

Companies Auditors Disciplinary Board

Annual Report
for the year ending 30 June 2017

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Companies Auditors
Disciplinary Board

11 October 2017

The Hon. Kelly O'Dwyer MP
Minister for Revenue and Financial Services
Parliament House
CANBERRA ACT 2600

Dear Minister

I am pleased to present the Board's Annual Report for the year ended 30 June 2017 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 she receives a copy of the report.

Yours sincerely

Maria McCrossin
Chairperson

Chairperson's Review

The 2016-17 reporting year ("the year") heralded change for the Board. On 1 March 2017 certain provisions of the Insolvency Law Reform Act came into effect which removed the Board's powers under Section 1292 of the Corporations Act with respect to liquidators registered under the Corporations Act. The practical effect of those changes is discussed in more detail in the body of this report and notably involved a change of name from CALDB to CADB. CADB's powers under Section 1292 of the Corporations Act with respect to auditors registered under the Corporations Act remain unchanged.

There was one conduct hearing convened during the reporting year. That hearing took place over three days in October 2016 and CADB's final decision was handed down in December 2016. A copy of the reasons for decision has been published on CADB's website, www.cadb.gov.au.¹ In the reporting year one auditor matter was referred to the Board by ASIC. The new application received during the reporting year is being dealt with in accordance with the Board's pre-hearing procedures and has been scheduled for hearing in the next reporting year.

At the conclusion of the reporting year the Board comprised three accounting members, three business members, the Chairperson and the Deputy Chairperson. The number of members is less than prescribed by Section 203 of ASIC Act which provides that CADB consist of a Chairperson, a Deputy Chairperson, six accounting members and six business members. CADB liaises regularly with the Department of Treasury regarding prospective suitable members for approval and appointment by the Minister to ensure that CADB is adequately resourced to convene hearing panels as required.

CADB wishes to record its appreciation for the support that ASIC provides pursuant to Sub-Section 11(2)(a) of the ASIC Act and for the assistance provided by the Department of Treasury via its regular consultation with the Board.

Finally I wish to acknowledge and thank each of the members of CADB and the Deputy Chairperson, who so generously contribute their significant experience and expertise on a part time basis, and notwithstanding their other commitments.

In the coming year, CADB will continue to maintain its focus on dealing with matters effectively, fairly and expeditiously in order to ensure its continued contribution as an administrative decision making body within the national financial services regulatory scheme established by the ASIC Act and the Corporations Act.

Maria McCrossin
Chairperson

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

Overview

CADB is an independent statutory body established under Part 11 of the ASIC Act. Its powers and functions are conferred under Part 9.2 of the Corporations Act and Part 11 of the ASIC Act. It is constituted by part time accounting and business members appointed from time to time for terms of up to three years by the Minister for Revenue and Financial Services, who is the minister responsible for CADB. In conjunction with several other bodies, including ASIC, APRA, the FRC and various professional associations, CADB plays a key role for the Australian economy with respect to the regulation of auditors.

On 1 March 2017 the CALDB became the CADB pursuant to legislative changes which removed the Board's powers with respect to liquidators. This change is discussed further on page 4.

Pursuant to Section 214(1) of the ASIC Act, the CADB is required to prepare a report annually describing the operations of the CADB and provide a copy of that report to the Minister as soon as practicable before 31 October each year. CADB notes the commencement of the PGPA Act on 17 April 2015. Legal advice obtained confirms that CADB is not required to comply with the PGPA Act in respect of preparation of its annual report for the 2016/17 year. CADB notes the latest version of *Requirements for Annual Reports* issued by the Department of the Prime Minister and Cabinet dated 30 June 2015, as approved by the Joint Committee of Public Accounts and Audit under Sub-Sections 63(2) and 70(2) of the Public Service Act, and in accordance with Part 1, 3 (4) has referred to those requirements to the extent they are consistent with CADB's reporting requirement pursuant to Section 214(1) of the ASIC Act.

Current role and purpose

CADB's mandate under the relevant legislation is to act as an independent expert disciplinary tribunal for auditors registered under the Corporations Act. CADB has the power to hear and consider applications brought before it by ASIC or APRA and may cancel or suspend the registration of auditors who do not meet the requirements of Section 1292 of the Corporations Act. CADB has no power to instigate applications. While applications may be brought to CADB by ASIC or APRA, CADB has never received an application from APRA.

