

Chapter 2

Bodies established under Parts 9–11 of the ASIC Act

2.1 This chapter considers the 2014–15 annual reports of the:

- Companies Auditors and Liquidators Disciplinary Board (CALDB); and
- The Takeovers Panel (the Panel).

2.2 This chapter also discusses the status of the Corporations and Markets Advisory Committee (CAMAC).

Companies Auditors and Liquidators Disciplinary Board

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

2.4 CALDB's 2014–15 annual report states:

The responsibilities conferred on CALDB by the Corporations Act are intended to provide an incentive to registered auditors and liquidators to maintain high professional standards. CALDB's jurisdiction to cancel or suspend the registration of an auditor or liquidator also has a public protective and educative role.²

Annual report of CALDB

2.5 The ASIC Act directs that the annual report is to 'describe the operations' of CALDB for the relevant financial year.³ New applications received by CALDB are categorised as either 'administrative' or 'conduct'. There were two new applications to CALDB by ASIC in 2014–15. Both of these applications were conduct matters. No administrative applications were received. One of the matters received related to auditors, and one related to liquidators.⁴ During 2014–15 three matters were heard, leading to orders being issued for suspension of registration in one matter and the board issuing an admonishment in another. The decision for the third matter will be delivered in 2015–16.⁵

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

2 CALDB, *Annual Report: 2014–15*, p. 4.

3 *ASIC Act 2001*, s. 214.

4 CALDB, *Annual Report: 2014–15*, p. 7.

5 CALDB, *Annual Report: 2014–15*, pp 8, 23.

2.6 An analysis of data provided in previous annual reports indicates that the Board's case load has significantly declined since 2004–05 (see Figure 2.1). During 2014–15 there was also a decline in the hearings workload from 71 to 26 person days and this contributed to a decrease in member's fees, from \$456,000 in the previous year to \$349,000 in 2014–15. The committee notes that for this reporting period the Board has operated without its full complement of 14 members.⁶

Table 2.1: Number of cases referred: 2003–04 to 2014–15⁷

Financial Year	Auditors	Liquidators
2014–15	1	1
2013–14	2	2
2012–13	1	4
2011–12	5	2
2010–11	2	1
2009–10	0	0
2008–09	11	1
2007–08	5	0
2006–07	7	0
2005–06	9	3
2004–05	23	12
2003–04	32	1

2.7 During the 2014–15 financial year, two applications for decisions made by CALDB were referred to the AAT. The first application was still the subject of proceedings before the AAT at the time of reporting. The outcome of the second application was unsuccessful with CALDB's decision to suspend the registration of a registered auditor affirmed by the AAT.⁸ No applications for judicial review were made during this period.⁹

2.8 The committee considers that CALDB has fulfilled its regulatory and reporting responsibilities during the 2014–15 financial year.

6 CALDB, *Annual Report: 2014–15*, pp 1, 7, 10.

7 CALDB, *Annual report: 2014–15*, p. 7; CALDB, *Annual report: 2013–14*, p. 6; CALDB, *Annual report: 2012–13*, pp 7–8; CALDB, *Annual report: 2011–12*, p. 13; CALDB, *Annual report: 2010–11*, p.13; CALDB, *Annual report: 2009–10*, pp 14–15; CALDB, *Annual report: 2008–09*, pp 13–14; CALDB, *Annual report: 2007–08*, pp 13–14; CALDB, *Annual report: 2006–07*, pp 13–14; CALDB, *Annual report: 2005–06*, p. 11; CALDB, *Annual report: 2004–05*, p. 11; CALDB, *Annual report: 2003–04*, p. 10.

