

## 4. UNDERTAKING THE REGISTRATION AND SUPERVISORY FUNCTIONS

401. This chapter considers the institutional arrangements that could be put in place for undertaking the functions of registration and supervision of company auditors.

402. The term 'supervision' can broadly be considered to cover many functions, including:

- (a) administration and lodgment of triennial statements (re-registration) including changes and voluntary cancellations;
- (b) dealing with administrative matters, such as failure to lodge a statement and bankruptcy (see also paragraph 851);
- (c) monitoring of continuing education;
- (d) monitoring of continuing experience;
- (e) performance of quality review/surveillance of audit work;
- (f) assessments and responses to complaints received;
- (g) disciplinary procedures where required;
- (h) independence considerations;
- (i) issues regarding appointment;
- (j) monitoring changes of auditors (for example, approval of resignation); and
- (k) public oversight and/or reporting.

403. Consideration of the issues associated with the qualifications and experience that a person should possess in order to satisfy the requirements for registration as a company auditor and the level and type of post-registration supervision for such auditors appears in chapters 5 and 6.

404. Issues associated with the institutional arrangements for dealing with disciplinary matters involving RCAs are considered separately in chapter 8.

## CURRENT SYSTEM

405. Since 1991 the ASC has been responsible for the registration and subsequent supervision of company auditors. The former National Companies and Securities Commission (NCSC) (through its State and Territory delegates) also performed these functions. However, prior to the NCSC assuming responsibility for the administration of company law in 1982, registration of company auditors was undertaken by Companies Auditors Boards in some jurisdictions and Public Accountants Registration Boards in others.

406. The work in relation to the registration and supervision of RCAs (and liquidators) has recently been consolidated into the ASC Regional Office located in South Australia. This office carries out a number of mandatory activities, including:

- (a) processing and assessing applications for registration;
- (b) administration of triennial statements;
- (c) dealing with changes in particulars;
- (d) dealing with administrative matters; and
- (e) approval of requests for resignation.

407. Routine disciplinary matters, such as failure to lodge triennial statements and bankruptcy, are collated by the South Australian Regional Office for forwarding to the CALDB. Conduct matters are dealt with by each local Regional Office.

408. The ASC also carries out functions for which its resource requirements may vary considerably, including:

- (a) a surveillance program covering selected auditors (in some States only);
- (b) assessing and responding to complaints; and
- (c) disciplinary procedures, particularly referral of auditors to the CALDB where they appear to be deficient in audit performance.

409. A 'Procedures Manual — Auditors and Liquidators Registration', which provides an explanation of the various provisions in the Law and the Regulations dealing with the registration of auditors, has been prepared by the ASC to provide guidance to the staff who perform the registration function and to ensure uniform administration of the provisions in all jurisdictions. This manual is available to the general public. In addition, in January 1993 the ASC published a booklet to assist potential applicants for registration entitled 'An ASC Guide to the Registration and Supervision of Auditors'.

410. The ASC is required by the Law to maintain a record of all persons who have been registered as company auditors and whose registration is still current. Known as the Register of Auditors, the record is required by the Law to contain the following information about each RCA:

- (a) the name of the person;
- (b) the day on which the person's application for registration was granted;
- (c) the address of the principal place of business where the person practices as an auditor;
- (d) the name of the firm or the name or style under which the auditor practices;
- (e) particulars of any suspension of the person's registration as an auditor; and
- (f) such other particulars as the ASC considers appropriate.

411. The Register of Auditors is maintained on the ASC's ASCOT database. It may be inspected by members of the public upon payment of the prescribed fee (currently \$8).

## **OVERSEAS POSITION**

412. All of the overseas jurisdictions whose requirements were examined by the Working Party<sup>1</sup> have requirements dealing with the regulation of either company auditors or public accountants (including company auditors).

413. In Great Britain, there are requirements dealing specifically with the regulation of company auditors. The responsibility for this function is delegated by the Companies Act 1989 to recognised supervisory bodies (RSBs) that have been approved for the purposes of the legislation. The RSBs that have been approved are the main accounting bodies in Great Britain.

414. Two other jurisdictions, Canada<sup>2</sup> and South Africa, require the registration of all public accountants (including company auditors). In Canada and South Africa the registration functions are undertaken by statutory public accountants' and auditors' boards.

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<sup>1</sup> The Working Party examined the requirements of the Canadian Province of Ontario, Great Britain, New Zealand, South Africa and the United States of America.

<sup>2</sup> Throughout this Discussion Paper a reference to the Canadian requirements should be read as the requirements in the Province of Ontario.

