



Australian Government

---

Corporations and Markets  
Advisory Committee

# **CORPORATIONS AND MARKETS ADVISORY COMMITTEE**

## **ANNUAL REPORT 2008-2009**

---

**Corporations and Markets  
Advisory Committee**

---

Annual Report  
2008-09

---

© Corporations and Markets Advisory Committee 2009

ISSN 1447 8048 (print version)

ISSN 1449 0099 (on-line version)

This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth. Requests and inquiries concerning reproduction and rights should be addressed to the Commonwealth Copyright Administration, Attorney General's Department, Robert Garran Offices, National Circuit, Barton ACT 2600 or posted at <http://www.ag.gov.au/cca>.

### **Contact details**

For information about this report or about the work of the Committee, please contact:

John Kluver  
Executive Director  
Corporations and Markets Advisory Committee  
GPO Box 3967  
SYDNEY NSW 2001

Tel: 02 9911 2950  
Fax: 02 9911 2955  
Email: [camac@camac.gov.au](mailto:camac@camac.gov.au)

The Advisory Committee's homepage is:

[www.camac.gov.au](http://www.camac.gov.au)

This report can be found at:

[www.camac.gov.au](http://www.camac.gov.au)

The Advisory Committee's location is:

Level 16  
60 Margaret Street  
SYDNEY



## Australian Government

### Corporations and Markets Advisory Committee

---

Level 16, 60 Margaret Street, Sydney  
Telephone: (02) 9911 2950  
Email: [camac@camac.gov.au](mailto:camac@camac.gov.au)

GPO Box 3967 Sydney NSW 2001  
Facsimile: (02) 9911 2955  
Website: [www.camac.gov.au](http://www.camac.gov.au)

18 September 2009

The Hon. Chris Bowen MP  
Minister for Financial Services, Superannuation and Corporate Law  
Parliament House  
CANBERRA ACT 2600

Dear Minister

I am enclosing the annual report for 2008–09 of the Corporations and Markets Advisory Committee.

The report has been prepared in accordance with s 162 of the *Australian Securities and Investments Commission Act 2001* (the ASIC Act) and the *Requirements for Annual Reports for departments, executive agencies and FMA Act bodies*, approved by the Joint Committee of Public Accounts and Audit in June 2009.

I note that, under subsection 162(3) of the ASIC Act, a copy of this report is to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which you receive the report.

Yours sincerely

A handwritten signature in black ink that reads "Richard St John". The signature is written in a cursive, flowing style.

Richard St John  
Convenor



## Contents

<b>Convenor’s review .....</b>	<b>1</b>
<b>Issues and developments .....</b>	<b>3</b>
Issues in external administration .....	3
Shareholder claims against insolvent companies: implications of the <i>Sons of Gwalia</i> decision .....	7
Market integrity .....	10
Board diversity .....	13
Removal of directors .....	14
Members’ schemes of arrangement .....	15
<b>Outlook for 2009–10 .....</b>	<b>17</b>
<b>References to CAMAC reviews .....</b>	<b>18</b>
<b>Past reports .....</b>	<b>22</b>
<b>The Committee.....</b>	<b>24</b>
Overview .....	24
Functions .....	24
Membership.....	25
Audit Committee .....	28
Legal Committee .....	29
Executive.....	32
Coordination with other bodies .....	32
<b>Other information.....</b>	<b>34</b>
Ethics.....	34
Fraud.....	34
External scrutiny.....	34
Management of human resources .....	35
Purchasing .....	35
Consultants .....	35

---

Competitive tendering and contracting .....	36
Australian National Audit Office Access Clauses.....	36
Exempt contracts.....	36
Commonwealth Disability Strategy .....	36
Occupational health and safety.....	36
Freedom of information .....	37
Advertising and market research.....	37
Ecologically sustainable development and environmental performance .....	37
Discretionary grants .....	37
Legal services expenditure .....	37
<b>Glossary.....</b>	<b>38</b>
<b>Date and signing of report .....</b>	<b>39</b>
<b>Audit report .....</b>	<b>40</b>
<b>Financial statements.....</b>	<b>42</b>
<b>Index.....</b>	<b>68</b>

## Convenor's review

### *Output*

A productive year for the Committee saw the completion of reports on *Issues in external administration*, *Shareholder claims against insolvent companies: implications of the Sons of Gwalia decision*, *Diversity on boards of directors* and *Aspects of market integrity*.

The Committee's consideration of the issues before it was undertaken against the background of the global financial crisis, and the ensuing focus on corporate and financial market practices and the adequacy of regulatory frameworks and responses. While these issues are still being played out, the underlying framework for corporate activity and financial services in Australia has proved relatively robust. That said, there is no cause for complacency. The overall effectiveness of the regulatory framework does not rule out the need for continuing review, including attention to possible gaps in coverage as well as refinement of laws and regulatory approaches. The challenges for regulators in focusing enforcement and other efforts effectively, and for market participants in enhancing governance and performance standards, are ongoing.

The Committee seeks in its reports to inform public understanding of underlying issues and their implications for regulatory policy, as well as provide advice to government on the questions referred to it. The Committee does not look to legislative action as the way to bring about desired change in all circumstances. In a number of reports – including *Diversity on boards of directors* and *Aspects of market integrity* – the focus has been more on guiding and influencing standards and practices of corporate governance.

The latest reference from the Government, which calls for review of the sufficiency of guidance available to directors in relation to their role and responsibilities, is also directed to the corporate governance framework. The 'softer' areas of goals, mindset and practice can contribute to improved corporate performance.

A noteworthy development in the regulatory environment is the growing prominence of private actions by shareholders and others, some by way of class action or supported by litigation funders. While there may be some rough edges with this approach, and some issues are still to be resolved, private actions for damages or other remedies are emerging as a real factor in the regulatory compliance balance. In effect, private suits add another

level of enforcement to the efforts of public regulatory and law enforcement authorities. The Committee was mindful of the growing importance of private suits in its report *Shareholder claims against insolvent companies: implications of the Sons of Gwalia decision* and drew attention to possible implications for this development of any move to curtail the rights of recourse of aggrieved shareholders where a company is financially distressed.

### *Outlook*

Work is under way on the review requested by the Government in August 2009 of the adequacy of guidance for directors in carrying out their role. The Committee is also aiming to complete its review of members' schemes of arrangement.

### *Acknowledgements*

Barbara Bradshaw's term as a member of the Advisory Committee ended in August 2008, as also did that of Laurie Shervington on the Legal Committee, of which he was one of the longest serving members. In addition, Jeremy Cooper, who represented ASIC on the Committee, and Brendan Byrne, who represented ASIC on the Legal Committee, have moved on from ASIC to take up new appointments. The contribution of each of those individuals is acknowledged with appreciation.

The Committee keeps in touch with officers of Treasury and appreciates the attendance by representatives of that department at its meetings. It also receives assistance from ASIC officers in various administrative areas, including financial management, payroll, library services and information technology, and appreciates that support.

Members of the Advisory Committee and Legal Committee participate on a part-time basis and have other commitments. They bring to the work of the Committee valuable experience, expertise and judgment. They are supported by a small, professional and hard-working Executive. The members of both Committees and the Executive combine effectively in pursuit of informed and well-reasoned conclusions and reports.

## Issues and developments

The Committee's work in 2008–09 in meeting the outcomes and outputs described in the Treasury Portfolio Budget Statement is summarised below.

### Issues in external administration

#### Terms of reference

In May 2007, the then Parliamentary Secretary to the Treasurer asked the Advisory Committee to review a number of new issues that were raised by stakeholders during consultation on the Corporations Amendment (Insolvency) Bill 2007 (subsequently enacted) and that would benefit from public discussion and subsequent consideration by the Committee.

The Parliamentary Secretary sought advice on the following proposals.

- A new mechanism should be introduced to allow for voting by post on proposals relating to remuneration, compromise of debts under subsection 477(2A) of the *Corporations Act 2001* (Corporations Act) and liquidators entering into agreements on the company's behalf under subsection 477(2B) of the Corporations Act.
- The requirement to publish insolvency notices in a newspaper should be limited, such that it requires only a summary statement with additional details to be published on a website to be maintained by ASIC or a professional body. An alternative proposal would move all notices to a website to be maintained by ASIC or a professional body.
- Directors and related party creditors should be prevented from voting on a proposal to appoint a different person as liquidator when a company proceeds from administration into liquidation.
- Where a company is put into liquidation after an administration (or deed of company arrangement) then the remuneration of the administrator (or deed administrator) should be provided a priority over that of any replacement liquidator.
- The rule allowing a deed administrator to apply to the court for an exemption from the rule requiring a company to publish its former name on public documents should be extended to all other types of external administration.

- A nominee of an administrator should be allowed to chair the second meeting in voluntary administration, where the administrator is sick or otherwise unable to attend in person.
- Creditors should be able to approve the remuneration of a provisional liquidator when a company proceeds from provisional liquidation into liquidation.
- The new mechanism for electronic communication with creditors should be extended, to allow for electronic means to be used except if the creditor requests a hard copy of documents. One suggested approach would provide for a single page to be sent to creditors directing them to documents available on a website and providing a telephone number to call if a hard copy is required. An alternative proposal would provide for a creditor being ‘deemed’ to have consented to electronic communication where a company has communicated with a creditor by that means at any time prior to the commencement of the external administration.
- ASIC should be able to apply to a court to replace a liquidator if the liquidator dies or is no longer registered.
- ASIC should be able to take possession of books relating to a company in external administration, and transfer those books to another liquidator, if a liquidator dies or is no longer registered.
- The deed administrator should be required to notify creditors of any breach of a deed of company arrangement.
- The defences to the voidable transaction provisions should be amended, such that the insolvency defence under section 588FG does not apply to the new provisions relating to transactions entered into while a company was under administration (given that insolvency is not a condition for those provisions).
- Transactions conducted under the authority of a receiver or controller should be exempted from the voidable transaction provisions.
- The administrator of a company should be required to provide access to a list of a company’s known creditors as soon as practicable after their appointment.
- The definition of ‘controller’ should be revised such that enforcing a security over a single asset, or an asset with a value of less than \$100,000, does not involve a controllership and the requirements of the Corporations Act dealing with controllers are not applicable.

- The administrator of a company should be required to provide details of the location of all equipment in the possession of the company owned by entities other than the company. These details might be included in the subsection 443B(3) notice that informs the owner or lessor that the company does not propose to exercise rights in relation to the property.

### Discussion paper

In February 2008, the Advisory Committee published a discussion paper *Issues in external administration*, which put forward a number of provisional proposals for further consideration and comment.

The submissions received on the discussion paper are available on the CAMAC website.

### Report

CAMAC provided its report *Issues in external administration* to the Minister in November 2008.

In the Committee's view, greater use of the Internet for conveying information to creditors as well as to the general public would enhance the efficiency, and reduce the cost, of external administrations. Creditors in particular will be empowered by ready access to information about the identity of fellow creditors and the progress of an administration. This can be achieved by:

- requiring administrators to publish the name and contact details of each creditor on a designated website and to publish the estimated amount due to each creditor, other than in relation to any creditor who requests that the amount not be made public
- giving an external administrator the right to inform creditors in the initial notice to them that all subsequent information will be made available on a designated website, with creditors having the right to request printed copies of that information
- implementing a staged move of mandatory public notices relating to external administrations from the print media to an ASIC website.

The report also recommended measures to enhance procedural efficiency, including:

- enabling an administrator who for good reason cannot chair the major meeting of creditors in a voluntary administration to appoint a suitably qualified nominee, subject to creditor approval

- giving creditors the power to determine the remuneration of a provisional liquidator
- allowing a liquidator to conduct a postal vote of creditors on certain administrative matters
- an administrator's notice that he or she does not intend to continue using property owned by another person should disclose the location of the property where reasonably possible
- deed administrators should notify creditors of breaches of the deed that could have a material effect on the purpose or outcome of the deed
- giving administrators, receivers and other controllers and liquidators, as well as deed administrators, the right to apply to the court for an exemption from the requirement for a company to publish its former name on public documents.

The report also recognised the importance of ensuring continuity where the office of an external administrator becomes vacant. For this purpose:

- ASIC should be able to replace a liquidator if there is a vacancy in that office
- ASIC should be able to take possession of and transfer the books of a company if there is a vacancy in the office of external administrator.

