Parliamentary Joint Committee on Corporations and Financial Services

Report on the 2011 – 12 annual reports of bodies established under the ASIC Act

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Duties of the Committee

Section 243 of the *Australian Securities and Investments Commission Act 2001* sets out the Parliamentary Committee's duties as follows:

(a) to inquire into, and report to both Houses on:

(i) activities of ASIC or the Panel, or matters connected with such activities, to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed; or

(ii) the operation of the corporations legislation (other than the excluded provisions), or of any other law of the Commonwealth, of a State or Territory or of a foreign country that appears to the Parliamentary Committee to affect significantly the operation of the corporations legislation (other than the excluded provisions); and

(b) to examine each annual report that is prepared by a body established by this Act and of which a copy has been laid before a House, and to report to both Houses on matters that appear in, or arise out of, that annual report and to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed; and

(c) to inquire into any question in connection with its duties that is referred to it by a House, and to report to that House on that question.

Table of Contents

Abbreviations ..... **ix**

Chapter 1

Scrutiny of annual reports **1**

Chapter 2

Review of the 2011–12 annual reports of bodies established under the ASIC Act **5**

Companies Auditors and Liquidators Disciplinary Board 5

Figure 2.1: Breakdown of number of cases before CALDB 6

Figure 2.2: Number of cases referred: 2003-04 to 2011-12 7

Corporations and Markets Advisory Committee 9

Financial Reporting Panel 12

Takeovers Panel 13

Chapter 3

Review of annual reports of bodies established under Part 12 of the ASIC Act **17**

Financial reporting framework 17

Review of the 2011–12 annual report of the Financial Reporting Council 22

Figure 3.1: Extract from FRC's SWOT analysis of the financial reporting framework 23

Review of the 2011-12 annual report of the Auditing and Assurance Standards Board 25

Figure 3.2: AUASB organisational structure 26

Review of the 2011–12 annual report of the Australian Accounting Standards Board 27

Figure 3.3: AASB organisational structure 29

Abbreviations

AAT	Administrative Appeals Tribunal
AASB	Australian Accounting Standards Board
ANAO	Australian National Audit Office
AOSSG	Asian Oceanian Standard Setters Group
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ASIC Act	*Australian Securities and Investments Commission Act 2001*
AUASB	Auditing and Assurance Standards Board
CALDB	Companies Auditors and Liquidators Disciplinary Board
CAMAC	Corporations and Markets Advisory Committee
FRC	Financial Reporting Council
FRP	Financial Reporting Panel
IAASB	International Auditing and Assurance Standards Board
SWOT	Strengths, Weaknesses, Opportunities and Threats
The Panel	Takeovers Panel

Chapter 1

Scrutiny of annual reports

1.1 The Parliamentary Joint Committee on Corporations and Financial Services is established by Part 14 of the *Australian Securities and Investments Commission Act 2001* (the ASIC Act). Section 243 specifies the committee's duties, which include:

> (b) to examine each annual report that is prepared by a body established by this Act and of which a copy has been laid before a House, and to report to both Houses on matters that appear in, or arise out of, that annual report and to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed...

1.2 This report is presented in fulfilment of the committee's duties under subsection 243(b).

1.3 The ASIC Act establishes 10 bodies, namely:

- Auditing and Assurance Standards Board (AUASB);
- Australian Accounting Standards Board (AASB);
- Australian Securities and Investments Commission (ASIC);
- Companies Auditors and Liquidators Disciplinary Board (CALDB);
- Corporations and Markets Advisory Committee (CAMAC);
- Financial Reporting Council (FRC);
- Financial Reporting Panel (FRP);
- Office of the Australian Accounting Standards Board (Office of the AASB);
- Office of the Auditing and Assurance Standards Board (Office of the AUASB); and
- Takeovers Panel.

1.4 Collectively, these bodies form the 'administrative organs' of the national financial services regulatory scheme established by the ASIC Act and the *Corporations Act 2001*.[1]

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1 The Hon Lionel Bowen MP, Attorney-General, *House of Representatives Hansard*, Second Reading Speech, Australian Securities Commission Bill 1988, 25 May 1988, p. 2991. The ASIC Act predominantly replicates the administrative structure established in the *Australian Securities Commission Act 1989*. Section 261 of the ASIC Act directs that bodies established under the Australian Securities Commission Act continue in existence as if they had been established under the ASIC Act.

1.5 While ten bodies are established under the ASIC Act, only eight annual reports are prepared. The ASIC Act directs that one annual report will cover both the AASB and the Office of the AASB.[2] Similarly, the AUASB is required to prepare an annual report that addresses its activities and the activities of the Office of the AUASB.[3]

1.6 The annual report of ASIC is not considered in this report. The committee routinely examines the annual reports prepared by ASIC as part of the committee's ongoing oversight of the Commission.

1.7 Accordingly, this report examines the 2011–12 annual reports of the AASB, the AUASB, CALDB, CAMAC, the FRC, the FRP and the Takeovers Panel.

1.8 Effective as of 1 October 2012, provisions in the Australian Securities and Investments Commission Act 2001 and the Corporations Act 2001 which established the FRP were repealed. While ceasing operation the Committee will consider the annual report for the FRP's operations during the 2011-12 financial year.[4]

1.9 The committee notes that the annual reports of bodies established under the ASIC Act are also the subject of scrutiny by the Senate Economics Legislation Committee. Senate Standing Order 25(20) requires the Economics Committee to:

> (a) Examine each annual report referred to it and report to the Senate whether the report is apparently satisfactory.
>
> (b) Consider in more detail, and report to the Senate on, each annual report which is not apparently satisfactory, and on the other annual reports which it selects for more detailed consideration.
>
> (c) Investigate and report to the Senate on any lateness in the presentation of annual reports.
>
> (d) In considering an annual report, take into account any relevant remarks about the report made in debate in the Senate.
>
> (e) If the committee so determines, consider annual reports of departments and budget-related agencies in conjunction with examination of estimates.
>
> (f) Report on annual reports tabled by 31 October each year by the tenth sitting day of the following year, and on annual reports tabled by 30 April each year by the tenth sitting day after 30 June of that year.
>
> (g) Draw to the attention of the Senate any significant matters relating to the operations and performance of the bodies furnishing the annual reports.
>
> (h) Report to the Senate each year whether there are any bodies which do not present annual reports to the Senate and which should present such reports.

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2 *ASIC Act 2001*, s. 235J.

3 *ASIC Act 2001*, s. 236DG.

4 *Corporations Legislation Amendment (Financial Reporting Panel) Act 2012*

1.10 Therefore, in conducting its review of the annual reports of bodies established under the ASIC Act, the committee will focus on operational matters of key interest and raise urgent matters that in the committee's opinion Parliament should consider. Chapter two examines the annual reports of CALDB, CAMAC the FRP and the Takeovers Panel. Chapter three assesses the annual reports of the three agencies established by Part 12 of the ASIC Act to oversee the administration of the financial services: the AASB, the AUASB and the FRC.

