Parliamentary Joint Committee on Corporations and Financial Services

Report on the 2010 – 11 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.

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Abbreviations

AASB	Australian Accounting Standards Board
ASC Act 1989	*Australian Securities Commission Act 1989*
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
Corporations Act	*Corporations Act 2001*
FRC	Financial Reporting Council
FRP	Financial Reporting Panel

Recommendation

Recommendation 1

4.12 The committee recommends that the Government review section 158 of the Australian Securities and Investments Commission Act 2001 to ensure that it accurately reflects the staffing options available to CAMAC and does not contain obsolete references to repealed legislative provisions.

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 Mr Lionel Bowen, 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 reports of ASIC and the Takeovers Panel are 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. The 2010–11 annual report of the Takeovers Panel will be considered as part of the committee's oversight of that Panel.

1.7 Accordingly, this report examines the 2010–11 annual reports of the AASB, the AUASB, CALDB, CAMAC, the FRC and the FRP.

1.8 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.

1.9 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.

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

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

Chapter two examines the annual reports of CALDB, CAMAC and the FRP is in chapter two. 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.

1.10 In reviewing the annual reports, the committee will also consider whether there are opportunities to strengthen the operation of the corporations legislation. One such opportunity is discussed in chapter four.

1.11 The committee did not hold any public hearings or seek written submissions during the preparation of this report. Assistance was provided by Ms Moira Coombs, Senior Researcher, Law and Bills Digest Section of the Research Branch of the Parliamentary Library. The committee thanks Ms Coombs and the Parliamentary Library for their assistance.

Chapter 2

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

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

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

Companies Auditors and Liquidators Disciplinary Board

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

2.3 CALDB's annual report stated:

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

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 three matters before CALDB during 2010–11. All were new applications referred between 1 April and

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

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

3 *ASIC Act 2001*, s. 214.

30 June 2011.[4] No matters were carried over from 2009–10.[5] Accordingly, the Board was without casework for at least three quarters of the financial year.

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

2.6 The Board's decisions may be appealed to the Administrative Appeals Tribunal (AAT) or to the Federal Court of Australia.[7] The annual report indicates that no decisions were the subject of judicial or AAT review during the 2010–11 financial year.[8] This reflects the time in which the matters were referred in 2010–11 and the lack of matters referred to CALDB during 2009–10.[9]

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

Figure 2.1: Breakdown of number of cases before CALDB[11]

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

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

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

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

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

7 *Corporations Act 2001*, s, 1317B; *Administrative Decisions (Judicial Review) Act 1977*, s. 5; CALDB, *Annual report:201-11*, p. 8.

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

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

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

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

Figure 2.2: Number of cases referred: 2002-03 to 2010-11[12]

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

Future of CALDB

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

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

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

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

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

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

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

Committee view

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

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

Corporations and Markets Advisory Committee

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

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

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

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

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

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

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

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

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

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

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

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

Annual report

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

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

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19 *ASIC Act 2001*, s. 148.

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

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

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

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

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

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

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

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

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

2.22 Second, for the 2010–11 financial year remuneration for CAMAC members totalled $45 549. While noting that $2042 of the $45 549 represents the aggregated amount of superannuation payments for committee members, the annual report does not provide further breakdown of the remuneration paid during the financial year. The ASIC Act requires the committee's remuneration to be calculated in accordance with determinations of the Remuneration Tribunal.[28] According to information published by the Remuneration Tribunal, from 1 August 2010 the CAMAC Convenor was entitled to a daily rate of $779. Other members were entitled to a daily rate of $709.[29] Entitlements differed for July 2010, during which the daily rate for the Convenor was $748 and $681 for other members.[30] This information could usefully be included in the annual report. It would assist with monitoring the activities of CAMAC were the monies spent reported against the remuneration entitlements as determined by the Remuneration Tribunal and according to the number of committee meetings per year.

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

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

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

28 *ASIC Act 2001*, s. 152.