In other areas the Committee was not persuaded of the need for change. The report recommended:

- no change to the current position under which all creditors, including directors or their related parties, have the right to vote on a resolution to appoint a different person as liquidator when a company proceeds from administration into liquidation
- no legislative amendment to give the remuneration of an administrator (or deed administrator) priority over that of a replacement liquidator where a company is put into liquidation after an administration (or deed of company arrangement)
- retention of the assumed solvency defence (that there were no reasonable grounds to suspect at the time of a transaction that the company was insolvent) for transactions entered into by officers of a company while the company is under a deed of company arrangement
- no amendment to exempt from the definition of 'controller' a person enforcing a security over a single asset or an asset with a value of less than \$100,000

- no amendment to exempt from the voidable transaction provisions transactions conducted under the authority of a receiver or other controller.

## Shareholder claims against insolvent companies: implications of the *Sons of Gwalia* decision

### Terms of reference

In *Sons of Gwalia Ltd v Margaretic* (2007)<sup>1</sup> (*Sons of Gwalia*), the High Court held that a shareholder who is misled by a company into acquiring its shares through misrepresentation or defective market disclosure (an aggrieved investor) can claim as a creditor in the external administration of the company. Such a claim, being based on various investor protection provisions, is not postponed behind other unsecured creditors as are claims brought in a shareholder's 'capacity as a member of the company'. Prior to the High Court decision, there was a view in the commercial community that all claims by shareholders against a company that arose from their shareholding were claims in their capacity as members.

Following the *Sons of Gwalia* decision, the then Parliamentary Secretary to the Treasurer wrote to the Advisory Committee in February 2007 and sought its advice on three questions:

1. Should shareholders who acquired shares as a result of misleading conduct by a company prior to its insolvency be able to participate in an insolvency proceeding as an unsecured creditor for any debt that may arise out of that misleading conduct?
2. If so, are there any reforms to the statutory scheme that would facilitate the efficient administration of insolvency proceedings in the presence of such claims?
3. If not, are there any reforms to the statutory scheme that would better protect shareholders from the risk that they may acquire shares on the basis of misleading information?

---

<sup>1</sup> (2007) 232 ALR 232, 60 ACSR 292, 25 ACLC 1.

## Discussion paper

The Advisory Committee published a discussion paper *Shareholder claims against insolvent companies: implications of the Sons of Gwalia decision* in September 2007.

The paper described the current state of the law, explained the steps that aggrieved investors would need to take in making claims in an insolvency and considered the implications of these claims for the conduct of external administrations, corporate financing and financial markets.

The paper reviewed various arguments for or against change to the current legal position and noted the divergence between the US and UK positions. It canvassed possible changes to the conduct of creditors' meetings and to the procedure for determining shareholder claims if the current position is retained. It raised the possibility of introducing a 'fraud on the market' principle to assist shareholder claims should the law be changed. Finally, the paper considered whether shareholders whose claims are postponed in a liquidation should still be treated as creditors, with voting and other rights in an external administration.

The submissions received on the discussion paper are available on the CAMAC website.

## Report

The Committee provided its report *Shareholder claims against insolvent companies: implications of the Sons of Gwalia decision* to the Minister in December 2008.

While the Committee recognised the significant implications of the *Sons of Gwalia* decision, including for providers of corporate debt finance as well as the conduct of external administrations, the Committee as a whole was not persuaded of the need to change the current legal position, under which aggrieved shareholder claims are treated as ordinary unsecured creditor claims. The report noted in particular that any move to curtail the rights of recourse of aggrieved shareholders where a company is financially distressed could be seen as undermining legislative initiatives to provide shareholders with direct rights of action in respect of corporate misconduct. The report also noted that the decision has provided a measure of certainty, and it is likely that changes have already occurred as the corporate finance market has adapted to the new legal environment.

The report also provided advice on the following options if, notwithstanding its view, some change to the present position were considered necessary:

- postpone all, or some, claims by aggrieved shareholders behind claims by conventional unsecured creditors
- maintain those claims as creditor claims but subject them to a monetary cap
- prohibit claims by aggrieved shareholders altogether.

The report recognised that shareholder claims may add to the complexity of corporate external administrations and proposed measures to assist with those claims:

- a standardised proof of debt form for claims by aggrieved shareholders, which may assist administrators in making a ‘just estimate’ of the value of those claims
- a rebuttable presumption that a determination in one proceeding of a question of fact common to other aggrieved shareholder claims applies in any subsequent proceedings
- giving the court a general power to make orders in a liquidation, which would cover creditors’ meetings and the determination of shareholder claims.

CAMAC considered possible measures to assist aggrieved shareholders if their current rights, as recognised in *Sons of Gwalia*, were postponed. It did not favour the introduction, by legislation, of a fraud on the market principle (which would overcome the need to prove reliance on a corporate misrepresentation) in the context of claims by aggrieved shareholders against insolvent companies. Any such change would need to be carefully considered in the broader context of shareholder claims against solvent as well as insolvent companies.

The report also recommended:

- abrogation of the rule in *Houldsworth’s* case, which in some cases prohibits claims by shareholders who have purchased shares from the company, rather than from a third party
- that shareholders making claims as members of a company in liquidation, for unpaid dividends for example, should not, on that basis, receive information or be able to vote as creditors.

## Market integrity

### Terms of reference

In November 2008, the then Minister for Superannuation and Corporate Law requested the Advisory Committee to provide advice in relation to a number of practices that had the potential to damage the integrity of the market and investor confidence. These practices are:

- directors' interests in the securities of listed companies and margin lending
- 'blackout' trading by company directors
- spreading of false and misleading information
- disclosure of information in the briefing of analysts.

The Minister asked the Advisory Committee to report by 30 June 2009.

### Issues paper

In February 2009, the Advisory Committee published an Issues Paper. The paper provided background material on the four matters in the terms of reference, analysed the legal position in Australia, compared approaches in some overseas jurisdictions, identified issues for consideration and identified policy options if action were considered necessary.

The submissions received on the issues raised are available on the CAMAC website.

### Report

The Committee provided its report *Aspects of market integrity* to the Minister on 30 June 2009.

#### *Dealing by directors in shares of their company*

The report considered:

- the use by directors of margin lending arrangements in relation to shares in their company, and
- trading by directors in their company's securities during sensitive (blackout) periods, such as between the close of books and the release of financial results

in the broader context of the regulation of dealings by directors in the securities of their company. It also proceeded on the basis that the most senior officers of a company (executive officers) should be subject to duties and constraints similar to those that apply to directors, given their privileged position as corporate insiders.

The report recommended that, as a matter of best practice, directors and executive officers should be required to obtain the board's clearance for dealings in the securities of their company. While they should not be prevented from entering margin lending or other loan arrangements as such, a clearance procedure should apply, having regard to possible conflicts of duty and other problems that can arise where securities of the company are used as collateral.

The report also recommended that, as a matter of best practice, directors and executive officers should not be permitted to deal in the securities of their company in sensitive blackout periods.

The report proposed the implementation of clearance processes and restrictions on dealings by corporate officers as governance requirements by the ASX Corporate Governance Council or in the ASX Listing Rules. In the absence of effective implementation, a legislative approach could be considered.

The report also recommended legislative action to require:

- directors and executive officers to disclose to the market, within a short time, all their dealings in relation to securities of their company
- a company to disclose in its annual report the number or percentage of its securities held by directors or executive officers that are subject to a pledge.

The report further recommended a tightening of the insider trading provisions so that they apply to lenders and borrowers under margin lending and other financial arrangements in the same way as they apply to other market participants. On the other hand, it reiterated a recommendation in the Advisory Committee's report *Insider trading* (2003) for an exception to the insider trading law to enable corporate insiders to use non-discretionary trading plans in order to meet regular or anticipated financial commitments or objectives.

### ***Rumour-mongering***

The report considered the dissemination of false rumours against the background of the regime for disclosure of information to the market. The more timely and reliable the information available to the market, the less scope there is for the successful dissemination of false rumours.

The report saw the intentional spreading of false rumours as inimical to the maintenance of a fair, efficient and transparent market. While the market will never be free of rumour, egregious conduct should be pursued and eliminated where possible.

The report noted that the law already contains a number of prohibitions relevant to the perpetration of false rumours and other forms of market misconduct. However, given the nature of this conduct, the uncovering of evidence and proof of elements of an offence present a challenge.

The report made a number of recommendations in support of effective law enforcement:

- the introduction of civil penalties for market misconduct provisions where only criminal prosecution is now available
- empowering ASIC to require market licensees to have guidelines on rumour-mongering and to report any suspected misconduct
- empowering ASIC to make a banning order against a person who contravenes a licensee's guidance on rumour-mongering
- treatment of market manipulation as a serious offence for the purposes of telephonic interception legislation
- making it an offence to provide false or misleading information to bodies that conduct clearing and settlement operations.

The report encouraged ASIC, the ASX and industry bodies to develop further guidance to companies on how to respond to rumours about them. It also supported an ASIC initiative to develop best practice guidelines for market participants on responding to rumours of which they become aware.

### *Corporate briefing of analysts*

The Committee considered the practice by which listed companies provide briefings to analysts, institutional investors and others in the context of the regime for market disclosure and the prohibition on insider trading. The report saw briefings as providing a useful supplement to more formal disclosures to the market and as assisting in the clarification or assessment of available information. At the same time, the Committee acknowledged the risks involved, including of selective disclosure of market-sensitive information or harm to investor confidence through perceptions that some market participants are receiving favoured treatment.

While not seeing a need for further legislative intervention, the report identified areas where there is scope for promotion of best practice. The Committee considered that it is in the interests of a well-run company to

control its communications with analysts and others to ensure consistency and accuracy, as well as compliance with legal requirements.

The report proposed action by the ASX Corporate Governance Council to build on existing guidance and encourage more open practices in relation to briefings, including:

- making briefings more accessible (including through use of the Internet)
- keeping of records
- processes for checking information disclosed and rectifying any inadvertent disclosure by making the information generally available
- restricting briefings during times of market sensitivity.

## Board diversity

### Terms of reference

In September 2008, the then Minister for Superannuation and Corporate Law sought the Advisory Committee's advice on matters relating to board diversity, in particular, options for creating an environment that will encourage companies in Australia to foster a governance culture that embraces diversity in the composition of their boards. The advice was sought by way of background to consideration of board diversity at a meeting of the Ministerial Council for Corporations.

The Minister's request adverted to observations by commentators that corporate boards tend to be homogenous groups, largely composed of men of similar ages and with similar demographic, ethnic, educational and professional backgrounds, as well as some evidence that correlates diversity at board level with enhanced corporate performance.

### Consultation

In preparing its report, the Committee consulted with the Australian Government Office for Women and the Australian Government Equal Opportunity for Women in the Workplace Agency.

### Report

The Committee provided its report *Diversity on boards of directors* to the Minister in March 2009.

In considering diversity on corporate boards, the report looked at:

- the role and structure of boards, including the processes by which directors are appointed and the elements that make up an effective board
- the current state of diversity on boards
- possible ways to promote an environment conducive to a more open approach by companies to the composition of boards, including recruitment of directors from a more diverse pool of qualified candidates
- possible ways to assist in the development of a broader pool of skilled and experienced board candidates.

The report considered the imposition of quotas, as occurs in some other countries. The Committee did not favour quotas, as they would run counter to the responsibility of shareholders for the governance structure of a company, including the composition of its board.

Instead, the Committee considered that effective change would depend on convincing corporate leaders and shareholders of the benefits of a more open approach to the identification and selection of directors. The putting together of well-qualified and effective boards, without overlooking candidates from a less traditional mould, should be promoted as an element of effective governance and corporate success.

The report noted some possible steps that could be taken to assist a more diverse group, including women, to develop the skills that would enable them to take up board positions, including mentoring programs and adoption of more accommodating employment practices at executive management level.

## Removal of directors

In December 2008, the Advisory Committee provided advice to the then Minister for Superannuation and Corporate Law about an issue that arose in consequence of conflicting judicial decisions at first instance on the procedure for shareholders of a public company to remove a director.

