Chapter 2

Annual reports of bodies established under the ASIC Act

Auditing and Assurance Standards Board (AUASB)

About the AUASB

2.1 The Office of the AUASB is governed by the FMA Act and provides technical support and administrative and advisory services to the AUASB. The AUASB is a statutory committee under the ASIC Act.

2.2 The functions of the AUASB are set out in section 227(B) of the ASIC Act. The AUASB is responsible for the following:

- making auditing standards under section 336 of the *Corporations Act 2001*;
- developing auditing and assurance standards and related guidance material for other purposes; and
- participating in the development of a single set of auditing standards for worldwide use.

2.3 The Chair of the AUASB is appointed by the Minister for Financial Services and Superannuation and is accountable to the Minister regarding the operations of the AUSAB and the Office of the AUSAB. Other Board members are appointed by the Financial Reporting Council (FRC). The Chair is also the CEO of the Office of the AUASB.

Annual Report 2009-2010

2.4 The AUASB completed its three-year *Clarity* project, which issued 43 revised and redrafted standards in *Clarity* format. The project was characterised in the report as the 'most significant change in auditing in Australia since the introduction of legally enforceable auditing standards in 2006'.[1] The *Clarity* Australian Auditing Standards became operative for reporting periods commencing on or after 1 January 2010.

2.5 The *Clarity* standards conform to the equivalent international standards and are written in a form that facilitates auditors' understanding and application of the standards.[2]

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1 *AUASB Annual Report 2009-2010*, p. 3.

2 *AUASB Annual Report 2009-2010*, p. 4.

Committee view

2.6 The committee was satisfied with the Annual Report of the AUASB and will watch the operation of the revised standards with interest.

Australian Accounting Standards Board (AASB)

About the AASB

2.7 The AASB is an independent accounting standard-setter. It is based in Melbourne. The Board comprises 13 members including the Chair. The Chair is appointed by the Minister for Financial Services and Superannuation and members, from a variety of backgrounds, are appointed by the Financial Reporting Council.

2.8 Under the ASIC Act, the statutory functions of the AASB are:

- to develop a conceptual framework for the purpose of evaluating proposed standards;
- to make accounting standards under section 334 of the *Corporations Act 2001*;
- to formulate accounting standards for other purposes;
- to participate in and contribute to the development of a single set of accounting standards for worldwide use; and
- to advance and promote the main objects of Part 12 of the ASIC Act, which include reducing the cost of capital, enabling Australian entities to compete effectively overseas and maintaining investor confidence in the Australian economy.[3]

2.9 The Financial Reporting Council provides broad strategic direction and advice to the AASB.[4]

Annual Report 2009-10

2.10 The Annual Report notes that during the 2009-10 year, the AASB re-focussed its agenda for the future as follows:

- 'keeping pace with the [International Accounting Standards Board] IASB as it has dealt with financial reporting issues highlighted during the global financial crisis and high priority [International Financial Reporting Standards/US Generally Accepted Accounting Principles] convergence projects
- rejuvenating the public-sector work program

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3 www.aasb.gov.au/About-the-AASB.aspx (accessed 14 December 2010).

4 *AASB Annual Report 2009-10*, p. 41.

- improving private-sector not-for-profit reporting
- establishing requirements for differential reporting, in both the private and public sectors
- closely monitoring the development of conceptual frameworks by the IASB, FASB and IPSASB
- harmonising Australian and New Zealand reporting requirements
- revising selected Australian originated standards
- increasing the AASB's influence internationally
- ensuring the AASB's resources are both adequate and sustainable and that its processes are open and accessible'.[5]

2.11 The Annual report notes that a number of the outputs in the reporting period are due to the IASB's ongoing response to the global financial crisis. The majority of the revised standards were issued by the AASB to ensure consistency with the International Financial Reporting Standards issued by the IASB. Further, most of the Exposure Drafts that were issued incorporate IASB proposals.

