



Australian Government

CALDB

Companies Auditors and
Liquidators Disciplinary Board

Annual Report

For the year ended **30 June 2014**

Companies Auditors and Liquidators Disciplinary Board

Annual Report
for the year ending 30 June 2014

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TABLE OF CONTENTS

CONTACT OFFICER.....	II
CHAIRPERSON’S REVIEW.....	1
BOARD OVERVIEW	3
Role and functions.....	3
Constitution of CALDB and current Board membership	4
OPERATIONAL INFORMATION 2013–14.....	5
Registrar.....	5
Premises	5
Applications received by CALDB in the reporting year 2013–14	6
Hearing days during the reporting year	6
Results by nature of sanction	7
Publication of CALDB decisions	7
Costs orders by CALDB	8
Review of CALDB decisions	8
CALDB financial information for reporting year	9
Work health and safety and environmental matters	10
FOI Act and section 13 AD(JR) Act requests	10
Ethics.....	11
External scrutiny and accountability	11
Management of human resources.....	11
Purchasing.....	11
Consultants.....	12
Competitive tendering	12
Australian National Audit office Access Clauses	12
Exempt contracts	12
Advertising and market research.....	12
Discretionary grants	12
GLOSSARY	13
APPENDIX 1.....	15
CALDB procedures with respect to applications	15
Panel of CALDB members to hear and determine matters.....	17
APPENDIX 2.....	19
Details of current members of the Board	19
APPENDIX 3.....	22
Decisions gazetted during the year ended 30 June 2014	22



**Companies Auditors
and Liquidators
Disciplinary Board**

29 August 2014

The Hon. Joe Hockey MP
Treasurer
Parliament House
CANBERRA ACT 2600

Dear Treasurer

I am pleased to present the Board's Annual Report for the year ended 30 June 2014 in accordance with section 214 of the *Australian Securities and Investments Commission Act 2001*.

Subsection 214(1) of that Act requires the Board to prepare a report describing its operations during the year and to give a copy of the report to the Minister as soon as practicable after 30 June and before 31 October, each year.

Subsection 214(2) provides that the Minister shall cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after he receives a copy of the report.

Yours sincerely

Howard Insall SC
Chairperson

Chairperson's Review

The 2013-14 reporting year was productive. During the year, CALDB has dealt with a steady flow of applications brought by ASIC, in marked contrast to the 2009 to 2012 reporting years, when few applications were brought to the Board.

During the reporting year, CALDB delivered decisions in respect of six applications. Five of these concerned liquidators and one concerned an auditor. In three of the liquidator matters, the Board decided to exercise its power to cancel the relevant liquidator's registration. In the other two liquidator matters, it suspended registration for a period of six months and required remedial undertakings from the liquidators concerned, with the objective of preventing future recurrence of the offending conduct. In the auditor matter, it suspended registration for a period of three years and required remedial undertakings. Copies of the decisions and reasons are on the Board's website, www.caldb.gov.au.¹

A number of new applications were received in recent months. These are being dealt with in accordance with the Board's pre-hearing procedures and will be heard in the near future.

CALDB has sought to deal fairly and expeditiously with all applications and to provide its decisions on a timely basis. In a number of instances during the reporting year, applications by respondents to superior courts have delayed CALDB hearings or decisions.

For most of the reporting year, the Board has operated without its full complement of 14 members. The terms of business members Professor Ian Ramsay and Messrs David Barnett, Tom Bostock and John Keeves expired during the year and were not renewed by the Minister. Each of these gentlemen commenced as members of the Board on 1 September 2004, as inaugural business members after changes in the relevant legislation. I, along with all remaining members of CALDB, express sincere appreciation to each of the outgoing members for their substantial contribution to the work of CALDB.

During the reporting year ASIC concluded a review of the cost of providing staff and support facilities for CALDB, which it is required to provide to CALDB under Section 11(2) of the ASIC Act. Following this review, CALDB's full time support staff has been reduced from two persons to one (the Registrar) and CALDB's registry and office premises have been co-located to self-contained and fully secure space within ASIC's Sydney premises. These changes have resulted in significant cost savings.

1 See also **Appendix 3** which contains notices of five of the decisions, as published in the *Gazette* as at the end of the reporting year.

As a disciplinary tribunal that hears applications brought by ASIC itself, CALDB must be, and be seen to be independent from ASIC. Notwithstanding the relocation of the CALDB office and registry to premises leased by ASIC, arrangements are in place to ensure the security and privacy of CALDB operations, with the intention of preserving its independence. The primary activity of the Board, (the conduct of the hearings themselves), now takes place at appropriate off-site hearing rooms, hired on an 'as-needs' basis.

CALDB records its appreciation for the support that ASIC provides, pursuant to s 11(2) of the ASIC Act and also for the assistance which Treasury provides, through its regular consultation with the Board.

I also wish to acknowledge and thank each of the remaining members of CALDB, who so generously contribute their significant experience and expertise on a part time basis, and notwithstanding the demands of their practices or other professional or business commitments.

In the coming year, it is my hope that CALDB will continue to maintain its focus on dealing with matters fairly, cost-effectively and expeditiously in order to ensure its contribution as a relevant and effective enforcement body within Australia's financial regulatory framework. CALDB will continue to use the process of reviewing and updating its procedures as an opportunity for continual improvement in this regard.

