 30 June 2014, the Panel had 37 members, down from 48 at 30 June 2013.³⁹ Members are nominated by the Minister and appointed by the Governor-General. Members are chosen so that there is a mix of expertise, geographical representation and gender.⁴⁰

Annual Report of the Takeovers Panel

2.33 There have been no amendments relevant to the Panel in the current period. There was consultation on the *Corporations Legislation Amendment (Deregulatory and Other Measures) Bill 2014*, including a proposed amendment in relation to Panel members acting while overseas.⁴¹

2.34 During the 2013–14 financial year, the Panel received 26 applications. This was below the yearly average of 30 applications, though still greater than the 20 applications received in 2012–13 and the 16 applications received in the 2011–12 year.⁴²

2.35 The Panel declined to conduct proceedings for 50 per cent of the applications it received.⁴³ Over the previous decade, the proportion of applications for which the Panel declined to conduct proceedings has grown steadily from 6% in 2001⁴⁴ to 50% in 2013–14.⁴⁵ The committee has commented on this trend previously and will continue to monitor the trend in the proportion of applications dismissed by the Panel.

2.36 Five declarations and/or orders were issued in 2013–14 and undertakings were accepted for five matters. The Panel conducted proceedings with five cases in which unacceptable circumstances were deemed to be present. Proceedings were withdrawn in three cases throughout the 2013–14 year.⁴⁶ The issues raised in applications

38 Takeovers Panel, *Annual Report 2013–14*, p. 7.

39 Takeovers Panel, *Annual Report 2013–14*, p. 4; Takeovers Panel, *Annual Report 2012–13*, p. 4.

40 *Australian Securities and Investments Commission Act 2001*, s. 172.

41 Takeovers Panel, *Annual Report 2013–14*, p. 23.

42 Takeovers Panel, *Annual Report 2013–14*, p. 3.

43 Takeovers Panel, *Annual Report 2013–14*, p. 5.

44 Ian Ramsay, *The Takeovers Panel and Takeovers Regulation in Australia*, Melbourne University Publishing Ltd, December 2010, p. 25.

45 Takeovers Panel, *Annual Report 2013–14*, p. 5.

46 Takeovers Panel, *Annual Report 2013–14*, pp 5, 20.

included associations, rights issues, disclosure, lock-up devices and shareholder intention statements.⁴⁷

2.37 The annual report indicates an increase of time between a Panel decision and its publication of reasons. The average number of calendar days between a decision and the publication of reasons was 12.1 days for 2013–14, although this is still down from the average of 36.4 calendar days for over a decade. The time between receipt of an application and a decision also increased, with an average of 19.2 days, up from an average of approximately 15 days since March 2000.⁴⁸

2.38 The committee notes that during the year the Panel generated an index of past decisions for future guidance. The annual report indicates that the executive has undertaken a detailed reorganisation of the Panel's database and statistics in relation to the 425 applications it has previously received. The executive is considering how this can be published for research and comment.⁴⁹

2.39 The Panel was subject to one judicial review regarding The President's Club Limited. The Federal Court dismissed the proceedings with costs on 5 June 2014. An appeal was lodged with the Full Federal Court of Australia on 25 June 2014. The Panel did not use its rule making power, nor were any matters referred from the court during the financial year.⁵⁰

2.40 The Panel maintains contact with the Australian Securities Exchange (ASX), the Australian Competition and Consumer Commission (ACCC) and with ASIC, with which the Panel has a Memorandum of Understanding. The annual report notes the Panel may refer matters to ASIC that it considers ASIC should inquire into, if aspects of the application may present concerns under the Corporations Act. The report also indicated that the Panel was not the focus of any reports by the Australian National Audit Office (ANAO) in 2013–14.⁵¹

Committee view

2.41 The committee considers that the Panel has fulfilled its regulatory and reporting responsibilities during the 2013–14 financial year. The committee notes that the Panel has implemented recommendations of the committee (including commentary about external scrutiny in its annual reports) and recommendations of the Senate Economics Legislation Committee (including statements in annual reports on disability strategies).⁵²

47 Takeovers Panel, *Annual Report 2013–14*, p. 21.

48 Takeovers Panel, *Annual Report 2013–14*, p. 5.

49 Takeovers Panel, *Annual Report 2013–14*, p. 4.

50 Takeovers Panel, *Annual Report 2013–14*, pp 8, 23.

51 Takeovers Panel, *Annual Report 2013–14*, pp 25, 31.

52 Parliamentary Joint Committee on Corporations and Financial Service, *report on the 2012–13 annual reports of bodies established under the ASIC Act*, March 2014, p. 14; Senate Economics Legislation Committee, *Annual report (No. 1 of 2013)*, March 2013, p. 36; Takeovers Panel, *Annual report: 2013–14*, pp 31–34.