2.12 The most substantial domestic output in 2009-10 was 'the introduction of two tiers of general purpose financial reporting requirements'. Tier 2 Australian Accounting Standards—Reduce Disclosure Requirements—was noted in particular in the Annual Report.[6]

Committee view

2.13 The committee was satisfied with the AASB's Annual Report.

Companies Auditors and Liquidators Disciplinary Board (CALDB)

About the CALDB

2.14 The CALDB was established in 1990 to replace similar state-based boards at the time of the implementation of the *Corporations Act 1989* and the *Australian Securities and Investments Commission Act 1989*. It is an independent statutory body established under Part II of the *Australian Securities and Investments Commission Act 2001* (ASIC Act).

2.15 CALDB members are appointed by the Treasurer on the basis of their knowledge and experience in the fields of law, accounting and business.

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5 *AASB Annual Report 2009-10*, p. 3.

6 *AASB Annual Report 2009-10*, p. 19.

2.16 The Board's powers and functions are provided for in the *Corporations Act 2001* (in particular sections 1292 to 1298) and the *Australian Securities and Investments Commission Act 2001* (in particular sections 203 to 223).

2.17 The Board is required by the *Corporations Act 2001* to determine whether a registered auditor or liquidator should be dealt with under section 1292 of the Act. Applications are made to the Board by either the Australian Securities and Investments Commission (ASIC) or the Australian Prudential Regulation Authority (APRA).

2.18 The Board categorises applications made to it by ASIC or APRA as either administrative matters or conduct matters.

2.19 The functions and powers of the Board in relation to an application are performed and exercised by a Panel of the Board. The Panel conducts Hearings to determine whether a registered auditor or liquidator (Respondent):

- 'has failed to carry out their duties and functions adequately and properly;
- is not a fit and proper person to remain registered;
- is subject to disqualification; or
- is otherwise ineligible to remain registered'.

2.20 The Panel, if it is satisfied that some or all of the relevant contentions in an application have been established under the Act, may make the following orders:

- 'cancel or suspend the Respondent's registration; and/or
- admonish or reprimand the Respondent; and/or
- require the Respondent to give an undertaking.'[7]

Annual report 2009-10

2.21 The Board experienced a significant decrease in expenditure compared to the previous year (2009/10 total: $645 476 and 2008/09 total: $1 074 486).[8] This decrease was attributed to:

- Reduction in legal costs
- Decrease in hearing days (therefore decrease in salaries, travel and accommodation and transcription costs)[9]

2.22 The Annual Report notes that the Board had not received an application to deal with a conduct matter since 16 December 2008 and has not received an

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7 www.caldb.gov.au (accessed 14 December 2010).

8 *CALDB Annual Report for the year ended 30 June 2010*, p. 14. Note: the 2009/10 total is listed inaccurately in the Annual Report as 645,4766.

9 *CALDB Annual Report for the year ended 30 June 2010*, p. 14.

application concerning an administrative matter since 4 February 2009.[10] Between 1 July and 14 December 2010 the Board did not receive any applications.[11]

Issues

2.23 The low number of applications by ASIC and APRA to the Board was raised by witnesses within the context of the recent Senate Economics Committee inquiry into liquidators and administrators.[12] In particular, the Institute of Chartered Accountants of Australia (ICCA) observed that 'the disciplinary process is "not operating effectively"', and noted that 'ASIC and practitioners are increasingly defaulting to enforceable undertakings to resolve matters, which lack the transparency and accountability of the CALDB'.[13]

2.24 The Senate Economics Committee made a series of recommendations that would transfer the regulation of insolvency practitioners from ASIC to the Insolvency and Trustee Service Australia (ITSA):

> The committee recommends that the corporate insolvency arm of ASIC be transferred to ITSA to form the Australian Insolvency Practitioners Authority (AIPA). The agency should be governed by the Financial Management and Accountability Act under the Attorney General's portfolio.[14]

2.25 The Senate Economics Committee noted that the CALDB should be retained in its current form[15] but, like the ICCA, it was critical of CALDB's lack of transparency, saying:

> the CALDB's investigative and adjudicative processes lack transparency. [The Economics Committee] believes that the Board's deliberations and findings should be given in open unless there is a ruling otherwise. Past hearings and evidence of the CALDB should also be open to inspection by any person.[16]

2.26 In its Annual Report, CALDB responded by noting:

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10 *CALDB Annual Report for the year ended 30 June 2010*, p. 2.