Until recently, the legal position, as reflected in the case law, was thought to be that the procedure under s 203D was one, but not the only, possible way for shareholders of a public company to remove a director.<sup>2</sup>

However, the Court in a more recent case<sup>3</sup> held that the procedure in s 203D was the only way for shareholders of a public company to remove a director.

The Advisory Committee considered that, in principle, shareholders of public companies should have the right to remove directors through any procedure provided in the company's constitution, as well as that in s 203D. The Advisory Committee will keep developments in this area under review.

## Members' schemes of arrangement

### Terms of reference

The Advisory Committee was asked by the former Government, in conjunction with the request regarding issues in external administration, to consider whether the 'headcount' test for shareholder approval of members' schemes (namely a majority in number of shareholders voting on the scheme) should be removed. The Committee considered that this issue might best be considered in the context of a wider review of whether the provisions for members' schemes of arrangement under Part 5.1 of the Corporations Act operate in an effective and appropriate manner, and with appropriate safeguards, to facilitate corporate restructuring.

### Discussion paper

The Advisory Committee published a discussion paper *Members' schemes of arrangement* in June 2008.

The discussion paper pointed out that schemes of arrangement are a commonly used mechanism for achieving structural change within a company or a corporate group. They can be tailored to novel or complex corporate structures or be used for major group reconstructions. Members' schemes are increasingly used instead of takeover bids to achieve a change of corporate control.

---

<sup>2</sup> For instance, in *Allied Mining & Processing Ltd v Boldbow Pty Ltd* [2002] WASC 195 at [47].

<sup>3</sup> *Scottish and Colonial Ltd v Australian Power and Gas Co Ltd* [2007] NSWSC 1266.

The paper included a review of factors that may influence the choice between schemes, takeover bids and reductions of share capital to effect a change of corporate control.

The paper invited submissions on a range of issues, including:

- whether the disclosure requirements for schemes should be amended to assist greater understanding by shareholders, for instance, by introducing a ‘clear, concise and effective’ disclosure requirement for the explanatory statement
- whether the procedure for determining classes of shareholders should be changed to permit earlier and binding determinations
- whether the headcount test should be amended or repealed
- whether ASIC should have modification powers for schemes comparable to those for takeover bids
- whether s 411(17), which relates to schemes that have been proposed for the purpose of avoiding the takeover provisions, should be repealed or amended.

The paper also considered whether the provisions for members’ schemes:

- should accommodate holders of options over unissued shares or convertible notes
- should be extended to listed or unlisted managed investment schemes
- should be simplified for mergers within wholly-owned corporate groups
- should be adapted for use in schemes opposed by the target company.

The submissions received on the discussion paper are available on the CAMAC website.

### **Further work**

CAMAC’s Legal Committee has been considering the matters raised in submissions and the Advisory Committee will give further consideration to the submissions and the advice of the Legal Committee.

## Outlook for 2009–10

The Advisory Committee is considering submissions on the *Members' schemes of arrangement* discussion paper, with a view to submitting a report.

The Committee has also commenced work on guidance for directors, referred to it by the Minister for Financial Services, Superannuation and Corporate Law, the Hon. Chris Bowen MP, on 12 August 2009. The Minister has requested the Committee to report by 30 April 2010.

As well as responding to any further requests for advice from the Minister, the Committee will keep under consideration other areas that may be suitable for review.

## References to CAMAC reviews

During 2008–2009 and to the date of this report, the work of the Advisory Committee was referred to in various articles in the daily media. It was also referred to in other publications, including:

### Related party transactions

- B Mees & I Ramsay, ‘Corporate regulators in Australia (1961-2000): From companies’ registrars to ASIC’ (2008) 22 *Australian Journal of Corporate Law* 212

### Statutory derivative actions

- D Lam, ‘Statutory derivative action in Hong Kong: So far so good?’ (2009) 23 *Australian Journal of Corporate Law* 26

### Continuous disclosure

- G North, ‘Periodic disclosure regulation: Enhancements to enable all investors to make informed decisions’ (2009) 27 *Company and Securities Law Journal* 23
- M Duffy, ‘Insider trading: Addressing the continuing problems of proof’ (2009) 23 *Australian Journal of Corporate Law* 149

### Collective Investments: Other people’s money (jointly with the Australian Law Reform Commission)

- B Mees & I Ramsay, ‘Corporate regulators in Australia (1961-2000): From companies’ registrars to ASIC’ (2008) 22 *Australian Journal of Corporate Law* 212
- V Battaglia, ‘The liability of members of managed investment schemes in Australia: An unresolved issue’ (2009) 23 *Australian Journal of Corporate Law* 122

### **Compulsory acquisitions**

- Justice Kevin Lindgren, ‘Private equity and section 411 of the Corporations Act 2001 (Cth)’ (2008) 26 *Company and Securities Law Journal* 287

### **Regulation of On-exchange and OTC derivatives markets**

- P Latimer, ‘Regulation of over-the-counter derivatives in Australia’ (2009) 23 *Australian Journal of Corporate Law* 9

### **Corporate voluntary administration**

- C Anderson & D Morrison, ‘Seen but not heard? The significance of shareholders under Pt 5.3A of the Corporations Act’ (2008) 16 *Insolvency Law Journal* 222
- J Dickfos, ‘Improving outcomes for creditors: Balancing efficiency with creditor protections’ (2008) 16 *Insolvency Law Journal* 84
- R Langley, ‘The future role of creditors’ schemes of arrangement in Australia after the rise of voluntary administrations’ (2009) 27 *Company and Securities Law Journal* 70

### **Liability of members of managed investment schemes**

- V Battaglia, ‘The liability of members of managed investment schemes in Australia: An unresolved issue’ (2009) 23 *Australian Journal of Corporate Law* 122

### **Corporate groups**

- C Witting, ‘Modified limited liability’ (2009) 27 *Company and Securities Law Journal* 108
- J Dickfos, ‘Improving outcomes for creditors: Balancing efficiency with creditor protections’ (2008) 16 *Insolvency Law Journal* 84

### **Insider trading**

- J Butler, ‘Are we there yet? The journey of the insider trading provisions’ (2008) 26 *Company and Securities Law Journal* 460
- G North, ‘Closed and private company briefings: Justifiable or unfair?’ (2008) 26 *Company and Securities Law Journal* 501

- M Duffy, ‘Insider trading: Addressing the continuing problems of proof’ (2009) 23 *Australian Journal of Corporate Law* 149
- J Austin, ‘A rapid response to questionable trading: Moving towards better enforcement of Australia’s securities laws’ (2009) 27 *Company and Securities Law Journal* 203
- G North, ‘The insider trading “generally available” and “materiality” carve-outs: Are they achieving their aims?’ (2009) 27 *Company and Securities Law Journal* 234
- G North, ‘The Australian insider trading regime: Workable or hopelessly complex?’ (2009) 27 *Company and Securities Law Journal* 310

### **Rehabilitating large and complex enterprises in financial difficulties**

- R Langley, ‘The future role of creditors’ schemes of arrangement in Australia after the rise of voluntary administrations’ (2009) 27 *Company and Securities Law Journal* 70
- J Dickfos, ‘Improving outcomes for creditors: Balancing efficiency with creditor protections’ (2008) 16 *Insolvency Law Journal* 84
- C Anderson & D Morrison, ‘Seen but not heard? The significance of shareholders under Pt 5.3A of the Corporations Act’ (2008) 16 *Insolvency Law Journal* 222

### **Personal liability for corporate fault**

- B Cowley & T Taylor, ‘A reform agenda for liability of corporate officers’ July 2008 *Keeping Good Companies* 352

### **Long-tail liabilities**

- R Langley, ‘The future role of creditors’ schemes of arrangement in Australia after the rise of voluntary administrations’ (2009) 27 *Company and Securities Law Journal* 70
- C Witting, ‘Modified limited liability’ (2009) 27 *Company and Securities Law Journal* 108

### Issues in external administration

- M Murray, 'The alignment of the laws of personal and corporate insolvency' *Insolvency Law Bulletin* vol 9 No 5 (January 2009) 78
- 'CAMAC calls for greater efficiency in external administrations' *The Baxt Report* (January 2009) p 12

### Sons of Gwalia

- M Duffy, 'After *Sons of Gwalia* – Some perspectives on the position of shareholders and creditors and the question of law reform' (2008) 22 *Australian Journal of Corporate Law* 161
- A Hargovan & J Harris, 'Shareholders as creditors: A response to the CAMAC discussion paper on law reform' (2008) 22 *Australian Journal of Corporate Law* 135
- K Berkeley, J Mackie, J Marshall & C Della-Bosca, 'Sons of Gwalia and the CAMAC report – where to from here?' *Insolvency Law Bulletin* (March 2009) 115
- 'The High Court again strikes at the heart of the rights of shareholders – the *Sons of Gwalia* endorsed by CAMAC' *The Baxt Report* (March 2009) p 11
- C Witting, 'Modified limited liability' (2009) 27 *Company and Securities Law Journal* 108

### Market integrity

- J Austin, 'A rapid response to questionable trading: Moving towards better enforcement of Australia's securities laws' (2009) 27 *Company and Securities Law Journal* 203

## Past reports

The following Advisory Committee reports are available at [www.camac.gov.au](http://www.camac.gov.au):

- Aspects of market integrity (June 2009)
- Diversity on boards of directors (March 2009)
- Shareholder claims against insolvent companies: implications of the *Sons of Gwalia* decision (December 2008)
- Issues in external administration (November 2008)
- Long-tail liabilities: the treatment of unascertained future personal injury claims (May 2008)
- The social responsibility of corporations (December 2006)
- Personal liability for corporate fault (September 2006)
- Corporate duties below board level (April 2006)
- Rehabilitating large and complex enterprises in financial difficulties (October 2004)
- Directors and officers insurance (June 2004)
- Insider trading (November 2003)
- Retail client compensation in financial markets (September 2001)
- Charges over uncertificated securities (April 2001)
- Sections 181 and 189 of the Corporations Law (October 2000)
- Qualifications and experience for secretaries of public companies (August 2000)
- Shareholder participation in the modern listed public company (Company meetings) (June 2000)
- Corporate groups (May 2000)
- Jurisdictional legal risk for collateral securities (May 2000)

- Liability of members of managed investment schemes (March 2000)
- Compulsory acquisitions (March 2000)
- Compulsory acquisitions and buy-outs (March 1999)
- Reform of ss 621(4) and 623(2) and (3) of the Corporate Law Economic Reform Program Bill 1998 (December 1998)
- Corporate voluntary administration (June 1998)
- Netting in financial markets transactions (June 1997)
- Regulation of on-exchange and OTC derivatives markets (June 1997)
- Continuous disclosure (November 1996)
- Compulsory acquisitions (January 1996)
- Law of derivatives: an international comparison (January 1995)
- Anomalies in the takeovers provisions of the Corporations Law (March 1994)
- Collective investments: other people's money (September 1993) (in conjunction with the Australian Law Reform Commission)
- Statutory derivative actions (July 1993)
- Collective investments: superannuation (March 1992) (in conjunction with the Australian Law Reform Commission)
- Prospectus law reform (March 1992)
- Company directors and officers: indemnification, relief and insurance (February 1992)
- An enhanced statutory disclosure system (September 1991)
- Report on reform of the law governing corporate financial transactions (Related party financial transactions) (July 1991).

## The Committee

### Overview

The Advisory Committee is established under the *Australian Securities and Investments Commission Act 2001* (the ASIC Act) to provide informed and expert advice to the Minister about corporate, financial product and financial market matters (ss 1(1)(c) and 148).

Its members are appointed by the Minister following consultation with the States and Territories. It has an audit committee and receives specialist legal advice from its Legal Committee, whose members are also appointed by the Minister.

The Advisory Committee comes under the *Financial Management and Accountability Act 1997* for the purpose of financial accountability.

The Committee is supported by a full-time Executive located in Sydney.

### Functions

The Committee's statutory functions are 'on its own initiative or when requested by the Minister to advise the Minister, and to make to the Minister such recommendations as it thinks fit, about any matter' relating to corporations and financial services law, administration and practice. The Committee sees its role as being to provide informed, objective and independent advice to the Minister on such matters. In so doing, it seeks to promote a sound and effective regulatory framework for corporate activity and financial services and efficient financial markets.