1.11 In reviewing the annual reports, the committee will also consider whether there are opportunities to strengthen the operation of the corporations legislation.

1.12 The committee did not hold any public hearings or seek written submissions during the preparation of this report.

Chapter 2

Review of the 2011–12 annual reports of bodies established under the ASIC Act

2.1 This chapter considers the 2011–12 annual reports of the:

- Companies Auditors and Liquidators Disciplinary Board (CALDB) (paragraphs 2.2–2.14);
- Corporations and Markets Advisory Committee (CAMAC) (paragraphs 2.15–2.29);
- Financial Reporting Panel (FRP) (paragraphs 2.30–2.32); and
- Takeovers Panel (the Panel) (paragraphs 2.33–2.47).

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]

Annual report

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 seven matters before CALDB

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

2 CALDB, *Annual report: 2011-12*, p. 2.

3 *ASIC Act 2001*, s. 214.

during 2011–12. Four of these matters were new applications referred between 1 July 2011 and 30 June 2012.[4] Three matters were carried over from 2010–11.[5]

2.5 Matters are categorised as either 'administrative' or 'conduct'. Of the seven matters, four involved auditor conduct, one involved auditor administrative matters and two concerned liquidator administrative matters.[6] All matters were concluded during the financial year. On the information provided, it is unclear whether matters were referred by ASIC or APRA, except for the decision that was gazetted which was referred by ASIC.[7]

2.6 The Board's decisions may be appealed to the Administrative Appeals Tribunal (AAT) or to the Federal Court of Australia.[8] The annual report indicates that no decisions were the subject of judicial or AAT review during the 2011–12 financial year.[9] This reflects the time in which the matters were referred in 2011–12.

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

Figure 2.1: Breakdown of number of cases before CALDB[10]

Results of application	07/08	08/09	09/10	10/11	11/12
Registration cancelled	1	6	1	-	1
Registration suspended	1	2	2	-	-
Admonition	-	-	-	-	-
Reprimand	-	-	-	-	-
Undertakings required to be given	-	2	2	-	-
Dismissed	-	1	-	-	-
Withdrawn by ASIC	-	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: 2011-12*, p. 12.

5 CALDB, *Annual report: 2011-12*, p. 12.

6 CALDB, *Annual report: 2011-12*, p. 12.

7 CALDB, *Annual report: 2011-12*, p. 15.

8 *Corporations Act 2001*, s, 1317B; *Administrative Decisions (Judicial Review) Act 1977*, s. 5; CALDB, *Annual report:2011-12*, p. 8.

9 CALDB, *Annual report: 2012-12*, p. 13.

10 CALDB, *Annual report: 2011-12*, Table: 'Results by nature of sanction', p. 13.

Figure 2.2: Number of cases referred: 2003-04 to 2011-12[11]

Financial year	Auditors	Liquidators
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

2.9 The committee notes the reports' reference to CALDB's appearance at a public hearing for the Inquiry into the collapse of Trio Capital.[12] During this hearing, the committee examined the number of matters referred to the Board, while also raising the question of the usefulness of the Board, given that no auditors involved in the collapse of Trio Capital were referred to CALDB.[13]

Future of CALDB

2.10 The committee has previously noted the Senate Economics References Committee's 2010 inquiry into liquidators and administrators. That committee 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.[14] While concluding that CALDB's disciplinary oversight of liquidators and auditors should continue, the Senate Economics Committee recommended the ASIC

11 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.

12 CALDB, *Annual report: 2011-12*, p. 1.

13 Mr Paul Fletcher MP, *Committee Hansard*, 4 April 2012, p. 4.

14 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.

Act be amended to increase the transparency of the Board's deliberations and findings.[15]

2.11 The Government responded in June 2011, issuing a discussion paper outlining options to improve the regulatory framework applying to the corporate insolvency industry.[16] It is noted that the Government has released an exposure draft of the Insolvency Law Reform Bill 2013 which will incorporate proposals intended to improve the regulatory framework applying to the corporate insolvency industry, as well as to remove liquidator matters from CALDB's jurisdiction. These liquidator matters would instead be referred to a Committee consisting of 'the relevant regulator, a practitioner appointed by the Insolvency Practitioners Association, and a person appointed by the relevant Minister. The committee may then decide to deregister or suspend the practitioner's registration'[17]. Submissions for the exposure draft close on 8 March 2013. [18]

Committee view

2.12 The committee has previously noted its concern with the low number of referrals to CALDB.[19] While the number of matters increased from the 2010–11 financial year, it would appear that the CALDB continues to be underutilised. The decline in CALDB's activity is particularly evident when viewed against its caseload in previous years.

2.13 In its report for the Inquiry into the collapse of Trio Capital, the committee raised its concern with the regulators' preference to use enforceable undertakings rather than disciplinary action through the CALDB when an auditor fails to conduct a compliance plan audit in accordance with the assurance standards.[20]

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15 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.

16 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).

17 Treasury, *Insolvency Law Reform Bill 2013: explanatory material*, available at: http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/Insolvency-Law-Reform-Bill, (accessed 12 February 2013)

18 Treasury, *Insolvency Law Reform Bill 2013: explanatory material*, available at: http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/Insolvency-Law-Reform-Bill, (accessed 1 February 2013)

19 Joint Parliamentary Committee on Corporations and Financial Services, *Report on annual reports: 2010-11*, February 2012, p. 8.

20 Joint Parliamentary Committee on Corporations and Financial Services, *Report on the inquiry into the collapse of Trio Capital*, May 2012, pp 98–99.

2.14 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

2.15 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.[21] 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
- a proposal to improve the efficiency of the financial markets.[22]

2.16 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'.[23] 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 to provide the Australian Government with advice of the highest quality on any steps to achieve this, including suitable regulatory reform where necessary.[24]

2.17 To administer its functions more effectively, CAMAC is divided into two committees; namely, an audit committee and a legal committee.[25] The annual report

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21 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.

22 *ASIC Act 2001*, s. 148.