11 Personal communication between Secretary and CALDB, 14 December 2010.

12 Senate Economics Committee, *The regulation, registration and remuneration of insolvency practitioners in Australia: the case for a new framework*, 14 September 2010.

13 Senate Economics Committee, *The regulation, registration and remuneration of insolvency practitioners in Australia: the case for a new framework*, 14 September 2010, p. 134.

14 Senate Economics Committee, *The regulation, registration and remuneration of insolvency practitioners in Australia: the case for a new framework*, 14 September 2010, p. 148, recommendation 1.

15 *The regulation, registration and remuneration of insolvency practitioners in Australia: the case for a new framework*, 14 September 2010, p. 151.

16 Senate Economics Committee, *The regulation, registration and remuneration of insolvency practitioners in Australia: the case for a new framework*, 14 September 2010, para. 11.26.

> At present, the legislation under which the Board operates requires hearings to take place in private unless, in effect, the auditor or liquidator who is the subject of the hearing before the Board requests otherwise. In addition the legislation imposes a general obligation of confidentiality on the Board in relation to all information given to the Board. Since 1 January 2008 the legislation has given the Board specific power to publicise any decision it makes to exercise its disciplinary powers and the reasons for that decision.
>
> It is not appropriate for the Board to take any particular stance in relation to the changes proposed by the Senate Committee, but the Board looks forward to the opportunity to participate appropriately in any future discussions concerning these matters.[17]

Committee view

2.27 The committee is concerned about the low number of applications being made to the CALDB and notes the related issues raised in the Senate Economics Committee inquiry as discussed above. The committee will revisit this matter after the government has formally responded to the recommendations of the Senate Economics Committee Inquiry into Liquidators and Administrators.

Corporations and Markets Advisory Committee (CAMAC)

About CAMAC

2.28 The Corporations and Markets Advisory Committee was set up in 1989 to provide a source of independent advice to the Australian Government on issues that arise in corporations and financial markets law and practice.

2.29 CAMAC is a body corporate. Its part-time members are appointed by the Treasurer on the basis of knowledge and expertise in business, financial markets, law, economics or accounting. The Chairman of the Australian Securities and Investments Commission is a member of the Committee by virtue of section 147 of the ASIC Act. Members are supported by a full-time executive.

2.30 The Committee's functions are set out under section 148(1) of the ASIC Act as follows: to, 'on its own initiative or when requested by the Minister, to advise the Minister, and to make such recommendations as the Committee thinks fit, about any matter connected with:

a) a proposal to make corporations legislation or to amend that legislation;

b) the operation or administration of that legislation;

c) law reform in relation to that legislation;

d) companies or a segment of the financial products and financial services industry; or

17 *CALDB Annual Report for the year ended 30 June 2010*, pp 1–2.

e) a proposal for improving the efficiency of the financial markets'.[18]

Annual Report 2009-10

2.31 CAMAC completed two reports during the 2009-10 year: one on members' schemes of arrangements, and one on guidance for directors. It also commenced work on a report on executive remuneration.[19] In November 2010 (after the annual report was finalised), two further references were made to CAMAC on: the definition of a derivative, particularly in relation to physically settled forward contracts; and the regulation of managed investment schemes.[20] CAMAC noted that an increase in penalties provided for in the Corporations Amendment (No 1) Bill 2010 was consistent with CAMAC's *Aspects of Market Integrity* report, and that the ASX had responded to two earlier CAMAC reports, with changes to its *Corporate Governance Principles and Recommendations*.[21]

Committee view

2.32 The committee was satisfied with the Annual Report of CAMAC.

Financial Reporting Council (FRC)

About the FRC

2.33 The Financial Reporting Council is a statutory body under the *Australian Securities and Investments Commission Act 2001* (ASIC Act), as amended by the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004*. Secretariat support is provided by the Australian Treasury.

2.34 The FRC is responsible for providing broad oversight of the process for setting accounting and auditing standards as well as monitoring the effectiveness of auditor independence requirements in Australia and giving the Minister reports and advice on these matters. The ASIC Act limits the FRC's capacity to become involved in the technical deliberations of the AASB and the AUASB (see above), including directing these two agencies in relation to the development or vetoing of a standard.