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

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

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

Committee view

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

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

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

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

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

Financial Reporting Panel

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

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

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

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

Annual report

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

2.33 The 2010–11 annual report does not provide a breakdown of monies spent per matter. It is evident, however, that the Panel was overspent for 2010–11, ending the financial year with a $64 381 deficit from an allocated budget of $233 000.[35] This is in contrast to all other years of operation for which the FRP ended the financial year with surplus funds.[36]

2.34 On 7 February 2012, the Government announced its decision to terminate the FRP due to 'lower than expected referral rates'.[37] The decision was foreshadowed in the *Mid Year Economic and Fiscal Outlook 2010–11*[38] and announced following a one-month public consultation process.[39] To disband the Panel, the Government will introduce amendments to the Corporations Act[40] and, presumably, the ASIC Act. In announcing the decision, the Government did not indicate the timeframe for the introduction of the amending legislation.

Committee view

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

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

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

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

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

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

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

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

Chapter three

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: 2010-11, p. 13; AUASB, Annual report: 2010–11, p. 15.*

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*, 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 2010–11 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]

The Australian Accounting Standards Board

3.8 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]

3.9 As detailed in the 2010–11 annual report, the AASB's mission statement captures the Board's statutory responsibilities and role in Australia's financial reporting framework:

> The mission of the AASB is to:
>
> - develop and maintain high-quality financial reporting standards for all sectors of the Australian economy; and

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

12 FRC, *Annual report: 2010–11,* Appendix A, p. 51.

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.

- contribute, through leadership and talent, to the development of global financial reporting standards and to be recognised as facilitating the inclusion of the Australian community in global standard setting.[19]

The Auditing and Assurance Standards Board

3.10 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]

3.11 The ASIC Act also establishes the Office of the AUASB, which provides technical services and administrative support to the AUASB.[23] The Board's 2010–11 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]

3.12 The AUASB's statutory responsibilities are reflected in the Board's mission statement as contained in the 2010–11 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 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

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19 AASB, *Annual report: 2010–11*, 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: 2010–11*, p. 52.

> 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

3.13 The ASIC Act also requires significant coordination between the three bodies charged under Part 12 of the ASIC Act with 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]

3.14 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]

3.15 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]

3.16 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 2010–11 annual reports of both bodies, the AASB and the AUASB operate according to a shared

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25 AUASB, *Annual report: 2010–11*, p. 16.

26 *ASIC Act 2001*, ss225(2).

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

28 FRC, *Annual report: 2010–11*, p. 45.

service agreement under which seven of the AASB's eight administrative staff concurrently work for the AUASB.[29]

Review of the 2010–11 annual report of the Financial Reporting Council

3.17 The FRC noted in its 2010–11 annual report that it had introduced a strategic plan. The annual report records that following the appointment of FRC Chairman Ms Lynn Wood in March 2011, the Council adopted the Strategic Plan 2011–2014, which provides an action plan for the FRC against strategic issues relevant to the financial services sector.[30]

3.18 The 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.

Figure 3.1: Extract from FRC's SWOT analysis of the financial reporting framework[31]

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

3.19 The annual report also provides further information about the state of Australia's financial reporting system. Notably, the FRC has concluded that the

29 AASB, *Annual report: 2010–11*, p. 41; AUASB, *Annual report: 2010–11*, p. 36.

30 FRC, *Annual report: 2010–11*, p 7.

31 FRC, *Annual report: 2010–11*, pp 53 – 54.

'independence framework in Australia continues to operate effectively'.[32] As the report elaborates:

> [o]n the basis of its work during the period covered by this report, the FRC has not become aware of any evidence to suggest that the systems and processes used by audit firms to ensure compliance with auditor independence requirements are not working effectively.[33]

3.20 However, the annual report highlights two potential areas of concern with the auditor independence framework. First, the risk of duplication and regulatory overlap. The annual report indicates that in conducting its auditor-independence functions, the FRC places a high reliance on the activities of ASIC:

> During 2010-11 the FRC continued to monitor the effectiveness of Australia's auditor independence requirements. The FRC performs this work primarily through the use of information obtained from the Australian Securities and Investments Commission (ASIC) and the other bodies with which it has a Memorandum of Understanding (MOU) and through periodic meetings with those bodies and other stakeholders such as auditing firms.[34]