Howard Insall SC

Chairperson

Board Overview

Role and functions

CALDB is an independent statutory body established under Part 11 of the ASIC Act with the powers and functions provided in Part 9.2 of the *Corporations Act 2001* (Corporations Act) and Part 11 of the ASIC Act. The Minister responsible for CALDB is the Treasurer (The Minister).

CALDB, along with several other bodies, including ASIC, the Australian Prudential Regulation Authority (APRA), the Financial Reporting Council and various professional associations, plays an important role for the Australian economy in the regulation of auditors and liquidators.

The primary role of CALDB is to act as an expert disciplinary tribunal to consider applications for the cancellation or suspension of the registration of auditors or liquidators under the provisions of the Corporations Act. CALDB has no power to instigate applications. Applications may be brought to CALDB by ASIC or APRA although CALDB has never received an application from APRA.

On an application brought before it in relation to a registered auditor or registered liquidator, CALDB may impose sanctions, if satisfied of particular matters, including that the auditor or liquidator:

- has failed to carry out his or her duties or functions adequately and properly;
- is not a fit and proper person to remain registered; or
- has contravened certain provisions of the Corporations Act.

If CALDB determines any of these matters to be established, it may impose sanctions including orders for cancellation or suspension of the registration of auditor or liquidator.

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.

As a wholly independent body made up of part time professionals and business members appointed by the Minister, CALDB is able to fulfil the essential function of an independent and impartial tribunal, capable of ensuring that natural justice is accorded to parties appearing before it.

As a tribunal whose procedures are designed to avoid technicality and delay, CALDB has the ability to facilitate the expeditious and cost-effective resolution of matters. Moreover, as an expert tribunal with the ability to assess applications by reference to

its own expert knowledge of professional standards, CALDB is in a unique position to deal with matters without the necessity for time consuming and costly expert evidence, necessary in other tribunals or courts.

The decisions of the Board are important in identifying and upholding professional standards and applying them to particular fact situations, and they form an important aspect of the educative function of the Board.

CALDB continues to utilise its revised procedures in relation to new matters, resulting in applications being set down for the earliest appropriate hearing dates. CALDB continues to seek to minimise the reliance on expert evidence and as noted, is in a unique position to adopt this course, as it possesses specialist expertise permitting it to assess applications by reference to its own knowledge of professional standards.

Details of the specific procedures adopted by CALDB in relation to applications it receives and how it conducts hearings before it are set out in **Appendix 1**. These procedures are governed by relevant provisions in Part 11 of the ASIC Act and Division 5 Part 9.2 of the Corporations Act.

Constitution of CALDB and current Board membership

Section 203 of the ASIC Act provides that the CALDB consists of the following:

- (a) a Chairperson;
- (b) a Deputy Chairperson;
- (c) six accounting members selected by the Minister; and
- (d) six business members selected by the Minister.

The Chairperson and the Deputy Chairperson must each be enrolled as a barrister, as a solicitor, or as a barrister and solicitor or as a legal practitioner of the High Court, any Federal Court or the Supreme Court of a State or Territory and must have been so enrolled for a period of at least five years.

Accounting members are required to be a resident of Australia and a member of a professional accounting body or any other body prescribed by regulation.

Business members represent the business community and have qualifications, knowledge or experience in business or commerce, the administration of companies, financial markets, financial products and services, economics or law.

All appointments are made by the Minister and are part-time appointments. Appointments are for a period of no longer than three years. The appointees are eligible for re-appointment.

Section 210A of the ASIC Act provides that panels convened to hear applications must be constituted by either five members or three members, including either the Chair or the Deputy Chair as the panel chair, and either one or two business members and one or two accounting members as the case may be.

Board members during the reporting year:

Name	Role	Term expires/expired
Howard Insall SC	Chairperson	30 August 2014
Maria McCrossin	Deputy Chairperson	5 August 2016
Judith Downes	Accounting member	14 December 2015
Robert Ferguson	Accounting member	28 January 2016
George Georges	Accounting member	30 August 2014
Bruce Gleeson	Accounting member	28 January 2016
David Sauer	Accounting member	14 December 2015
Eric Passaris	Accounting member	28 January 2016
David Barnett	Business member	30 November 2013
Tom Bostock	Business member	30 November 2013
Geoff Brayshaw AM	Business member	30 August 2014
John Keeves	Business member	30 May 2014
Karen O'Flynn	Business member	14 December 2015
Professor Ian Ramsay	Business member	30 November 2013

Biographical details of the current members are included in **Appendix 2**.

Operational information 2013–14

Registrar

The administrative business and operations of CALDB are conducted by its Registrar, Mr Gary Hoare. Mr Hoare is a full time employee of ASIC permanently seconded to CALDB.

Premises

CALDB moved during the reporting year to new premises at Level 5, 100 Market Street Sydney. CALDB no longer has a dedicated hearing room available on premises. An appropriate hearing venue is now hired, as needed, in Sydney and other locations in Australia. It is CALDB's policy that a hearing will normally be held in the capital city of the state of residence of the Respondent. The application of this policy may be varied in individual cases and, when feasible, hearings will be held by telephone or video link.