The Advisory Committee comes under the Treasury Portfolio. The Minister for Financial Services, Superannuation and Corporate Law, the Hon. Chris Bowen MP, has responsibility for corporate law matters.

In fulfilling its functions, the Advisory Committee undertakes reviews, resulting in the presentation and publication of reports, and also responds to particular requests from the Minister for advice. Its general practice for major reviews is to invite and consider submissions from interested persons, and take into account the expert advice of its Legal Committee, before settling a report to the Minister. In matters where the Minister

requires urgent advice, the Advisory Committee prepares a report on the basis of its own deliberations, in consultation with its Legal Committee.

Through consultation and the provision of timely advice to the Minister, the Advisory Committee seeks to ensure that Australian financial markets and corporations operate in a commercial environment of the highest standard, supported by appropriate legislation.

## Membership

The Advisory Committee is a body corporate, comprising part-time members appointed in their personal capacity by the Minister. The Minister appoints one of the members as the Convenor.

The members are selected, following consultation between the Commonwealth and the States, on the basis of their knowledge of, or experience in, business, the administration of companies, the financial markets, financial products and financial services, law, economics or accounting. The Chairperson of the Australian Securities and Investments Commission (ASIC) is a member of the Committee by virtue of s 147 of the ASIC Act. The ASIC Chairperson may nominate another person to attend in his or her place (s 153(1A), (1B)).

The members during 2008–09 are set out below.

- **Richard St John, Convenor (Melbourne) (appointed until March 2010).** Richard is Special Counsel to Johnson Winter & Slattery. He has had extensive experience in legal, policy and governance roles in the private and public sectors, including as General Counsel of BHP, Deputy Secretary of the Attorney-General's Department and Secretary to the HIH Royal Commission.
- **Zelinda Bafle (Perth) (appointed until May 2011).** Zelinda is a lawyer and director. As a former General Counsel and Executive at Home Building Society Ltd for over 20 years, she has extensive commercial experience and governance expertise in the banking and finance industry.
- **Barbara Bradshaw (Darwin) (appointed until August 2008).** Barbara is the Chief Executive Officer of the Law Society of the Northern Territory. She is a lawyer, with an extensive background in private practice and working for government in corporate law and related policy areas and as a regulator. Barbara's term expired on 24 August 2008.
- **Jeremy Cooper (Melbourne).** Prior to his appointment as chair of the Government's superannuation review, Jeremy was the

Melbourne-based Deputy Chairman of the Australian Securities and Investments Commission, having been appointed to that position in July 2004. He was formerly a partner of Blake Dawson Waldron where he was involved in many corporate transactions, including takeovers, reconstructions, ASX listings and capital raisings.

- **Tony D'Aloisio (Sydney).** Tony is the Chairman of the Australian Securities and Investments Commission, having been appointed to that position in May 2007 for a 4-year term. He has extensive commercial and legal experience and has been involved in business policy and regulation, having held a number of other company directorships and public positions. Before joining ASIC, Tony was Managing Director and Chief Executive Officer at the Australian Stock Exchange from 2004 to 2006. Previously, he was Chief Executive Partner at Mallesons Stephen Jaques between 1992 and 2004. Tony joined Mallesons in 1977 as a commercial lawyer, with principal areas of practice in mergers and acquisitions, taxation and restrictive trade practices and international trade and investment. He was also involved in extensive assessment of overseas markets in Asia, USA and the UK.

Pursuant to s 153(1A), (1B) of the ASIC Act, Jeremy Cooper and Belinda Gibson attended Advisory Committee meetings as representatives of the ASIC Chairman.

- **Ian Eddie (Tweed Heads, NSW) (appointed until May 2011).** Ian is Director of the Graduate College of Management and Professor of Accounting at Southern Cross University. He is a Fellow of CPA Australia and has experience as a director, corporate adviser and consultant on securities market developments. Former positions he has held include Dean of the Faculty of Business and Government at the University of Canberra and Head of the New England Business School, University of New England. Ian has published many articles on accounting practice, corporate financial reporting, corporate governance and international capital markets.
- **Belinda Gibson (Sydney).** Belinda is a Commissioner of the Australian Securities and Investments Commission, having been appointed to that position in November 2007. She has responsibility to the Commission for aspects of the capital markets and for market integrity issues. Belinda was a Partner at Mallesons Stephen Jaques, where she specialised in transactional advice and in corporate and securities law. She has extensive knowledge of corporate governance and accounting practices in Australia. She was a director of Airservices Australia from 2000 to 2004.
- **Alice McCleary (Adelaide) (appointed until May 2011).** Alice is a professional director and chartered accountant. She is a member of

several boards and committees in the private and public sectors. She is also a member of the Takeovers Panel and is Deputy Chancellor of the University of South Australia. Her professional background is in corporate taxation.

- **Marian Micalizzi (Brisbane) (appointed until March 2010).** Marian is a chartered accountant and director, with expertise in corporate and financial advisory areas. She is a current member of several boards and advisory committees.
- **Geoffrey Nicoll (Canberra) (appointed until May 2011).** Geoff is Co-Director, National Centre for Corporate Law and Policy Research, University of Canberra. He was an Academic Director of the National Institute for Governance (2000–2003), a Director of the Governance Area of Research Strength (2004) and Acting Head of the Law School in 2005. Since 2002, he has been an Executive Member of the Business Law Section of the Law Council of Australia and, since 2003, has sat as the Law Council of Australia's representative on the Business Advisory Committee of ASIC.
- **Ian Ramsay (Melbourne) (appointed until May 2011).** Ian is the Harold Ford Professor of Commercial Law in the Faculty of Law at the University of Melbourne where he is Director of the Centre for Corporate Law and Securities Regulation. He has practised law with firms in New York and Sydney. He is a member of the Takeovers Panel, the Companies Auditors and Liquidators Disciplinary Board, the Law Committee of the Australian Institute of Company Directors and the Corporations Law Committee of the Law Council of Australia. Former positions he has held include Dean of the Faculty of Law at the University of Melbourne, Head of the Federal Government inquiry on auditor independence and member of the International Federation of Accountants taskforce on rebuilding confidence in financial reporting. Ian has published extensively on corporate law issues both internationally and in Australia.
- **Robert Seidler (Sydney) (appointed until March 2010).** Bob is a partner at Blake Dawson. He has been practising law for some 30 years, including nearly 10 years as a partner of an international firm based in Sydney and Tokyo. While working in Tokyo, he became the first Australian lawyer licensed to practise foreign law in Japan and was a member of The Ministry of International Trade and Industry Import Board, being appointed by the Japanese Prime Minister to represent Australia and New Zealand. He has been a director of various Australian subsidiaries of international banks and is currently a director of a large institutional property trust and on the board of two listed Australian companies.

- **Greg Vickery AM (Brisbane) (appointed until May 2011).** Greg is Partner at the Brisbane office of Deacons. He has been practising law for over 35 years, primarily in the corporate and commercial areas. He is an Adjunct Professor of Law at the University of Queensland and regularly speaks on aspects of company law. He is a member of the Regional ASIC Committee in Queensland and of several Boards, and is National Chairman of Australian Red Cross and a member of the Governing Board of the International Red Cross and Red Crescent Movement.
- **Nerolie Withnall (Brisbane) (appointed until March 2010).** Nerolie is a Company Director. She began practising law in Darwin in the 1960s and subsequently spent 10 years with Minter Ellison in Brisbane as a partner specialising in corporate law. Now retired from practice, she is a director of several public companies and government organizations and a member of the Takeovers Panel.

During 2008–09 the Advisory Committee met 6 times. The members attended the following number of meetings (where the terms of members did not cover the entire year, the number of meetings they were eligible to attend is shown):

- Richard St John—6
- Zelinda Bafile—6
- Barbara Bradshaw—1 of 1
- Jeremy Cooper (representative of ASIC Chairman)—1
- Belinda Gibson (representative of ASIC Chairman)—2
- Ian Eddie—6
- Alice McCleary—5
- Marian Micalizzi—5
- Geoffrey Nicoll—5
- Ian Ramsay—5
- Robert Seidler—4
- Greg Vickery—6
- Nerolie Withnall—4.

## Audit Committee

The Convenor, as Chief Executive of CAMAC, has established an audit committee, with the functions and responsibilities required by the Finance

Minister's Orders, in compliance with s 46 of the *Financial Management and Accountability Act 1997*.

During 2008–09, Alice McCleary was chair of the Audit Committee. Barbara Bradshaw was a member until 24 August 2008 and Ian Eddie from 13 October 2008.

During 2008–09, the Audit Committee met three times.

Work of the Committee during 2008–09 included:

- a meeting with a representative of the Australian National Audit Office (ANAO) to discuss audit issues affecting CAMAC
- a review of the Advisory Committee's 2007–08 financial statements, with a recommendation that they be adopted
- discussion of the interim audit procedure
- consideration of a letter from ANAO concerning the 2008-09 audit of the CAMAC financial statements.

## Legal Committee

The Advisory Committee, under s 154 of the ASIC Act, may inform itself in such manner as it sees fit. Pursuant to that provision, the Legal Committee was formally established in September 1991. Its function is to provide expert legal analysis, assessment and advice to the Advisory Committee in relation to such matters as are referred to it by the Advisory Committee.

The members of the Legal Committee are appointed in their personal capacity by the Minister. They are selected from throughout Australia, following consultation between the Commonwealth and the States, on the basis of their expertise in corporate law.

The members during 2008–09 are set out below.

- **Nerolie Withnall, Convenor (Brisbane) (appointed until March 2010).** Nerolie is a Company Director. She began practising law in Darwin in the 1960s and subsequently spent 10 years with Minter Ellison in Brisbane as a partner specialising in corporate law. Now retired from practice, she is a director of several public companies and government organizations and a member of the Takeovers Panel.

- **Lyn Bennett (Darwin) (appointed until August 2009).** Lyn is a partner with Minter Ellison, practising in commercial law. She has broad experience over 25 years practising in Victoria and in recent years in Darwin. She is a member of the commercial law sub-committee of the Law Society of the Northern Territory and the Property and Commercial Law Taskforce assisting the Northern Territory government, and is also an appointed member of the Northern Territory Architects Board. She has been actively involved over many years in boards of various private community organizations and corporate entities. Lyn's term expired on 24 August 2009.
- **Elizabeth Boros (Melbourne) (appointed until March 2010).** Until September 2009, Elizabeth held the Sir Keith Aickin Chair of Company Law at Monash University. Since then, she has been reading at the Victorian Bar. She is the author of a book, *Minority Shareholders' Remedies* and co-author of a book, *Corporate Law*. Elizabeth is a member of the Corporations and E-commerce Committees of the Business Law Section of the Law Council of Australia and has formerly held positions as a director of ASX Supervisory Review Pty Limited, an External Specialist Adviser to the London School of Economics and Political Science, and inaugural national chair of the Law Council's E-commerce Committee.
- **Damian Egan (Hobart) (appointed until September 2011).** Damian is a commercial law partner with Murdoch Clarke and President of the Retirement Benefits Fund Board (Tasmania). He is a member of several Boards and a member of the Faculty of Accounting and Commerce at the University of Tasmania.
- **Jennifer Hill (Sydney) (appointed until March 2010).** Jennifer is a Professor of Law at the University of Sydney. She teaches, and has written widely in, corporate law and corporate governance, and has been a Visiting Professor at a number of US law schools, including the University of Virginia, the University of Texas at Austin and Vanderbilt University.
- **James Marshall (Sydney) (appointed until March 2010).** James is a partner of Blake Dawson and is the Head of the Restructuring and Insolvency Group of that firm. He practises in the areas of business turnaround and restructuring and has been active in the distressed debt markets. He has a longstanding interest in insolvency law reform and was a member of the Insolvency Law Advisory Group, which was commissioned by Treasury to advise it in relation to the proposed amendments to the corporate insolvency legislation. He lectures on insolvency topics at the Law School of the University of Sydney. James is also a member of FINSIA and the Insolvency Practitioners Association.

