



Australian Government

**Corporations and Markets
Advisory Committee**

CORPORATIONS AND MARKETS ADVISORY COMMITTEE

ANNUAL REPORT
2004–2005

**Corporations and Markets
Advisory Committee**

Annual Report
2004-05

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Australian Government

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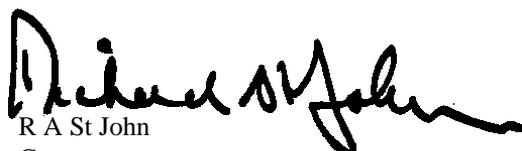
8 September 2005

The Hon Peter Costello, MP
Treasurer
Parliament House
CANBERRA ACT 2600

Dear Treasurer

I am enclosing for your information and presentation to Parliament the Annual Report for 2004–2005 of the Corporations and Markets Advisory Committee.

Yours sincerely


R A St John
Convenor

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Constitution of the Committee

Functions

The Corporations and Markets Advisory Committee is constituted under Part 9 of the *Australian Securities and Investments Commission Act 2001* (the ASIC Act). Its functions are set out in s 148 of the ASIC Act:

CAMAC's 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 connected with:

- (a) a proposal to make corporations legislation, or to make amendments of the corporations legislation (other than the excluded provisions); or
- (b) the operation or administration of the corporations legislation (other than the excluded provisions); or
- (c) law reform in relation to the corporations legislation (other than the excluded provisions); or
- (d) companies or a segment of the financial products and financial services industry; or
- (e) a proposal for improving the efficiency of the financial markets.

The Advisory Committee comes under the Treasury Portfolio. In addition to the Treasurer, the Hon. Peter Costello, MP, the Parliamentary Secretary to the Treasurer, the Hon. Chris Pearce, 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 the expert advice of its Legal Committee, before settling the report to the Minister. In other 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 by the Minister.

The Chairman of the Australian Securities and Investments Commission is a member of the Committee by virtue of s 147 of the ASIC Act. The other members of the Advisory Committee are appointed to the Committee in their personal capacity by the Minister. They 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 members during 2004–05 are set out below. The Committee notes that the terms of Philip Brown, Greg Hancock, Merran Kelsall and John Maslen expired during this period, and records its appreciation for their contribution.

- **Richard St John, Convenor (Melbourne).** Richard is Special Counsel to Johnson Winter & Slattery. He has had experience over a number of years 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, Canberra, and Secretary to the HIH Royal Commission.
- **Zelinda Bafle (Perth).** Zelinda has been with Home Building Society Ltd, an ASX listed company operating in the financial services industry in Western Australia for over 20 years and her roles include Company Secretary, General Counsel and Executive responsible for Risk and Compliance. Zelinda is a member of numerous professional bodies including the Law Society of Western Australia and member and past President of the Australian Corporate Lawyers Association (WA). She is a Fellow of the Australian Institute of Company Directors and Fellow of the Chartered Institute of Company Secretaries in Australia Ltd. She has held a large number of community-related and government appointments over the years and is currently Chairperson of the Perth Area Consultative Committee, Council Member of the Curtin University of Technology, Chairperson of The

Resource Unit for Children with Special Needs Incorporated and Finance Committee member of the International Federation of University Women.

- **Elizabeth Boros (Melbourne).** Elizabeth holds the Sir Keith Aickin Chair of Company Law at Monash University and is the author of a book, *Minority Shareholders' Remedies*. She is also a director of ASX Supervisory Review Pty Limited, former national chairperson of the E-commerce Committee of the Business Law Section of the Law Council of Australia, and a member of that Section's Corporations Committee.
- **Barbara Bradshaw (Darwin).** 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.
- **Philip Brown (Perth).** Philip is Emeritus Professor of the University of Western Australia. He has research interests in accounting and finance. Among academics he is best known for his work on financial markets. He is also a consultant to firms in Australia and North America and has appeared as an expert witness in civil and criminal litigation involving financial markets and products. He is an adviser to various organisations on financial and regulatory matters. Philip's term expired on 11 December 2004.
- **Berna Collier, Commissioner of ASIC (Brisbane).** Berna was appointed as a Commissioner effective 5 November 2001. She was a director of the Australian Prudential Regulation Authority from 5 November 2001 until 30 June 2003. Before joining the Commission, Berna was Clayton Utz Professor of Commercial Law in the Faculty of Law, Queensland University of Technology, and a consultant with Clayton Utz Lawyers. Berna has written extensively in the areas of insolvency, corporate and commercial law, and medico-legal practice. She attends Committee meetings as an alternate to the ASIC Chairman, as provided for under s 153(1A), (1B) of the ASIC Act.
- **Greg Hancock (Perth).** Greg is the Managing Director, Hancock Corporate Investments Pty Ltd. He has practised as a stockbroker for 20 years, specialising in capital raisings and corporate activity. He now runs a corporate advisory and corporate finance practice. He is also Chairman of Cooper Energy NL, a publicly listed oil/gas production and exploration company, and is a non-executive Director of Ausquest Ltd, a publicly listed gold and nickel explorer. Greg's term expired on 11 December 2004.

- **Merran Kelsall (Melbourne).** Merran is a chartered accountant, company director and consultant, with over 25 years' experience in financial and corporate services. She is also Chairman of the Audit Committee of ASIC and Chairman of the Auditing and Assurance Standards Board. Merran's term expired on 11 December 2004.
- **Jeffrey Lucy, Chairman of ASIC (Sydney).** Jeffrey is a Chartered Accountant and experienced financial consultant. He is a Fellow of the Institute of Chartered Accountants in Australia, CPA Australia, the National Institute of Accountants, and the Australian Institute of Company Directors. He has been the Chairman of the Financial Reporting Council and a Managing Partner of PricewaterhouseCoopers, Adelaide.
- **John Maslen (Adelaide).** John is the chief financial officer and company secretary, Michell Australia Pty Ltd. He has over 25 years' experience as a chartered accountant, auditor and tax and business adviser, as well as a company secretary. John's term expired on 11 December 2004.
- **Louise McBride (Sydney).** Louise is a director of Grant Samuel Corporate Finance. She commenced her career with a major international bank before working on corporate and taxation matters for large law firms. She has specialised in tax-based financing for major infrastructure projects and also the taxation treatment of derivative financial products. She was a partner with a major law firm and with Deloitte Touche Tohmatsu. She is also a member of the Commonwealth Superannuation Board and the Public Sector Superannuation Board, the Takeovers Panel and the National Portrait Gallery.
- **Alice McCleary (Adelaide).** 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).** 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.
- **Ian Ramsay (Melbourne).** 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, Faculty of Law, 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).** Bob is a partner at Blake Dawson Waldron. He has been practising law for nearly 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).** Greg is Chairman and Partner at the Brisbane office of Deacons. He has been practising law for over 30 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 the Vice Chairman of the Law Council of Australia's Company Law Committee, a member of several Boards, and National Chairman of Australian Red Cross.
- **Nerolie Withnall (Brisbane).** 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 organisations and a member of the Takeovers Panel.

During 2004–05, 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—1 of 1

- Elizabeth Boros—2 (Elizabeth was on maternity leave from the latter part of 2004)
- Barbara Bradshaw—5
- Philip Brown—3 of 3
- Greg Hancock—3 of 3
- Merran Kelsall—1 of 3
- John Maslen—2 of 3
- Louise McBride—4 of 5
- Alice McCleary—0 of 1 (Alice was appointed in May 2005 and could not attend the June meeting, owing to a pre-appointment commitment)
- Marian Micalizzi—5 of 6
- Ian Ramsay—6
- Robert Seidler—4 of 5
- Greg Vickery—1 of 1
- Nerolie Withnall—4 of 5
- ASIC representative—6 (Berna Collier—3, Jeremy Cooper, Deputy ASIC Chairman—1, and Brendan Byrne, ASIC General Counsel—2).

Audit Committee

During 2004–05, the Audit Committee consisted of Marian Micalizzi and Philip Brown until the expiry of their terms on 11 December 2004. From April 2005, the Audit Committee consisted of Marian Micalizzi and Barbara Bradshaw. In the period between these appointments, all Advisory Committee members constituted the Audit Committee.