Applications received by CALDB in the reporting year 2013–14

Four new applications were received during the reporting year. All applications received during the year were received from ASIC.

The tables below provide a summary of the status of the matters before CALDB during the reporting year:

Auditors

	Conduct	Administrative
Uncompleted matters at 1/7/13	-	-
New Applications received in 2013/2014 year	2	-
Matters withdrawn	-	-
Matters Dealt with — Orders issued	1	-
Uncompleted matters at 30/6/14	1	-

Liquidators

	Conduct	Administrative
Uncompleted matters at 1/7/13	4	-
New Applications received in 2013/2014 year	2	-
Matters Withdrawn	-	-
Matters dealt with — orders issued	5	-
Uncompleted matters at 30/6/14	1	-

There is an additional costs order to be made in one otherwise completed matter.

Hearing days during the reporting year

The overview in the table below provides data on the number of days Board members were engaged in the hearing of applications.

Activity	Auditors 13–14	Auditors 12–13	Liquidators 13–14	Liquidators 12–13
Hearing days	3 person days	3 person days	68 person days	30 person days

In addition to attendance for formal hearing days, CALDB members must spend time preparing for hearings, which involves the review and analysis of pleadings and evidence. There is also travel time to hearing venues and the preparation and review of determinations, subsequent decisions and orders.

In respect of each application that proceeds to a contested hearing, the Chairperson of the relevant Panel (who must either be the CALDB Chairperson or Deputy Chairperson) usually plays the principal role in drafting the decision and supporting reasons, albeit in close consultation with other Panel members. The Board Chairperson is responsible for conducting pre-hearing conferences relating to all matters before CALDB and is also involved in the general affairs of CALDB, as is the Deputy Chairperson as necessary.

Results by nature of sanction

The table below records the results of matters before CALDB during the reporting year and the preceding five years, by nature of sanction. Undertakings required to be given may be in addition to other orders. The outcomes of some of the new matters brought to CALDB during the reporting year are not reflected in this year's report.

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

Decisions reviewed in the reporting year are detailed on page 8 below.

Publication of CALDB decisions

Pursuant to subsection 1296(1) of the Corporations Act, written notice of a decision by a Panel to exercise CALDB's powers under section 1292 and the reasons for the decision must be provided to the practitioner concerned. Pursuant to subsection 1296(2), written notice of a decision by a Panel to refuse to exercise CALDB's powers under section 1292 or a decision that it is not required to make an order under subsection 1292(7) in relation to a person, must be given to the practitioner concerned. A copy of any such notice must be lodged with ASIC. The notice of decision is available for inspection at ASIC except when the Panel has decided to refuse to exercise CALDB's powers under section 1292 or has decided that it is not required to make an order under subsection 1292(7) (see subparagraph 1274(2)(a)(iii)).

Where the Panel has decided to exercise any of the CALDB's powers under section 1292 or has decided that it is required to make an order under subsection 1292(7), CALDB is required pursuant to subsection 1296(1) to publish in the Commonwealth Gazette a notice setting out the decision.

By arrangement with the Institute of Chartered Accountants in Australia, CPA Australia, Institute of Public Accountants (formerly National Institute of Accountants), Australian Restructuring Insolvency and Turnaround Association (formerly Insolvency Practitioners Association of Australia) and the Tax Agents Registration Board, copies of notices published in the Commonwealth Gazette are provided to those bodies of which the practitioner is a member. In addition, if the Panel decides to exercise any of CALDB's powers under section 1292, it may take such steps as it considers reasonable and appropriate to publicise that decision and the reasons for that decision. This will include the power to post the decision and the reasons on the

CALDB website. CALDB generally takes the view that it is appropriate to publish its decisions on the CALDB website as this provides transparency of its decisions and processes as well as contributing to the public educative role played by CALDB. In the reporting year there were five decisions gazetted and publicised pursuant to CALDB's powers under section 1292. Details of the CALDB decisions gazetted during the reporting year are included in Appendix 3. One additional decision made during the reporting year was gazetted and publicised after the end of the reporting year. Copies of the decisions and reasons issued during the reporting year are set out on the Board's website: www.caldb.gov.au.

Costs orders by CALDB

At the end of a hearing a Panel may make an order for costs, and when the Panel makes such an order, CALDB refers the parties to its Costs Practice Note. A Panel may also order payment by a party of all or part of the CALDB's costs of, and incidental to, a hearing. There is no power conferred on CALDB to publish costs orders made.

Review of CALDB decisions

A review of any decision made under section 1292 of the Corporations Act may be sought before the AAT by ASIC or by APRA or by any person whose interests are affected by the decision.

A person who is aggrieved by a decision of CALDB may also apply to the Federal Court of Australia under the provisions of the *Administrative Decisions (Judicial Review) Act 1977* for an order of review in respect of a decision.

Generally, reviews before the AAT are re-hearings of the application while those by the Federal Court of Australia are concerned with a review of questions of law arising out of the proceedings before CALDB.

When a CALDB decision is under review the Board will often be restricted from publishing any notice of decision. Such restriction may be sought by either of the parties and is often sought to avoid prejudice to a Respondent who may later be successful in having a decision of the Board reversed or altered.

During the year, two applications were made by respondents for decisions made by CALDB to be reviewed by the AAT.

The first application was withdrawn by the respondent prior to any decision being made by the AAT.