23 CAMAC, *Annual report: 2011–12*, p. 15.

24 CAMAC, *Annual report: 2011–12*, p. 44.

25 CAMAC, *Annual report: 2011–12*, pp 21 – 22.

notes that during the 2011–12 financial year each of CAMAC's current terms of reference was managed by a sub-committee.[26]

2.18 The committee is supported by a full time executive, which for the 2011–12 financial year consisted of an SES officer, an Executive Level 2 officer and an APS level 6 officer.[27]

2.19 There is a high degree of interaction between ASIC and CAMAC, with CAMAC reportedly receiving administrative assistance from ASIC's finance section, information technology officers, payroll section, library and fraud control section.[28]

Annual report

2.20 The annual report details CAMAC's activities during 2011–12. These included an inquiry into the regulation of managed investment schemes, which reported in July 2012, a report on derivatives that was published in January 2012 and a discussion paper on the annual general meeting (AGM) and shareholder engagement.[29]

2.21 CAMAC continues to contribute constructively to the debate on Australia's financial system. During the 2011–12 financial year, CAMAC's recommendation to transition from newspaper notices to the publication of notices on a single website influenced the publication of notices provisions in the *Corporations Amendment (Phoenixing and Other Measures) Act 2012*.[30]

2.22 It is noted that CAMAC has implemented in the annual report the recommendations made in the Parliamentary Joint Committee on Corporations and Financial Services' *Report on the 2010–11 annual reports of bodies established under*

26 CAMAC, *Annual report: 2011–12*, p. 21.

27 CAMAC, *Annual report: 2011–12*, p. 28.

28 CAMAC, *Annual report: 2011–12*, pp 26 – 27.

29 CAMAC, *Annual report: 2011–12*, pp 4 – 7.

30 CAMAC, *Annual report: 2011–12*, p. 9.

the ASIC Act to clarify note 14 by directly referring the reader to note 1.4 under the heading *Resources received free of charge* as well as to note 6a.[31]

2.23 The annual report also includes a breakdown of the 2011–12 financial year remuneration for CAMAC members totalling $66 079. Of this figure, $2434 comprises aggregated superannuation payments. The remainder incorporates the remuneration payable to CAMAC members. This is further explained through Note 13d that states that the Convenor was entitled to a sitting rate of $803 while other members where eligible for a $703 sitting rate, as determined by the Remuneration Tribunal.[32]

2.24 The report notes that CAMAC's expenditure for the 2011–12 financial year included the payment of $70 000 to ASIC. The report clarifies that this payment to ASIC is 'for administrative support, including financial management, payroll, library services and information technology.[33]

2.25 The annual report also comments that during the 2011–12 financial year there were no parliamentary committee reports regarding CAMAC's activities.[34]

Committee view

2.26 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, in advising on Australia's financial system. The committee is interested in CAMAC's review of the AGM and shareholder engagement and will monitor the outcome of this review.

2.27 The committee is pleased that the recommendations directed to CAMAC in its previous report on annual reports, *Report on the 2010–11 annual reports of bodies established under the ASIC Act*, were implemented in this annual report.

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31 In the committee's March 2012 Report on Annual Reports the committee referred to Note 14 to the financial statements recording an expenditure of $15 100 for auditor services provided by the Auditor-General. The committee noted that the accompanying text states that the auditing services were provided free of charge. Line two of the Statement of comprehensive income, which recorded a gain of $15 100 from resources provided free of charge and by note 1.4 which stated that '[u]se of these resources is recognised as an expense'. The committee noted that 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. The committee argued that it would improve the clarity of the annual report if note 14 were to directly refer the reader to note 1.4 and to line two of the Statement of comprehensive income. PJC on Corporations and Financial Services, *Report on Annual Reports 2010–11*, March 2012, p. 10.

32 CAMAC, *Annual report: 2011–12*, p. 62.

33 CAMAC, *Annual report: 2011–12*, p. 59.

34 CAMAC, *Annual report: 2011–12*, p. 28.

2.28 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. For example, CAMAC referred directly to the Joint Committee on Corporations and Financial Services' report *Inquiry into the collapse of Trio Capital May 2012* in its report into Managed investment Schemes published in July 2012. [35]

2.29 Subject to the issues raised with regard to external scrutiny of CAMAC, the committee was satisfied with the 2011–12 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.[36] 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.[37]

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. No matters were referred during the 2011–12 financial year. This follows the announcement on 7 February 2012 of the Government's decision to terminate the FRP due to 'lower than expected referral rates'.[38] The decision was foreshadowed in the *Mid Year Economic and Fiscal Outlook 2010–11*[39] and announced following a one-month public consultation process.[40] To disband the Panel, the Government introduced amendments to the Corporations Act and to the ASIC Act.[41] These amendments commenced on 1 October 2012 and the FRP has since ceased operating.[42]

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35 CAMAC, *Report on managed investment schemes*, July 2012, p. 75

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

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

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

39 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.

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

41 *Corporations Legislation Amendment (Financial Reporting Panel) Act 2012.*

42 Financial Reporting Panel, *Annual Report 2011–12*, p. 1.

Committee view

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

Takeovers Panel

2.33 The Takeovers Panel was established in January 1991 by Part 10 of the ASIC Act. 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. The Panel is also able to review decisions made by ASIC.[43] To further maintain its operations the Panel has a rule making power.[44]

2.34 The primary objective of the Panel is 'to improve the certainty, efficiency and fairness of Australia's takeovers market.'[45]

2.35 As at 30 June 2012 the Panel had a total of 52 members. Members are nominated by the Minister and appointed by the Governor-General on the basis of achieving a mix of expertise, geographical representation and gender.[46]

Annual Report

2.36 During the 2011–12 financial year the Takeovers Panel received 14 applications for a declaration at first instance of unacceptable circumstances. Only two applications were subject to a review, meaning the decision made by the original Panel is assessed by a replacement Panel consisting of three new members from the original Panel. These two applications both related to the same subject.[47] With the 14 original applications and the two reviews, the Panel received a total of 16 applications for unacceptable circumstances in the reporting period.

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

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

45 Takeovers Panel, *Annual Report 2011–12*, p. 21.

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

47 Takeovers Panel, *Annual Report 2011–12*, pp 7-8. The annual report did not refer to what those matters were.

Figure 2.3 Issues dealt with by the Takeovers Panel in 2011–12[48]

Issue	2011–12
Disclosure	1
Association	2
Bidder's statement — disclosure	2
Finance Facilities	1
Options reducing the number of shareholders	1
Rights issue	4
Scheme implementation agreement	1
Share acquisition in contravention of a legislative provision	1
Truth in takeovers	3
Total	**16**

2.37 The total of 16 applications is the lowest number of applications received by the Panel since 2000 and is just over half the yearly average of 30 applications. The reason given in the report is the lack of activity in the mergers and acquisitions market in the 2011–12 financial years, both in Australia and overseas.[49]

2.38 The annual report notes that the Panel did not review any ASIC decisions or receive any matters to review from the Court.[50]

2.39 The Panel publishes Guidance Notes on its website in order to support its role. After conducting a review of its Guidance Notes, the Panel revised Guidance Note 18 (now named Takeover Documents).[51] The Panel invited comments on the draft guidance note on 7 December 2011 and received a submission from ASIC and the Takeovers Panel amended the Guidance Note to included ASICs recommendations.[52] The consultation process outlined in the annual report is noted.[53]

2.40 The Panel was subject to two judicial reviews during the reporting period of 2011–12. The first set of proceedings were issued on 5 April 2011, involving the affairs of CMI Limited.[54] This litigation was dismissed by the Federal Court of Australia on November 16 2012.[55] The second set of proceedings were issued on

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48 Takeovers Panel, *Annual Report 2011–12*, p. 6.