415. Prior to 1993, the New Zealand authorities also achieved a similar result to that in Canada and South Africa by using the then New Zealand Society of Accountants (NZSA)<sup>3</sup> as a de facto public accountants' registration board. However, in 1993 the New Zealand legislation was amended to allow suitably qualified people who are not members of the NZSA to offer accounting services to the public.<sup>4</sup>

416. In the United States of America the regulation of the accounting profession is largely State-based. In most, if not all States, State Boards of Accountancy have been established under legislation enacted by the State legislature and these Boards are empowered to issue licences to practice public accountancy (including the provision of auditing services).

## ISSUES

417. One of the more significant issues to be addressed by the Working Party during the course of this review is whether the existing institutional arrangements for regulating auditors are operating in an efficient and effective manner.

418. The Working Party received a number of submissions dealing with the question of the institutional arrangements for the registration of company auditors. While the majority of these submissions either argued or asserted that the ICAA and ASCPA should assume responsibility for the registration and supervisory functions, a number of submissions proposed that these functions should be undertaken by an independent body.

419. A number of the submissions that argued that the ICAA and ASCPA should be responsible for the institutional arrangements sought to justify this on the grounds that there is currently a duplication of effort between the ASC and the CALDB and the activities of the bodies in the areas of registration (including character checks), quality reviews and discipline. As the ASC is only responsible for auditors who perform one type of audit engagement, it was argued that it would be more efficient for the bodies to

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<sup>3</sup> During 1996 the NZSA changed its name to the Institute of Chartered Accountants of New Zealand.

<sup>4</sup> Notwithstanding this amendment, subsection 199(1) of the New Zealand Companies Act 1993 provided that a company auditor must be a member of the NZSA who holds a certificate of public practice, an officer of the Audit Department who is authorised to be an auditor of a company or a member of an accounting body formed outside New Zealand where the body has been approved by the Registrar and the member is eligible to conduct audits in the jurisdiction in which the body is formed. In 1996, in conjunction with the change of name of the NZSA, the Companies Act was amended by replacing the reference to NZSA members with a reference to chartered accountants (within the meaning of section 19 of the Institute of Chartered Accountants of New Zealand Act 1996) and, in addition, to allow audits to be conducted by a person who is eligible to conduct audits in jurisdictions other than New Zealand and who has been approved by the Registrar.

have responsibility for monitoring company auditors as part of their more extensive programs for monitoring the activities of members who are in public practice.<sup>5</sup>

420. While accepting the argument that there is some duplication of effort in the activities of the ASC and the accounting bodies, the Working Party notes that, in considering the appropriate form of institutional arrangements for the regulation of auditors, careful consideration must be given to the objectives of the legislators when they enacted the present requirements. In brief, the objective was, and still is, to ensure that suitably qualified natural persons are available to audit the financial statements of companies and thus provide some assurance about the reliability of those financial statements to securities market participants who rely on them for making investment decisions.

## **OPTIONS FOR PERFORMING THE FUNCTIONS**

421. The Working Party identified a number of alternative ways in which the registration and supervisory functions could be performed. The alternatives identified by the Working Party are:

- (a) continuing the existing institutional arrangements;
- (b) having authorised accounting bodies perform the functions under delegation from the ASC;
- (c) amending the Law to provide that authorised accounting bodies may be given full responsibility for performing the functions (statutory conferral);  
or
- (d) establishing a new Auditors Practice Board (APB) which could incorporate the current responsibilities of both the ASC and the CALDB.

422. The following paragraphs briefly outline each of these alternatives.

### **ASC Continues to Perform Functions**

423. This option envisages the continuation of the existing institutional arrangements for the registration and supervision of auditors.

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<sup>5</sup> There is one minor qualification to this statement. RCAs who are members of the ASCPA, whose gross annual income from public accountancy services is less than \$7,500 and who do not hold themselves out to the public as providing public accountancy services, are not required to hold public practice certificates and thus do not come within the scope of programs for monitoring the action of members in public practice.

424. Since 1991 the staff of the ASC's Corporate Regulation/Commercial Programs Division have built up a considerable level of expertise in processing applications for registration of auditors and the ongoing supervision of RCAs. The Working Party understands that, notwithstanding complaints by some applicants for registration as an auditor about the ASC's interpretation of the experience requirements, the present administrative arrangements for registering auditors are, for the most part, operating satisfactorily.