The outcome of the second application is not yet known.

Apart from these two matters, no other applications for review of a CALDB decision under s 1292 were made during the reporting year.

CALDB financial information for reporting year

CALDB is allocated funding by the Federal Government through ASIC's budget. CALDB's expenses are, apart from some fixed overhead expenses, largely a function of the workload, being applications received, and so vary from year to year depending on the number and complexity of the applications made.

CALDB's expenditure for this and the previous financial year, (extracted from the accounts of ASIC), was as follows:

	2013–14	2012–13
	\$	\$
Administrative expenses (including staff costs and external legal costs)	508,947	433,156
Travel and accommodation including allowances	38,632	34,111
Members' fees	456,838	175,014
Total:	1,004,417	642,281

CALDB operated within the budget allocated to it by ASIC in the 2013–14 year. The location of, and increase in number of hearings did result in a year on year increase in expenses in relation to travel and accommodation during the current year. Members' fees also increased as a result of the increased number of hearing days for matters being dealt with by CALDB during the reporting year. This trend is expected to continue in the 2015 year. While there has been an increase in administrative expenses in the 2014 year this is largely attributable to a one off redundancy cost for the staff member who left in the reporting year and as the move to ASIC's premises has resulted in a reduction in property costs it is not expected that administrative expenses will continue to increase unless that increase is attributable to a further increase in hearing activity.

Members of CALDB are remunerated in accordance with rates determined by the Commonwealth Remuneration Tribunal. In early November 2013 the Remuneration Tribunal completed a review of part-time offices which foreshadowed a new part-time determination which was issued in early 2014 (2014/3) and took effect 1 March 2104. The daily rates effective for CALDB members from 1 March 2014 are as follows:

Chairperson	\$1,383
Deputy Chairperson	\$1,245
Member	\$1,107

CALDB spent \$32,411 on external legal advice and legal representation at appeal proceedings during the reporting year. CALDB briefed the AGS in relation to appeal proceedings commenced by two Respondents against the Board. Additionally, advice of Counsel was obtained in relation to the proper interpretation of an aspect of the Board's obligations under the Corporations Act.

While CALDB endeavours to operate within the budget allocated to it through ASIC, a significant portion of the costs incurred by CALDB is dependent on the number of applications received and the hearing time and complexity of matters heard. Variation of those factors from year to year introduces uncertainty into the task of projecting the annual operating costs of CALDB.

Work health and safety and environmental matters

ASIC is responsible for work health and safety and the working environment for staff seconded to the CALDB.

The Registrar, the only staff member seconded to CALDB, monitors the workplace environment on an ongoing basis to ensure the health, safety and welfare of workers who carry out work for CALDB. No accidents or dangerous occurrences, or relevant investigations took place during the 2013–14 financial year. The Registrar and CALDB Board members when attending hearings and Board meetings, are covered either under Comcare and Comcover or have their own arrangements in place.

Section 516A of the *Environment Protection and Biodiversity Conservation Act 1999* requires CALDB to report on matters relevant to environmentally sustainable development (ESD). CALDB reports that:

- the only activities relevant to ESD principles concern procurement of goods and services which is done through ASIC;
- CALDB's legislative function is not related to ESD principles; and
- CALDB is a small statutory body with only one full time staff member operating from a single location in Sydney and has a limited environmental impact. CALDB seeks to use minimum energy, water, paper and other resources necessary to perform its functions and keeps under constant review possible measures to reduce its environmental impact.

FOI Act and section 13 AD(JR) Act requests

CALDB did not receive any applications for information under the *Freedom of Information Act 1982* (FOI Act) or any requests for reasons pursuant to section 13 of the *Administrative Decisions (Judicial Review) Act 1977* (AD(JR) Act) during the year.

Applications under the FOI Act and the AD(JR) Act may be made to the Registrar who may be contacted at GPO Box 3731, Sydney NSW 2000.

CALDB is currently updating its website to comply with the Information Publication Scheme (IPS) under part II of the FOI legislation.

Ethics

The Registrar is required to adhere to the Australian Public Service values and code of conduct under the Public Service Act. The requirements of the code of conduct include honesty, care and diligence, courtesy, compliance with the law, avoiding conflicts of interest and proper use of Commonwealth resources and information.

External scrutiny and accountability

During the financial year there were no judicial decisions or reports by the Auditor General, a parliamentary committee or the Commonwealth Ombudsman concerning, or that could have a significant impact on, the operations of CALDB.

The parliamentary joint committee on Corporations and Financial Services (PJC) and the Senate Economics Legislation Committee review and prepare reports on the annual reports of statutory bodies that come under the Treasury portfolio including CALDB.

The PJC, in its report tabled in the Senate in March 2014 that examined the annual reports of bodies established under the ASIC Act made recommendations to enhance CALDB's annual report. Those suggestions have been implemented as well as the recommendations suggested by the Senate Economics Legislation Committee in its report on annual reports tabled on 14 March 2013.

It is noted that the Senate Economics Legislation Committee, in its report on Annual reports tabled in March of this year noted that CALDB is reviewed and reported on by the PJC and it determined to consider but not report on the CALDB report as the PJC has specific responsibility for oversight of CALDB.