As a disciplinary board with procedures designed to avoid technicality and delay, CADB provides a forum for expeditious and cost-effective disciplinary outcomes within an independent and transparent framework. CADB panels constituted to hear disciplinary matters must comprise at least one accounting member and one business member. This provides the Board with capacity to assess applications by reference to its own expert knowledge of professional standards and places CADB in a unique position to deal with matters without the need for time consuming and costly expert evidence, often necessary in other tribunals and in the courts.

The published decisions of CADB are a source of guidance to registered practitioners and industry bodies and form an important aspect of the educative function of the Board.

Details of the specific procedures adopted by CADB in relation to applications it receives and how it conducts hearings before it are set out in **Appendix 1**. These procedures are governed by the relevant provisions in Part 11 of the ASIC Act and Part 9.2 Division 3 of the Corporations Act which is the source of the Board's powers with respect to auditors.

On an application brought before it in relation to a registered auditor and after providing the auditor with an opportunity to be heard in relation to the allegations made and providing the parties with its reasons for decision, CADB may, if it is satisfied that any of the matters set out in Section 1292 have been established, impose sanctions on the registered auditor including an order either cancelling or suspending the registration of the auditor.

Effect of Insolvency Law Reform Act on CADB's functions

As noted, the partial commencement of the Insolvency Law Reform Act and consequent amendments to the Corporations Act ("new provisions") on 1 March 2017 ("commencement date") removed CADB's powers with respect to liquidators registered under the Corporations Act except insofar as there were liquidator matters lodged with the Board as at the commencement date which fell within the transitional provisions of the new provisions. There were no applications before the Board which fell within the transitional provisions although it is noted that there is one liquidator matter currently on appeal to the AAT which, depending on the AAT's decision, may be remitted to CADB and would fall within the scope of the relevant transitional provisions.

CADB's statutory powers with respect to auditors registered under the Corporations Act did not change when the new provisions came into operation.

Constitution of CADB and current Board membership

Section 203 of the ASIC Act provides that the CADB 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 more than three years. The appointees are eligible for reappointment.

Board members during the reporting year:

Name	Role	Term expires/expired
Maria McCrossin	Chairperson	3 December 2018
Clare Lethlean	Deputy Chairperson	4 May 2019
Robert Ferguson	Accounting member	28 July 2017
Bruce Gleeson	Accounting member	28 July 2017
Kerrie Howard	Business member	3 December 2018
Inge Kindermann	Business Member	3 December 2018
Eric Passaris	Accounting member	28 July 2017
Karen O'Flynn	Business member	13 December 2018

Biographical details of the current members are included in **Appendix 2**. Each of the current CADB members fulfils the requirements of Section 203 of the ASIC Act with respect to their membership of the CADB.

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. Each of the Panels convened during the year fulfilled the requirements of Section 210A of the ASIC Act.

As may be noted from the above table, the Board had three business members and three accounting members current at the end of the reporting year although the terms of three of the accounting members are due to expire on 28 July 2017. The Board consults with the Department of Treasury regarding the need to make further member appointments and/or re-appointments from time to time to ensure the Board is able to carry out its functions.

Operational Information 2016-17

Registrar

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

Premises

During the year, CADB continued to occupy offices on level 10 of 100 Market Street in Sydney. Appropriate hearing venues are hired, as needed, in Sydney and other locations in Australia. It is CADB's usual policy to conduct hearings in the capital city of the state of residence of the respondent of the proceedings. The application of this policy may be varied in individual cases and, if feasible, hearings occur by telephone or video link.

Applications received by CADB in the reporting year 2016–17

One new application was received from ASIC during the reporting year.