- **David Proudman (Adelaide) (appointed until March 2010).** David is a partner of Johnson Winter & Slattery and was admitted as a practitioner in South Australia in 1986. He is currently the National Chair of the Insolvency & Reconstruction Committee of the Law Council of Australia. He was a member of the Insolvency Law Advisory Group appointed by the Parliamentary Secretary to the Treasurer to advise on the Corporations Amendment (Insolvency) Bill 2007 and is a member of the Consultative Group on Personal Property Security Reform, having been appointed by the Attorney-General. David advises banks, financial institutions, corporations and insolvency practitioners in all aspects of corporate insolvency, workouts, reconstructions and recoveries.
- **Laurie Shervington (Perth) (appointed until August 2008).** Laurie is a partner with Minter Ellison. He has practised in corporate and business law for over 35 years. He has board experience at listed and large proprietary company level and practises in the corporate advisory field. Laurie's term expired on 24 August 2008.
- **Simon Stretton (Adelaide) (appointed until May 2011).** Simon is the South Australian Crown Solicitor and Adjunct Professor of Law at the University of South Australia. As a barrister, he specialised in corporate and commercial litigation and probity auditing. He is a former ASIC Regional Commissioner and ICAC and Crime Commission General Counsel. He is currently chair or member of several committees advising on corporate and regulatory issues, and is a member of the Companies Auditors and Liquidators Disciplinary Board.
- **Gabrielle Upton (Sydney) (appointed until August 2009).** Gabrielle is legal counsel with the Australian Institute of Company Directors. She previously worked as a banker at Deutsche Bank and Toronto Dominion Bank in New York and in Sydney as a lawyer at Freehills and Phillips Fox. She is Deputy Chancellor of the University of New South Wales, a Director of the Prince of Wales Medical Research Institute and Deputy Chair of the Duke of Edinburgh Awards in Australia. Gabrielle's term expired on 24 August 2009.
- **Rachel Webber (Perth) (appointed until September 2011).** Rachel is a Special Counsel at Jackson McDonald, practising in corporate and commercial law. Her primary areas of expertise include corporations law advice, with an emphasis on financial services regulation, corporate fundraising, ASX compliance, managed investments, mergers and acquisitions and general commercial law. She is the convenor of the Commercial Law Committee of the Law Society of Western Australia and is a member of the Corporations Committee of the Business Law Section of the Law Council of Australia.

During 2008–09, the Legal Committee met 3 times. The members attended the following number of meetings (where the terms of members did not cover the entire year, the number of meetings they were eligible to attend is shown):

- Nerolie Withnall—2
- Lyn Bennett—3
- Elizabeth Boros—2
- Damian Egan—3
- Jennifer Hill—2
- James Marshall—1
- David Proudman—2
- Laurie Shervington—0 of 1
- Simon Stretton—2 of 2
- Gabrielle Upton—3
- Rachel Webber—2 of 2.

Brendan Byrne, in his capacity as Special Counsel, Chief Legal Office at the Australian Securities and Investments Commission, attended all three Legal Committee meetings as an invitee.

## Executive

As at 30 June 2009, the Advisory Committee had a full-time Executive of three officers, being John Kluver (Executive Director), Vincent Jewell (Deputy Director) and Thaumani (Timmi) Parrino (Office Manager).

John Kluver prepared and presented various papers on matters being reviewed by the Advisory Committee, including at seminars and conferences.

The Executive carries out research, liaises with interested organizations and individuals and prepares, on the basis of the Committee's deliberations, draft papers and other material for the Committee's consideration.

## Coordination with other bodies

The Advisory Committee, through the Executive, maintains contact with officers of the Commonwealth Treasury, ASIC and other relevant government and private sector bodies. Representatives of Treasury attend

Advisory Committee and Legal Committee meetings, at the invitation of the Committees. A senior officer of ASIC also attends Legal Committee meetings, at that Committee's invitation.

The Advisory Committee also receives administrative support from ASIC, including, in particular, from ASIC's Finance Section in Sydney, its Payroll Section in Brisbane, its information technology officers and the ASIC Library.

## Other information

### Ethics

CAMAC staff members are required to adhere to the Australian Public Service values and code of conduct under the *Public Service Act 1999*.

Australian Public Service values include performing functions impartially and professionally, the highest ethical standards, open accountability, providing frank, honest, comprehensive, accurate and timely advice to government and promoting communication, consultation, co-operation and input from employees.

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.

### Fraud

CAMAC has a fraud control plan (under arrangements with the Australian Securities and Investments Commission, CAMAC has adopted the ASIC Fraud Control Plan) and a fraud business risk assessment. It also has adequate fraud prevention, detection, investigation, reporting and data collection procedures and processes that meet its needs and comply with the Commonwealth Fraud Control Guidelines (including the reporting aspects of those guidelines).

The CAMAC Executive conducts quarterly reviews of its fraud risk action plan.

### External scrutiny

CAMAC's accounting records are audited each year by the Australian National Audit Office.

During the financial year, there were no judicial decisions or decisions of administrative tribunals or reports by the Auditor-General, a Parliamentary Committee or the Commonwealth Ombudsman concerning the performance of the Advisory Committee.

## Management of human resources

As at 30 June 2009, the Advisory Committee had three full-time APS employees based in Sydney (two male and one female), being:

- an Executive Director (SES level)
- a Deputy Director (Executive Level 2)
- an Office Manager (APS 6).

The Executive Director is employed pursuant to a contract for services with the Advisory Committee, with his salary and other entitlements being linked to Treasury SES salary scales and other entitlements. The Executive Director does not receive performance pay.

The salaries and other entitlements of the Deputy Director and the Office Manager are linked to relevant ASIC officer salary scales and entitlements. The Deputy Director and the Office Manager each received a performance bonus in the 2008–09 financial year. Given that only two employees received performance bonuses and they are in separate classification levels, it is not possible to give the respective amounts without identifying the amount of the payment to each individual.

Staff members attend seminars from time to time on matters related to the policy or administrative work of the Advisory Committee.

No occupational health and safety issues arose during the 2008–09 financial year.

## Purchasing

The Advisory Committee's general policy is that any major capital items are purchased through arrangement with ASIC, which follows the *Commonwealth Procurement Guidelines*.

## Consultants

During 2008–09, the Advisory Committee did not enter into any new consultancy contracts and there were no ongoing consultancy contracts active during the 2008–2009 year.

Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website [www.tenders.gov.au](http://www.tenders.gov.au).

## Competitive tendering and contracting

CAMAC did not undertake any competitive tendering or contracting during the 2008–09 financial year.

## Australian National Audit Office Access Clauses

CAMAC has not entered into any contract of \$100,000 or more during the reporting period that does not provide for the Auditor-General to have access to the contractor's premises.

## Exempt contracts

CAMAC 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 *Freedom of Information Act 1982*.

## Commonwealth Disability Strategy

The Advisory Committee employs staff with specialist skills and experience relevant to the work of the Committee. The Committee does not discriminate on the basis of disability and its office premises are accessible to persons having a disability.

## Occupational health and safety

During the 2008–09 financial year, CAMAC developed Health and Safety Management Arrangements (HSMAs), pursuant to s 16(2)(d) of the *Occupational Health and Safety Act 1991*. All CAMAC staff members participated in the development of the HSMAs and are therefore aware of the requirements under them.

Given the small number of full-time employees, the Advisory Committee has not seen a need to establish a committee to deal with occupational health and safety matters. All employees, and Advisory Committee and Legal Committee members, when attending meetings, are covered under Comcare and Comcover.

No accidents or dangerous occurrences, or relevant investigations, took place during the 2008–09 financial year.

## Freedom of information

The Advisory Committee maintains a website [www.camac.gov.au](http://www.camac.gov.au), which describes its organization and functions and on which its discussion papers, submissions on those discussion papers (unless marked private and confidential), reports and annual reports are publicly available.

Advisory Committee discussion papers invite interested bodies or persons to comment on matters that the Committee is considering.

The website also provides contact details of Advisory Committee officers.

No matter involving freedom of information arose during the 2008–09 financial year.

## Advertising and market research

The Advisory Committee does not carry out any advertising or market research.

## Ecologically sustainable development and environmental performance

As a small agency with only three full-time staff operating from a single location in Sydney, the Advisory Committee has a limited environmental impact. The Advisory Committee Executive seeks to use the minimum resources necessary to perform its functions and keeps under constant review possible measures to reduce its environmental impact.

## Discretionary grants

The Advisory Committee does not administer any discretionary grant programs.

## Legal services expenditure

The Advisory Committee had no legal services expenditure during the 2008–09 financial year.

## Glossary



APS	Australian Public Service
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
ASX	Australian Securities Exchange
CAMAC	Corporations and Markets Advisory Committee
FINSIA	Financial Services Institute of Australasia
FMA Act	<i>Financial Management and Accountability Act 1997</i>
HSMAs	Health and Safety Management Arrangements
ICAC	Independent Commission Against Corruption
SES	Senior Executive Service

## Date and signing of report

This Annual Report is signed by the Convenor, Richard St John, as Agency Head of the Corporations and Markets Advisory Committee.

A handwritten signature in black ink that reads "Richard St John". The signature is written in a cursive style with a long, sweeping tail on the letter "n".

Richard St John  
Convenor  
18 September 2009



**INDEPENDENT AUDITOR'S REPORT**

**To the Minister for Financial Services, Superannuation and Corporate Law**

**Scope**

I have audited the accompanying financial statements of the Corporations and Markets Advisory Committee (the Committee) for the year ended 30 June 2009, which comprise: a Statement by the Chief Executive Officer and Executive Director; Income Statement; Balance Sheet; Cash Flow Statement; Statement of Changes in Equity; Schedule of Commitments; Schedule of Contingencies; and Notes to and forming part of the Financial Statements, including a Summary of significant accounting policies.

**Responsibility of the Chief Executive Officer for the Financial Statements**

The Chief Executive of the Committee is responsible for the preparation and fair presentation of the financial statements in accordance with Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, including Australian Accounting Standards (which include Australian Accounting Interpretations). This responsibility includes establishing and maintaining internal controls relevant to the preparation and fair presentation of the financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

**Auditor's Responsibility**

My responsibility is to express an opinion on the financial statements based on my audit. I conducted my audit in accordance with Australian National Audit Office Auditing Standards, which incorporate Australian Auditing Standards. These auditing standards require that I comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Committee's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Committee's internal control. An audit also includes evaluating the appropriateness of

PO Box A056 Sydney South NSW 1235  
130 Elizabeth Street  
SYDNEY NSW  
Phone (02) 9367 7100 Fax (02) 9367 7102

accounting policies used and the reasonableness of accounting estimates made by the Committee, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

***Independence***

In conducting the audit, I have followed the independence requirements of the Australian National Audit Office, which incorporate the requirements of the Australian accounting profession.

**Auditor's Opinion**

In my opinion, the financial statements of the Corporations and Markets Advisory Committee:

- (a) have been prepared in accordance with Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, including Australian Accounting Standards; and
- (b) give a true and fair view of the matters required by the Finance Minister's Orders including the Corporations and Markets Advisory Committee's financial position as at 30 June 2009 and its financial performance and cash flows for the year then ended.

Australian National Audit Office



P Hinchey  
Senior Director  
Delegate of the Auditor-General

Sydney  
31 August 2009

## Financial statements

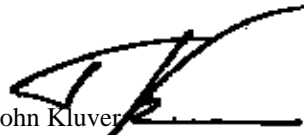
*for the year ended 30 June 2009*

### STATEMENT BY CHIEF EXECUTIVE AND EXECUTIVE DIRECTOR

In our opinion, the attached financial statements for the year ended 30 June 2009 are based on properly maintained financial records and give a true and fair view of the matters required by the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*.



Richard St John  
Convenor (Chief Executive)  
31 August 2009



John Kliver  
Executive Director  
31 August 2009

## Income statement

*for the year ended 30 June 2009*

	Note	2009 \$	2008 \$
<b>INCOME</b>			
<b>Revenue</b>			
Revenues from Government	4(a)	1,031,000	1,035,000
Other revenues	4(b)	100,000	–
<b>Total revenue</b>		<b>1,131,000</b>	<b>1,035,000</b>
<b>GAINS</b>			
Resources received free of charge	4(c)	14,000	15,900
<b>Total revenue</b>		<b>14,000</b>	<b>15,900</b>
<b>Total income</b>	18	<b>1,145,000</b>	<b>1,050,900</b>
<b>EXPENSES</b>			
Employees	6(a)	598,952	617,017
Suppliers	6(b)	409,785	402,011
Depreciation and amortisation	6(c)	7,577	10,326
Write-down of assets	6(d)	–	4,972
Finance costs	7	1,858	1,336
<b>Total expenses</b>	18	<b>1,018,172</b>	<b>1,035,662</b>
<b>OPERATING SURPLUS<sup>1</sup></b>	12	<b>126,828</b>	<b>15,238</b>

<sup>1</sup> The surplus for the year ended 30 June 2008 is \$14,077 higher than the amount reported in the 2007–08 financial statements. The increased surplus results from a reduction to the revaluation decrement recognised through the income statement for the year ended 30 June 2008 (Note 9(d) refers).