Annual Report 2009-2010

2.35 The first of January 2010 marked the 10th anniversary of the Council's establishment.

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18 www.camac.gov.au (accessed 14 December 2010).

19 *CAMAC Annual Report 2009–2010*, pp 3–8.

20 CAMAC, Current Reviews, http://www.camac.gov.au/camac/camac.nsf/0/A41EFEAB5B8B7BCACA256ED90006082A?opendocument (accessed 20 December 2010).

21 *CAMAC Annual Report 2009–2010*, p. 9.

2.36 During 2009-10 the FRC achieved the following:

- Continued in its oversight function of the processes for setting accounting and auditing standards. This included:
  - approving re-appointments to the AASB and AUASB
  - monitoring the strategic directions, priorities, business plans, procedures, budgets and staffing arrangements of the AASB and the AUASB
  - monitoring international developments regarding accounting and auditing standards
  - monitoring the operation of Australian accounting and auditing standards
- Continued its function of monitoring the effectiveness of auditor independence requirements. The FRC concluded that the independence framework continues to operated effectively; and[22]
- Participated in and/or hosted a number of forums and meeting with international counterparts.

2.37 In 2009-10 the ASIC Act was amended to release the FRC from the following obligations with respect to funding of the AASB and AUASB:

- 'Seeking contributions towards the costs of the Australian accounting and auditing standards setting processes; and
- Monitoring the level of funding, and the funding arrangements, for those processes.'[23]

2.38 The Annual Report notes that in the 2010-11 year it is expected there will be significant developments at a domestic and international level in the area of financial reporting.[24]

Committee view

2.39 The committee notes the FRC's forecast that substantial financial reporting-related changes will occur both domestically and internationally in 2010-11 and that these changes, while positive, may present short-term transitional issues. The committee was satisfied with the FRC's Annual Report.

22 *FRC Annual report 2009-10*, p. 3.

23 *FRC Annual report 2009-10*, p. 27.

24 *FRC Annual report 2009-10*, p. 3.

Financial Reporting Panel (FRP)

About the FRP

2.40 The FRP was established under the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004* (CLERP 9 Act). It commenced its operations in July 2006. The FRP is a statutory authority. Its principal function is to 'resolve disputes between the Australian Securities and Investments Commission and a company, disclosing entity or registered scheme over the application of accounting standards in its financial reports'.[25] The FRP enables disputes to be resolved without the cost of court proceedings.

2.41 Either party—ASIC or the company—may lodge referrals to the FRP. As outlined by the FRP, 'a company must acquire ASIC's consent to the referral before lodging an application with FRP. Referrals must be made in the form prescribed by the *Corporations Act 2001*, subsections 323EF(2) or 323EI(2)'.[26]

2.42 Panel members are appointed by the Minister (section 239AB of the ASIC Act) and the Chairperson (section 239AC of the ASIC Act). Members have experience/expertise in accounting, auditing, business, administration of companies and law. There must be a minimum of five members.

Annual Report 2009-2010

2.43 No matters were referred to the FRP by ASIC in 2009-10 (see discussion below).

Issues

2.44 In the 2008-09 Annual Report, the FRP noted it received no referrals during that period. It indicated that it had considered 'expanding its functions from the resolution of disputes to the surveillance of financial reporting practices in the market'.[27] However, it concluded that this would present a risk of duplication of activity with ASIC, and did not go down that path. The same year, the Chairman Mr Paul Shannon resigned.

2.45 In June 2010 the committee's attention was drawn to the fact that the Panel had received no references in the four years since it had commenced operation (there had been one reference in 2007-08, but that matter was resolved prior to the Panel making a determination).

2.46 In the 2009-10 Annual Report the FRP noted that, despite the financial crisis, there had still been no referrals of matters by ASIC. It commented:

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25 *Financial Reporting Panel Annual Report 2009-2010*, p. vii.

26 www.frp.gov.au/about/ (accessed 13 December 2010).

27 *Financial Reporting Panel: Annual Report 2008–2009*, p. 1.