During the financial year, the Audit Committee:

- liaised with the Australian National Audit Office (ANAO) in connection with the ANAO external audit and the signing of the 2003–04 Advisory Committee financial statements
- monitored the changes to the financial statements resulting from the implementation of the Australian Equivalents to International Financial Reporting Standards (AEIFRS)

- supervised the implementation of a Memorandum of Understanding (MOU) between the Advisory Committee and the Australian Securities and Investments Commission, which was approved by the Advisory Committee at its 1 October 2004 meeting and subsequently signed by the Convenor on behalf of the Committee and by Jeffrey Lucy on behalf of the Commission. That MOU set out the internal audit related services to be provided by ASIC to CAMAC and CAMAC's responsibilities relating to internal audit, risk assessment and its use of ASIC's internal audit services provider
- drafted an Audit Committee Charter, which was adopted by the Advisory Committee in June 2005.

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 of the Advisory 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 2004–05 are set out below. The Committee notes that the terms of Elspeth Arnold and Suzanne Corcoran expired during this period, and records its appreciation for their contribution.

- **Nerolie Withnall, Convenor (Brisbane).** 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 organisations and a member of the Takeovers Panel.
- **Julie Abramson (Melbourne).** Julie is a General Manager, National Australia Bank. She has had an extensive career in public policy and regulation, including as a lobbyist with the Victorian Employers' Chamber of Commerce and Industry and a legal adviser to the Federal Treasurer, the Hon. Peter Costello, MP. In addition, she worked in the Regulatory Policy Division of the Australian Securities and

Investments Commission and as Executive Officer to the then ASIC Chairman David Knott. She also worked as a lawyer for some eight years, including as an associate at a major Australian law firm.

- **Elsbeth Arnold (Melbourne).** Elspeth is a partner with Blake Dawson Waldron. She is a corporate lawyer who practises primarily in mergers and acquisitions, joint ventures, capital raisings and ‘head office’ advice. Elspeth’s term expired on 8 October 2004.
- **Ashley Black (Sydney).** Ashley is a partner with Mallesons Stephen Jaques. He specialises in securities and financial services law and enforcement and commercial litigation. He is joint author of books dealing with securities industry law and the Corporate Law Economic Reform Program Act, and lectures in postgraduate courses at the University of Sydney and the University of New South Wales.
- **Elizabeth Boros (Melbourne).** Elizabeth holds the Sir Keith Aickin Chair of Company Law at Monash University and is the author of a book, *Minority Shareholders’ Remedies*. She is also a director of ASX Supervisory Review Pty Limited, former national chairperson of the E-commerce Committee of the Business Law Section of the Law Council of Australia, and a member of that Section’s Corporations Committee.
- **Suzanne Corcoran (Adelaide).** Suzanne is a Professor of Law at Flinders University and Professorial Fellow, Australian National University, Canberra. She has more than 20 years’ experience as a barrister and solicitor in the private sector and has published widely in the field of corporate law, including corporate governance. She has also worked as a consultant to the Auditor-General of South Australia and other government departments and agencies. She is a member of several government and company boards. Suzanne’s term expired on 19 June 2005.
- **Damian Egan (Hobart).** 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.
- **Brett Heading (Brisbane).** Brett is Chairman of McCullough Robertson Lawyers. He is an experienced corporate lawyer in capital raising and takeovers. He is experienced at board level and is presently Chairman of a listed public company. He is also a member of the Takeovers Panel.

- **Jennifer Hill (Sydney).** 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.
- **Francis Landels (Perth).** Francis was for many years the Chief Legal Counsel of Wesfarmers Ltd. He is a Barrister and Solicitor of the Supreme Court of Western Australia, a Solicitor of the High Court of Australia and a Public Notary. Francis has been a director of a number of companies and continues to be a director of the Opera Company of Western Australia.
- **Duncan Maclean (Perth).** Duncan is a special counsel with Minter Ellison. He has acted for both government and private sector clients in major commercial transactions and projects. His practice is generally focused on commercial and corporate advisory work. He advises in the areas of corporate governance, regulatory compliance, structuring of projects and new ventures, e-commerce and information technology and private investment in infrastructure projects.
- **Laurie Shervington (Perth).** Laurie is a partner with Minter Ellison. He has practised in corporate and business law for over 30 years. He has board experience at listed and large proprietary company level and presents to industry and professional groups in Western Australia on the operation of the Corporations Act and the ASIC Act.
- **Simon Stretton (Adelaide).** Simon is the South Australian Crown Solicitor. 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.
- **Gary Watts (Adelaide).** Gary is a partner with Fisher Jeffries. He is a corporate lawyer in private practice and deals primarily with shareholder and board issues, mergers and acquisitions and restructurings. He is a past National Chair of the Corporations Committee of the Law Council of Australia, Chair of the Helpmann Academy for the Visual and Performing Arts and a director of the Metropolitan Domiciliary Care Service (SA).

- **Elizabeth Whitelaw (Canberra).** Elizabeth is Chair of Partners of the Canberra office of Minter Ellison. She heads the Infrastructure and Finance Group in the Canberra office. Elizabeth has during her 25 years of legal practice in the private sector also chaired the Canberra Business Council, the Red Tape and Regulation Review Task Force (ACT Government) and the Business and Regulatory Review Team (ACT Government). In addition, she has served on the ACT Government's Economic Priorities Committee, as well as Business Canberra, which was also an ACT Government advisory body. Elizabeth is also experienced at Board level and is presently a Director of ACTEW Corporation Limited, which is responsible for the ACT's water and electricity infrastructure.

During 2004–05, the Legal Committee met 4 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—3 of 3
- Julie Abramson—1 of 1
- Elspeth Arnold—0 of 2
- Ashley Black—1
- Elizabeth Boros—0 of 3 (Elizabeth was on maternity leave from the latter part of 2004)
- Suzanne Corcoran—4
- Damian Egan—3
- Brett Heading—1
- Jennifer Hill—3
- Francis Landels—4
- Duncan Maclean—3
- Laurie Shervington—4
- Simon Stretton—1 of 1
- Gary Watts—3
- Elizabeth Whitelaw—0 of 0 (Elizabeth was appointed to the Legal Committee on 23 May 2005, after the final Legal Committee meeting for the 2004–05 financial year).

The Advisory Committee values the advice of the Legal Committee and acknowledges with appreciation the contribution of its members.

Executive

During 2004–05, the Advisory Committee had a full-time Executive of three officers, being John Kluver (Executive Director), Vincent Jewell (Deputy Director) and Thaumani (Timmi) Parrino (Executive Assistant).

John Kluver prepared and presented various seminar papers on insider trading, as well as a conference paper on rehabilitating large and complex enterprises in financial distress. He also prepared and presented a paper at an international symposium on corporate group law at the University of Connecticut in October 2004 and wrote an article, 'Entity vs. Enterprise Liability: Issues for Australia', to be published in *37 Connecticut Law Review* Issue 3 (2005).

Vincent Jewell prepared a paper on the rehabilitation of large and complex enterprises, which he presented at a seminar in Sydney.

The Executive carries out research, liaises with interested organisations and individuals and prepares, on the basis of the Committee's deliberations, draft papers and other material for the Committee's consideration. The Advisory Committee is grateful to the members of the Executive for their assistance and support, and records its thanks to them.

Coordination with other bodies

The Advisory Committee, through its Executive, keeps in touch 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. The Committees appreciate the cooperation shown by these officers throughout the year. A senior officer of ASIC also attends Legal Committee meetings, at that Committee's invitation.

The Advisory Committee thanks ASIC and its officers for the administrative support they provide. In particular, the Advisory Committee thanks the officers of the Finance Section of ASIC in Sydney for their assistance in administering the accounts of the Committee and preparing the annual financial statements, the officers of the Payroll Section in Brisbane for their assistance in administering the sitting fees for members and salary and entitlements for officers of the Executive, the officers of the

ASIC Library for their assistance in the research work of the Executive and the ASIC information technology officers for their support.

Reporting requirement

The Advisory Committee is a Commonwealth authority within the meaning of s 7 of the *Commonwealth Authorities and Companies Act 1997* and is required under s 9 of that Act to prepare an annual report to the responsible Minister.

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Outcome for 2004–05

The Advisory Committee forwarded to the Government a report on *Rehabilitating large and complex enterprises in financial difficulties* (October 2004) and published Discussion Papers on *Personal liability for corporate fault* (May 2005) and *Corporate duties below board level* (May 2005). The Committee has also commenced consideration of a reference on corporate social responsibility.