The above statement should be read in conjunction with the accompanying notes.

## Balance sheet

as at 30 June 2009

	Note	2009 \$	2008 \$
<b>ASSETS</b>			
<b>Financial assets</b>			
Cash	8(a)	64,626	61,008
Receivables	8(b)	460,716	206,517
<b>Total financial assets</b>		<b>525,342</b>	<b>267,525</b>
<b>Non-financial assets</b>			
Leasehold improvements	9(a)	22,568	6,089
Plant and equipment	9(b)	72,975	71,609
Other non-financial assets	9(e)	3,979	6,229
<b>Total non-financial assets</b>		<b>99,522</b>	<b>83,927</b>
<b>TOTAL ASSETS</b>		<b>624,864</b>	<b>351,452</b>
<b>LIABILITIES</b>			
<b>Payables</b>			
Suppliers	10(a)	14,256	3,643
Other payables	10(b)	70,533	6,016
<b>Total payables</b>		<b>84,789</b>	<b>9,659</b>
<b>Provisions</b>			
Employees	11(a)	273,311	224,515
Other provisions	11(b)	46,728	24,070
<b>Total provisions</b>		<b>320,039</b>	<b>248,585</b>
<b>TOTAL LIABILITIES</b>		<b>404,828</b>	<b>258,244</b>
<b>NET ASSETS</b>		<b>220,036</b>	<b>93,208</b>
<b>EQUITY</b>			
Reserves		688	688
Accumulated surplus		219,348	92,520
<b>TOTAL EQUITY</b>		<b>220,036</b>	<b>93,208</b>
Current assets		529,321	273,754
Non-current assets		95,543	77,698
Current liabilities		306,839	234,174
Non-current liabilities		97,989	24,070

The above balance sheet should be read in conjunction with the accompanying notes.

## Statement of cash flows

for the year ended 30 June 2009

	Note	2009 \$	2008 \$
<b>OPERATING ACTIVITIES</b>			
<b>Cash received</b>			
Appropriations		851,089	839,918
Interest		–	1,501
Other revenue		100,000	–
GST recovered from ATO		35,384	48,100
<b>Total cash received</b>		<b>986,473</b>	<b>889,519</b>
<b>Cash used</b>			
Employees		(550,156)	(583,715)
Suppliers		(428,077)	(462,199)
<b>Total cash used</b>		<b>(978,233)</b>	<b>(1,045,914)</b>
<b>Net cash received/(used) by operating activities</b>	12	<b>8,240</b>	<b>(156,395)</b>
<b>INVESTING ACTIVITIES</b>			
Purchase of leasehold improvements, plant and equipment	9(d)	(4,622)	(4,869)
<b>Net cash used by investing activities</b>		<b>(4,622)</b>	<b>(4,869)</b>
<b>Net increase/(decrease) in cash held</b>		<b>3,618</b>	<b>(161,264)</b>
Cash at the beginning of the reporting period		61,008	222,272
<b>Cash at the end of the reporting period</b>	8(a)	<b>64,626</b>	<b>61,008</b>

The above statement should be read in conjunction with the accompanying notes.

## Statement of changes in equity

for the year ended 30 June 2009

	Accumulated results		Asset revaluation reserve		Total equity	
	2009	2008	2009	2008	2009	2008
	\$	\$	\$	\$	\$	\$
Opening balance	92,520	77,282	688	10,144	93,208	87,426
Revaluation of plant and equipment <sup>1,2</sup>	–	–	–	(9,456)	–	(9,456)
Operating surplus	126,828	15,238	–	–	126,828	15,238
<i>Total income and expenses recognised directly in equity</i>	126,828	15,238	–	(9,456)	126,828	5,782
Closing balance at 30 June	219,348	92,520	688	688	220,036	93,208

1 An independent valuation of CAMAC's leasehold improvements, plant and equipment was conducted by the Australian Valuation Office as at 30 June 2008. As a result of the revaluation, the carrying value of plant and equipment was reduced by \$14,428, of which \$9,456 has been debited to the asset revaluation reserve (Note 9(d) refers).

2 Total equity as at 30 June 2008 is \$186 higher than the amount disclosed in the 2007-08 financial statements. The increase is represented by an increase in accumulated results of \$10,246 and a decrease in the asset revaluation reserve of \$10,060. The adjustment was required to correct the disclosure of the revaluation of plant and equipment as at 30 June 2008.

The above statement should be read in conjunction with the accompanying notes.

## Schedule of commitments

as at 30 June 2009

	Note	2009 \$	2008 \$
<b>BY TYPE</b>			
<b>Other commitments</b>			
Operating leases	(a)	789,119	99,479
<b>Total other commitments</b>		<b>789,119</b>	<b>99,479</b>
Commitments receivable	(b)	(71,738)	(9,044)
<b>Net commitments by type</b>	(c)	<b>717,381</b>	<b>90,435</b>
<b>BY MATURITY</b>			
One year or less		161,999	99,479
From one to five years		627,120	–
<b>Total operating lease commitments</b>		<b>789,119</b>	<b>99,479</b>
Commitments receivable	(b)		
One year or less		(14,727)	(9,044)
From one to five years		(57,011)	
<b>Total commitments receivable</b>		<b>(71,738)</b>	<b>(9,044)</b>
<b>Net commitments by maturity</b>		<b>717,381</b>	<b>90,435</b>

Notes:

- (a) Operating leases included are effectively non-cancellable and comprise:

<i>Nature of lease</i>	<i>General description of leasing arrangements</i>
Leases for office accommodation	. Subject to fixed annual increase . No contingent rentals exist
Office equipment	. No contingent rentals exist . There are no purchase options available to CAMAC

- (b) Commitments receivable consist of GST recoverable in respect of operating leases. All commitments are GST inclusive.
- (c) During 2008–09 CAMAC renewed its lease for office accommodation for a period of 5 years.

The above schedule should be read in conjunction with the accompanying notes.

## Schedule of contingencies

*as at 30 June 2009*

### **Contingent liabilities**

There were no quantifiable contingent liabilities as at 30 June 2009 (2008: nil).

### **Contingent assets**

There were no quantifiable contingent assets as at 30 June 2009 (2008: nil).

### **Unquantifiable contingent liabilities**

There were no unquantifiable contingent liabilities as at 30 June 2009 (2008: nil).

### **Unquantifiable contingent assets**

There were no unquantifiable contingent assets as at 30 June 2009 (2008: nil).

The above schedule should be read in conjunction with the accompanying notes.

## Notes to and forming part of the financial statements

*for the year ended 30 June 2009*

### **Notes**

- 1 Summary of significant accounting policies
- 2 Events after the balance sheet date
- 3 Economic dependency
- 4 Operating revenue
- 5 Appropriations
- 6 Operating expenses
- 7 Finance costs
- 8 Financial assets
- 9 Non-financial assets
- 10 Payables
- 11 Provisions
- 12 Cash flow reconciliation
- 13 Related party disclosures
- 14 Remuneration of members and executive officer
- 15 Remuneration of auditor
- 16 Average staffing levels
- 17 Financial instruments
- 18 Reporting of outcomes

## 1 Summary of significant accounting policies

### 1.1 Objective of Corporations and Markets Advisory Committee

The Corporations and Markets Advisory Committee (CAMAC) is an independent body operating under the *Australian Securities and Investments Commission Act 2001* to provide informed and expert advice to the Minister about corporate, financial product and financial market matters.

The objectives of CAMAC are to stimulate and lead the debate on the enhancement of standards for corporations and participants in financial markets and to provide the Australian Government with advice of the highest quality on any steps needed to achieve this, including suitable regulatory reform where necessary.

On 1 July 2007, CAMAC became an agency prescribed under Schedule 1 Part 1 of the *Financial Management and Accountability Regulations 1997* (FMA Regulations). Before this, CAMAC was a prescribed agency under the *Commonwealth Authorities and Companies Act 1997*.

### 1.2 Basis of accounting

The financial statements and notes are required by section 49 of the *Financial Management and Accountability Act 1997* (FMA Act) and are a general purpose financial report.

The financial statements and notes have been prepared in accordance with the:

- Finance Minister's Orders (or FMOs) for reporting periods ending on or after 1 July 2008; and
- Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

CAMAC's Income Statement and Balance Sheet have been prepared on an accrual basis and are in accordance with the historical cost convention, except for certain assets, which are at fair value. Except where stated, no allowance is made for the effect of changing prices on results or the financial position of CAMAC. The financial report is presented in Australian dollars.

Assets and liabilities are recognised in CAMAC's Balance Sheet when and only when it is probable that future economic benefits will flow and the amounts of the assets or liabilities can be reliably measured. Assets and

liabilities arising under agreements equally proportionately unperformed are however not recognised unless required by an accounting standard. Liabilities and assets that are not recognised are reported in the Schedule of Commitments and the Schedule of Contingencies.

Income and expenses are recognised in CAMAC's Income Statement when and only when the flow or consumption or loss of economic benefits has occurred and can be reliably measured.

### **1.3 Changes in Australian Accounting Standards**

#### ***Adoption of new Australian Accounting Standard requirements***

No accounting standard has been adopted earlier than the application date as stated in the standard. No new accounting standards, amendments to standards or interpretations issued by the Australian Accounting Standards Board that are applicable to the current period have had a material financial impact on CAMAC.

#### ***Future Australian Accounting Standard requirements***

No new standards, amendments to standards or interpretations that have been issued by the Australian Accounting Standards Board and are effective for future reporting periods are expected to have a material financial impact on CAMAC.

### **1.4 Income**

#### ***Revenues from Government—output appropriations***

The full amount of the appropriation for departmental outputs for the year is recognised as revenue.

#### ***Resources received free of charge***

Resources received free of charge are recognised as gains when and only when a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense.

#### ***Other revenue***

Revenue from rendering of services is recognised by reference to the stage of completion of contracts at the reporting date. Revenue is recognised when:

- The amount of revenue, stage of completion and transaction costs incurred can be reliably measured; and

- The probable economic benefits associated with the transaction will flow to CAMAC.

The stage of completion of contracts at the reporting date is determined by reference to the proportion that costs incurred to date bear to the estimated total costs of the transaction.

### **1.5 Employee benefits**

Liabilities for services rendered by employees are recognised at the reporting date to the extent that they have not been settled.

Liabilities for ‘short-term employee benefits’ (as defined in AASB 119) and termination benefits due within twelve months of balance date are measured at their nominal amounts.

The nominal amount is calculated with regard to the rates expected to be paid on settlement of the liability.

All other employee benefit liabilities are measured as the present value of the estimated future cash outflows to be made in respect of services provided by employees up to the reporting date.

#### ***Leave***

The liability for employee benefits includes provision for annual leave and long service leave. No provision has been made for sick leave, as all sick leave is non-vesting and the average sick leave taken in future years by employees of CAMAC is estimated to be less than the annual entitlement for sick leave.

The leave liabilities are calculated on the basis of employees’ remuneration, including CAMAC’s employer superannuation contribution rates, to the extent that the leave is likely to be taken during service rather than paid out on termination.

#### ***Superannuation***

CAMAC employees are members of the Commonwealth Superannuation Scheme (CSS) and Public Sector Superannuation Scheme (PSS).

The CSS and PSS are defined benefit schemes of the Australian Government.

The liability for defined benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course. This liability is reported by the Department of Finance and Deregulation as an administered item.

CAMAC makes employer contributions to the Australian Government at rates determined by an actuary to be sufficient to meet the current cost to the Government of the superannuation entitlements of CAMAC's employees.

### **1.6 Leases**

All leased assets have been classified as operating leases, as substantially all the risks and benefits incidental to the ownership of the leased assets remain with the lessor.