Management of human resources

As noted there is one full time ASIC employee, the Registrar, who is permanently seconded to CALDB and whose salary and entitlements are linked to the relevant ASIC officer salary scales and entitlements, which are determined under a collective agreement for ASIC staff.

The Registrar's performance is evaluated annually by the Chairperson of CALDB. The Registrar received a performance bonus in the current reporting year.

No work and safety issues arose during the 2013-14 financial year.

Purchasing

All required items are purchased through arrangement with ASIC, which follows the Commonwealth Procurement guidelines. CALDB did not have any major capital purchases in 2013-14.

Consultants

During 2013-14 CALDB did not enter into any consultancy contracts and there are no ongoing consultancy contracts.

Competitive tendering

CALDB did not undertake any competitive tendering or contracting during the 2013-14 financial year.

Australian National Audit office Access Clauses

CALDB has not entered into any contract of \$100,000 or more during the reporting period.

Exempt contracts

CALDB has no contracts or standing offers that have been exempted from being published in AusTender on the basis that publication would disclose exempt matters under the FOI Act.

Advertising and market research

CALDB does not carry out any advertising or market research.

Discretionary grants

CALDB does not administer any discretionary grant programmes.

Glossary

AAT	Administrative Appeals Tribunal
AD(JR) Act	<i>Administrative Decisions (Judicial Review) Act 1977</i>
AGS	Australian Government Solicitor
APRA	Australian Prudential Regulation Authority
APS	Australian Public Service
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
CALDB	Companies Auditors and Liquidators Disciplinary Board
Corporations Act	<i>Corporations Act 2001</i>
ESD	Environmentally sustainable development
FOI Act	<i>Freedom of Information Act 1982</i>
IPS	Information Publication Scheme
PJC	Parliamentary Joint Committee on Corporations and Financial Services

APPENDIX 1

CALDB procedures with respect to applications

Applications to CALDB may be made by either ASIC or APRA.

Provisions of the Corporations Act and ASIC Act prescribe the essential procedures. These provide, importantly, that CALDB is required to provide a respondent with the opportunity to appear at a hearing held by CALDB and to make submissions to and adduce evidence before CALDB in relation to a matter. Hearings are conducted by a panel of board members convened by the Chairperson as required by the ASIC Act.

More detailed procedures adopted by CALDB are contained in its *Manuals of Practice and Procedure* available on CALDB's website, www.caldb.gov.au. There is a manual for 'conduct' matters and a manual for 'administrative' matters. The manuals set out procedures to be followed in relation to the filing and exchange of documents and other material prior to a hearing and the procedures for pre-hearing conferences and for hearings.

The Manuals are provided to all parties involved in proceedings before CALDB. These documents are reviewed and updated from time to time.

CALDB categorises the matters brought before it as *administrative matters* or *conduct matters*. The categorisation has been adopted by CALDB as a procedural policy and will be reviewed from time to time. In general terms, administrative matters involve less complexity and are less time consuming than conduct matters.

CALDB categorises as administrative matters those matters that arise from applications pursuant to the following provisions of the Corporations Act:

subparagraph 1292(1)(a)(i)	failing to lodge annual statement under section 1287A (auditor)
subparagraph 1292(1)(a)(ii)	ceasing to be resident in Australia (auditor)
subparagraph 1292(2)(a)(i)	failing to lodge annual statement under section 1288 (liquidator)
subparagraph 1292(2)(a)(ii)	ceasing to be resident in Australia (liquidator)
subparagraph 1292(3)(a)(i)	failing to lodge a statement under section 1288(5) (liquidator of a specified body corporate)
subparagraph 1292(3)(a)(ii)	ceasing to be resident in Australia (liquidator of a specified body corporate)
paragraph 1292(7)(a)	becoming disqualified from managing corporations under Part 2D.6 (auditor or liquidator)
paragraph 1292(7)(b)	becoming incapable because of mental infirmity of managing affairs (auditor or liquidator)

CALDB categorises as conduct matters those matters that arise from applications pursuant to the following provisions of the Corporations Act:

subparagraph 1292(1)(a)(ia)	contravening section 324DB by playing a significant role in an audit without being eligible to do so (auditor)
subparagraph 1292(1)(a)(ia)	failing to comply with a condition of registration (auditor)
subparagraph 1292(1)(b)(i)	not performing any audit work for five years and as a result ceasing to have the necessary practical experience (auditor)
subparagraph 1292(1)(b)(ii)	not performing any significant audit work for five years and as a result ceasing to have the necessary practical experience (auditor)
subparagraph 1292(1)(d)(i)	failing to carry out the duties of an auditor (auditor)
subparagraph 1292(1)(d)(ii)	failing to carry out any duties or functions required by an Australian law to be carried out by a registered auditor (auditor)
paragraph 1292(1)(d)	not being a fit and proper person to remain registered as an auditor (auditor)
subparagraph 1292(2)(d)(i)	failing to carry out the duties of a liquidator (liquidator)
subparagraph 1292(2)(d)(ii)	failing to carry out any duties or functions required by an Australian law to be carried out by a registered liquidator (liquidator)
paragraph 1292(2)(d)	not being a fit and proper person to remain registered as a liquidator (liquidator)
paragraph 1292(3)(d)	failing to carry out the duties of a liquidator of a body corporate or otherwise not being a fit and proper person to remain registered as a liquidator of that corporation (liquidator of a specified body corporate)

In general CALDB has power to cancel or suspend the registration of a registered auditor or a registered liquidator, if any of these grounds has been established to its satisfaction.