425. The principal advantage in adopting this option is that the National Corporations Scheme will continue to obtain the benefits of the administrative systems that have been put in place by the ASC and the expertise of the ASC staff responsible for performing these functions. In addition, an arms length body may dispel any perception of bias that might arise if authorised accounting bodies undertook the registration and supervisory processes.

426. The major disadvantages of retaining the existing arrangements include:

- (a) the need for the ASC to maintain an administrative structure for regulating one aspect of the work undertaken by members of the accounting profession;
- (b) a continuation of the difficulties currently experienced by ASC staff in assessing whether an applicant has satisfied the prescribed requirements concerning practical experience in auditing; and
- (c) ongoing supervision of RCAs would continue to be undertaken by the ASC and one or more accounting bodies, with the result that there would be continuing lack of cohesion and potential duplication of effort especially in terms of implementing and administering surveillance programs.

427. None of the overseas jurisdictions examined by the Working Party currently have institutional arrangements under which the corporate regulator is responsible for the registration and supervision of company auditors.

## **Authorised Accounting Bodies Responsible for Functions**

428. The Working Party has identified two ways in which authorised accounting bodies could be given responsibility for registering company auditors:

- (a) under delegation from the ASC, which would retain legislative responsibility for the functions; or
- (b) by statutory conferral of the functions, thus making them self-regulating bodies approved under the Law.

## Under Delegation

429. Under this option, the ASC would, on the face of the Law, retain responsibility for administering the provisions dealing with registration and supervision of company auditors. The Law would, however, be amended to provide that the ASC could delegate the functions of registration and supervision of company auditors to authorised accounting bodies which met specific criteria regarding their operations and which the ASC was satisfied were appropriate to undertake the functions.

430. The delegation of the functions of registration and supervision of auditors would require a formal act of delegation by the ASC to the authorised accounting bodies. Any such delegation would desirably be preceded by the negotiation of an appropriate MOU between the ASC and the bodies. That MOU would need to address the full range of issues associated with the performance of registration and supervision functions.

431. While the majority of MOUs currently entered into by the ASC are with other regulatory bodies (both domestically and internationally) and therefore refer mainly to the exchange of information between such regulatory bodies, these MOUs may provide important precedents for an MOU between the ASC and the accounting bodies. An MOU in the circumstances suggested here would need to specify the conditions upon which the delegation was to be exercised and this would include fairly detailed procedures relating to registration and supervision. An MOU would also need to address the appropriate form of liaison between the ASC and the bodies, the circumstances in which assistance could be provided between the ASC and the bodies, the way in which information generally could be exchanged and the circumstances in which matters unable to be appropriately dealt with by the bodies could be referred to the ASC for its more definitive regulatory action.

432. Provisions respecting the confidentiality of information exchanged would also need to be included in an MOU. An instrument of delegation of this kind would always need to be capable of revocation and an MOU would need to specify a mechanism for resolving any disputes or substantial differences of approach which may arise between authorised accounting bodies acting under a delegation from the ASC.

433. In order to ensure transparency of the arrangements between the ASC and authorised accounting bodies, an MOU should be a public document.

434. It would be desirable for the legislation itself to set the framework around which delegation could take place. The legislation could be expected to provide that the ASC may delegate certain functions to the accounting bodies provided the ASC was satisfied that acceptable procedures and arrangements were in place to provide reasonable assurance regarding the equity, quality and consistency of relevant matters, including:

- (a) the adequacy of the resources to be devoted to the registration and supervision functions;

- (b) the adequacy of the appeal mechanisms in place;
- (c) the adequacy of indemnity insurance arrangements that are in place;
- (d) the effectiveness of the supervisory arrangements in place; and
- (e) the effectiveness of the continuing professional development program.

## Statutory Conferral

435. Under this option, the Law would provide that all of the functions associated with the registration and supervision of company auditors are to be undertaken by non-public sector organisations, such as the bodies constituting the accounting profession.

436. The precise mechanism to be used for achieving a statutory conferral of these functions to the accounting bodies is not canvassed in this report. However, it could include some or all of the following elements:

- (a) an application for approval of each of the bodies seeking to be involved in the administration of the function;
- (b) the approval of each applicant by the Minister or a delegate of the Minister;
- (c) the appointment of outside representatives to the bodies involved in the administration of the function;
- (d) the approval of the rules of each successful applicant to ensure that there is equity and fairness in the way the procedures for registering and supervising company auditors work; and
- (e) the Minister or his delegate having the power to disallow rules dealing with the procedures to be followed in registering and supervising company auditors.

437. Two overseas jurisdictions, Great Britain and New Zealand, have given one or more private sector organisations responsibility for the registration and supervision of company auditors.