8 CALDB decisions, <http://www.caldb.gov.au/decisions/caldb-decisions/> (accessed 4 April 2016)

9 CALDB, *Annual Report: 2014–15*, pp 10, 12.

The Takeovers Panel

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

2.10 The Panel is also able to review decisions made by ASIC¹¹ and maintains its operations with a rule making power.¹² The Panel's annual report states that:

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

- resolving disputes in a fair, timely, consistent, informal and sound manner; and
- publishing clear, well-developed guidance.¹³

2.11 As at 30 June 2015, the Panel had 38 members, up from 37 at 30 June 2014.¹⁴ Members are nominated by the Minister and appointed by the Governor-General.¹⁵ Members are chosen so that there is a mix of expertise, geographical representation and gender.¹⁶

Annual Report of the Takeovers Panel

2.12 Since the committee last reported on the Takeovers Panel, the *Corporations Legislation Amendment (Deregulatory and Other Measures) Act 2014* was enacted. This amended sections 184 and 188 of the ASIC Act to allow:

- Panel members to participate in proceedings whether or not they are physically located in Australia; and
- the President to give a direction about the members who are to constitute the Panel whether or not the President is physically located in Australia.¹⁷

2.13 During the 2014–15 financial year, the Panel received 20 applications. This was below the yearly average of 30 applications and below the 26 applications received in 2013–14. It is the same number as those received in the 2012–13 year.¹⁸

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

11 *Corporations Act 2001*, s. Part 6.10, Division 2.

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

13 Takeovers Panel, *Annual Report 2014–15*, p. 7.

14 Takeovers Panel, *Annual Report 2014–15*, p. 4; Takeovers Panel, *Annual Report 2013–14*, p. 4.

15 *ASIC Act 2001*, s. 172.

16 Takeovers Panel, *Annual Report 2014–15*, p. 12.

17 Takeovers Panel, *Annual Report 2014–15*, p. 24.

18 Takeovers Panel, *Annual Report 2014–15*, pp 5, 20; *Annual Report 2013–14*, p. 3.

2.14 The Panel declined to conduct proceedings for 60 per cent of the applications it received.¹⁹ Over the previous decade, the proportion of applications for which the Panel declined to conduct proceedings has grown steadily from 6% in 2001 to 60% in 2014–15.²⁰ In its annual report, the Panel indicates that when determining whether to conduct proceedings it gives weight to:

Whether the circumstances complained of would give rise to a declaration of unacceptable circumstances if established, given the strength of the evidence, and the remedies that might be available.²¹

2.15 Three declarations and/or orders were issued in 2014–15, however no undertakings were requested. The Panel conducted proceedings with three cases in which unacceptable circumstances were deemed to be present. Proceedings were withdrawn in one case throughout the 2014–15 year.²² The issues raised in applications included association/breach of section 606, rights issues, disclosure, contravention of the substantial holding provisions, frustrating action and disclosure and voting in relation to a scheme of arrangement.²³

2.16 The annual report indicates a decrease of time between a Panel decision and its publication of reasons. The average number of calendar days between a decision and the publication of reasons was 11.8 days for 2014–15, down from 12.1 days in 2013–14. This is also below the average of 36.8 calendar days since March 2000. The time between receipt of an application and a decision also decreased, with an average of 11.3 days, down from an average of approximately 15 days since March 2000.²⁴

2.17 In the annual report the Panel notes the fact that it has increasingly declined to conduct proceedings but also notes that it has made more declarations of unacceptable circumstances when it has conducted proceedings, stating '...that this reflects the developing maturity in Panel decision making and the ability of the Panel to make quick and commercial decisions.'²⁵

2.18 The committee notes that the Panel executive has issued an index of past decisions for future guidance. *The Australian Government Takeovers Panel Index of Reasons 2000–2014* is ordered by topic and by legislation. It was published on the Panel's website on 8 April 2015.²⁶