If a ground is established under paragraph 1292(7)(a) or (b) then CALDB has no discretion but to cancel the registration of the practitioner concerned.

In relation to conduct matters under paragraphs 1292(1)(d), (2)(d) or (3)(d), CALDB has additional powers under subsection 1292(9) to admonish, reprimand or require undertakings. These powers may be exercised in addition to, or instead of, the powers to cancel or suspend registration.

Where the registration of a person has been suspended, CALDB may, on an application by the person or of its own motion, by order under s 1295, terminate the suspension.

Section 1294A of the Corporations Act provides that the Chairperson may, if he considers that it would assist the conduct of the hearing, convene one or more pre-hearing conferences with the parties. The Chairperson uses the pre-hearing conferences to:

- fix a hearing date
- give directions about the timing of the filing of evidence and submissions; and
- give directions about the procedure to be followed generally at, or in connection with, the hearing.

The Chairperson also uses the pre hearing conferences to:

- refine and reduce the matters in dispute to reduce the length of the hearing and overall costs of the proceedings; and
- resolve any preliminary matters.

CALDB's pre-hearing procedures are regularly reviewed to ensure that they remain effective and efficient so as to minimise costs and time for all parties.

Should the parties reach consensus regarding an acceptable outcome they can refer draft agreed terms of order to the CALDB panel. CALDB does not participate in any settlement discussions or negotiations between the parties and retains the right to determine the appropriate orders.

Panel of CALDB members to hear and determine matters

As noted, hearings are conducted and decisions are made by a panel of members of CALDB determined by the Chairperson (Panel).

A Panel must include the Chairperson or Deputy Chairperson as Chairperson of the Panel. Generally, a Panel is constituted by five members – including two accounting members and two business members. The Chairperson may consider it appropriate to convene a Panel with three members, in which case one accounting and one business member would be selected.

Matters are heard by a duly constituted Panel that will make a determination and decisions as necessary in relation to a particular application.

All matters referred to CALDB (unless subsequently withdrawn by ASIC) must proceed to a hearing following which the Panel will make a determination and orders. Hearings are required to be held in private unless a public hearing is requested by the respondent.

For contested conduct matters, a Panel will usually hold a hearing with all members and parties physically present. In other matters, the Panel may arrange hearings by

video link or telephone link with one or more members or parties in different locations. The ASIC Act permits legal representation at all hearings, for all parties. Parties may also represent themselves.

The Panel must determine whether or not it is satisfied that the contentions raised in the application have been established. The Panel provides the parties with a written determination that sets out the Panel's conclusions (with reasons) on each of the contentions.

If the Panel determines a contention is established it must decide whether or not to exercise any of CALDB's powers under section 1292 of the Corporations Act and/or whether or not it is required to make an order under subsection 1292(7). For that purpose, the Panel may hold a final hearing before delivering its decision.

At any final hearing, the parties will have an opportunity to present relevant evidence and make submissions on the questions of sanctions, publicity and costs.

APPENDIX 2

Details of current members of the Board

Howard Insall SC

Howard Insall is a barrister practising at the New South Wales bar. He was called to the bar in 1981 and was appointed senior counsel in 2001. He practises in the field of commercial/equity with particular emphasis on corporations and insolvency law. He has appeared in a number of major cases involving significant corporate collapses and the duties of directors and auditors, and is an author of the Winding Up chapter in the Butterworths Corporations Service.

Maria McCrossin

Maria McCrossin is a lawyer with extensive financial services, capital markets and commercial litigation experience. She has held senior roles in private legal practice (Clayton Utz) and within the commercial sector (AMP, ASX, ANZ). Maria is a Fellow of the Australian Institute of Company Directors and a current member of the ChiX Australia Compliance Panel.

Judith Downes

Judith Downes is a non-executive director with extensive experience in senior finance roles in listed Australian companies, including as chief financial officer. She is a past member of the IFRS Advisory Council and the AASB. Judith is a Fellow of the ICAA, CPA, and AICD, and has an honorary appointment as Fellow at the University of Melbourne.

Robert Ferguson

Robert is a Chartered Accountant, Official Liquidator and Registered Trustee in Bankruptcy, specialising in insolvency practice. Robert's experience includes being an insolvency partner with both PricewaterhouseCoopers and Deloitte for 18 years after which he established his own specialist firm. Robert has more than 30 years' experience in insolvency practice, is a member of the Australian Restructuring Insolvency & Turnaround Association (ARITA) and former State Chair and National Board member of that organisation.

George Georges

George Georges is a partner of Ferrier Hodgson in Melbourne. George has over 20 years' experience specialising in corporate recovery assignments. He is a Chartered Accountant, a member of the Institute of Public Accountants (IPA) and the Australian Restructuring Insolvency & Turnaround Association (ARITA) as well as being a Fellow of the Financial Services Institute of Australia (FINSIA).