> The FRP met twice during 2009-10 to discuss why matters were not proceeding to the Panel for consideration. Following these meetings, the FRP met with ASIC to reinforce the importance of ASIC promoting the independence of the panel when discussing the referral process with lodging entities.[28]

2.47 It appears that this may have had the intended effect. Shortly before the end of that financial year, the FRP heard that there were four disputes between ASIC and companies, and these matters were subsequently formally referred to the FRP in August 2010. The FRP reported on all of them in October 2010. Two of the four matters were determined in favour of ASIC, and two in favour of the company concerned.

Committee view

2.48 It is possible that the FRP was under-utilised in its initial years of operation, and some of the comments in recent annual reports suggest that FRP members were concerned about this. However, recent activity suggests that the issue may have been resolved. The committee will seek a briefing from ASIC on the issue and will raise it at a future ASIC oversight public hearing.

Takeovers Panel

About the Takeovers panel

2.49 The primary objective of the Panel is 'to improve the certainty, efficiency and fairness of Australia's takeovers market'.[29]

2.50 The appointment and proceedings for the Takeovers Panel are provided for under sections 172-201A of the ASIC Act. The role of the Takeovers Panel is outlined in the *Corporations Act 2001* and is to deal with issues that arise during a takeover bid. More specifically, the Panel has two roles:

- Making declarations of unacceptable circumstances under section 657A, and orders under section 657D to remedy those circumstances; and
- Reviewing decisions of ASIC under section 656A (modifications of, or exemptions from, Chapter 6) and, during a takeover bid, section 673 (modifications of, or exemptions from, Chapter 6C).[30]

2.51 The panel issues guidance notes to support these roles.

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28 *Financial Reporting Panel: Annual Report 2009–2010*, p. 1.

29 *Takeovers Panel: Annual Report 2009-2010*, p. 21.

30 *Takeovers Panel: Annual Report 2009-2010*, p. 7.

2.52 As at 30 June 2010 the Panel had a total of 54 members. Members are nominated by the Minister and appointed by the Governor-General. Nominations are considered on the basis of achieving a mix of expertise,[31] geographical representation and gender.[32]

Annual Report 2009-2010

2.53 The Takeovers Panel annual report summarises the Panel's recent activity:

- Unacceptable circumstances - In the reporting period the panel received 25 applications for declarations of unacceptable circumstances. The report noted that this is a little under the approximately 30 applications received in recent years.
- Review of ASIC decisions - There were two reviews of ASIC decisions brought to the Panel in 2009-2010.
- Referrals from the court – There were no referrals from the Court for review.
- Guidance
  - Updated guidance notes – the Panel updated four guidance notes.
  - Rules – the Panel released a consultation draft of the Procedural rules in late 2009. New procedural rules came into effect on 1 June 2010.
  - Consultation paper – at the close of the reporting period the Panel was reviewing submissions on its consultation on its updated Guidance Note 1, which concerns 'Unacceptable Circumstances'.

Issues

2.54 The tenth anniversary of the Takeovers Panel has been the occasion for discussion in the financial press of possible reforms to its operation. Concern has been expressed about the limited transparency of its operations, both in relation to preventing disclosure of its proceedings, and the increasing brevity of its published reasons for decisions.[33] The Panel's annual report notes that 'Commercial sensitivity and time pressures under the legislation mean that proceedings are generally conducted in private'.[34]

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31 The following areas of expertise are considered: business; administration of companies; financial markets; financial products and financial services; law; economics; and accounting.

32 *Takeovers Panel: Annual Report 2009-2010*, p. 11.

33 Brian Frith, 'Takeovers Panel out to muzzle the media', *The Australian*, 5 October 2010, p. 20; Tony Damian, 'Takeovers Panel needs improvements', *Australian Financial Review*, 15 March 2010, p. 55.

34 *Annual Report 2009–10*, p. 33.

2.55 There have also been policy issues raised about the laws it implements, on matters such as creeping acquisitions, with journalist Martin Collins suggesting that it may be timely for CAMAC to undertake a review of the takeover rules.[35]

Committee view

2.56 The committee notes the matters raised in the press and may give further consideration to these issues at a later stage.

Mr Bernie Ripoll MP
Chairman

35 Martin Collins, 'Time to reform takeover laws', *The Australian*, 5 March 2010, p. 32.