Advisory Committee publications are available on its website
www.camac.gov.au.

1. Rehabilitating large and complex enterprises

Terms of reference

In September 2002, the then Parliamentary Secretary to the Treasurer, Senator the Hon. Ian Campbell, referred the matter of rehabilitating large and complex enterprises to the Advisory Committee. Senator Campbell asked the Advisory Committee to consider and report on the following questions.

- Are there particular difficulties in applying the voluntary administration provisions in Part 5.3A of the Corporations Act to large and complex enterprises?
- If so, could the Committee recommend the most appropriate course of action to deal with those difficulties? This could include:
 - particular changes to Part 5.3A to accommodate better large corporate rehabilitation cases;
 - particular changes to the rarely-used scheme of arrangement provisions in Part 5.1 of the Corporations Act to accommodate large corporate rehabilitation cases;
 - a new system for corporate rehabilitation, along the lines of Chapter 11 of the United States Bankruptcy Act; or
 - any other action that the Advisory Committee considers appropriate.

Discussion Paper

In September 2003, the Advisory Committee published a Discussion Paper that examined a range of issues applicable to the rehabilitation of large and complex enterprises.

Report

In October 2004, the Advisory Committee forwarded to the Government its report *Rehabilitating large and complex enterprises in financial difficulties*.

The Advisory Committee provided the following responses to the questions raised in the terms of reference.

Should a new system of corporate rehabilitation along the lines of Chapter 11 of the United States Bankruptcy Code be adopted in Australia?

The Advisory Committee finds no compelling need, or intrinsic shortcoming in the voluntary administration (VA) procedure, which requires or justifies adopting Chapter 11 as an additional or substitute corporate recovery procedure for large and complex, or other, enterprises.

There was general support in submissions for the five principles for effective corporate rehabilitation set out in the Discussion Paper, though respondents also considered that these do not constitute a decisive argument for preferring either Chapter 11 or VA. Both procedures seek to achieve corporate rehabilitation, albeit through quite different methods.

There was overwhelming support in submissions for retaining VA and not introducing Chapter 11. Chapter 11 is a longstanding and commonly utilised corporate recovery procedure in the USA. However, it could not be introduced into Australia without fundamental changes to the rehabilitation process and the role of the courts, for which there is no apparent demand.

Are there any particular difficulties in applying Part 5.3A to large and complex enterprises?

The Advisory Committee has not identified any fundamental difficulties in applying the VA provisions to large and complex enterprises, or any circumstances where it is necessary to have separate corporate recovery regulation for these enterprises.

Some issues dealt with in this review (for instance, timing of creditors' meetings) are more likely to arise in the administration of large and

complex enterprises, while other issues (for instance, rights of substantial chargees) may be relevant in any type of administration. Any necessary changes can be accommodated within the VA legislative structure.

Are there any particular changes required to Part 5.3A better to accommodate large corporate rehabilitation cases?

The Advisory Committee concludes that Part 5.3A is fundamentally sound. In some respects, however, the workability of VA for large and complex, as well as other, enterprises could be further enhanced by legislative amendments to:

- permit administrators to notify pre-commencement creditors through electronic means
- increase incrementally the time period for holding the first and major meetings
- require an administrator to give reasons in exercising any casting vote
- stipulate more appropriate qualifications for persons who will act as administrators
- permit a committee of creditors to approve an administrator's remuneration
- permit deed administrators to sell or cancel equity with the consent of the holder or the leave of the court
- increase incrementally the decision period within which substantial chargees may appoint a receiver, and permit them to enter into agreements with administrators to extend further that period
- permit unsecured creditors, by special resolution, to give a post-administration lender priority over all unsecured creditors
- allow a corporation to be a member of a committee of creditors
- provide prospectus relief for equity for debt swap offers (a refinement of a recommendation in the Advisory Committee *Corporate Voluntary Administration Report* (June 1998))
- clarify that deeds of company arrangement may include mandatory equity for debt swaps

- clarify that a deed can depart from the statutory winding up priorities
- introduce specific pooling procedures (a refinement of a recommendation in the Advisory Committee *Corporate Groups Report* (May 2000))
- give liquidators at least one year from the date of their appointment to commence litigation to undo voidable transactions.

Are there any particular changes required to Part 5.1 arrangements and reconstructions to accommodate large corporate rehabilitation cases?

The Advisory Committee does not propose any changes to the creditors' scheme of arrangement provisions to accommodate large and complex enterprises.

2. Personal liability for corporate fault

Terms of reference

In July 2002, the then Parliamentary Secretary to the Treasurer, Senator the Hon. Ian Campbell, referred various aspects of directors' duties to the Advisory Committee for consideration and advice. These related to:

- the impact of directors' liability on the availability of professional indemnity insurance and the consequences of rising insurance premiums
- whether the duties imposed on directors by various Commonwealth, State and Territory legislation might result in inconsistent compliance burdens and increased costs for business, while acting as a disincentive for persons to accept or continue to hold directorships, or to engage in entrepreneurial but responsible risk taking.

Report

In June 2004, the Advisory Committee forwarded to the Government a report *Directors and officers insurance*.

Discussion Paper

In May 2005, the Advisory Committee released a Discussion Paper *Personal liability for corporate fault*.

The paper reviews the circumstances in which directors and corporate managers may be held criminally liable for corporate misconduct by reason of their formal position or function in a company and without the need to establish misconduct on their part. This form of liability is separate from that of the company itself or of an officer who has actually participated in a corporate breach.

The paper looks at a range of Commonwealth, State and Territory environmental, occupational health and safety, hazardous goods and fair trading statutes, as they provide significant examples of this kind of derivative liability. In pursuit of their various public interest goals, there is a trend in statutes of this kind to treat directors and other officers as personally liable, including for criminal offences, for breaches of the law by their company, without the need to show personal culpability.

The paper draws attention to the broad range of differing statutory tests both within and between jurisdictions for imposing this form of liability. This lack of uniformity and resultant complexity may in itself:

- detract from effective corporate governance by reducing the possibility of directors fully understanding their legal responsibilities in performing their corporate functions
- unduly increase compliance costs for businesses in attempting to identify and respond to that complex legal environment.

The paper puts forward for comment several alternatives for a uniform provision that seeks to achieve a balance between the promotion of corporate compliance and the rights of corporate officers where a need is seen in legislation for the imposition of some element of derivative liability. Such a provision could be adopted as a model or template for use across the various jurisdictions in order to achieve a more harmonised approach. The possible provisions differ in relation to the classes of individuals potentially liable, the grounds of liability and whether the prosecution or the defence has the burden of proof.

The Discussion Paper invites interested parties to lodge submissions by 12 August 2005. The Advisory Committee will prepare its final report, taking into account the submissions received.

3. Corporate duties below board level

Terms of reference

In April 2004, the then Parliamentary Secretary to the Treasurer, the Hon. Ross Cameron, MP, referred to the Advisory Committee aspects of Recommendation 2 of the HIH Royal Commission report. That recommendation included redefining, according to function rather than formal position, the class of persons who are subject to fiduciary duties under Chapter 2D of the Corporations Act and extending the class of persons who are prohibited from acting dishonestly in regard to the company.

The Parliamentary Secretary requested the Committee to consider and report on the following matters:

- does the approach taken by the law (incorporating the CLERP Act 2004 amendments) clearly and adequately impose sufficient duties on persons other than directors, particularly in the case of complex corporate structures where high-level decision-making may be performed by so-called ‘middle management’?
- is the definition of a wider class of personnel by reference to the term ‘employee’ and the potential exclusion of consultants and independent contractors problematic?
- are there particular difficulties with the application of the current provisions to corporate groups?

Discussion Paper

In May 2005, the Advisory Committee released a Discussion Paper *Corporate duties below board level*.

The paper reviews the personal duties and liabilities under the Corporations Act of corporate officers, employees and other individuals below board level. It puts forward preliminary proposals to:

- extend the duties in ss 180 (care and diligence) and 181 (good faith and proper purpose) beyond directors and some corporate officers to ‘any other person who takes part, or is concerned, in the management of that corporation’

- extend the prohibitions in ss 182 and 183 (dealing with improper use of corporate position or information) beyond directors, other officers and employees of a corporation to ‘any other person who performs functions, or otherwise acts, for or on behalf of that corporation’
- extend the prohibitions in ss 1309(1) and 1307 (providing false information) beyond officers and employees of a corporation to ‘any other person who performs functions, or otherwise acts, for or on behalf of that corporation’.