49 Takeovers Panel, *Annual Report 2011–12*, p. 3

50 Takeovers Panel, *Annual Report 2011–12*, p. 8.

51 Takeovers Panel, *Annual Report 2011–12*, p. 20.

52 Takeovers Panel, *Rewrite of GN 18: Public consultation response statement*, 20 April 2012, http://www.takeovers.gov.au/content/DisplayDoc.aspx?doc=consultation\040.htm&pageID=&Year= (accessed 4 February 2012)

53 Takeovers Panel, *Annual Report 2011–12*, p. 20.

54 Takeovers Panel, *Annual Report 2011–12*, p. 19

55 Allan Bullman, Director, Takeovers Panel, 'CMI Limited – Federal Court Decision', Media Release TP12/81, 16 November 2012, http://www.takeovers.gov.au/content/DisplayDoc.aspx?doc=media_releases/2012/081.htm&pageID=&Year=2012 (accessed 9 January 2013).

2 August 2011, involving the decision of the Panel to accept undertakings from Bentley Capital Limited. The matter was resolved after a meeting of shareholders of Bentley Capital Limited and the judicial review applications were withdrawn.[56]

2.41 The Takeovers Panel maintains consistent contact with Australian regulators such as the Australian Securities Exchange, the Australian Competition and Consumer Commission and with ASIC, with which the Panel has a Memorandum of Understanding.[57]

2.42 The annual report notes that the Panel only recommended one matter to ASIC in the 2011–12 period.[58]

2.43 The report mentions the appearance of the Panel before the Parliamentary Joint Committee on Corporations and Financial Services for the public hearing relating to the committee's statutory oversight under the ASIC Act. Section 243 of the ASIC Act authorises the committee to monitor and inquire into the activities of the Takeover Panel. As noted in the annual report, during the 2011–12 financial year the committee held a public oversight hearing with the Takeovers Panel for this purpose. The committee was particularly interested in the processes and decision-making powers of the Takeovers Panel, the consistency between decisions made by different panels, and the transparency of the decision-making process.[59]

2.44 It also states that the Panel appeared before the Senate Standing Committee on Economics for Estimates as is the custom, and that the Panel was not the focus of any reports by the Australian National Audit Office (ANAO) in 2011–12.[60]

Committee view

2.45 The committee notes that the 2011–12 financial year was a quiet period for the Takeovers Panel. Although there was a reduction in the number of applications received, some of the applications that were received generated significant media attention. In particular, the Panel's decisions in *Ludowici Limited* led to discussion regarding the principle of truth in takeovers.[61] This created public awareness that the

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56 Allan Bullman, Director, Takeovers Panel, 'Bentley Capital Limited 01R – Application for Judicial Review', Media Release TP12/27, 23 April 2012, http://www.takeovers.gov.au/content/DisplayDoc.aspx?doc=media_releases/2012/027.htm (accessed 9 January 2013).

57 Takeovers Panel, *Annual Report 2011–12*, p. 21.

58 Takeovers Panel, *Annual Report 2011–12*, p. 22.

59 Joint Committee on Corporations and Financial Services, *Statutory Oversight of the Australian Securities and Investments Commission*, May 2012, p. 5.

60 Takeovers Panel, *Annual Report 2011–12*, p. 29.

61 Robert Johanson, President of the sitting Panel, Takeovers Panel, 'Reasons for Decision: Ludowici Limited [2012] ATP 3, 9 March 2012, http://www.takeovers.gov.au/content/DisplayDoc.aspx?doc=reasons_for_decisions/2012/003.htm&pageID=&Year= (accessed 10 January 2013).

Takeover Panel takes ASIC's truth in takeovers policy quite seriously, 'the Panel has endorsed this policy as a "*fundamental tenet*" of Australia's takeover regime.'[62]

2.46 ASIC has raised a number of issues concerning takeover bids with Treasury, including creeping acquisitions, the use and disclosure of equity derivatives, clarity of takeover proposals, the issue of association of shareholders and the impact of new media. Due to this, Treasury released a scoping paper for comment and on 14 November 2012 ASIC published a consultation paper recommending an update and consolidation of its takeover regulatory guidance.[63]

2.47 The committee notes the issues raised in the consultation paper and is aware that a change to ASIC's takeover policies may be needed to adapt to the changing nature of the Australian takeovers market and to ensure that the Takeovers Panel remains relevant.

2.48 The committee has previously encouraged Panel members to continue to develop their expertise by working on a wider range of matters by regularly reviewing the effectiveness of their systems and processes.[64] It is noted that the annual report mentions training to maintain the consistency of decision making, by holding full-day roundtable sessions. Four of these sessions were held in the 2011–12 period.

2.49 The committee was satisfied with the Takeovers Panel 2011–12 annual report.

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62 Robert Johanson, President of the sitting Panel, Takeovers Panel, 'Reasons for Decision: Ludowici Limited [2012] ATP 3, 9 March 2012, http://www.takeovers.gov.au/content/DisplayDoc.aspx?doc=reasons_for_decisions/2012/003.htm&pageID=&Year= (accessed 10 January 2013).

63 ASIC, 'ASIC to update and consolidate takeover guidance', *Media Release 12-276MR*, 14 November 2012, http://www.asic.gov.au/asic/asic.nsf/byheadline/12-276MR+ASIC+to+update+and+consolidate+takeover+guidance?openDocument (accessed 10 January 2013)

64 Joint Committee on Corporations and Financial Services, *Statutory Oversight of the Australian Securities and Investments Commission*, May 2012, p. 8.

Chapter 3

Review of annual reports of bodies established under Part 12 of the ASIC Act

Financial reporting framework

3.1 Part 12 of the *Australian Securities and Investments Commission Act 2001* (the ASIC Act) establishes Australia's financial reporting system. As outlined in section 224 of the ASIC Act, the objects of the financial reporting system include:

- facilitating the Australian economy;
- maintaining investor confidence in the Australian economy;
- developing accounting standards that require the provision of information that is relevant, reliable, easy to understand, allows investors to make and evaluate financial decisions, and assists directors to fulfil their statutory financial reporting obligations; and
- developing auditing and assurance standards that provide Australian auditors relevant and comprehensive guidance in determining whether financial reports comply with statutory requirements, and require auditors' reports to be reliable and capable of being readily understood by investors.[1]

3.2 Three agencies are established under Part 12 as the administrative arms of the financial reporting system; namely, the Financial Reporting Council (the FRC), the Australian Accounting Standards Board (AASB) and the Auditing and Assurance Standards Board (AUASB). All three bodies are to monitor their activities against the objects in section 224,[2] and to include in their annual reports an analysis of their achievements against the objects.[3]

3.3 While not established under Part 12 of the ASIC Act, the Australia Securities and Investments Commission (ASIC) is also integral to the administration of the financial reporting framework.[4] The Commission's contribution to the framework includes the enforcement of auditor independence and audit quality requirements.[5]

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1 *ASIC Act 2001*, s. 224.