3.21 The summary of the process by which the FRC conducts is auditor independence oversight functions is consistent with Treasury's findings outlined in its March 2010 consultation paper *Audit quality in Australia: A strategic review*. Treasury concluded that the 'FRC's annual Auditor Independence Report is largely based on the annual report that ASIC prepares on its Audit Inspection Program'.[35] Accordingly, Treasury has proposed that the option of transferring the FRC's auditor independence functions to ASIC should be explored.[36]

3.22 The second potential area of concern is the issue of whether the auditor independence framework is sufficient to deliver audit reports that meet the statutory objects of reliability, relevance and user-friendliness. 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'.[37] 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

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32 FRC, *Annual report: 2010–11*, p. 3.

33 FRC, *Annual report: 2010–11*, p. 30.

34 FRC, *Annual report: 2010–11*, p. 2.

35 Treasury, *Audit quality in Australia: A strategic review*, March 2010, p. 32.

36 Treasury, *Audit quality in Australia: A strategic review*, Key finding 11, p. 32.

37 FRC, *Annual report: 2010–11*, p. 8.

> and professional judgement exercised by auditors, and as a consequence, growing international pressure for greater regulation of auditors.[38]

3.23 Treasury noted that concerns have been raised about the 'expectation gap' between public understanding of the nature of audit reports and the audit profession's view of their audit responsibilities.[39] These concerns have lead to recommendations for increased FRC activity. For example, the Australian National Centre for Audit and Assurance Research has recommended the FRC establish a taskforce to address the factors that may be contributing to the expectation gap.[40] While not directly referenced in the annual report, it appears that the FRC is responding to these concerns. As detailed in the annual report, as part of its strategic plan in 2010–11 the FRC introduced the Audit Quality Task Force:

> In 2011 the FRC decided that audit quality is a strategic issue for the FRC and the Audit Quality Task Force was established to focus on this issue. The Task Force identified recent key publications, reports and other initiatives in relation to audit quality in Australia, in other jurisdictions and at the international level for the purpose of formulating its work program for 2011-12.[41]

Committee view

3.24 The committee is satisfied with the annual report. The FRC's strategic plan appears broadly consistent with the role of the FRC as envisioned under the ASIC Act. The committee considers that future annual reports should evaluate the priority projects under the strategic plan against the objects in section 244 which underpin Australia's financial reporting system.

3.25 The committee draws to Parliament's attention the identified areas of weakness in, and threats to, Australia's financial reporting system. The committee will monitor developments in these areas with interest.

3.26 The committee notes Treasury's strategic review of audit quality in Australia and the proposal to transfer the FRC's audit independence functions to ASIC. The committee considers that the audit quality framework must promote auditor independence and require audit reports to be transparent, accurate and reliable. The committee is concerned that unnecessary duplication between the functions of ASIC and the FRC is avoided. The committee may seek the views of ASIC on this matter, as part of the committee's oversight of the Commission. It will also monitor the work of the FRC's Audit Quality Task Force and may seek the FRC's advice about the progress of the Task Force's work.

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38 FRC, *Annual report: 2010–11*, p. 2

39 Treasury, *Audit quality in Australia: A strategic review*, Part 6, pp. 45–54.

40 Keith A. Houghton, Christine Jubb, Michael Kend and Juliana Ng, Australian National Centre for Audit and Assurance Research, *The future of auditing*, 2009, p. 58.

41 FRC, *Annual report: 2010–11*, p. 17.

Review of the 2010-11 annual report of the Auditing and Assurance Standards Board

3.27 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.[42] The 2010-11 annual report notes that the AUASB 'monitored and facilitated' the introduction of the standards during the 2010–11 financial year.[43] 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.