The paper also discusses whether there should be a general provision in the Corporations Act, as recommended in the Royal Commission report, prohibiting individuals from acting dishonestly in connection with the performance or satisfaction of any obligation imposed on a corporation by any statute.

The Discussion Paper invites interested parties to lodge submissions by 26 August 2005. The Advisory Committee will prepare its final report, taking into account the submissions received.

4. Corporate social responsibility

Terms of reference

In March 2005, the Parliamentary Secretary to the Treasurer, the Hon. Chris Pearce, MP, requested the Advisory Committee to consider and report on the following matters related to corporate social responsibility:

- should the Corporations Act be revised to clarify the extent to which directors may take into account the interests of specific classes of stakeholders or the broader community when making corporate decisions?
- should the Corporations Act be revised to require directors to take into account the interests of specific classes of stakeholders or the broader community when making corporate decisions?
- should Australian companies be encouraged to adopt socially and environmentally responsible business practices and if so, how?
- should the Corporations Act require certain types of companies to report on the social and environmental impact of their activities?

The Advisory Committee has commenced its review of these matters.

In June 2005, the Parliamentary Joint Committee on Corporations and Financial Services announced that it also would be reviewing issues related to corporate social responsibility.

5. Hanel v O'Neill

In October 2004, the Convenor of the Advisory Committee wrote to the Federal Treasurer, the Hon. Peter Costello, MP, to convey the Committee's views on the implications of the decision of the Full Court of the Supreme Court of South Australia in *Hanel v O'Neill* (2003) 48 ACSR 378.

That decision turned on the interpretation of s 197 of the Corporations Act, which in some circumstances imposes personal liability on directors of a corporate trustee for debts and obligations incurred by that trustee on behalf of the trust.

The forerunner provision to s 197 was generally understood to impose personal liability on directors of a corporate trustee whenever creditors were blocked from full access to the assets of the trust (for instance, where the directors acted outside the terms of the trust, the corporate trustee breached its fiduciary duties or the right of indemnity was partially or wholly excluded in the trust document). The current provision, as interpreted by the majority in *Hanel v O'Neill*, imposes personal liability on the directors of a corporate trustee whenever trust assets, even though accessible to the creditors, are insufficient to satisfy the creditors. This makes directors of a corporate trustee in effect guarantors of any debts incurred by the corporate trustee on behalf of the trust, without defences comparable to those available to directors of other insolvent companies.

The Committee drew attention to the uncertainties now pertaining to the interpretation of s 197 and to the practical consequences for directors of corporate trustees if the interpretation of the majority in *Hanel v O'Neill* remains. The Committee considered that the matter required legislative attention.

In June 2005, the Parliamentary Secretary to the Treasurer, the Hon. Chris Pearce, released the Corporations Amendment Bill (No 1) 2005, which is designed to confirm the previously understood position.

Past reports

The Advisory Committee has submitted to the Government the following reports, all of which, together with some related discussion papers, are available on the CAMAC Website:

- 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)
- Related party financial transactions (July 1991).

Implementation of proposals

The Parliamentary Secretary to the Treasurer, the Hon. Chris Pearce, MP, has announced an integrated set of proposals to improve the operation of Australia’s insolvency laws. It will include the Government’s response to the Advisory Committee reports *Corporate voluntary administration* (June 1998), *Corporate groups* (May 2000) and *Rehabilitating large and complex enterprises in financial difficulties* (October 2004).

Reference has been made earlier in this report to the Government’s proposals concerning *Hanel v O’Neill* (2003) 48 ACSR 378.

Date and signing of Report

This Annual Report is signed by the Convenor, Richard St John, on behalf of the Advisory Committee members, who are responsible for its preparation and content.

A handwritten signature in black ink, appearing to read 'Richard St John', written in a cursive style.

Richard St John

Convenor

8 September 2005



INDEPENDENT AUDIT REPORT

To the Treasurer

Matters relating to the Electronic Presentation of the Audited Financial Statements

This audit report relates to the financial statements published in both the annual report and on the website of the Corporations and Markets Advisory Committee for the year ended 30 June 2005. The members of the Corporations and Markets Advisory Committee are responsible for the integrity of both the annual report and the web site.

The audit report refers only to the financial statements, schedules and notes named below. It does not provide an opinion on any other information, which may have been hyperlinked to or from the audited financial statements.

If the users of this report are concerned with the inherent risks arising from electronic data communications they are advised to refer to the hard copy of the audited financial statements in the Corporations and Markets Advisory Committee's annual report.

Scope

The financial statements and Members' responsibility

The financial statements comprise:

- Statement by Members;
- Statements of Financial Performance, Financial Position and Cash Flows;
- Schedules of Commitments and Contingencies; and
- Notes to and forming part of the Financial Statements

of the Corporations and Markets Advisory Committee for the year ended 30 June 2005.

The members of the Corporations and Markets Advisory Committee are responsible for preparing the financial statements that give a true and fair view of the financial position and performance of the Corporations and Markets Advisory Committee, and that comply with Finance Minister's Orders made under the *Commonwealth Authorities and Companies Act 1997*, accounting standards and other mandatory financial reporting requirements in Australia. The members of the Corporations and Markets Advisory Committee are also responsible for the maintenance of adequate accounting records and internal controls that are designed to prevent and detect fraud and error, and for the accounting policies and accounting estimates inherent in the financial statements.

Audit approach

I have conducted an independent audit of the financial statements in order to express an opinion on them to you. My audit has been conducted in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing and Assurance Standards, in order to provide reasonable assurance as to whether the financial statements are free of material misstatement. The nature of an audit is influenced by factors such as the use of professional judgement, selective testing, the inherent limitations of internal control, and the availability of persuasive, rather than conclusive, evidence. Therefore, an audit cannot guarantee that all material misstatements have been detected.

While the effectiveness of management's internal controls over financial reporting was considered when determining the nature and extent of audit procedures, the audit was not designed to provide assurance on internal controls.

I have performed procedures to assess whether, in all material respects, the financial statements present fairly, in accordance with Finance Minister's Orders made under the *Commonwealth Authorities and Companies Act 1997*, including accounting standards and other mandatory financial reporting requirements in Australia, a view which is consistent with my understanding of the Corporations and Markets Advisory Committee's financial position, and of its performance as represented by the statements of financial performance and cash flows.

The audit opinion is formed on the basis of these procedures, which included:

- examining, on a test basis, information to provide evidence supporting the amounts and disclosures in the financial statements; and
- assessing the appropriateness of the accounting policies and disclosures used, and the reasonableness of significant accounting estimates made.

Independence

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

Audit 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 *Commonwealth Authorities and Companies Act 1997*; and
- (b) give a true and fair view of the Corporations and Markets Advisory Committee's financial position as at 30 June 2005 and of its performance and cash flows for the year then ended, in accordance with:
 - (i) the matters required by the Finance Minister's Orders; and
 - (ii) applicable accounting standards and other mandatory financial reporting requirements in Australia.

Australian National Audit Office



P Hinchey
Senior Director
Delegate of the Auditor-General

Sydney
29 August 2005

Financial statements
for the year ended 30 June 2005

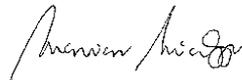
STATEMENT BY MEMBERS

In our opinion, the attached financial statements for the year ended 30 June 2005 have been prepared 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 *Commonwealth Authorities and Companies Act 1997*.

In our opinion, at the date of this statement, there are reasonable grounds to believe that the Corporations and Markets Advisory Committee will be able to pay its debts as and when they become due and payable.