2 *ASIC Act 2001*, s. 235B,s. 227, s. 227B.

3 *ASIC Act 2001*, s. 235B*; AASB, Annual report: 2011-12*, p. 13*; AUASB, Annual report: 2011–12*, p. 17.

4 *ASIC Act 2001*, Division 3, Part 3. For a detailed explanation of ASIC's role in the operation of Australia's financial reporting requirements see The Treasury, *Audit quality in Australia: A strategic review*, March 2010, Part 4, pp 26–30.

5 The Treasury, *Audit quality in Australia: A strategic review 2010*, p. 26.

The Financial Reporting Council

3.4 The FRC was established by section 225 of the *Australian Securities Commission Act 1989* (the ASC Act 1989)[6] and was re-established in 2001 by Part 12 of the ASIC Act.[7] As part of the financial reporting system, the FRC's role in the operation of Australia's corporations law is to:

- provide broad oversight of the processes for setting accounting standards and auditing standards in Australia;
- monitor the effectiveness of auditor independence requirements in Australia; and
- advise the Minister on these matters.[8]

3.5 The ASIC Act also confers on the FRC 'specific accounting standards functions', 'specific auditing standards functions', and 'specific auditor independence functions'. The FRC's specific auditor independence functions direct the FRC to monitor and advise the Minister about the effectiveness of Australia's auditor independence requirements. In undertaking this function, the FRC is to monitor international developments in auditor independence, assess the adequacy of the auditor independence requirements under the corporations legislation and professional codes of conduct. The FRC is also charged with assessing the overall adequacy of the investigation and disciplinary procedures of professional accounting bodies applying to Australian auditors.[9] The FRC's responsibilities do not extend to monitoring the disciplinary procedures of CALDB or the FRP.

3.6 The Council's specific accounting standards functions and the specific auditing standards functions recognise the position of Australia's financial system within the international economy. The functions also reflect the object in section 224 of 'facilitating the Australian economy by enabling Australian entities to compete effectively overseas'.[10] Accordingly, the FRC is required to:

- monitor developments in international accounting standards and auditing standards;
- further the development of a single set of accounting standards and auditing standards for world-wide use; and

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6 See Note, section 225, ASIC Act.

7 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.

8 *ASIC Act 2001*, ss. 225(1).

9 *ASIC Act 2001*, ss. 225(2B).

10 *ASIC Act 2001*, paragraph 224(b)(ii).

- promote the continued adoption of international best practice accounting standards and auditing standards if doing so would be in the best interests of the private and public sectors of the Australian economy.[11]

3.7 As detailed in the 2011–12 annual report, the FRC's view of its purpose and functions reflects its statutory responsibilities:

> The Financial Reporting Council (FRC) is the peak body responsible for overseeing the effectiveness of the financial reporting framework in Australia.
>
> Its key functions include the oversight of the accounting and auditing standards setting processes for the public and private sectors, monitoring the effectiveness of the auditor independence regime, and advising the Minister on these matters.[12]

3.8 The committee notes that towards the end of the financial year the FRC's functions were amended, with its auditor independence functions being repealed (see paragraph 3.22).

The Australian Accounting Standards Board

3.9 The AASB was established by section 226 of the ASC Act 1989,[13] and was re-established by Subdivision B, Division 1, Part 12 of the ASIC Act.[14] The AASB was established to raise the standards of accounting statements through developing accounting standards and 'a conceptual framework, not having the force of an accounting standard, for the purpose of evaluating proposed accounting standards and international standards.'[15] Reflecting the object of promoting Australian entities in the international market,[16] the AASB is also tasked with contributing to the development of 'a single set of accounting standards for world-wide use'.[17] The ASIC Act also establishes the Office of the AASB, to provide the AASB administrative and technical support.[18]

3.10 As detailed in the 2011–12 annual report, the AASB's mission statement captures the Board's statutory responsibilities and role in Australia's financial reporting framework:

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11 *ASIC Act 2001*, ss225(2); ss225(2A).

12 FRC, *Annual report: 2011–12*, p. ix.

13 See Note 1, section 227, ASIC Act.

14 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.

15 *ASIC Act 2001*, s. 227.

16 *ASIC Act 2001*, s. 224.

17 *ASIC Act 2001*, s. 227.

18 *ASIC Act 2001*, s. 226A.

The mission of the AASB is to:

- develop and maintain high-quality financial reporting standards for all sectors of the Australian economy;
- develop and maintain a high quality accounting (i.e. financial reporting) standards for reporting entities in those sectors; and
- contribute, through thought leadership and participation, in the development of global financial reporting standards and standard-setting.[19]

The Auditing and Assurance Standards Board

3.11 The AUASB is established under Subdivision C, Division 1, Part 12 of the ASIC Act. Chief among the AUASB's responsibilities is the task of facilitating the objective of an Australian financial reporting system that provides clear guidance to auditors about auditing standards and requirements.[20] The AUASB formulates auditing standards, in the form of legislative instruments, that operate under the *Corporations Act 2001* (the Corporations Act).[21] Consistent with the object in section 224 to 'enable Australian entities to compete effectively overseas', the AUASB is also tasked with contributing to the 'development of a single set of auditing standards for world-wide use.'[22]

3.12 The ASIC Act also establishes the Office of the AUASB, which provides technical services and administrative support to the AUASB.[23] The Board's 2011–12 annual report provides further details of the functions of the Office of the AUASB:

> The Office of the AUASB is structured to meet one outcome: the formulation and making of auditing and assurance standards and guidance that are used by auditors of Australian entity financial reports or for other auditing and assurance engagements.[24]

3.13 The AUASB's statutory responsibilities are reflected in the Board's mission statement as contained in the 2011–12 annual report:

> The mission of the AUASB is to develop, in the public interest, high–quality auditing and assurance standards and related guidance, as a means to enhance the relevance, reliability and timeliness of information provided to users of audit and assurance services...
>
> The AUASB contributes to public confidence in the financial reporting and corporate governance frameworks by issuing auditing standards, which are

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19 AASB, *Annual report: 2011–12*, p. 14.

20 *ASIC Act 2001*, s. 224.

21 *ASIC Act 2001*, ss227B; *Corporations Act 2001*, s 336.

22 *ASIC Act 2001*, ss227B.

23 *ASIC Act 2001*, s. 227AB.