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

> ...a major focus of the International Auditing and Assurance Standards Board (IAASB) and the AUASB over the past three to four years has been the revision and re-issue of the Australian Auditing Standards (ASAs) in *Clarity* format. The IAASB issued its suite of *Clarity* auditing standards in 2009 effective for reporting periods beginning on or after 15 December 2009, and the AUASB released confirming *Clarity* accounting standards in 2009, operative for financial reporting periods that commenced on or after 1 January 2010. These revised auditing standards significantly increased the requirements on auditors in a number of areas of concern, including accounting estimates, using the work of experts, group audits and communication with audit committees. These standards, which are now applied by auditors, address many of the areas of concern raised during the crisis.[44]

3.29 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 H Kelsall, Chairman, AUASB, was appointed a member of the IAASB, and the IAASB task force, from 1 January 2011.[47]

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42 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.

43 AUASB, *Annual report: 2010–11*, p. 30.

44 AUASB, *Annual report: 2010–11*, p. 3.

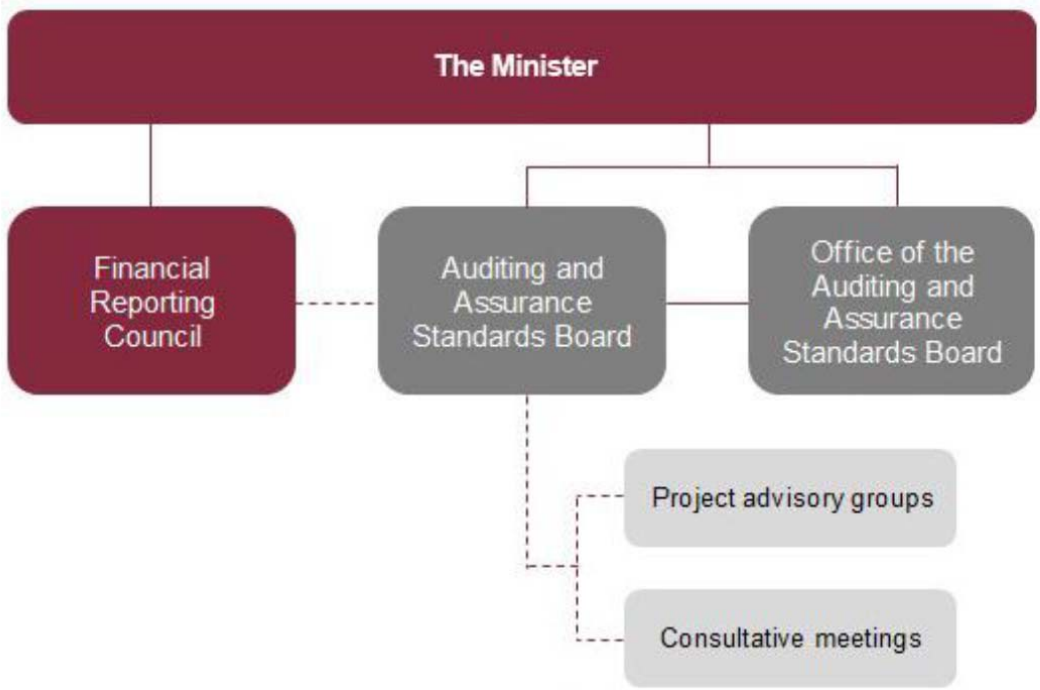
45 Treasury, *Audit quality in Australia: A strategic review*, p. 52.

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

47 AUASB, *Annual report: 2010-11*, p. 3.

3.30 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 provide an evaluation of the merit of the interaction between the FRC and the AUASB as contemplated under Part 12 of the ASIC Act. The annual report did, however, note that the FRC is integrated within the AUASB's broad organisational structure:

Figure 3.2: AUASB organisational structure[48]



3.31 The annual report also comments that during the 2010–11 financial year, there were no parliamentary committee reports relating to the Board's activities.

Committee view

3.32 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.

3.33 As the committee has noted, it is concerned with any divergence between auditors' statutory requirements and public expectations about auditors' role within Australia's financial services system. The committee will closely monitor developments in this area and may seek the AUASB's advice on the efficacy of Australia's auditing standards.