Barbara Bradshaw
Member
29 August 2005



Marian Micalizzi
Member
29 August 2005

Statement of financial performance

for the year ended 30 June 2005

	Note	2005 \$	2004 \$
REVENUE			
Revenues from ordinary activities			
Revenues from Government	5	856,000	856,000
Interest	4	34,298	34,340
Revenues from ordinary activities		890,298	890,340
EXPENSES			
Expenses from ordinary activities			
Employees	6A	518,789	502,406
Suppliers	6B	388,254	400,743
Depreciation and amortisation	6C	7,277	12,026
Expenses from ordinary activities		914,320	915,175
Net (deficit)	11, 12	(24,022)	(24,835)
Change in accumulated results on application of the transitional provisions of the accounting standard AASB 1041	8D, 11	5,487	–
Total valuation adjustments recognised directly in equity		5,487	–
Total changes in equity other than those resulting from transactions with the Australian Government as owner		(18,535)	(24,835)

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

Statement of financial position

as at 30 June 2005

	Note	2005 \$	2004 \$
ASSETS			
Financial assets			
Cash	7A	635,848	659,174
Receivables	7B	14,232	15,624
Total financial assets		650,080	674,798
Non-financial assets			
Leasehold improvements	8A	6,220	3,659
Plant and equipment	8B	85,829	82,483
Intangibles	8C	–	401
Other	8F	15,949	15,608
Total non-financial assets		107,998	102,151
TOTAL ASSETS		758,078	776,949
LIABILITIES			
Provisions			
Employees	9	165,277	169,606
Total provisions		165,277	169,606
Payables			
Suppliers	10	18,277	14,284
Total payables		18,277	14,284
TOTAL LIABILITIES		183,554	183,890
NET ASSETS		574,524	593,059
EQUITY			
Parent entity interest			
Reserves	11	10,144	10,144
Accumulated surplus	11	564,380	582,915
TOTAL EQUITY		574,524	593,059
Current assets		666,029	690,406
Non-current assets		92,049	86,543
Current liabilities		61,767	82,124
Non-current liabilities		121,787	101,766

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

Statement of cash flows

for the year ended 30 June 2005

	Note	2005 \$	2004 \$
OPERATING ACTIVITIES			
Cash received			
Appropriations	5	856,000	856,000
Interest		34,224	33,963
GST recovered from ATO		47,611	41,196
Total cash received		937,835	931,159
Cash used			
Employees		(529,631)	(485,407)
Suppliers		(424,234)	(453,426)
Total cash used		(953,865)	(938,833)
Net cash from operating activities	12	(16,030)	(7,674)
INVESTING ACTIVITIES			
Cash used			
Purchase of leasehold improvements, plant and equipment	8D	(7,296)	(14,713)
Total cash used		(7,296)	(14,713)
Net cash used by investing activities		(7,296)	(14,713)
FINANCING ACTIVITIES			
Cash used			
Capital use charge paid		–	(71,828)
Total cash used		–	(71,828)
Net cash used by financing activities		–	(71,828)
Net increase/(decrease) in cash held		(23,326)	(94,215)
Cash at the beginning of the reporting period		659,174	753,389
Cash at the end of the reporting period	7A	635,848	659,174

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

Schedule of commitments

as at 30 June 2005

	Note	2005 \$	2004 \$
BY TYPE			
Other commitments			
Operating leases	(a)	562,003	712,409
Total other commitments		562,003	712,409
Commitments receivable	(b)	(49,691)	(64,764)
Net commitments by type		512,312	647,645
BY MATURITY			
Operating lease commitments			
One year or less		152,118	149,097
From one to five years		409,885	563,312
Total operating lease commitments		562,003	712,409
Net commitments			
One year or less		138,666	135,543
From one to five years		373,646	512,102
Net commitments by maturity		512,312	647,645

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 annual increase |
| 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.

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

Schedule of contingencies

as at 30 June 2005

Contingent liabilities

There were no quantifiable contingent liabilities as at 30 June 2005 (2004: nil).

Contingent assets

There were no quantifiable contingent assets as at 30 June 2005 (2004: nil).

Unquantifiable contingent liabilities

There were no unquantifiable contingent liabilities as at 30 June 2005 (2004: nil).

Unquantifiable contingent assets

There were no unquantifiable contingent assets as at 30 June 2005 (2004: 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 2005

Note	Description
1	Summary of significant accounting policies
2	Adoption of AASB equivalents to International Financial Reporting Standards from 2005–06
3	Economic dependency
4	Operating revenue
5	Appropriations
6	Operating expenses
7	Financial assets
8	Non-financial assets
9	Provisions
10	Payables
11	Equity
12	Cash flow reconciliation
13	Related party disclosures
14	Remuneration of members and executives
15	Auditor's remuneration
16	Average staffing levels
17	Financial instruments
18	Events occurring after reporting date
19	Reporting of outcomes
20	Appropriations

1 Summary of significant accounting policies

1A Basis of accounting

The financial statements are required by clause 1(b) of Schedule 1 to the *Commonwealth Authorities and Companies Act 1997* (CAC Act) (referred to as Schedule 1 in this financial report) and are a general purpose financial report.

The statements have been prepared in accordance with the:

- Finance Minister's Orders (being the Commonwealth Authorities and Companies Orders (Financial Statements for reporting periods ending on or after 30 June 2005));
- Australian Accounting Standards and Accounting Interpretations issued by the Australian Accounting Standards Board; and
- Urgent Issues Group (UIG) abstracts.

The Corporations and Markets Advisory Committee's (CAMAC) Statements of Financial Performance and Financial Position have been prepared on an accrual basis and are in accordance with the historical cost convention, except for certain assets which, as noted, are at valuation. Except where stated, no allowance is made for the effect of changing prices on performance or the financial position of CAMAC.

Assets and liabilities are recognised in the Statement of Financial Position 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. Unrecognised liabilities and assets are reported in the Schedule of Commitments and the Schedule of Contingencies.

Revenues and expenses are recognised in the Statement of Financial Performance when and only when the flow or consumption or loss of economic benefits has occurred and can be reliably measured.

1B Changes in accounting policy

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

1C Reporting of outcomes

CAMAC's financial result reported in the context of the Government's outcomes and outputs framework is disclosed in Note 19.

Any intra-government costs included in the figure 'net cost to Budget outcomes' are eliminated in calculating the actual budget outcome for the Government overall.

1D Going Concern

CAMAC is a statutory body and prepares its financial statements on a going concern basis, which assumes that it is able to extinguish its liabilities as they arise through the normal level of appropriations it receives from Government.

1E Revenue

Revenues from Government—Output Appropriations

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

Other revenue

Interest revenue is recognised on a time proportionate basis that takes into account the effective yield on the relevant asset.

1F Employee benefits

The provision for employee benefits includes a 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 liability for annual leave reflects the value of total annual leave benefits of all employees at 30 June 2005 and is recognised at its nominal amount. The nominal amount is calculated with regard to the rates expected to be paid on settlement of the liability, in accordance with the provisions of Accounting Standard AASB 1028.

The provision for long service leave is recognised and measured at the present value of the estimated future cash flows to be made in respect of all employees at 30 June 2005. In determining the present value of the liability,

attrition rates and pay increases through promotion and inflation have been taken into account.

1G Superannuation

CAMAC employees are covered under the Commonwealth Superannuation Scheme (CSS) and Public Sector Superannuation Scheme (PSS). Details of superannuation payments are disclosed in Note 6A. The liability for their superannuation benefits is recognised in the financial statements of the Australian Government and will be settled by the Australian Government in due course.

1H Leases

No finance leases existed during the financial year. 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 charged to expense on a basis which is representative of the pattern of benefits derived from the leased assets.

1I Cash

For the purpose of the Statement of Cash Flows, cash includes petty cash and deposits held at call with a bank.

1J Taxation

CAMAC is exempt from all forms of taxation with the exception of fringe benefits tax and the goods and services tax (GST).

1K Acquisition of assets

Assets are recorded at cost on acquisition except as stated below. 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.

1L Leasehold improvements, plant and equipment

Asset recognition threshold

Purchases of leasehold improvements, plant and equipment are recognised initially at cost in the Statement of Financial Position, 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 that are significant in total).

Revaluations—Basis

Leasehold improvements, plant and equipment are carried at valuation. Revaluations are conducted with sufficient frequency that the carrying amount is not materially different from its fair value as at the reporting date.

Assets that are surplus to requirements are measured at their net realisable value. As at 30 June 2005 CAMAC had no surplus assets (2004: Nil).

Leasehold improvements

During 2004–05 leasehold improvements were revalued to fair value for the first time, measured at written down replacement cost, which is the lesser of depreciated replacement cost or depreciated reproduction cost.