24 AUASB, *Annual report: 2011–12*, p. 55.

> legally enforceable for audits and reviews of financial reports required under the *Corporations Act 2001*, other auditing and assurance pronouncements and related guidance.
>
> The role of the AUASB also extends to liaison with other national standard setters and participating in standard setting initiatives of the IAASB [the International Auditing and Assurance Standards Board] to develop a single set of auditing standards for worldwide use. Such involvement seeks to contribute ultimately to the quality of AUASB pronouncements.[25]

Coordination between the FRC, the AASB and the AUASB

3.14 The ASIC Act also requires significant coordination between the three bodies responsible under Part 12 of the ASIC Act for the administration of the financial reporting framework. Accordingly, FRC's specific accounting standards functions and specific auditing standards functions also include oversight of certain activities of the AASB and the AUASB. The FRC is to:

- appoint members of the AASB and the AUASB, other than the Chair;
- determine the Boards' broad strategic direction;
- advise the AASB and the AUASB on the Boards' priorities, business plans and procedures;
- monitor the effectiveness of the Boards' consultative arrangements; and
- advise the Office of the AASB and the Office of the AUASB on the Offices' budgets and staffing arrangements.[26]

3.15 The ASIC Act requires the AASB and the AUASB to have regard to the FRC's advice concerning the bodies' priorities, business plans, procedures and strategic direction.[27]

3.16 However, as acknowledged in the FRC's annual report, in conducting its oversight duties the FRC is not permitted to undermine the independence of the AASB or the AUASB:

> The ASIC Act expressly limits the FRC's ability to become involved in the technical deliberations of the AASB and AUASB. In particular, it provides that the FRC does not have power to direct the AASB or AUASB in relation to the development, or making, of a particular standard, or to veto a standard formulated or recommended by the AASB or AUASB. This provision is designed to ensure the independence of the standard setters.[28]

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25 AUASB, *Annual report: 2011–12*, p. 18.

26 *ASIC Act 2001*, ss. 225(2).

27 *ASIC Act 2001*, s. 236AA, s. 236EA, s. 232.

28 FRC, *Annual report: 2011–12*, p. 35.

3.17 In addition to the oversight provided by the FRC, the interaction between the bodies is furthered by the administrative arrangements of the AASB and the AUASB. As is evident from the presentation and format of the agencies' annual reports, the AASB and AUASB share administrative resources. As detailed in the 2011–12 annual reports of both bodies, the AASB and the AUASB operate according to a shared service agreement under which seven of the AASB's eight administrative staff concurrently work for the AUASB.[29]

Review of the 2011–12 annual report of the Financial Reporting Council

3.18 The FRC noted in its 2011–12 annual report that its strategic plan had been in operation for a full year. The FRC Strategic Plan 2011–14 provides an action plan for the FRC against strategic issues relevant to the financial services sector.[30] The Strategic Plan will undergo a midterm review in 2012–13.[31]

3.19 The Strategic Plan includes a Strengths, Weaknesses, Opportunities and Threats (SWOT) analysis of Australia's financial reporting framework, which identified the following areas of weakness in, and threats to, Australia's financial reporting system.

29 AASB, *Annual report: 2011–12*, p. 43; AUASB, *Annual report: 2011–12*, p. 40.

30 FRC, *Annual report: 2011–12*, p 1.

31 FRC, *Annual report: 2011–12*, p 4.

Figure 3.1: Extract from FRC's SWOT analysis of the financial reporting framework[32]

SWOT analysis – Financial Reporting Framework	
Weaknesses	**Threats**
• Not all areas given equal attention and priority in developing international standards	• Risk of fragmentation of the global IFRS [International Financial Reporting Standards] community
• Exclusive focus on financial reporting, neglecting to some extent the wider context in which economic entities operate	• Discussion of radical proposals to regulate audit practices, for example in the European Union
• Complexity and length of annual reports	• Failure of a big 4 accounting firm, potentially leading to a lack of competition in the audit market
• Level of financial literacy among users, including company directors, leading to issues such as expectation gaps for audit reports	• Plethora of narrow additional financial reporting burdens being advocated, for example as part of a Corporate Social Responsibility or Environmental, Social and Governance Agenda, without consideration as to their broader appropriateness
	• Complexity caused by Australia's federal structure

3.20 The annual report also provides further information about the state of Australia's financial reporting system. Notably, the FRC has concluded that the 'independence framework in Australia continues to operate effectively and will be further improved in light of recent audit developments'.[33] As the report elaborates:

> [T]he FRC did not become aware of deficiencies in the underlying systems and processes used by audit firms to ensure compliance with auditor independence requirements.[34]

3.21 The annual report also states that the FRC's key strategic issues include 'how to monitor the effectiveness of auditor independence and other audit quality drivers'.[35] The annual report notes that the veracity of audit reports is a topic of growing national and international interest:

> A key international and local focus affecting auditing and assurance over the past year has been the debate on auditing related issues following the global financial crisis. These issues include audit quality, the role of the auditor and auditor reporting. There is also a considerably heightened focus on the independence of auditors and greater scrutiny over the scepticism

32 FRC, *Annual report: 2011–12*, pp 43 – 44.

33 FRC, *Annual report: 2011–12*, p. 3.

34 FRC, *Annual report: 2011–12*, p. 22.

35 FRC, *Annual report: 2011–12*, p. 45.

> and professional judgement exercised by auditors, and as a consequence, growing international pressure for greater regulation of auditors.[36]

3.22 The report noted the commencement on 27 June 2012 of the *Corporations Legislation Amendment (Audit Enhancement) Act 2012*, which repealed the FRC's auditor independence function and related reporting requirements.[37] Instead, the FRC will provide a strategic policy role of advising the Minister while ASIC assumes the responsibility of monitoring auditor independence.[38] The impact of this will be reported in the 2012–13 period. The relevant Explanatory Memorandum notes that the requirements were repealed to improve efficiency, reduce administrative costs and streamline the functions of the FRC.[39]

Committee view

3.23 The committee is satisfied with the FRC's annual report. However, it emphasises that future annual reports would benefit from evaluating the priority projects under the strategic plan against the objects in section 244 of the ASIC Act. The committee notes that the 2012–13 financial year coincides with the start of a new direction for the FRC, with the repeal of its auditor independence functions. With the transfer of these functions to ASIC, coordination between ASIC and the FRC is essential. The committee stresses the importance of ongoing communication between ASIC and the FRC.

3.24 The committee notes the FRC's statement has not become aware of any evidence to suggest deficiencies used by audit firms to ensure compliance with auditor requirements. The committee will be calling the FRC to give evidence at the first ASIC oversight hearing of 2013 to give due consideration to the role of auditors in Australia's financial system. The committee draws the FRC's attention to ASIC's 2012 report *Audit Inspection Program Report for 2011–12* which highlights ASIC's concern with the performance of Australia's audit industry.[40] The committee looks forward to the FRC's response to ASIC's concerns.

3.25 The committee will monitor the effects of the repealed auditor independence functions of the FRC in order to determine if the FRC's functions are streamlined and effective.

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36 FRC, *Annual report: 2011–12*, p. 3.