Bruce Gleeson

Bruce Gleeson is a principal at Jones Partners Chartered Accountants, a specialist insolvency and business recovery firm. He is a Chartered Accountant, a member of CPA Australia and the Australian Restructuring Insolvency & Turnaround Association (ARITA). Bruce has in excess of 15 years corporate and personal insolvency experience and is an Official Liquidator and a Registered Trustee in Bankruptcy. He has recently been on the NSW State Council of the Institute of Chartered Accountants (ICAA), being the Chair in 2010, as well as being the 2010 Junior Vice President of the Western Sydney Business Connection. Bruce has also held roles in commerce (with James Hardie and AMP) to broaden his experience.

David Sauer

David Sauer is a Chartered Accountant and Registered Company Auditor, specialising in professional standards – financial reporting, assurance and ethics. He provides professional education for accountants and independent advice on the application of standards in transactions, commercial disputes and regulatory compliance. He has worked in public practice since 1983 and now assists mid-tier and smaller accounting firms to develop and monitor their quality assurance and audit policies and procedures. David was a member of the Institute of Public Accountants' Legislation and Standards Committee from 2000 to 2009.

Eric Passaris

Eric Passaris is a partner with Grant Thornton in Melbourne and has specialised in audit and assurance services for over 25 years. Eric is a registered company auditor and a member of ICAA and CPA Australia. He is a member of CPA Australia's Disciplinary Committee and is called upon to provide expert evidence in auditor/accountant professional negligence cases for legal proceedings, commercial disputes, insurance claims and disciplinary proceedings.

Geoff Brayshaw

Geoff Brayshaw is a Chartered Accountant and company director. He has spent 35 years in the accounting profession and was a former audit partner and managing partner of the Perth practice of BDO, retiring from public practice in 2005. He now has a number of directorship roles including non-executive director and Chairperson of Poseidon Nickel Limited, and formerly a non-executive director and Chairperson of the audit committee of Fortescue Metals Group Limited and AVEA Insurance Limited. He is a former board member of the Small Business Development Corporation in Western Australia. He was formerly Chairperson of Gumala Investments Pty Ltd, an Aboriginal corporation trustee company. He was National President of the ICAA in Australia for 2002 and was made a Member of the Order of Australia in 2007.

Karen O'Flynn

Karen O'Flynn is a Partner of Clayton Utz and leads that firm's restructuring and insolvency practice. Karen is a member of the Clayton Utz board, Vice-Chair of the Insolvency Section of the International Bar Association and a member of the International Insolvency Institute.

APPENDIX 3

Decisions gazetted during the year ended 30 June 2014²

Mark Darren LEVI

Corporations Act 2001

SECTION 1296(1)(c)

NOTICE OF DECISION

At a hearing held pursuant to section 1294 of the *Corporations Act 2001* ("Act"), commencing on 6 May 2013 a Panel of the Companies Auditors and Liquidators Disciplinary Board decided that it was satisfied, on an application by the Australian Securities and Investments Commission that **Mark Darren LEVI** ("Respondent"), a registered liquidator, was not a fit and proper person to remain registered as a liquidator and decided on 2 July 2013 to exercise its powers under section 1292 of the Act by ordering that the Respondent's registration as a liquidator be cancelled with effect 28 days after the date of the decision.

Dated: 22 August 2013

Gary K Hoare

Registrar

Avitus Thomas FERNANDEZ

Corporations Act 2001

SECTION 1296(1)(c)

NOTICE OF DECISION

At a hearing held pursuant to section 1294 of the *Corporations Act 2001* ("Act"), commencing on 2 July 2013 a Panel of the Companies Auditors and Liquidators Disciplinary Board decided that it was satisfied, on an application by the Australian Securities and Investments Commission that **Avitus Thomas FERNANDEZ** ("Respondent"), a registered liquidator, had failed to carry out or perform adequately and properly duties or functions required by an Australian law to be carried out or performed by a registered liquidator and that the Respondent was not a fit and proper person to remain registered as a liquidator and decided on 29 October 2013 to exercise its powers under section 1292 of the Act by ordering that the Respondent's registration as a liquidator be cancelled with effect 30 days after the date of the decision.

Dated: 29 October 2013

Gary K Hoare

Registrar

2 Notice of a further Decision made on 24 June 2014 was published in the Gazette on 8 July 2014, after then end of the reporting year.

Wayne John WESSELS

Corporations Act 2001

SECTION 1296(1)(c)

NOTICE OF DECISION

At a hearing held pursuant to section 1294 of the *Corporations Act 2001* ("Act"), commencing on 25 October 2013 a Panel of the Companies Auditors and Liquidators Disciplinary Board decided that it was satisfied, on an application by the Australian Securities and Investments Commission that **Wayne John WESSELS** ("Respondent"), a registered auditor, had failed to carry out and perform adequately and properly the duties of an auditor or the duties and functions required by an Australian Law to be carried out or performed by a registered company auditor, for the purposes of s 1292(1)(d) of the Corporations Act and decided on 15 November 2013 to exercise its powers under section 1292 of the Act by ordering that the Respondent's registration as an auditor be suspended for a period of three years with effect 14 days after the date of the decision.