3.34 The committee draws the Board's attention to the reports on annual reports prepared by this committee and the Senate Economics Legislation Committee. It

48 AUASB, *Annual report: 2010-11*, p. 30.

would be appropriate for these reports to be referred to in the discussion in the annual report regarding the external scrutiny of the AUASB.

Review of the 201011 annual report of the Australian Accounting Standards Board

3.35 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.[49]

3.36 Consistent with the object of promoting Australian entities within international markets, the 2010–11 annual report notes that developments in domestic accounting standards have been shaped by events at the international level.[50] 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:

> Most of the revised 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 and public sector issues in the process of developing the new and revised Standards.[51]

3.37 The report does not evaluate the effect the revised standards, as the standards had not commenced as of 30 June 2011. As Mr Kevin Michael Stevenson, Chairman, reported:

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

50 AASB, *Annual report: 2010-11*, p. 3.

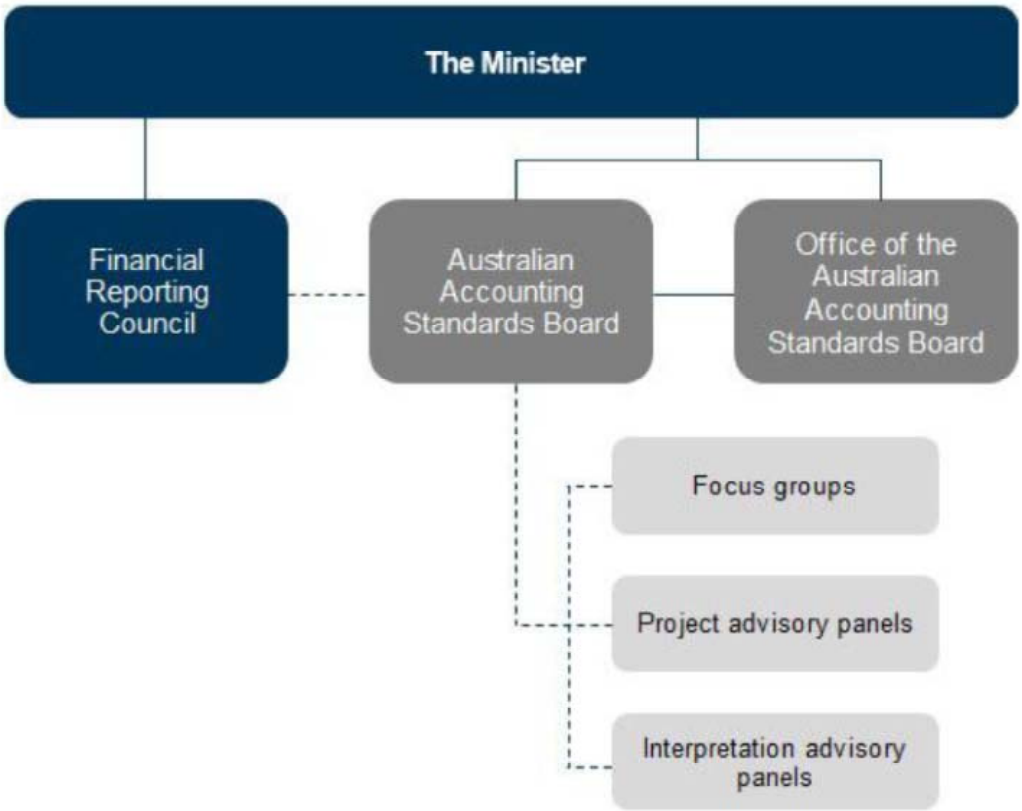
51 AASB, *Annual report: 2010-11*, p. 19.