Operating lease payments are expensed on a straight line basis which is representative of the pattern of benefits derived from the leased assets.

### **1.7 Finance costs**

Finance costs are expensed as incurred.

### **1.8 Cash**

Cash means petty cash and deposits held at call with a bank or financial institution. Cash is recognised at its nominal amount.

### **1.9 Other non-financial assets—prepayments**

Prepayments are recognised at their nominal amounts, being cost.

### **1.10 Financial assets and financial liabilities**

#### ***Receivables***

CAMAC's receivables comprise amounts expected to be received from operating revenue and GST receivable from the Australian Taxation Office. An allowance for doubtful debts is not considered necessary.

#### ***Trade creditors***

Trade creditors and accruals are recognised at their nominal amounts, being the amounts at which the liabilities will be settled. Liabilities are recognised to the extent that the goods or services have been received (irrespective of whether they have been invoiced).

### **1.11 Acquisition of assets**

Assets are recorded at cost on acquisition, providing the asset recognition threshold is satisfied (refer to note 1.12). The cost on acquisition includes the fair value of assets transferred in exchange and liabilities undertaken. Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and revenues at their fair value at the date of acquisition.

## 1.12 Leasehold improvements, plant and equipment

### *Asset recognition threshold*

Acquisitions of leasehold improvements, plant and equipment are recognised initially at cost in the Balance Sheet, except for purchases costing less than \$1,000, which are expensed in the year of acquisition (other than where they form part of a group of similar items which are significant in total).

The initial cost of an asset includes an estimate of the cost of dismantling and removing the item and restoring the site on which it is located. This is particularly relevant to the ‘make good’ provision in CAMAC’s property lease, i.e. the obligation to restore the property to its original condition. These costs are included in the value of CAMAC’s leasehold improvements with a corresponding provision for the ‘make good’ taken up.

### *Revaluations*

Fair values of each class of asset are determined as shown below:

<b>Asset class</b>	<b>Fair value measured at:</b>
Leasehold improvements	Depreciated replacement cost
Plant and equipment	Market value

Following initial recognition at cost, leasehold improvements, plant and equipment are carried at fair value less accumulated depreciation and accumulated impairment losses. Valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets do not differ materially from the assets’ fair values as at the reporting date. The regularity of independent valuations depends upon the volatility of movements in market values for the relevant assets.

Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the heading of asset revaluation reserve, except to the extent that it reverses a previous revaluation decrement of the same asset class that was previously recognised through the Income Statement. Revaluation decrements for a class of assets are recognised directly through the Income Statement except to the extent that they reverse a previous revaluation increment for that class.

Any accumulated depreciation as at the revaluation date is eliminated against the gross carrying amount of the asset and the asset restated to the revalued amount.

Assets that are surplus to requirements are measured at their net realisable value. At 30 June 2009 CAMAC held no surplus assets.

### ***Depreciation and amortisation***

Depreciable plant and equipment assets (including library books) are written down to their estimated residual values over their estimated useful lives to CAMAC using, in all cases, the straight-line method of depreciation. Leasehold improvements are amortised on a straight-line basis over the lesser of the estimated useful life of the improvements or the unexpired period of the lease.

Depreciation/amortisation rates (useful lives), residual values and methods are reviewed at each reporting date and necessary adjustments are recognised in the current reporting period, or current and future reporting periods, as appropriate.

Depreciation rates applying to each class of depreciable assets are based on the following useful lives:

	2009	2008
Leasehold improvements	<b>Lease Term</b>	Lease Term
Plant and equipment	<b>2–40 years</b>	2–40 years

#### **1.13 Impairment of non-current assets**

All assets were assessed for impairment at 30 June 2009. Where indications of impairment exist, the asset's recoverable amount is estimated and an impairment adjustment made if the asset's recoverable amount is less than its carrying amount.

#### **1.14 Intangible assets—computer software**

##### ***Purchased software***

Purchased software is included in non-financial assets and is classified under Intangibles. Where substantial installation/implementation costs are incurred and can be reliably measured, these costs are added to the purchase price to arrive at the initial value. Otherwise, the purchase price is used.

Software is amortised on a straight-line basis over its anticipated useful life. The useful life of software is 4 years.

#### **1.15 Other provisions**

In accordance with AASB 116 *Property, Plant & Equipment* and AASB Interpretation 1 *Changes in Existing Decommissioning, Restoration and Similar Liabilities*, CAMAC recognises a liability for estimated restoration costs relating to leased premises where the lease creates an obligation for CAMAC to make good those premises.

### **1.16 Taxation**

CAMAC is exempt from all forms of taxation except fringe benefits tax and the goods and services tax (GST). CAMAC recovers GST from the Australian Taxation Office.

Revenues, expenses, assets and liabilities are recognised net of GST:

- except where the amount of GST incurred is not recoverable from the Australian Taxation Office; and
- except for receivables and payables.

### **1.17 Insurance**

CAMAC has insured for risks through Comcover, the Government's insurable risk managed fund. Workers' compensation is insured through Comcare Australia.

### **1.18 Contingent liabilities and contingent assets**

Contingent liabilities and contingent assets are not recognised in the Balance Sheet but are reported in the relevant schedules and notes. They may arise from uncertainty as to the existence of a liability or asset or represent an asset or liability in respect of which the amount cannot be reliably measured. Contingent assets are disclosed when settlement is probable but not virtually certain and contingent liabilities are disclosed when settlement is greater than remote.

### **1.19 Changes in accounting policy**

Changes in accounting policy have been identified in this note under their appropriate headings.

### **1.20 Comparative figures**

Where necessary, comparative figures have been adjusted to conform with changes in presentation in these financial statements.

### **1.21 Rounding**

The figures in these financial statements have been rounded to the nearest dollar.

## **2 Events after the balance sheet date**

There were no events occurring after balance sheet date that had a material effect on the financial statements.

### 3 Economic dependency

CAMAC is controlled by the Commonwealth of Australia. Accordingly, CAMAC is dependent on appropriations from the Parliament of the Commonwealth for its continued existence and ability to carry out its normal activities and functions as set out in s 148 of the *Australian Securities and Investments Commission Act 2001*.

### 4 Operating revenue

	Note	2009 \$	2008 \$
<b>4a Revenues from Government</b>			
Departmental outputs	5	1,031,000	1,035,000
<b>4b Other revenue</b>			
	(i)	100,000	–
<b>4c Gains</b>			
Resources received free of charge	(ii)	14,000	15,900

(i) This is related to the funding received by CAMAC to conduct a review of 'Aspects of market integrity'.

(ii) As a prescribed agency, CAMAC receives audit services from the Australian National Audit Office free of charge. The fair value of the service received for the reporting period is \$14,000 (2008: \$15,900).

### 5 Appropriations

**Table A Acquittal of authority to draw cash from the Consolidated Revenue Fund (CRF)**

Particulars	Departmental outputs	
	2009 \$	2008 \$
Balance of cash and appropriation receivable carried forward from previous period	256,090	222,272
Appropriation Act (No. 1)	1,031,000	1,035,000
Annotations to 'net appropriations' (FMA Act section 31)	100,000	1,501
Appropriations to take account of recoverable GST (FMA Act section 30A)	35,384	48,100
Total appropriation available for payments	1,422,474	1,306,873
Cash payments made during the year (GST inclusive)	(982,855)	(1,050,783)
Balance of authority to draw cash from the CRF	439,619	256,090
<b>Represented by</b>		
Cash	64,626	61,008
Departmental appropriations receivable	374,993	195,082
<b>Total</b>	<b>439,619</b>	<b>256,090</b>

## 6 Operating expenses

		2009	2008
	Note	\$	\$
<b>6a Employees</b>			
Salaries		468,639	499,715
Superannuation	(i)	73,284	68,645
Leave and other entitlements		57,029	48,657
<b>Total employee expenses</b>		<b>598,952</b>	<b>617,017</b>

(i) Employer contributions to superannuation amounting to \$65,523 (2008: \$61,229) have been expensed in the financial statements. Contributions to superannuation schemes are at rates calculated by the Commonwealth Superannuation Scheme (CSS) and the Public Sector Superannuation Scheme (PSS) to cover existing and emerging obligations. The employer contribution rate for CSS was 25.2% (2008: 25.3%), for PSS 12.6% (2008: 12.6%), and for the superannuation productivity benefit 2% to 3% (2008: 2% to 3%). Contributions to Employer Superannuation Productivity Benefit amounted to \$7,761 (2008: \$7,416).

		2009	2008
	Note	\$	\$
<b>6b Suppliers</b>			
Services from related entities		84,509	93,882
Services from external entities		173,922	158,195
Goods from external entities		10,746	18,228
Operating lease rentals	(i)	137,662	128,572
Workers compensation premiums		2,946	3,134
<b>Total suppliers expenses</b>		<b>409,785</b>	<b>402,011</b>

(i) These comprise minimum lease payments only.

		2009	2008
	Note	\$	\$
<b>6c Depreciation and amortisation</b>			
<i>Depreciation</i>			
Depreciation of plant and equipment		482	482
Depreciation of library books		2,774	5,893
<b>Total depreciation</b>	9(d)	<b>3,256</b>	<b>6,375</b>
<i>Amortisation</i>			
Amortisation of leasehold improvements	9(d)	4,321	3,951
<b>Total amortisation</b>		<b>4,321</b>	<b>3,951</b>
<b>Total depreciation and amortisation</b>	9(d)	<b>7,577</b>	<b>10,326</b>

	2009	2008
Note	\$	\$
<b>6d Write-down of assets</b>		
Write-down of plant and equipment <sup>1</sup>	–	4,972
<b>Total write-down of assets</b>	<b>9(d) –</b>	<b>4,972</b>

1 The write-down of assets expense for the year ended 30 June 2008 is \$14,077 lower than the amount reported in the 2007–08 financial statements. The decrease is offset by an adjustment to the plant and equipment asset revaluation reserve as at 30 June 2008 as disclosed in the statement of changes in equity.

## 7 Finance costs

	2009	2008
	\$	\$
Unwinding of discount on other provisions	1,858	1,336

## 8 Financial assets

	2009	2008
	\$	\$
<b>8a Cash</b>		
Cash on hand	1,000	1,000
Cash at bank	63,626	60,008
<b>Total cash</b>	<b>64,626</b>	<b>61,008</b>

### 8b Receivables

Appropriation receivable	374,992	195,082
Other debtors (i)	78,680	–
GST receivable	7,044	11,435
<b>Total receivables</b>	<b>460,716</b>	<b>206,517</b>
Receivables are aged as follows:		
– Current	460,716	206,517
<b>Total receivables</b>	<b>460,716</b>	<b>206,517</b>

(i) The balance of Other Debtors as at 30 June 2009 represents CAMAC's lease incentive receivable from the office accommodation lease that was renewed during the 2008–09 financial year. (Note 10(b) refers).

## 9 Non-financial assets

	Note	2009 \$	2008 \$
<b>9a Leasehold improvements</b>			
Leasehold improvements—at fair value		42,685	21,885
Accumulated amortisation		(20,117)	(15,796)
<b>Total leasehold improvements (non-current)</b>	9(d)	<b>22,568</b>	<b>6,089</b>

## 9b Plant and equipment

Plant and equipment—at fair value	(i)	76,231	71,609
Accumulated depreciation		(3,256)	–
<b>Total plant and equipment (non-current)</b>	9(d), (ii)	<b>72,975</b>	<b>72,609</b>

(i) A formal revaluation of leasehold improvements and plant and equipment was performed as at 30 June 2008 by the Australian Valuation Office in accordance with the revaluation policy stated at note 1.12. As a result of the valuation, the carrying value of plant and equipment was reduced by \$14,428. The revaluation decrement has been debited against the plant and equipment asset revaluation reserve (\$9,456) and the operating result (\$4,972).

(ii) The book value for plant and equipment for the year ended 30 June 2008 is \$186 higher than the amount reported in the 2007–08 financial statements. This is a result of the revaluation adjustment.

No indicators of impairment were found for plant and equipment or leasehold improvements at 30 June 2009.