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

Auditors

	Conduct	Administrative
Uncompleted matters at 1/7/16	-	-
New Applications received in 2016/2017 year	1	-
Matters withdrawn	-	-
Matters dealt with — orders issued	-	-
Uncompleted matters at 30/6/17	1	-

Liquidators

	Conduct	Administrative
Uncompleted matters at 1/7/16	1	-
New applications received in 2016/2017 year	-	-
Matters withdrawn	-	-
Matters dealt with — orders issued	1	-
Uncompleted matters at 28/2/17	-	-

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 16–17	Auditors 15–16	Liquidators 16–17	Liquidators 15–16
Hearing days	2 person days	4 person days	10 person days	26 person days

In addition to attendance for formal hearing days with respect to matters filed with the CADB, CADB members must spend time preparing for hearings. This involves the review and analysis of pleadings and evidence. Costs incurred also encompass travel time to hearing venues, preparation and review of detailed written determinations, and usually a subsequent hearing and decision on sanction and appropriate orders.

With respect to any application that proceeds to a contested hearing, the Chairperson of the relevant Panel (who must either be the CADB Chairperson or Deputy Chairperson) plays the principal role in formulating a written decision that includes supporting reasons. The process includes consultation with other Panel members. The Board Chairperson is responsible for conducting pre-hearing conferences relating to all matters before CADB and has oversight of the general affairs of CADB, supported by the Deputy Chairperson as necessary. In addition to the conduct of substantive disciplinary hearings and managing the administrative business of the Board, there is often ancillary work to be undertaken incidental to matters already heard, such as taxation of costs orders made if parties so apply and managing appeals by the parties from a decision of the Board.

Results by nature of sanction

The table below records the results of matters before CADB 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 new matter filed with the CADB during the reporting year is not reflected in this year's report as the matter had not been heard by 30 June 2017.

Results of application	11–12	12–13	13–14	14–15	15–16	16–17
Registration cancelled	1	1	3	-	1	-
Registration suspended	-	-	3	1	1	1
Admonition	-	-	-	1	-	-
Reprimand	-	-	-	-	-	-
Undertakings required to be given	-	-	2	1	1	1
Dismissed	-	-	-	-	-	-
Withdrawn by ASIC	2	1	-	-	-	-

CADB decisions appealed in the reporting year are detailed on page 9 below and decisions gazetted during the year are set out in **Appendix 3**.

Notification and publication of CADB decisions

Pursuant to Sub-Sections 1296(1) and (2) of the Corporations Act, written notice of a decision by a Panel either to exercise or refuse to exercise CADB's powers under Section 1292 of the Act and the reasons for such decision must be provided to the practitioner concerned. A copy of either such notice must also be lodged with ASIC. The notice of decision is available for inspection at ASIC **except** when the Panel has decided to refuse to exercise CADB's powers under Section 1292 or has decided that it is not required to make an order under Sub-Section 1292(7) (see Sub-Section 1274(2)(a)(iii)).

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

By arrangement with CAANZ, Institute of Public Accountants, CPA Australia, ARITA and the Tax Practitioners 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 CADB'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 CADB website. CADB generally takes the view that it is appropriate to publish its decisions on the CADB website as this provides transparency of its decisions and processes as well as contributing to CADB's public educative role. In the reporting year there was one decision gazetted and publicised pursuant to CADB's powers under Section 1292. Details are included in Appendix 3. The Board's website: www.cadb.gov.au. provides access to the Board's decisions which are publically available.

Costs orders by CADB

At the end of a hearing a Panel may make an order for costs against the unsuccessful party. CADB has published a Costs Practice Note on its website. A Panel may also order payment by a party of all or part of the CADB's costs of, and incidental to, a hearing. There is no power conferred on CADB to publish the costs orders it makes.

Review/Appeal of CADB decisions

A review/appeal 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 CADB 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.

When a CADB decision is under review the Board will often be restricted from publishing any notice of decision by reason of a stay order issued by the reviewing body. Such restriction may be sought by either of the parties and most often is sought by a Respondent on the basis that they will suffer prejudice by reason of the publication of the decision if subsequently the CADB's decision is reversed or altered.

There was one application for review of a CADB decision under Section 1292 made to the AAT during the reporting year which remained unfinalised at 30 June 2017.