37 FRC, *Annual report: 2011–12*, p. ix.

38 FRC, *Annual report: 2011–12*, p. 21.

39 Explanatory Memorandum, *Corporations Legislation Amendment (Audit Enhancement) Bill 2012*, p. 9

40 ASIC, *Audit Inspection Program Report for 2011–12*, December 2012, p. 9.

Review of the 2011-12 annual report of the Auditing and Assurance Standards Board

3.26 As the committee has previously noted, the 2009–10 financial year marked the introduction of the *Clarity* standards–43 revised auditing standards amended as part of a three-year review process.[41] The 2011–12 annual report notes that the AUASB continued to monitor and facilitate the implementation of the standards during the 2011–12 financial year.[42] However, the report does not contain an assessment of how the *Clarity* standards have measurably contributed to achieving a transparent and reliable financial reporting framework, although it is stated that the AUASB will ascertain whether the standards 'are being understood and applied consistently by auditors' and that feedback on the application of the standards will be supplied to the IAASB.[43]

3.27 From the information obtained in the annual report, it is evident that *Clarity* responds to, and is consistent with, international developments in auditing standards. As noted in the annual report:

> The AUASB released its current suite of auditing standards in 2009, operative for financial reporting periods that commenced on or after 1 January 2010. These auditing standards conform to the International Auditing Standards (ISAs) and significantly increased the requirements on auditors in a number of areas…[44]

3.28 While not referenced, the committee notes that this approach accords with the views of Treasury that 'global consistency is a critical goal that must always be borne in mind in considering any changes to the standard audit report'.[45] Treasury further concluded that 'it will be essential for the Auditing and Assurance Standards Board (in accordance with the FRC's strategic direction) to continue to base the Australian Auditing Standards on the standards issued by the International Auditing and Assurance Board'.[46] The committee also notes that Ms Merran Kelsall, Chairman, AUASB, as a member of the IAASB, participated in the Auditor Reporting Task Force.[47]

3.29 The AUASB did not report any concerns with the FRC's activities in setting the Board's strategic direction, procedures and priorities. The annual report does not

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41 Parliamentary Joint Committee on Corporations and Financial Services, *Report on the 2009–10 annual reports of bodies established under the ASIC Act*, February 2011, p. 3.

42 AUASB, *Annual report: 2011–12*, p. 55.

43 AUASB, *Annual report: 2011–12*, p. 11.

44 AUASB, *Annual report: 2011–12*, p. 4.

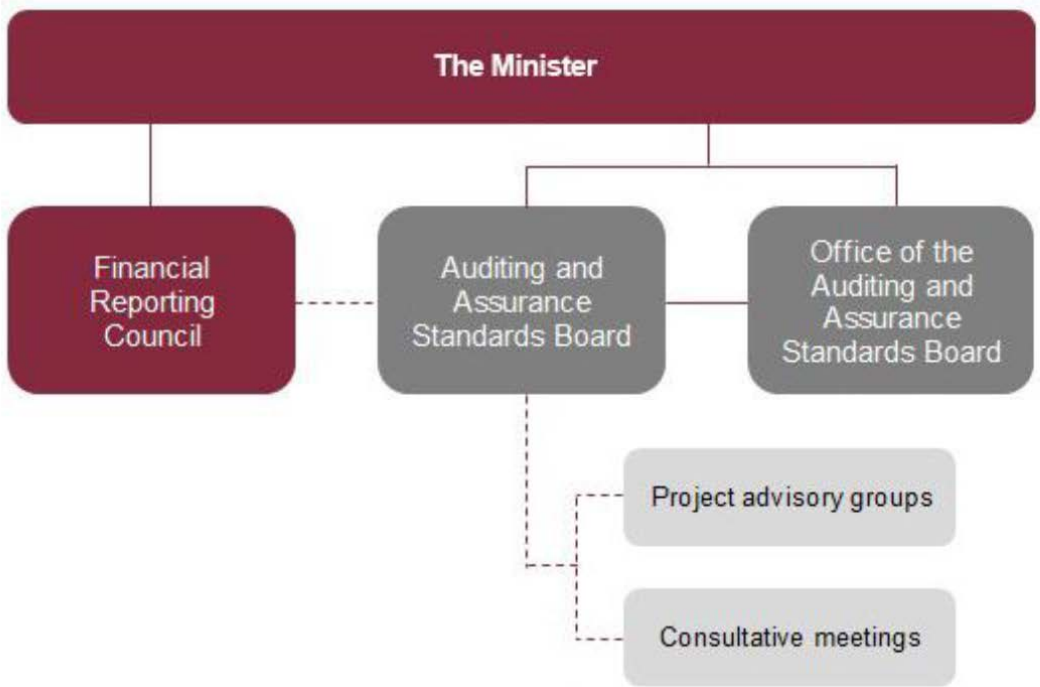
45 Treasury, *Audit quality in Australia: A strategic review 2010*, p. 52.

46 Treasury, *Audit quality in Australia: A strategic review 2010*, Key finding 20, p. 53.

47 AUASB, *Annual report: 2011-12*, p. 5.

provide an evaluation of the merit of the interaction between the FRC and the AUASB as contemplated under Part 12 of the ASIC Act. Part 12 sets out the FRC's and the AUASB's functions and powers and stipulates that the AUASB must have regard to the advice and feedback about its priorities, business plans and procedures that the FRC provides.[48] The annual report did, however, note that the FRC is integrated within the AUASB's broad organisational structure:

Figure 3.2: AUASB organisational structure[49]



3.30 The annual report also comments that during the 2011–12 financial year, there were no parliamentary committee reports relating to the Board's activities.[50]

Committee view

3.31 The committee is satisfied with the annual report of the AUASB. The committee expects that future annual reports will include an assessment of the achievements of the *Clarity* standards in promoting relevant and reliable auditor reports.

3.32 The committee draws the Board'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 the external scrutiny of the AUASB. In addition, the committee

48 *Australians Securities and Investments Commission Act 2001*, part 12, s. 236EA.

49 AUASB, *Annual report: 2011-12*, p. 34.

50 AUASB, *Annual report: 2011-12*, p. 39.

referred directly to the AUASB in its report *Inquiry into the collapse of Trio Capital May 2012*. The AUASB provided answers to questions placed on notice as part of this inquiry.[51]

3.33 The committee is concerned with the divergence between auditors' statutory requirements and public expectations about auditors' role within Australia's financial services system.[52] It notes ASIC's 2012 report that signals the regulator's concerns with the audit industry. The committee draws to the AUASB's attention ASIC's advice in evidence before this committee that the auditing industry is 'on notice'.[53] The committee will call the AUASB to attend the first ASIC oversight hearing in 2013. It will seek the AUASB's response to ASIC's concerns and its views on whether the *Clarity* standards will address these concerns.