Depreciated replacement cost is the cost of substitution by an equivalent modern asset, with due allowance for depreciation and obsolescence. Depreciated reproduction cost represents the cost of constructing a replica of the actual asset, with due allowance for depreciation and obsolescence.

Leasehold improvements are subject to a formal valuation every three years. Formal valuations are carried out by an independent qualified valuer (Australian Valuation Office). Between formal valuations, leasehold improvements are reviewed to ensure reported amounts are not materially different to fair values. For the purposes of these interim reviews, leasehold improvements are revalued using an appropriate index reflecting movements in the price of similar assets. If a material difference is identified assets are revalued.

Plant and equipment

On 1 July 2004 plant and equipment were revalued to fair value for the first time. The fair value of plant and equipment assets is measured at market selling price, being the amount for which the asset could be exchanged, or a

liability settled, between knowledgeable, willing parties in an arm's length transaction.

In accordance with AASB 1041 *Revaluation of Non-Current Assets*, where the fair value basis is initially applied to a class of non-current assets, the resulting increment or decrement is credited or debited directly to accumulated surplus or deficit.

Plant and equipment assets are subject to a formal valuation every three years. Formal valuations are carried out by an independent qualified valuer (Australian Valuation Office). Between formal valuations, plant and equipment assets are reviewed to ensure reported amounts are not materially different to fair values. The valuation confirmed that asset values reported at 30 June 2005 were representative of fair value and no valuation adjustment was required.

Impairment of non-current assets

Non-current assets carried at up-to-date fair value at the reporting date are not subject to impairment testing.

Non-current assets carried at cost and held to generate net cash inflows have been tested for their recoverable amounts at the reporting date. Carrying amounts were compared against the net present value of future net cash inflows. At 30 June 2005 CAMAC did not have any assets in this category, and no write-down to recoverable amount was required (2004: nil).

Non-current assets carried at cost, which are not held to generate net cash inflows, have been assessed for indications of impairment. Where indications of impairment exist, the carrying amount of the asset is compared to its net selling price and depreciated replacement cost and is written down to the higher of the two amounts.

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) and methods are reviewed at each balance date and necessary adjustments are recognised in the current and future reporting periods, as appropriate.

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

	2005	2004
Leasehold improvements	Lease term	Lease term
Plant and equipment	2 to 30 years	2 to 50 years

The aggregate amount of depreciation allocated for each class of asset during the reporting period is disclosed in Note 6C.

1M 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 (2004: 5 years).

1N Receivables

CAMAC's receivables comprise amounts expected to be received from operating revenue. A provision for doubtful debts is not considered necessary.

1O Financial instruments

Accounting policies in relation to financial instruments are disclosed in Note 17.

1P Rounding

Amounts have been rounded to the nearest dollar.

1Q Comparative figures

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

1R Insurance

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

2 Adoption of AASB equivalents to International Financial Reporting Standards from 2005–06

The Australian Accounting Standards Board has issued replacement Australian Accounting Standards to apply from 2005–06. The new standards are the Australian Equivalents to International Financial Reporting Standards (AEIFRS). The International Financial Reporting Standards are issued by the International Accounting Standards Board. The standards being replaced are to be withdrawn with effect from 2005–06, but continue to apply in the meantime, including the reporting period ended on 30 June 2005. The new standards cannot be adopted early.

The purpose of issuing AEIFRS is to enable Australian entities reporting under the *Corporations Act 2001* to access more readily overseas capital markets by preparing their financial reports according to accounting standards more widely used overseas.

It is expected that the Finance Minister will continue to require compliance with the Accounting Standards issued by the AASB, including the AEIFRS, in his Orders for the Preparation of Financial Statements for 2005–06 and beyond.

Existing AASB standards that have no IFRS equivalent will continue to apply.

Accounting Standard AASB 1047 *Disclosing the Impact of Adopting Australian Equivalents to International Financial Reporting Standards* requires that the financial statements for 2004–05 disclose:

- an explanation of how the transition to the AEIFRS is being managed;
- a narrative explanation of the key differences in accounting policies arising from the transition;

- any known or reliably estimable information about the impacts on the financial report had it been prepared using AEIFRS; and
- if the impacts of the above are not known or reliably estimable, a statement to that effect.

The purpose of this Note is to make these disclosures.

Management of the transition to AEIFRS

CAMAC has taken the following steps in preparation for the implementation of AEIFRS:

- the Audit Committee is overseeing the transition to and implementation of AEIFRS on behalf of CAMAC;
- all major accounting policy differences between current AASB standards and AEIFRS have been identified;
- AEIFRS compliant balance sheets as at 1 July 2004 and 30 June 2005 have been prepared. The 30 June 2005 balance sheet is provided as information in this note;
- no financial system changes will be required to implement AEIFRS;
- from 1 July 2004 all accounting records will be maintained to comply with AEIFRS requirements; and
- external advice has been sought where necessary to assist CAMAC in determining the nature and extent of major accounting and disclosure changes.

Major changes in accounting policy

Changes in accounting policies under AEIFRS are applied retrospectively i.e. as if the new policy had always applied. This rule means that a balance sheet prepared under the AEIFRS must be made as at 1 July 2004, except as permitted in particular circumstances by AASB 1 *First-time Adoption of Australian Equivalents to International Financial Reporting Standards*. This will also enable the 2005–06 financial statements to report comparatives under AEIFRS.

Changes to major accounting policies are discussed in the following paragraphs.

Management's review of the quantitative impacts of AEIFRS represents the best estimate of the impacts of the changes as at reporting date. The actual effects of the impacts of AEIFRS may differ from these estimates due to:

- the continuing review of the impacts of AEIFRS on CAMAC's operations;
- potential amendments to AEIFRS and AEIFRS Interpretations; and
- emerging interpretations regarding the application of AEIFRS and AEIFRS Interpretations.

Statement of Financial Position as at 30 June 2005

	Note	Existing Australian GAAP \$	AEIFRS \$	Change on adoption of AEIFRS \$
ASSETS				
Cash		635,848	635,848	–
Receivables		14,232	14,232	–
Leasehold improvements	(i)	6,220	17,942	11,722
Plant and equipment		85,829	85,829	–
Intangibles		–	–	–
Other non-financial assets		15,949	15,949	–
Total assets		758,078	769,800	11,722
LIABILITIES				
Employee provisions	(ii)	165,277	164,003	(1,274)
Suppliers payables	(iii)	18,277	38,564	20,287
Total liabilities		183,554	202,567	19,013
NET ASSETS/(LIABILITIES)		574,524	567,233	(7,291)
EQUITY				
Reserves		10,144	10,144	–
Accumulated surplus	(iv)	564,380	557,089	(7,291)
TOTAL EQUITY		574,524	567,233	(7,291)

(i) *Leasehold improvements—make good of leased premises*

AASB 116 *Property, Plant and Equipment* (AEIFRS) states that the cost of an item of property, plant and equipment includes 'the initial estimate of

the costs of dismantling and removing the item and restoring the site on which it is located, the obligation for which an entity incurs either when the item is acquired or as a consequence of having used the item during a period for purposes other than to produce inventories during that period’.

As a consequence of the change to the accounting standards CAMAC is now required to recognise leasehold improvements inclusive of the estimated cost of restoring the leased premises at the end of the lease. The net impact on leasehold improvements at transition is an increase of \$14,985.

During 2004–05 the higher asset value will give rise to a higher depreciation expense of \$3,263, resulting in an increase of \$11,722 in the net book value of leasehold improvements.

(ii) *Employee provisions—determination of non-current annual leave provision*

AASB119 *Employee Benefits* (AEIFRS) requires annual leave liabilities that will not be settled within 12 months of the reporting date to be recognised as a long-term employee provision. As a consequence, the non-current portion of the annual leave provision will be measured at present value, whereas AASB1028 *Employee Benefits* (existing GAAP) requires that all annual leave be measured at its nominal value. The restatement of non-current annual leave to present value at 1 July 2004 will result in a reduction in the provision at that date of \$4,829.

Annual leave expense for 2004–05 will be \$3,555 higher under AEIFRS. At 30 June 2005 the liability will be \$1,274 lower under AEIFRS after discounting to present value the non-current portion of the provision.

(iii) *Supplier payables—provision for make good of leased premises*

UIG 1, *Changes in Existing Decommissioning, Restoration and Similar Liabilities* (AEIFRS) requires CAMAC to recognise as a liability an estimate of the decommissioning and restoration costs relating to leased premises where the lease creates an obligation for CAMAC to make good those premises.