CADB financial information for reporting year

CADB is allocated funding by the Federal Government via the budget allocation to ASIC. Sub-Section 11(2) of the ASIC Act provides that a function of ASIC is to provide such staff and support facilities to CADB as are necessary or desirable for the performance and exercise by the Board of its respective functions and powers. Apart from some fixed overhead expenses, CADB's expenses are largely a function of the work referred to it, being applications received, and so vary from year to year depending on the number and complexity of the applications made. CADB endeavours to operate within the annual budget allocation made by ASIC, subject to these workflow fluctuations. It is noted that the introduction of the new provisions does not influence the volume of the CADB's work, which is simply dependent on referrals made by ASIC or APRA.

CADB operated within the budget allocated to it by ASIC in the 2016–17 year. Expenditure for this and the previous financial year, (extracted from the accounts of ASIC), was as follows:

	2016–17 \$	2015–16 \$
Administrative expenses (including staff costs and external legal costs)	353,630	267,281
Travel and accommodation including allowances	14,696	7,698
Members' fees	148,450	365,390
Total:	516,776	640,369

The increase in overall administrative expenses was due to a one off redundancy staff cost incurred in CADB's results this financial year as a result of the restructuring of the Board's administrative support arrangements to take effect in the 2017/2018 reporting year. Details of the revised arrangements are being finalised and will be reported on in the 2017/2018 reporting year.

The year on year increase in expenses in relation to travel and accommodation during the current year was due to a hearing that took place in Melbourne over two separate periods which required the three members empanelled to hear the matter to travel from their domiciles in Sydney and Adelaide respectively.

Members' fees decreased year on year as a result of the decreased number of hearing days this reporting year compared to the last reporting year.

CADB spent \$10,125 (2016 - \$10,222) on external legal advice and legal representation at appeal proceedings by the Australian Government Solicitor during the reporting year.

Members of CADB are remunerated in accordance with rates determined by the Commonwealth Remuneration Tribunal. The Remuneration Tribunal completed a review of part-time offices and issued a new part-time determination in December 2016 (#2016/18) that took effect 8 December 2016. The daily rates effective for CADB members from 1 January 2016 remain unchanged and are as follows:

Chairperson	\$1,411
Deputy Chairperson	\$1,270
Member	\$1,129

Work health and safety and environmental matters

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

The Registrar, the only staff member seconded to CADB, monitors the workplace environment on an ongoing basis to ensure the health, safety and welfare of workers who carry out work for CADB. No accidents or dangerous occurrences, or relevant investigations took place during the 2016–17 financial year. When attending hearings and Board meetings the Registrar and CADB Board members are covered either under Comcare or Comcover, or have their own arrangements in place.

Section 516A of the *Environment Protection and Biodiversity Conservation Act 1999* requires CADB to report on matters relevant to ESD. CADB reports that:

- the only activities relevant to ESD principles concern procurement of goods and services which is done through ASIC;
- CADB's legislative function is not related to ESD principles; and
- CADB is a small statutory body with only one full time staff member operating from a single location in Sydney and so has a limited environmental impact. CADB 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

CADB did not receive any applications for information under the FOI Act or any requests for reasons pursuant to Section 13 of the 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.

CADB has updated 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 CADB.

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

The PJC, in its report tabled to Parliament on 13 June 2017, examined the annual reports of bodies established under the ASIC Act and considered that CADB fulfilled its regulatory and reporting responsibilities during the 2015–16 financial year. The PJC noted that it will continue to monitor the effect of the passage of the Insolvency Law Reform Act on CADB's responsibilities and functions. Appendix 1 of the SELC report on annual reports dated 22 March 2017 notes the date of presentation of the CALDB annual report to the Minister, the Senate and the House of Representatives, but did not otherwise comment on the CALDB 2015/2016 Annual Report.

Management of human resources

As noted there is one full time ASIC employee, the Registrar, who is permanently seconded to CADB 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 CADB. The Registrar received a performance bonus in the current reporting year.

No work and safety issues arose during the 2016-17 financial year.

Purchasing

All required items are purchased through arrangement with ASIC, which follows the Commonwealth Procurement guidelines. CADB did not have any major capital purchases in 2016-17.

Consultants

During 2016-17 CADB did not enter into any consultancy contracts and there are no ongoing consultancy contracts.

Competitive tendering

CADB did not undertake any competitive tendering or contracting during the 2016-17 financial year.

Australian National Audit Office access clauses

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

Exempt contracts

CADB 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

CADB does not carry out any advertising or market research.