> Preparers and auditors can take some comfort from the fact that none of the major changes coming will have an early application date. There will be a number of years in which to make transitions.[52]

3.38 As the committee has previously noted, during the 2009–10 financial year the AASB revised the accounting reporting framework for 'non-public accountable entities'.[53] The annual report does not present an analysis of the impact of the new framework, known as the *Tier 2 Australian Accounting Standards–Reduce Disclosure Requirements*, as the standards are not due to commence until 2013.[54]

3.39 In detailing the AASB's management and accountability structures, the 2010—11 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:

Figure 3.3: AASB organisational structure[55]



52 AASB, *Annual report: 2010–11*, p. 3.

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

54 AASB, *Annual report: 2010–11*, p. 6.

55 AASB, *Annual report: 2010–11*, p. 34.

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

3.41 The annual report also comments that during the 2010-11 financial year there were no parliamentary committee reports regarding the Board's activities.

Committee view

3.42 The committee was satisfied with the annual report. The committee draws parliament's attention to the work of the AASB to improve accounting standards to take account of the issues raised by the global financial crisis. The committee expects that as these standards commence operation, future annual reports will include an assessment of the contribution that they have made to promoting reliable account and, ultimately, commercial certainty.

3.43 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 AASB.

Chapter 4

Other matters relevant to the operation of the corporations legislation

4.1 During the course of the committee's review of the annual reports of bodies established under the *Australian Securities and Investments Commission Act 2001* (the ASIC Act), it identified a matter affecting the operation of the corporations legislation.

4.2 Section 158 of the ASIC Act outlines the staffing arrangements for the Corporations and Markets Advisory Committee (CAMAC). Under paragraph 185(b), CAMAC's staff can include 'persons whose services are so made available under arrangements made under section 249'. Since the ASIC Act commenced on 15 July 2001,[1] the Act has not included a section 249.[2]

4.3 The ASIC Act 2001 replaces the *Australian Securities Commission Act 1989* (the ASC Act 1989). At its commencement, the ASC Act 1989 contained a section 249. The section is copied in full at Appendix 1. Section 249 authorised the Minister to arrange with State and Territory counterparts the secondment of State and Territory officers to CAMAC.

4.4 However, section 249 of the ASC Act 1989 was repealed by Schedule 7 of the *Corporations Legislation Amendment Act 1990*. The Corporations Legislation Amendment Act altered the framework for corporations regulation in Australia. As stated in the Explanatory Memorandum to the Corporations Legislation Amendment Bill 1990, the amendments were designed to 'convert it [the corporations legislation] from a Commonwealth law applying of its own force throughout Australia' to a regulatory system 'suitable for application as a uniform law by the States and the Northern Territory'.[3] With the move to this new regulatory framework, section 249 was considered 'no longer necessary' and was therefore repealed.[4]

4.5 The decisions of the High Court in *Re Wakim: ex parte McNally* (1999) 198 CLR 511 and *The Queen v* Hughes (2000) 74 ALJR 802 effectively invalidated the cross-vesting scheme on which the corporations regulatory framework introduced by the Corporations Legislation Amendment Act was based. Accordingly, in 2001 the ASC Act 1989 was repealed and replaced by the ASIC Act.

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1 *ASIC Act 2001*, s. 2; *Gazette* 2001 No. S285.

2 *ASIC Act 2001*, Act No. 51 of 2001, as made 28 June 2001, available on ComLaw, http://www.comlaw.gov.au/Details/C2004A00819/Download (accessed 15 February 2012).

3 Corporations Legislation Amendment Bill 1990, Explanatory Memorandum, para. 1267–1268.

4 Corporations Legislation Amendment Bill 1990, Explanatory Memorandum, para. 1348.

4.6 As noted in the second reading debates on the Australian Securities and Investments Commission Bill 2001, the 'Commonwealth is not attempting to change the substance of the Corporations Law...but simply to address issues about the constitutionality of the national Corporations Law system'. Accordingly, as stated in the Bill's Explanatory Memorandum, the Australian Securities and Investments Commission Bill 2001 was designed to 're-enact the 1989 Act as a Commonwealth Act capable of operating throughout Australia'.[5]

4.7 At the time the ASIC Act 2001 received Royal Assent, on 28 June 2001, it contained two references to section 249; one in section 158 and the other in section 122. Mirroring the reference to section 249 in section 158, section 122 authorised ASIC to second 'persons whose services are so made available under arrangements made under section 249'.