Currently, CAMAC does not recognise a liability for making good leased premises until a decision has been made by CAMAC to vacate the premises. The basis of this treatment is that a present obligation does not exist prior to a decision to vacate being made.

The recognition of a make good liability, on adoption of AEIFRS, for leased premises, will increase supplier payables by \$20,287 at 30 June 2005. UIG 1, *Changes in Existing Decommissioning, Restoration and Similar Liabilities* (AEIFRS) also requires that the discount included in the calculation of the fair value of the make good liability be unwound and reported as an interest expense. This will result in interest expense being \$697 higher in 2004–05 under AEIFRS.

(iv) *Accumulated surplus*

The decrease in the accumulated surplus of \$7,291 that will be reported once AEIFRS is adopted incorporates a 2004–05 operating deficit of \$26,050. A reconciliation of the difference in the net surplus on adoption of AEIFRS is provided in the table below. The note references in the table refer to the comments above:

Reconciliation of net surplus/(deficit)	Note	2005 \$
Net surplus under existing Australian GAAP		(18,535)
Adjustments		
Depreciation expense arising from the capitalisation of estimated make good costs on leased premises (AASB 116).	(i)	(3,263)
Change in employee expense arising from discounting of non-current annual leave (AASB 119).	(ii)	(3,555)
Interest expense arising from the unwinding of the discount in the make good provision (UIG 1).	(iii)	(697)
Net deficit under AEIFRS		(26,050)

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 s148 of the *Australian Securities and Investments Commission Act 2001*.

4 Operating revenue

	2005 \$	2004 \$
Interest		
Bank interest	34,298	34,340

5 Appropriations

		2005	2004
	Note	\$	\$
Appropriation Act No. 1 Operating Expenditure		856,000	856,000
Total		856,000	856,000

6 Operating expenses

		2005	2004
		\$	\$
6A Employees			
Salaries		420,244	408,249
Superannuation	(i)	57,647	57,464
Leave and other entitlements		38,038	34,767
Total employees benefits expense		515,929	500,480
Workers compensation premiums		2,860	1,926
Total employees expenses		518,789	502,406

(i) Employer contributions to superannuation amounting to **\$51,269** (2004: \$51,231) 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 25.3% (2004: 25.3%), for PSS 12.4% (2004: 12.4%), and for the superannuation productivity benefit 2 to 3% (2004: 2 to 3%).

Contributions to Employer Superannuation Productivity Benefit amounted to **\$6,378** (2004: \$6,233).

		2005	2004
		\$	\$
6B Suppliers			
Services from related entities		35,383	88,941
Services from external entities		227,344	191,103
Operating lease rentals		125,527	120,699
Total suppliers expenses		388,254	400,743

		2005	2004
	Note	\$	\$
6C Depreciation and amortisation			
Depreciation of plant and equipment		2,995	2,176
Depreciation of library books		3,552	8,279
Amortisation of leasehold improvements		680	1,363
Amortisation of intangible assets—computer software		50	208
<i>Total depreciation and amortisation</i>	8D	7,277	12,026

7 Financial assets

		2005	2004
		\$	\$
7A Cash			
Cash at bank and on hand		635,848	659,174
Balance of cash as at 30 June shown in the Statement of Cash Flows		635,848	659,174
7B Receivables			
Other debtors		3,057	2,982
GST receivable		11,175	12,642
		14,232	15,624
Receivables are aged as follows:			
– Not overdue		14,232	15,624
		14,232	15,624

All receivables are current assets.

8 Non-financial assets

	Note	2005 \$	2004 \$
8A Leasehold improvements			
Leasehold improvements—at cost		–	3,420
Accumulated amortisation		–	(255)
		–	3,165
Leasehold improvements—at valuation		6,900	20,600
Accumulated amortisation		(680)	(20,106)
		6,220	494
Total leasehold improvements (non-current)	8D	6,220	3,659
8B Plant and equipment			
Plant and equipment—at cost		7,296	25,400
Accumulated depreciation		(406)	(3,816)
		6,890	21,584
Plant and equipment—at valuation		85,080	180,397
Accumulated depreciation		(6,141)	(119,498)
		78,939	60,899
Total plant and equipment (non-current)	8D	85,829	82,483
8C Intangible assets—computer software			
Computer software at cost		50	1,045
Less accumulated amortisation		(50)	(644)
Total intangibles (non-current)	8D	–	401

The revaluation of leasehold improvements and plant and equipment was performed in accordance with the revaluation policy stated at Note 1L.

8D Analysis of leasehold improvements, plant and equipment

Reconciliation of opening and closing balances of leasehold improvements, plant and equipment and intangibles

Item	Note	Leasehold improvements	Plant and equipment	Intangibles computer software	Total
As at 1 July 2004		\$	\$	\$	\$
Gross book value		24,020	205,797	1,045	230,862
Accumulated depreciation/ amortisation		(20,361)	(123,314)	(644)	(144,319)
Net book value		3,659	82,483	401	86,543
Additions					
by purchase		–	7,296	–	7,296
Net revaluation increment/(decrement)	(i)	3,241	2,597	(351)	5,487
Depreciation/amortisation expense	6C	(680)	(6,547)	(50)	(7,277)
As at 30 June 2005					
Gross book value		6,900	92,376	50	99,326
Accumulated depreciation/ amortisation		(680)	(6,547)	(50)	(7,277)
Net book value		6,220	85,829	–	92,049

(i) Plant and equipment was revalued to fair value for the first time at 1 July 2004 by an independent valuer from the Australian Valuation Office (Ty Noble AAPI). Resulting from this revaluation, a debit of \$5,487 was recorded against the accumulated surplus in accordance with the transitional provisions of AASB 1041. Prior to 1 July 2004 plant and equipment was valued at deprival value.

Asset values have been reviewed at 30 June 2005 to ensure that there is no material difference to fair value.

8E Summary of balances of assets at valuation as at 30 June 2005, included in table 8D above

Item	Leasehold improvements	Plant and equipment	Total
As at 30 June 2005	\$	\$	\$
Gross value	6,900	85,080	91,980
Accumulated depreciation/amortisation	(680)	(6,141)	(6,821)
Net book value	6,220	78,939	85,159
As at 30 June 2004			
Gross value	20,600	180,397	200,997
Accumulated depreciation/amortisation	(20,106)	(119,498)	(139,604)
Net book value	494	60,899	61,393

8F Other non-financial assets

	2005	2004
	\$	\$
Prepayments	15,949	15,608
Total other non-financial assets (current)	15,949	15,608

9 Provisions

	2005	2004
	\$	\$
Employees		
Salaries	2,130	20,335
Leave	163,147	149,271
Total employee provisions	165,277	169,606
Employee provisions are represented by:		
Current	43,490	67,840
Non-current	121,787	101,766
Total employee provisions	165,277	169,606

10 Payables

	2005	2004
	\$	\$
Supplier payables		
Trade creditors	18,277	14,284
Total supplier payables	18,277	14,284

All supplier payables are current.

11 Equity

Item	Accumulated surplus		Asset revaluation reserve		Total equity	
	2005	2004	2005	2004	2005	2004
	\$	\$	\$	\$	\$	\$
Opening balance as at 1 July	582,915	607,750	10,144	10,144	593,059	617,894
Net surplus/(deficit)	(24,022)	(24,835)	–	–	(24,022)	(24,835)
Net revaluation increment /(decrement)	5,487	–	–	–	5,487	–
Closing balance as at 30 June	564,380	582,915	10,144	10,144	574,524	593,059

12 Cash flow reconciliation

Reconciliation of net (deficit) to net cash from operating activities

	2005	2004
	\$	\$
Net (deficit)	(24,022)	(24,835)
Depreciation and amortisation	7,277	12,026

Changes in assets and liabilities resulting from operating activities

Increase/(decrease) in employee provisions	(4,329)	16,999
(Increase)/decrease in prepayments	(341)	106
(Increase)/decrease in receivables	1,392	(8,448)
Increase/(decrease) in supplier payables	3,993	(3,522)
Net cash from/(used by) operating activities	(16,030)	(7,674)

13 Related party disclosures

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

- Richard St John—Convenor
- Zelinda Bafile (commenced 23 May 2005)
- Elizabeth Boros
- Barbara Bradshaw
- Philip Brown (until 11 December 2004)
- Berna Collier (Nominee of ASIC’s Chairman)
- Greg Hancock (until 11 December 2004)
- Merran Kelsall (until 11 December 2004)
- Jeffrey Lucy
- John Maslen (until 11 December 2004)
- Louise McBride
- Alice McCleary (commenced 23 May 2005)
- Marian Micalizzi
- Ian Ramsay
- Robert Seidler
- Greg Vickery (commenced 23 May 2005)
- Nerolie Withnall.