19 Takeovers Panel, *Annual Report 2014–15*, p. 5.

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

21 Takeovers Panel, *Annual Report 2014–15*, p. 20.

22 Takeovers Panel, *Annual Report 2014–15*, pp 5, 20.

23 Takeovers Panel, *Annual Report 2014–15*, p. 22.

24 Takeovers Panel, *Annual Report 2014–15*, p. 5.

25 Takeovers Panel, *Annual Report 2014–15*, p. 3.

26 Australian Government Takeovers Panel, *Index of Reasons*, http://www.takeovers.gov.au/content/index_of_reasons/default.aspx, (accessed 3 March 2016)

2.19 The Panel was subject to one judicial review regarding Queensland North Australia Pty Limited. An appeal was lodged with the Full Federal Court on 25 June 2014. On 22 May 2015 the appeal was allowed, however, during this reporting period the Full Federal Court had not made final orders. The Panel did not use its rule making power, nor were any matters referred from the court during the financial year.²⁷

2.20 The Panel maintains contact with the Australian Securities Exchange (ASX), the Australian Competition and Consumer Commission (ACCC) and with ASIC, with which the Panel has a Memorandum of Understanding. The annual report notes the Panel may refer matters to ASIC because aspects of the application might give rise to concerns under the Corporations Act or the Panel wants ASIC to consider whether to make an application. The latter occurred once during 2014–15.²⁸ The report also indicated that the Panel was not subject to any reports by the Australian National Audit Office (ANAO) in 2014–15.²⁹

Committee view

2.21 The committee considers that the Panel has fulfilled its regulatory and reporting responsibilities during the 2014–15 financial year. The committee has previously commented on the increasing proportion of applications for which the Panel has declined to conduct proceedings and will continue to monitor the trend. The committee commends the panel for continuing to publish reasons for decisions in a timely manner.

Corporations and Markets Advisory Committee

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

27 Takeovers Panel, *Annual Report 2014–15*, p. 24.

28 Takeovers Panel, *Annual Report 2014–15*, p. 26.

29 Takeovers Panel, *Annual Report 2014–15*, p. 33.

Proposal to abolish CAMAC

2.23 In March 2014, the National Commission of Audit considered that CAMAC's functions could be consolidated into the Department of the Treasury.³⁰ In May 2014 the Commonwealth Government, as part of the budget, announced its decision to abolish CAMAC and its Legal Committee during the 2014–15 financial year.³¹ On 24 September 2014, the government released an exposure draft of legislation to abolish CAMAC.³² The Australian Securities and Investments Commission Amendment (Corporations and Markets Advisory Committee Abolition) Bill 2014 (the CAMAC Bill) was introduced into the House of Representatives on 4 December 2014. The CAMAC Bill was passed by the House of Representatives on 2 March 2015 and introduced into the Senate on 3 March 2015. The Bill lapsed when Parliament was prorogued on 15 April 2016.³³

2.24 On 12 February 2015, the Senate referred the provisions of the CAMAC Bill to the Senate Economics Legislation Committee for inquiry and report by 16 March 2015.³⁴ While the Economics committee recognised that CAMAC had contributed extensively to the development of reforms to corporations law in Australia, it supported the passage of the bill.³⁵

2.25 The committee will continue to monitor developments in relation to CAMAC.

2.26 The committee will continue to monitor developments in relation to the ongoing effectiveness of the development of reforms to corporations law in Australia.

30 The National Commission of Audit was established by the Commonwealth government in October 2013 as an independent body to review and report on the performance, functions and roles of the Commonwealth government. It reported in February - March 2014; Commission of Audit, *Towards Responsible Government - The Report of the National Commission of Audit, Phase One*, February 2014, p. 216; Commission of Audit, *Towards Responsible Government: Appendix to the Report of the National Commission of Audit*, Volume 3, March 2014, p. 171.

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

32 Treasury, *Cessation of the Corporations and Markets Advisory Committee (CAMAC)*, exposure draft, <http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2014/CAMAC>, (accessed 3 March 2016)

33 Australian Securities and Investments Commission Amendment (Corporations and Markets Advisory Committee Abolition) Bill 2014, http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r5386, (accessed 28 April 2016).

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

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