Review of the 2011–12 annual report of the Australian Accounting Standards Board

3.34 As Treasury noted in its consultation paper *Audit quality in Australia: A strategic review*, the implications of the global financial crisis extend to accounting standards at the domestic level:

> There have been a number of significant developments relating to accounting standards at the international level. The G-20 has requested that the two global accounting standard setters, the International Accounting Standards Board (IASB) based in London and the US Financial Accounting Standards Board (FASB), address a range of accounting issues that have arisen during the global financial crisis. These issues include fair value measurement, the simplification of the standard relating to financial instruments, the treatment of off-balance sheet exposures and enhanced disclosure of complex financial products. The G-20 has also urged the IASB and FASB to work towards a single set of global accounting standards.[54]

3.35 Consistent with the object of promoting Australian entities within international markets, the AASB's 2011–12 annual report notes that developments in domestic accounting standards have been shaped by events at the international level.[55] As documented in the annual report, the international community's response to the global financial crisis has influenced the responsibilities of the AASB in delivering accounting standards that promote transparent and reliable accounting reports:

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51 PJC on Corporations and Financial Services, *Inquiry into the collapse of Trio Capital*, May 2012, pp 98–99.

52 PJC on Corporations and Financial Services, *Inquiry into the collapse of Trio Capital*, May 2012, pp 130–131.

53 Mr Greg Medcraft, Chairman, ASIC, *Committee Hansard*, 3 December 2012, p. 12.

54 Treasury, *Audit quality in Australia: A strategic review 2010*, p. 23.

55 AASB, *Annual report: 2011-12*, p. 3.

> [M]ost of the Standards issued…were to maintain conformity with International Financial Reporting Standards (IFRSs) issued by the International Accounting Standards Board (IASB). Many of these can be attributed to the IASB's ongoing response to the global financial crisis. Similarly, most of the AASB Exposure Drafts issued incorporated IASB proposals. During the year, the Board made submissions to proposals of both the IASB and the International Public Sector Accounting Standards Board (IPSASB). The AASB had regard to not–for–profit, including public sector, issues in the process of developing the new and revised Standards…[56]

3.36 The report refers to the input the AASB provided to the Asian Oceanian Standard Setters Group (AOSSG). The AASB helped establish the AOSSG as a regional body set to improve the input of the Asia-Oceania region to international accounting standard setting.[57]

3.37 As the committee has previously noted, during the 2009–10 financial year the AASB revised the accounting reporting framework for 'non-public accountable entities'.[58] The annual report does not present an analysis of the impact of the new framework, known as the 'Reduced Disclosure Regime'[59], as the standards are not due to commence until 2013.[60]

3.38 In detailing the AASB's management and accountability structures, the 2011–12 annual reports notes the statutory responsibilities of the FRC to appoint Board members and provide the Board strategic direction and advice. The annual report includes the following diagram showing the FRC's position within the Board's operational matrix:

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56 AASB, *Annual report: 2011-12*, p. 19.

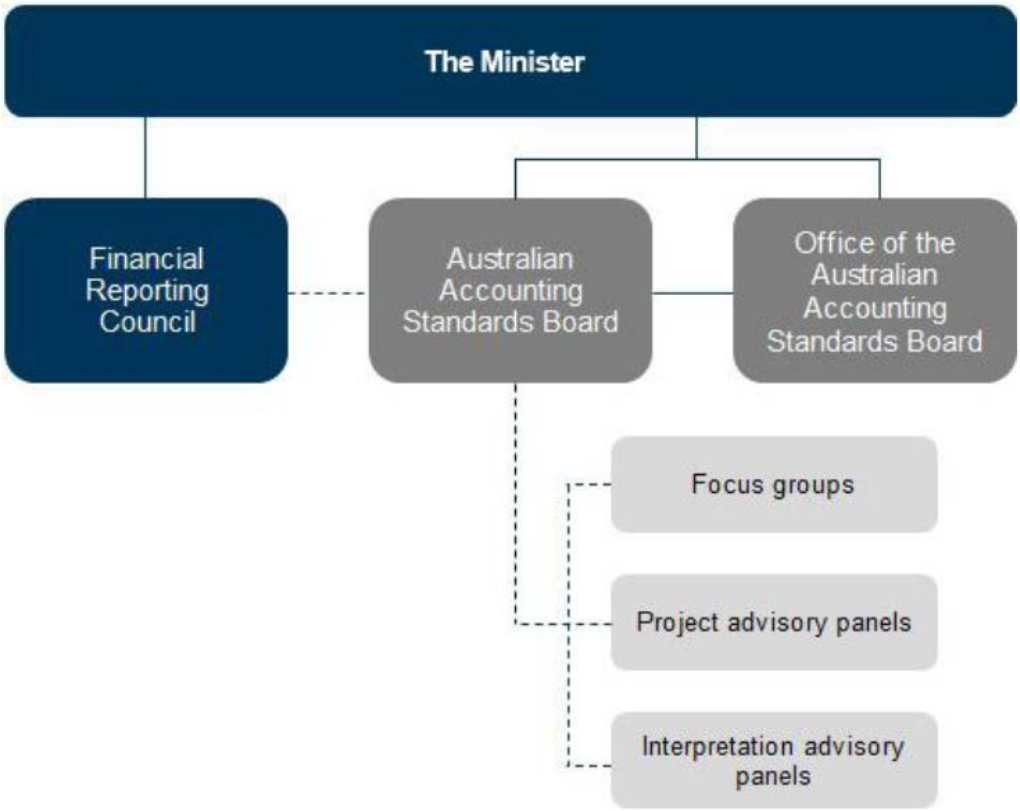
57 AASB, *Annual report: 2011-12*, p. 19.

58 Parliamentary Joint Committee on Financial Services, *Report on the 2009–10 annual reports of bodies established under the ASIC Act*, March 2011, p. 5.

59 AASB, *Annual report: 2011–12*, p. 5.

60 AASB, *Annual report: 2011–12*, p. 107.

Figure 3.3: AASB organisational structure[61]



3.39 The AASB did not report any concerns with the FRC's activities in setting the Board's strategic direction, procedures and priorities.[62]

3.40 The annual report also comments that during the 2011–12 financial year there were no parliamentary committee reports regarding the Board's activities.[63]

Committee view

3.41 The committee is satisfied with AASB's annual report. However, it draws the Board's attention to the reports on annual reports prepared by this committee and the Senate Economics Legislation Committee. Again, it would be appropriate for these reports to be referred to in the annual report's discussion of the external scrutiny of the Board.

3.42 The committee expects that as the AASB moves to improve and implement accounting standards to take account of the issues raised by the global financial crisis, future annual reports will include an assessment of the contribution that these standards have made to promoting reliable accounting practices and, ultimately,

61 AASB, *Annual report: 2011–12*, p. 36.

62 AASB, *Annual report: 2011–12*, p. 37.

63 AASB, *Annual report: 2011–12*, p. 42.

commercial certainty. The committee seeks the AASB's advice about measures the AASB has taken to support the transition to the new standards.

Ms Deborah O'Neill
Chair