4.8 However, at its commencement on 15 July 2001 the ASIC Act contained only one reference to section 249. The *Corporations (Repeals, Consequentials and Transitionals) Act 2001* was introduced to 'make minor drafting corrections that do not involve changes in substance'. The drafting corrections included amending section 122. As stated in the Explanatory Memorandum to the Corporations (Repeals, Consequentials and Transitionals) Bill:

> Item 1 recasts section 122 of the *Australian Securities and Investments Commission Act 2001* to remove an erroneous reference to section 249. Section 249 was removed from the *Australian Securities and Investments Commission Act 1989* in 1991 by the *Corporations Legislation Amendment Act 1990*.

4.9 The Explanatory Memorandum to the Corporations (Repeals, Consequentials and Transitionals) Bill does not explain why the reference to section 249 was retained in section 158.

Committee view

4.10 On the basis the information before the committee, three things are clear. First, a reference to section 249 was considered erroneous as the section had been repealed a decade before the ASIC Act was to commence. Second, the Corporations (Repeals, Consequential and Transitional) Act commenced at the same time as the ASIC Act.[6] Therefore, the ASIC Act did not provide ASIC the opportunity to second staff under arrangements made pursuant to section 249. The reference to section 249 was removed before the ASIC Act commenced. Third, if the reference to section 249 in section 122 of the ASIC Act was considered erroneous on the basis that the section

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5 Australian Securities and Investments Commission Bill 2001, Explanatory Memorandum, para 2.4.

6 *Corporations (Repeals, Consequentials and Transitionals) Act 2001*, *s*. 2; ASIC Act 2001, s. 2. Both Acts commenced 'at the commencement of the *Corporations Act 2001*' on 15 July 2001 (see *Gazette* 2001, No. S285).

had been repealed, it is arguable that the reference in section 158 of the ASIC Act is likewise erroneous. On this point, the committee notes that CAMAC's annual report for the 2010–11 financial year does not refer to any arrangements made under a section 249 for the secondment of staff from the States and Territories.

4.11 Accordingly, the committee queries the accuracy of the reference to section 249 in the overview of CAMAC's staffing options in section 158. To ensure the continuity and applicability of the ASIC Act, and the corporations legislation more broadly, the committee considers that the Government should review section 158. The review should ensure that the section is consistent with other provisions in the ASIC Act and the corporations legislation more broadly, and that it accurately conveys the staffing arrangements available to CAMAC.

Recommendation 1

4.12 The committee recommends that the Government review section 158 of the Australian Securities and Investments Commission Act 2001 to ensure that it accurately reflects the staffing options available to CAMAC and does not contain obsolete references to repealed legislative provisions.

Senator Sue Boyce

Deputy Chair

Appendix 1

Section 249 *Australian Securities Commission Act 1989*

249. (1) The Minister may make with an appropriate officer of a State or Territory an arrangement about any matter connected with:

a) the administration of a national scheme law; or

b) the performance or exercise of a function or power of the Commission or the Advisory Committee.

(2) An arrangement may be made under subsection (1) about:

(a) the transfer to the Commission, the Advisory Committee or the Commonwealth of books in the possession of, or of an authority of, the State or Territory, or of copies of such books;

(b) the acquisition or use, by the Commission, the Advisory Committee or the Commonwealth, of offices or facilities of, or of an authority of, the State or Territory; or

(c) a delegation under section 102 to an authority of the State or Territory or to an officer or employee of, or of an authority of, the State or Territory.

(3) An arrangement under subsection (1) may provide for the State or Territory to make available, from time to time as agreed under the arrangement, a person who is, or persons each of whom is, an officer or employee of, or of an authority of, the State or Territory to perform services for the Commission or the Advisory Committee in connection with the performance or exercise of any of the functions or powers of the Commission or the Advisory Committee, as the case may be.

(4) An arrangement under subsection (1) may provide for the Commonwealth to reimburse the State or Territory in respect of matters to which the arrangement relates.

(5) Nothing in this section limits the generality of anything else in it.