(b) During the financial year there were no related party transactions with Committee members, except for the payment of **\$66,000** to ASIC of which Jeffrey Lucy is the Chairman, Berna Collier is Commissioner and Merran Kelsall was Chair of the audit committee until 30 January 2005 (2004: \$64,505).

The aggregate remuneration of members is disclosed in Note 14A.

14 Remuneration of members and executives

14A Remuneration of members

	2005	2004
	\$	\$
Aggregate amount of superannuation payments in connection with the future retirements of Committee members, including Legal Committee members	3,266	4,154
Other remuneration received or due and receivable by Committee members, including Legal Committee members	40,991	48,581
<i>Total remuneration received or due and receivable by Committee members, including Legal Committee members</i>	44,257	52,735

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.

	2005	2004
Bands of remuneration	Members	Members
\$0–\$9,999	23	21

14B Remuneration of executive officer

	2005	2004
	\$	\$
Income received or due and receivable by the executive officer	195,695	198,137
Bands of income	Executives	Executives
\$190,000–\$199,999	1	1
	1	1

The executive remuneration includes all Executive Officers concerned with or taking part in the management of CAMAC during 2004–05 except for the members of the Committee. Details in relation to members of the Committee have been incorporated into Note 14A—Remuneration of members.

15 Auditor's remuneration

	2005	2004
	\$	\$
Remuneration to the Auditor-General for auditing the financial statements in respect of the reporting period. No other services were provided by the auditors.	10,750	8,000

16 Average staffing levels

	2005	2004
The average staffing levels for CAMAC during the year were	3	3

17 Financial instruments

17A Terms, conditions and accounting policies

Financial instrument	Note	Accounting policies and methods (including recognition criteria and measurement basis)	Nature of underlying instrument (including significant terms and conditions affecting the amount, timing and certainty of cash flows)
Financial assets			
Cash at bank	7A	Financial assets are recognised when control over future economic benefits is established and the amount of the benefit can be reliably measured. Interest is credited to revenue as it accrues.	Interest is earned on the daily balance at the prevailing daily rate for money on call and is paid at month end. At 30 June 2005 the current interest rate is 4.9%.
Receivables for goods and services	7B	These receivables are recognised at the nominal amounts due less any provision for bad and doubtful debts. Provisions are made when collection of the debt is judged to be less rather than more likely.	Credit terms are net 14 days (2004: 14 days).
Financial liabilities			
Trade creditors	10	Financial liabilities are recognised when a present obligation to another party is entered into and the amount of the liability can be reliably measured. 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.	Settlement is usually made net 30 days.

17B Interest rate risk

Financial instrument	Note	Floating interest rate		Non-interest bearing		Total		Weighted average effective interest rate	
		2005	2004	2005	2004	2005	2004	2005	2004
		\$	\$	\$	\$	\$	\$	%	%
Financial assets									
Cash at bank	7A	635,848	659,174	–	–	635,848	659,174	4.73	4.65
Receivables for goods and services	7B	–	–	14,232	15,624	14,232	15,624	–	–
Total financial assets		635,848	659,174	14,232	15,624	650,080	674,798		
Total assets						758,078	776,949		
Financial liabilities									
Trade creditors	10	–	–	18,277	14,284	18,277	14,284	–	–
Total financial liabilities		–	–	18,277	14,284	18,277	14,284		
Total liabilities						183,554	183,890		

17C Net fair values of financial assets and liabilities

	2005		2004	
	Total carrying amount	Aggregate net fair value	Total carrying amount	Aggregate net fair value
Financial assets	\$	\$	\$	\$
Cash at bank	634,848	634,848	658,174	658,174
Cash on hand	1,000	1,000	1,000	1,000
Receivables for goods and services	14,232	14,232	15,624	15,624
Total financial assets	650,080	650,080	674,798	674,798
Financial liabilities				
Trade creditors	18,277	18,277	14,284	14,284
Total financial liabilities	18,277	18,277	14,284	14,284

Financial assets

The net fair value of cash approximates its carrying amount.

The net fair values for receivables for goods and services, all of which are short term in nature, approximate their carrying amount.

Financial liabilities

The net fair values for trade creditors, all of which are short term in nature, approximate their carrying amount.

17D Credit risk exposures

CAMAC's maximum exposure to credit risk at reporting date in relation to each class of recognised financial assets is the carrying amount of those assets as indicated in the Statement of Financial Position.

CAMAC has no significant exposures to any concentrations of credit risk.

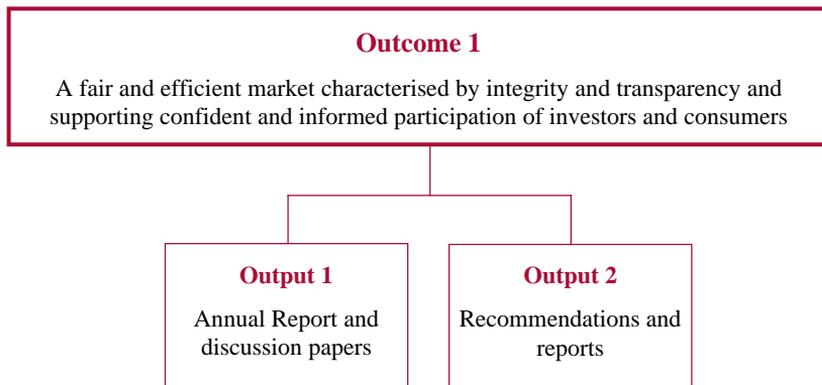
18 Events occurring after reporting date

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

19 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 advisor are categorised into two outputs. The relationship between Outcome 1 and the corresponding two outputs is shown in the diagram below.



Outcome 1. A fair and efficient market characterised by integrity and transparency and supporting confident and informed participation of investors and consumers.

Table A: Net cost of outcome delivery

	Outcome 1	
	2005 \$	2004 \$
Departmental expenses	914,320	915,175
Total expenses	914,320	915,175
<i>Costs recovered from provision of goods and services to the non-Commonwealth Government sector</i>		
Departmental	–	–
Total costs recovered	–	–
<i>Other external revenues</i>		
Departmental interest	34,298	34,340
Total departmental	34,298	34,340
Total other external revenues	34,298	34,340
Net cost of outcome (a)	880,022	880,835

(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 Statement of Financial Performance.

Table B: Departmental revenues and expenses by outcome and outputs

	Outcome 1					
	Output 1		Output 2		Total	
	2005 \$	2004 \$	2005 \$	2004 \$	2005 \$	2004 \$
Departmental expenses						
Employees	243,831	236,131	274,958	266,275	518,789	502,406
Suppliers	182,479	188,349	205,775	212,394	388,254	400,743
Depreciation and amortisation	3,420	5,652	3,857	6,374	7,277	12,026
Total departmental expenses	429,730	430,132	484,590	485,043	914,320	915,175
Funded by						
Revenue from government	402,320	402,320	453,680	453,680	856,000	856,000
Interest	16,120	16,140	18,178	18,200	34,298	34,340
Total departmental revenues	418,440	418,460	471,858	471,880	890,298	890,340

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.

20 Appropriations

This table reports on appropriations made by the Parliament out of the Consolidated Revenue Fund (CRF) in respect of CAMAC. When received by CAMAC, the payments made are legally the money of CAMAC and do not represent any balance remaining in the CRF.

20A Cash basis acquittal of Appropriations from Acts 1 and 3

Particulars	Departmental outputs	
	2005 \$	2004 \$
Year ended 30 June 2005		
Balance carried forward from previous year	–	–
Appropriation Acts 1 and 3	856,000	856,000
Appropriations available for payments from CRF	856,000	856,000
Payments made out of CRF	856,000	856,000
<i>Balance carried forward to next year</i>	–	–