Dated: 15 November 2013

Gary K Hoare

Registrar

William James HAMILTON

Corporations Act 2001

SECTION 1296(1)(c)

NOTICE OF DECISION

At a hearing held pursuant to section 1294 of the *Corporations Act 2001* ("Act"), commencing on 5 November 2013 a Panel of the Companies Auditors and Liquidators Disciplinary Board decided that it was satisfied, on an application by the Australian Securities and Investments Commission that **William James HAMILTON** ("Respondent"), a registered liquidator, has failed to carry out or perform adequately and properly the duties of a liquidator and decided on 3 April 2014 to exercise its powers under section 1292 of the Act by ordering:

- (a) The registration of William James Hamilton as a liquidator be suspended for a period of six months commencing on a day which is 60 days from the date this order takes effect.
- (b) Mr Hamilton is required to give the following undertakings in writing to ASIC within 14 days after this order takes effect:
 - (i) Within six months after this order takes effect, or such further period as ASIC may agree in writing, in addition to the usual yearly requirements for continuing professional development of the ICAA and of ARITA,

Mr Hamilton must complete at his expense and in forms to be agreed in advance by ASIC (which could include courses, lectures, seminars, workshops, mentoring programmes) an additional 16 hours of professional development training covering the areas of reporting (to creditors, ASIC and other practitioners), dealings with property, compliance and risk management and liquidator's duties to creditors and stakeholders.

- (ii) On completion of any professional development training undertaken by Mr Hamilton in accordance with paragraph (i), Mr Hamilton shall procure and lodge with ASIC a certificate or certificates of satisfactory completion (given by a person or entity agreed in advance by ASIC).
- (iii) That, during the period of suspension ordered, or before Mr Hamilton accepts any new appointments as a registered liquidator, Mr Hamilton will, at his expense, retain an appropriately qualified independent consultant agreed in advance with ASIC to:
 - 1. undertake a gap analysis of the current risk management and compliance procedures with respect to the conduct of liquidations and company administrations in place at the firm W J Hamilton and Co;
 - 2. prepare a report outlining any gaps identified and including recommendations regarding specific processes and procedures necessary to address any gaps identified;
 - 3. oversee the implementation of all recommendations made.
- (iv) Prior to accepting any new appointments as a registered liquidator Mr Hamilton is to provide a copy of the report in paragraph (iii) 2 above to ASIC and procure and provide to ASIC confirmation from the independent consultant engaged that they have engaged in each of the steps above and in their opinion the compliance and risk management processes of the firm with respect to the conduct of company administrations and liquidations is appropriate and up to date.
- (v) That following the period of suspension Mr Hamilton will submit the first four company external administrations conducted by him as a liquidator registered under the Corporations Act to an independent review by a person approved by ASIC (such approval not to be unreasonably withheld). Such person is to confirm in writing to ASIC that they have conducted a review and whether in their opinion the relevant external administration has been conducted in accordance with the Corporations Act, the ARITA Code of Professional Practice and the APES Code of Ethics for Professional Accountants.

- (vi) Until Mr Hamilton has complied fully with undertakings (i) – (iv), Mr Hamilton will not accept any new appointment to any office required under the Corporations Act to be filled by a registered liquidator.

Dated: 3 April 2014

Gary K Hoare

Registrar

Alan Godfrey TOPP

Corporations Act 2001

SECTION 1296(1)(c)

NOTICE OF DECISION

At a hearing held pursuant to section 1294 of the *Corporations Act 2001* ("Act"), commencing on 7 April 2014 a Panel of the Companies Auditors and Liquidators Disciplinary Board decided that it was satisfied, on an application by the Australian Securities and Investments Commission that **Alan Godfrey TOPP** ("Respondent"), a registered liquidator, has failed to carry out or perform adequately and properly the duties of a liquidator and duties and functions required by an Australian law to be carried out or performed by a registered liquidator and decided on 15 April 2014 to exercise its powers under section 1292 of the Act by ordering:

- (a) that the registration of Alan Godfrey Topp as a liquidator under the Corporations Act be suspended for a period of six months from 1 May 2014 to 31 October 2014 ("the six month suspension period");
- (b) that Alan Godfrey Topp give the following undertakings in writing within 7 days after this order takes effect:
 - (i) to lodge with ASIC all outstanding lodgements relating to the period up to 14 March 2013 as set out in the Schedule of Outstanding Lodgements attached to the Decision and Reasons dated 15 April 2014 and marked "A" by 1 May 2014;
 - (ii) to make arrangements for the appointment of replacement liquidators on all current appointments by 1 May 2014 and in the event that he fails to do so, and ASIC makes application to a Court to effect such replacements, to indemnify ASIC for the cost and expense of doing so; and
 - (iii) upon expiry of the six month suspension period, not to accept or hold any appointment as an external administrator except as a joint appointee with a registered liquidator or registered liquidators for a further period of six months;

- (c) that pursuant to s 223 of the *Australian Securities and Investments Commission Act 2001*, Alan Godfrey Topp pay ASIC's costs in the sum of \$2,000.00 within 30 days of the order for suspension in order (a) above coming into effect;
- (d) that pursuant to s 1297(1)(b) of the Act, the order for suspension in order (a) above will come into effect on 1 May 2014 but otherwise, these orders come into effect in accordance with the provisions of s 1297(1)(a) of the Act.

Dated: 15 April 2014

Gary K Hoare

Registrar

Companies Auditors and
Liquidators Disciplinary Board

Annual Report

For the year ended **30 June 2014**