Discretionary grants

CADB 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
ARITA	Australian Restructuring Insolvency & Turnaround Association
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
Board	CADB
CADB	Companies Auditors Disciplinary Board
CALDB	Companies Auditors and Liquidators Disciplinary Board
CAANZ	Chartered Accountants Australia and New Zealand
Corporations Act	<i>Corporations Act 2001</i>
ESD	Environmentally sustainable development
FRC	Financial Reporting Council
FOI Act	<i>Freedom of Information Act 1982</i>
Minister	Minister for Revenue and Financial Services
New Act	Insolvency Law Reform Act 2015
IPS	Information Publication Scheme
PGPA Act	Public Governance, Performance and Accountability Act 2013
PJC	Parliamentary Joint Committee on Corporations and Financial Services

APPENDIX 1

CADB procedures with respect to applications

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

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

CADB categorises the matters brought before it as either an *administrative matter* or a *conduct matter*. The categorisation has been adopted by CADB 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.

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

Provision	
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) (<i>until 1 March 2017</i>)
subparagraph 1292(2)(a)(ii)	ceasing to be resident in Australia (liquidator) (<i>until 1 March 2017</i>)
subparagraph 1292(3)(a)(i)	failing to lodge a statement under Section 1288(5) (liquidator of a specified body corporate) (<i>until 1 March 2017</i>)
subparagraph 1292(3)(a)(ii)	ceasing to be resident in Australia (liquidator of a specified body corporate) (<i>until 1 March 2017</i>)
paragraph 1292(7)(a)	becoming disqualified from managing corporations under Part 2D.6 (auditor or in the case of a liquidator (<i>until 1 March 2017</i>))
paragraph 1292(7)(b)	becoming incapable because of mental infirmity of managing affairs (auditor or in the case of a liquidator (<i>until 1 March 2017</i>))

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

Provisions	
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) (<i>until 1 March 2017</i>)
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) (<i>until 1 March 2017</i>)
paragraph 1292(2)(d)	not being a fit and proper person to remain registered as a liquidator (liquidator) (<i>until 1 March 2017</i>)
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) (<i>until 1 March 2017</i>)

CADB's detailed procedures are publically available on CADB's website, www.CADB.gov.au, including manuals for 'conduct' matters and '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. Parties involved in proceedings before CADB are referred to the procedure manuals. The manuals are reviewed and updated regularly.

In general CADB may cancel or suspend the registration of a registered auditor, if relevant grounds under Section 1292 of the Corporations Act are established to its satisfaction. However, if grounds are established under either Sub-Sections 1292(7)(a) or (b) of the Corporations Act, CADB must cancel the registration of the auditor concerned.

CADB has additional powers under Sub-Section 1292(9) to admonish, reprimand or require undertakings from auditors in conduct matters pursuant to Sub-Sections 1292(1)(d), 1292(2)(d) or 1292(3)(d) of the Corporations Act. 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, CADB may, on an application by the person or of its own motion, by order under Section 1295, terminate the suspension.

Section 1294A of the Corporations Act provides that the Chairperson may, if he or she 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.

CADB'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 CADB panel. CADB does not participate in any settlement discussions or negotiations between the parties and retains the right to determine the appropriate orders.

Panel of CADB members to hear and determine matters

As noted, hearings are conducted and decisions are made by a panel of members of CADB convened by the Chairperson (Panel) in accordance with the Corporations Act.

A Panel must include the Chairperson or Deputy Chairperson as Chairperson of the Panel. A Panel may be 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 the duly constituted Panel which will make a determination and decision as necessary in relation to a particular application.

All matters referred to CADB (unless subsequently withdrawn by ASIC) must proceed to a hearing following which the Panel will issue a written 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 CADB's powers under Section 1292 of the Corporations Act and/or whether or not it is required to make an order under Sub-Section 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 sanction, publicity and costs.

APPENDIX 2

Details of current members of the Board

Maria McCrossin

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

Clare Lethlean

Clare Lethlean is a lawyer with extensive dispute resolution and insolvency experience. She has held senior roles in private legal practice, with the United Nations (Geneva), with statutory disciplinary and complaint bodies and is currently employed in a professional practice role at McGrathNicol. Clare has held directorships in the education and disability sectors. She currently holds appointments in the education sector and for a disciplinary body in the health sector. Clare has recently been appointed to a Commonwealth Ministerial pool of persons to be selected to form an Insolvency Practitioner Disciplinary Committee under the *Corporations Act 2001*.