## 9d Analysis of leasehold improvements, plant and equipment and intangibles

**Table A Reconciliation of opening and closing balances of leasehold improvements and plant and equipment 2008–09**

Item	Leasehold improvements	Plant and equipment	Total
<b>As at 1 July 2008</b>	\$	\$	\$
Gross book value	21,885	71,609	93,494
Accumulated depreciation/amortisation	(15,796)	–	(15,796)
<b>Opening net book value</b>	<b>6,089</b>	<b>71,609</b>	<b>77,698</b>
<b>Additions</b>			
by purchase	20,800	4,622	25,422
Depreciation/amortisation expense	(4,321)	(3,256)	(7,577)
<b>As at 30 June 2009</b>			
Gross book value	42,685	76,231	118,916
Accumulated depreciation/amortisation	(20,117)	(3,256)	(23,373)
<b>Closing net book value</b>	<b>22,568</b>	<b>72,975</b>	<b>95,543</b>

**Table B Reconciliation of opening and closing balances of leasehold improvements, plant and equipment and intangibles 2007–08**

Item	Leasehold improvements	Plant and equipment	Intangibles— computer software	Total
<b>As at 1 July 2007</b>	\$	\$	\$	\$
Gross book value	21,885	102,845	50	124,780
Accumulated depreciation/amortisation	(11,845)	(15,302)	(50)	(27,197)
<b>Opening net book value</b>	10,040	87,543	–	97,583
Additions				
by purchase	–	4,869	–	4,869
Depreciation/amortisation expense	(3,951)	(6,575)	–	(10,326)
Disposals				
at cost/valuation	–	–	(50)	(50)
provision	–	–	50	50
Revaluation decrement recognised through the asset revaluation reserve		(9,456)		(9,456)
Revaluation decrement recognised through the income statement		(4,972)		(4,972)
<b>As at 30 June 2008</b>				
Gross book value	21,885	71,609	–	93,494
Accumulated depreciation/amortisation	(15,796)	–	–	(15,796)
<b>Closing net book value</b>	6,089	71,609	–	77,698

**9e Other non-financial assets**

	2009	2008
	\$	\$
Prepayments (current)	3,979	6,229

## 10 Payables

	2009	2008
	\$	\$
<b>10a Supplier payables</b>		
Trade creditors	14,256	3,643
<i>Total supplier payables (current)</i>	<u>14,256</u>	<u>3,643</u>
<b>10b Other payables</b>		
Rent payable	4,967	6,016
Property lease incentive	65,566	–
<i>Total other payables</i>	<u>70,533</u>	<u>6,016</u>
Total other payables are represented by:		
Current	19,272	6,016
Non-current	51,261	–
<i>Total other payables</i>	<u>70,533</u>	<u>6,016</u>

## 11 Provisions

	2009	2008
	\$	\$
<b>11a Employees</b>		
Salaries and bonuses	22,920	20,286
Leave	250,391	204,229
<i>Total employee provisions (current)</i>	<u>273,311</u>	<u>224,515</u>
<b>11b Other</b>		
Restoration obligations—leased premises	46,728	24,070
<i>Total other provisions (non-current)</i>	<u>46,728</u>	<u>24,070</u>

## 12 Cash flow reconciliation

Reconciliation of cash per Balance Sheet to Statement of Cash Flows	2009 \$	2008 \$
Cash at year end per Statement of Cash Flows	64,626	61,008
Balance Sheet items comprising cash above:		
Financial asset—cash	64,626	61,008
Reconciliation of operating surplus to net cash used by operating activities:		
<b>Net surplus</b>	<b>126,828</b>	<b>15,238</b>
Depreciation and amortisation	7,577	10,326
Net write-down of non-financial assets	–	4,972
Finance costs	1,858	1,336
<i>Changes in assets and liabilities resulting from operating activities</i>		
Increase in employee provisions	48,796	36,124
Decrease in prepayments	2,250	2,042
(Increase) in receivables	(254,199)	(191,612)
Increase/(decrease) in payables	75,130	(34,821)
<b>Net cash received/(used) by operating activities</b>	<b>8,240</b>	<b>(156,395)</b>

## 13 Related party disclosures

**13a** The members of the Advisory Committee during the financial year and to the date of this report were:

- Richard St John—Convenor
- Zelinda Bafile
- Barbara Bradshaw (term expired 24 August 2008)
- Belinda Gibson (nominee of ASIC’s Chairman)
- Jeremy Cooper (nominee of ASIC’s Chairman to 10 July 2009)
- Anthony D’Aloisio
- Ian Eddie (appointed 10 July 2008)
- Alice McCleary
- Marian Micalizzi
- Geoffrey Nicoll (appointed 10 July 2008)
- Ian Ramsay
- Robert Seidler
- Greg Vickery
- Nerolie Withnall.

**13b** The members of the Legal Committee during the financial year and to the date of this report were:

- Nerolie Withnall—Convenor
- Lyn Bennett (term expired 24 August 2009)
- Elizabeth Boros
- Damian Egan
- Jennifer Hill
- James Marshall
- David Proudman
- Laurie Shervington (term expired 24 August 2008)
- Simon Stretton
- Gabrielle Upton (term expired 24 August 2009)
- Rachel Webber (appointed 9 September 2008).

**13c** During the financial year there were no related party transactions with Advisory Committee members or Legal Committee members, except for the payment of \$69,000 to ASIC of which Anthony D’Aloisio is the Chairman and Jeremy Cooper was the Deputy Chairman to 10 July 2009 (2008: \$69,000).

The aggregate remuneration of members is disclosed in note 14(a).

## 14 Remuneration of members and executive officer

	2009	2008
	\$	\$
<b>14a Remuneration of members</b>		
Aggregate amount of superannuation payments in connection with the future retirements of Committee members, including Legal Committee members	5,438	3,554
Other remuneration received or due and receivable by Committee members, including Legal Committee members	71,669	59,433
<i>Total remuneration received or due and receivable by Committee members, including Legal Committee members</i>	77,107	62,987

The number of Advisory Committee and Legal Committee members paid sitting fees included in the above figures is shown below in the relevant remuneration bands.

	2009	2008
Bands of remuneration	Members	Members
\$0–\$14,999	18	17
\$15,000–\$29,999	1	1

### 14b Remuneration of executive officer

	2009	2008
	\$	\$
Income received or due and receivable by the executive officer	238,606	226,081

	2009	2008
	Executives	Executives
Bands of income		
\$225,000 – \$239,999	1	1
	1	1

The executive remuneration includes the sole Executive Officer concerned with or taking part in the management of CAMAC during 2008–09 except for the members of the Committee. Details in relation to members of the Committee have been incorporated into note 14(a) Remuneration of members.

### 15 Remuneration of auditor

	2009	2008
	\$	\$
Financial statements audit services by the Auditor-General are provided free of charge to CAMAC. No other services were provided by the Auditor-General.	14,000	15,900

### 16 Average staffing levels

	2009	2008
The average staffing levels for CAMAC during the year were	3	4

## 17 Financial instruments

### 17a Market risk exposures

#### *Currency risk*

CAMAC's exposure to 'Currency risk' is minimal, as only a small number of contracts are in currencies other than Australian dollars.

#### *Interest rate risk*

CAMAC financial instruments are not exposed to interest rate risk.

### 17b Net fair values of financial instruments

	2009		2008	
	Carrying amount	Fair value	Carrying amount	Fair value
<b>Financial liabilities</b>				
Trade creditors	14,256	14,256	3,643	3,643
<b>Total financial liabilities</b>	<b>14,256</b>	<b>14,256</b>	<b>3,643</b>	<b>3,643</b>

### 17c Credit risk exposures

CAMAC has no exposure to credit risk.

### 17d Liquidity risk exposures

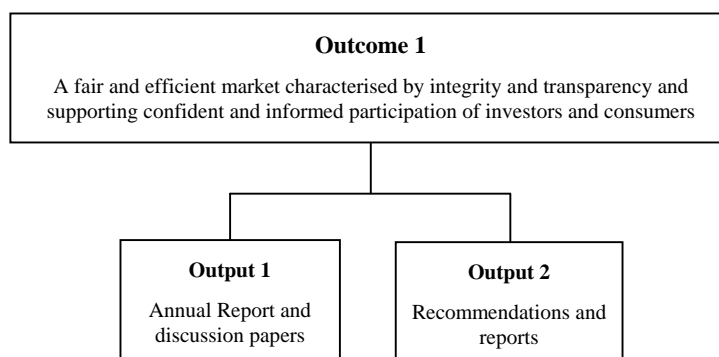
CAMAC's financial liabilities are payables.

CAMAC does not expect to have difficulty meeting its financial liability obligations as and when they become payable.

## 18 Reporting of outcomes

CAMAC seeks to stimulate and lead the debate on the enhancement of standards for corporations and participants in financial markets and propose suitable regulatory reform where necessary. CAMAC operates solely from Sydney, Australia.

CAMAC's operations and activities that give effect to its role as a corporations and financial markets adviser are categorised into two outputs. The relationship between Outcome 1 and the corresponding two outputs is shown in the diagram below.

**Table A Net cost of outcome delivery**

	Outcome 1	
	2009 \$	2008 \$
Departmental expenses	1,018,172	1,035,662
<b>Total expenses</b>	<b>1,018,172</b>	<b>1,035,662</b>
<i>Costs recovered from provision of goods and services to the non-Commonwealth Government sector</i>		
Departmental	-	-
<b>Total costs recovered</b>	<b>-</b>	<b>-</b>
<b>Net cost of outcome (a)</b>	<b>1,018,172</b>	<b>1,035,662</b>

(a) The net cost of outcome represents the expenses incurred by CAMAC less the revenue earned by CAMAC from other sources—each of these amounts is detailed in the Income Statement.

**Table B Departmental revenues and expenses by outcome and outputs**

	Outcome 1					
	Output 1		Output 2		Total	
	2009 \$	2008 \$	2009 \$	2008 \$	2009 \$	2008 \$
<b>Departmental expenses</b>						
Employees	281,507	289,998	317,445	327,019	598,952	617,017
Suppliers	195,599	188,945	214,186	213,066	409,785	402,011
Depreciation and amortisation	3,560	4,853	4,017	5,473	7,577	10,326
Finance cost	-	628	-	708	-	1,336
Write-down of assets	873	8,953	985	10,096	1,858	4,972
<b>Total departmental expenses</b>	<b>481,539</b>	<b>493,377</b>	<b>536,633</b>	<b>556,362</b>	<b>1,018,172</b>	<b>1,035,662</b>
<b>Funded by:</b>						
Revenue from government	484,570	486,450	546,430	548,550	1,031,000	1,035,000
Other revenue	47,000	-	53,000	-	100,000	-
Resources received free of charge	6,580	7,473	7,420	8,427	14,000	15,900
<b>Total departmental revenues</b>	<b>538,150</b>	<b>493,923</b>	<b>606,850</b>	<b>556,977</b>	<b>1,145,000</b>	<b>1,050,900</b>

The allocation of revenues and expenses between Output 1 and Output 2 is based on an estimate of the respective amounts of CAMAC Executive labour time and other administrative costs expended on each Outcome.

## Index

Advertising and market research.....	37
Audit Committee .....	28
Blackout periods .....	10
Board diversity .....	1, 13
Briefing of analysts.....	12
Commonwealth Disability Strategy .....	36
Competitive tendering and contracting .....	36
Constitution of the Committee.....	24
Consultants .....	35
Convenor’s review .....	1
Coordination with other bodies.....	32
Directors .....	1, 2, 10, 14, 17
Discretionary grants.....	37
Diversity on boards.....	1, 13
Environmental performance.....	37
Ethics .....	34
Executive .....	32
Exempt contracts .....	36
External scrutiny.....	34
Financial statements.....	42
Fraud.....	34
Freedom of information .....	37
Functions of the Committee.....	24
Glossary .....	38
Insider trading.....	11, 12
Insolvency.....	3
Legal Committee .....	29
Management of human resources .....	35
Margin lending .....	10
Market integrity .....	1, 10
Members’ schemes .....	2, 15, 17
Membership of the Committee .....	25
Non-discretionary trading plans.....	11
Occupational health and safety .....	36
Outlook for 2009–10.....	17
Past reports .....	22
Purchasing .....	35
Rumours .....	11
Schemes of arrangement.....	2, 15, 17
Significant issues and developments.....	3
Sons of Gwalia.....	2, 7