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.

Bruce Gleeson

Bruce is a Principal at Jones Partners Insolvency & Business Recovery – a specialist insolvency firm based in NSW. He holds a Bachelor of Commerce Degree from the University of Western Sydney, NSW and has also completed a Diploma of Financial Planning with the Financial Planning Association of Australia (FPA). Bruce is both a Fellow of the Chartered Accountants Australia & New Zealand (CAANZ) and CPA Australia, as well as being a member of the Australian Restructuring Insolvency & Turnaround Association (ARITA). He is a Registered Liquidator, Official Liquidator, Registered Trustee in Bankruptcy and a Justice of the Peace (NSW). Bruce was on the NSW State Council of the CAANZ (previously being Chairman) from 2007 to 2011, as well as being a former Junior Vice President of the Western Sydney Business Connection. He has been assisting the CAANZ regarding the Senate Inquiry and other insolvency reforms proposed by the federal Treasury and other state agencies. He is presently the Chairman of the Insolvency Management Committee which is a

specialist committee of the CAANZ. He was also on the ARITA NSW/ACT Committee during 2015. Bruce has in excess of 15 years corporate insolvency and re-organisation and bankruptcy experience. Bruce has also held roles in commerce with several Top 100 Companies (James Hardie and AMP) to further add to his professional skills in areas such as compliance and project management.

Kerrie Howard

Kerrie Howard is the General Counsel and Company Secretary of Victorian Funds Management Corporation. Kerrie has an extensive background in financial services including having worked in the regulatory sector and has held external directorships in government-related entities and the community sector.

Inge Kindermann

Inge Kindermann is a lawyer with extensive experience in restructuring, corporations and insolvency law. She is currently the Head of Legal – Lending Services at ANZ and has previously held a senior position in private practice (Minter Ellison).

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 CAANZ 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.

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 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 2017

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 27 July 2015, a Panel of the Companies Auditors and Liquidators Disciplinary Board ("Panel") decided that it was satisfied, on an application by the Australian Securities and Investments Commission that **Randall Clinton JOUBERT**, a registered liquidator, has failed to carry out or perform adequately and properly the duties of a liquidator within the meaning of Sub-Section 1292(2)(d)(i) of the Act and is not a fit and proper person to remain registered as a liquidator within the meaning of Sub-Section 1292(2)(d) of the Act. On 11 May 2016 the Panel decided to exercise its powers under Section 1292(2) of the Act by ordering that the registration of **Randall Clinton JOUBERT** as a liquidator be cancelled.

Dated: 11 May 2016

Gary K Hoare

Registrar

On 17 May 2016 Mr Joubert applied to the Administrative Appeals Tribunal ("AAT") for a review of the Board's decision as to the sanction imposed by the Board. The AAT placed a temporary stay on the implementation of the Board's decision (subject to conditions) until the matter has been reviewed by the AAT. That temporary stay included a temporary stay in respect of the lodgement of this notice and the publication of the Board's Decision and Reasons. On 21 July 2016 the AAT lifted the temporary stay in respect of the lodgement of this notice and the publication of the Board's Decision and Reasons. The stay in respect of the implementation of the Board's decision remains in place pending a substantive hearing by the AAT of Mr Joubert's appeal on a date to be set.

Corporations Act 2001

SUB-SECTION 1296(1)(c)

NOTICE OF DECISION

At a hearing held pursuant to Section 1294 of the Corporations Act 2001 ("Act"), commencing on 4 October 2016, the Companies Auditors and Liquidators Disciplinary Board ("Board") decided that it was satisfied within the meaning of Sub-Section 1292(2) of the Act, on an application by the Australian Securities and Investments Commission ("ASIC") that **Stan TRAIANEDES**, a registered liquidator, has failed to carry out or perform adequately and properly the duties of a liquidator within the meaning of Sub-Section 1292(2)(d)(i) of the Act. On 12 December 2016 the Panel decided to exercise its powers under Sub-Sections 1292(2) and 1292(9) of the Act by ordering that:

- (a) The registration of Mr Stan Traianedes as a liquidator be suspended for a period of 3 years.
- (b) Mr Traianedes provide undertakings to the Board and to ASIC in the form attached as Schedule A to this Notice.

The Board further ordered that:

- (c) Pursuant to Section 223 of the *Australian Securities and Investments Commission Act 2001*, that Mr Traianedes pay ASIC's costs in the fixed sum of \$60,000, as follows:
 - (i) \$18,000 within 7 days of the date of this order;
 - (ii) the balance of \$42,000 to be paid by the date that is four months from the date in paragraph (c)(i).
- (d) Pursuant to Sub-Section 1297(1)(b) of the Act, the order for suspension in sub-paragraph (a) to come into effect 28 days from the date of the Board's orders, but otherwise the Board's orders come into effect in accordance with the provisions of Sub-Section 1297(1)(a) of the Act.
- (e) Liberty be reserved to Mr Traianedes to apply to:
 - (i) extend the period referred to in paragraph (d) hereof; and/or
 - (ii) vary the terms of the undertaking included in Schedule A to these orders.

Dated: 12 December 2016

Gary K Hoare

Registrar

SCHEDULE A TO BOARD'S ORDERS

UNDERTAKINGS

Undertaking as to resolution of existing matters

1. The Respondent **Mr Traianedes** gives the following undertaking to **the Board** and to **ASIC**:
 - (a) That if for any reason his appointment as liquidator of **Playzone** does not cease on 8 January 2017, he will make all necessary arrangements for the appointment of a replacement liquidator within 28 days of 8 January 2017 such replacement liquidator to be approved by **ASIC** prior to his/her appointment;
 - (b) That the costs of and incidental to the appointment of replacement liquidators to each of the companies in Schedule B (including, if relevant, **Playzone**), will be borne by **Mr Traianedes**, including but not limited to the cost of any necessary Court applications or creditors' meetings;
 - (c) To the extent that any of the costs of and incidental to the appointment of a replacement liquidator to any company in Schedule B has been paid out of the company's own funds, **Mr Traianedes** will reimburse the company for such costs within 28 days of the date of the Board's order requiring the giving of this undertaking, or within 28 days of the cost being paid out of the company's funds, whichever is later.
 - (d) **Mr Traianedes** will provide all necessary assistance to the replacement liquidator of each company in Schedule B (including, if relevant, **Playzone**).
 - (e) That in the event of any default of 1(a) above, he indemnifies **ASIC** for the cost of any Court application required for the rectification of that default, including but not limited to any application for the appointment of replacement liquidators;

Undertaking as to Further Education

2. **Mr Traianedes** gives the following undertaking in writing to **the Board** and to **ASIC** within seven (7) days after this order takes effect:

- (a) **Mr Traianedes** will use reasonable endeavours to retain his membership of **CPA** and **ARITA** for a period of not less than 4 years from the date that his suspension to practice as a registered liquidator ends.
- (b) To complete the following Continuing Professional Development ("**CPD**") activities during the period of his suspension:
 - (i) all **CPD** requirements imposed on members of **ARITA** for the period from 1 January 2017 to 31 December 2019 ("**the CPD Period**");
 - (ii) in addition to the minimum annual requirement for **CPD** to which members of **ARITA** are subject, he will at his own expense undertake during each year of the **CPD** Period at least a further 10 hours of **CPD** relating to insolvency practice and practice management;
 - (iii) over the **CPD** Period, the **CPD** that he undertakes will include at least 3 hours of training or courses relating to each of (1) independence, (2) remuneration, (3) investigations/reporting and (4) record-keeping (or, if relevant training or courses are not available in any area, such other training or courses as are approved by **ASIC**);
- (c) To provide **ASIC**, as soon as practicable following each of:
 - (i) 31 December 2017;
 - (ii) 31 December 2018; and
 - (iii) the date by which he has completed his **CPD** requirements for the period from 1 January 2019 to 31 December 2019

with documents that evidence his completion of **CPD** for the relevant period.

Until **Mr Traianedes** has complied fully with these undertakings, he will not accept any new appointment to any office required under the **Act** to be filled by a registered liquidator.

Undertaking as to Joint Appointments or Reviews of Appointments Post Suspension

3. **Mr Traianedes** gives the following undertaking in writing to **the Board** and **ASIC** within seven (7) days after this order takes effect:

- (a) That, following expiry of the suspension period, **Mr Traianedes** will for the first ten appointments that he accepts to any office required under **the Act** to be filled by a registered liquidator, use his best endeavours to undertake such appointment jointly and severally with a registered liquidator or registered liquidators approved by **ASIC**.
- (b) If **Mr Traianedes** is unable to procure a joint and several appointee for any of his first ten appointments in respect of an appointment falling within sub-paragraph (a), he will:
 - (i) within 7 days of the appointment, notify **ASIC**, that he has accepted an appointment other than as a joint and several appointment and provide a written explanation to **ASIC** of the steps that he took to procure a joint and several appointment;
 - (ii) in relation to any such appointment, he will:
 - (A) procure (at his own expense) an independent registered liquidator (approved in advance by **ASIC**) to provide written reports to **ASIC** on the adequacy of **Mr Traianedes'** compliance with all relevant requirements and professional standards including, but not limited to, independence/conflicts, investigations, reporting to creditors and **ASIC**, and remuneration;
 - (B) use his best endeavours to procure that the reports are provided to **ASIC**: (i) within 6 months of the commencement of the appointment and (ii) if the appointment has not concluded within 12 months of its commencement, further reports one month after each 12 month period and a final report one month after completion of the appointment.
- (c) If, during the period of 3 years following the expiry of the suspension period, **Mr Traianedes** commences practice as a sole practitioner (that is, in a practice where he is the sole registered liquidator) he will:
 - (i) within 3 months of commencing such practice, have all template, checklist and procedure documents to be used in the practice reviewed (at his cost) by an independent reviewer (approved by **ASIC**) who will provide a written report on compliance with industry best practice, and recommendations for any changes to his processes and documents to comply with best practice; and
 - (ii) within 3 months of the completion of such review, make any changes to those processes and documents recommended by the external reviewer;

- (iii) provide to **ASIC**, as soon as reasonably practicable, the report and recommendations made by the external reviewer, and an explanation (by way of a statutory declaration) of the steps that he has taken to institute any recommendations made.

Undertaking as to employment during the period of suspension

4. **Mr Traianedes** gives the following undertaking in writing to **the Board** and **ASIC** within seven (7) days after this order takes effect:
- (a) During the period of his suspension, **Mr Traianedes** will not undertake work in relation to any formal insolvency appointment except as supervised by a registered liquidator in a firm or practice not established by **Mr Traianedes**.
 - (b) The arrangement that he enters into with any firm in association with whom **Mr Traianedes** undertakes insolvency-related work, and the manner in which his role is represented to clients and the public, will not be such as to suggest that **Mr Traianedes** is a registered liquidator or a principal in that firm or practice.
 - (c) **Mr Traianedes** will report in writing to **ASIC** as to the nature of the arrangements pursuant to which he is employed or engaged by IRT Advisory or any other firm once those arrangements are formalised and will report further to **ASIC** if there is any subsequent change to those arrangements during this suspension period.
 - (d) **Mr Traianedes** will provide any information or documentation requested of him by **ASIC** (in **ASIC's** sole discretion) for the purposes of verifying any of the matters set out at sub-paragraphs 4(a) to (c) above.

SCHEDULE B: COMPANIES

Creditors' Voluntary Liquidation

- 1. Playzone (Australia Pty Ltd) ACN 097 564 924
- 2. Sutherlands Creek Farm Pty Ltd ACN 124 637 298
- 3. Zamac Property Holdings Pty Ltd ACN 125 774 870
- 4. JCP Carpentry & Design Pty Ltd ACN 082 989 973
- 5. PC Construct Pty Ltd ACN 147 812 851
- 6. Cyberduck Software Pty Ltd ACN 075 497 415

7. B.A.S (R&D) Pty Ltd ACN 060 882 224
8. B.A.S Melb Pty Ltd ACN 100 085 229
9. Prosperity Legal Group Pty Ltd ACN 123 412 331