438. In 1989, Great Britain amended its Companies Act to place primary responsibility for the standards and conduct of company auditors on RSBs. In addition, the Act placed primary responsibility for the qualifications and training of potential company auditors on recognised qualifying bodies (RQBs). In practice the professional bodies to which the company auditors belong have gained recognition as both RSBs and RQBs.

439. To obtain recognition as an RSB, for example, each professional body had to make application to the Secretary of State and each application had to be accompanied by supporting information including a copy of its rules (which have to make adequate provision for matters such as appropriate technical standards, the competence of company auditors, the monitoring and enforcing of its rules and the investigation of complaints). One interesting feature of the British Act is that the RSBs are required to maintain a joint register of the individuals, partnerships and companies that are eligible for appointment as company auditors.

440. In the case of New Zealand, the Institute of Chartered Accountants of New Zealand (ICANZ), the country's principal professional accounting body, is, for practical purposes, responsible for the registration and supervision of the majority of company auditors in New Zealand.<sup>6</sup>

### Advantages and Disadvantages of Delegation and Statutory Conferral

441. Delegation of the registration and supervision functions to authorised accounting bodies could be expected to provide significant benefits for both the ASC and the bodies concerned. These benefits include:

- (a) making more efficient use of the resources of the ASC and each body that has been authorised through:
  - (i) elimination of some of the paper work associated with the registration and supervision of auditors; and
  - (ii) rationalisation of audit surveillance programs;
- (b) providing more efficient processing of applications for registration through having the applicant's peers considering whether the applicant has adequate practical experience in auditing;
- (c) using the revised procedures as a means of adding value to the register of members holding public practice certificates maintained by the bodies; and
- (d) enabling the ASC to use the resources currently committed to the registration and supervision of auditors for other high priority programs,

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<sup>6</sup> Subsection 199(1) of the New Zealand Companies Act 1993 provides that companies may be audited by a person who is a chartered accountant (within the meaning of section 19 of the ICANZ Act); an officer of the Audit Department who is authorised to audit companies; a member of an accounting body formed outside New Zealand where the body has been approved by the Registrar and the member is eligible to conduct audits in the jurisdiction in which the body is formed; and a person who is eligible to conduct audits in jurisdictions other than New Zealand and who has been approved by the Registrar.

assuming a portion of those resources is not transferred to the accounting bodies under an MOU arrangement.

442. The potential disadvantages of delegating these functions to authorised accounting bodies include:

- (a) whether the bodies would, in practice, be willing to self-regulate their activities to the standard expected of them by the wider community; and
- (b) creating a perception in some sections of the community that the government had allowed the authorised bodies to establish a ‘closed shop’ for company auditors.

443. The ways in which the concerns raised in the last paragraph might be overcome include:

- (a) a requirement for the authorised accounting bodies to provide the ASC with regular comprehensive reports on the administration of the delegated functions;
- (b) the establishment by the ASC of a mechanism for considering complaints about the manner in which the authorised accounting bodies are performing, or have performed, the delegated functions; and
- (c) legislative provisions or an MOU specifying matters about which the ASC must be satisfied.

444. As with the delegation of these functions to authorised accounting bodies, statutory conferral could be expected to provide significant benefits for the ASC and the bodies concerned. However, the safeguards that the Parliament might require from the bodies performing these functions could be expected to be more substantial and thus might result in greater intrusion into the affairs of these bodies than would be the case if the function were performed under delegation from the ASC.

## **Establishing an Auditors Practice Board<sup>7</sup>**

445. The establishment of a separate APB is another option that is available for performing the registration and supervisory functions. It would be expected that the majority of members would be appointed from nominations made by the accounting bodies.

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<sup>7</sup> This option is based on a proposal contained in a 1993 report, ‘Registration of Auditors and Related Issues’, prepared by a Working Party established by the ASC, the ICAA and the ASCPA.

446. An APB would take over responsibility for registering company auditors, based on criteria established in legislation and/or regulations. It would be most desirable for the possibility of conditions being attached to such registration to be introduced into the Law or regulations. It would also be expected as a minimum that an APB would assume responsibility for some other supervision functions described in paragraph 402, including:

- (a) the administration, supervision and lodgment of triennial statements, along with any changes or cancellations, including ensuring that any conditions of registration are met;
- (b) ensuring that appropriate designated requirements for continuing education and continuing experience are met;
- (c) dealing with letters of complaint; and
- (d) handling disciplinary matters, to the extent that the accounting bodies are not able to handle such matters through their internal disciplinary procedures (which would absorb the present audit-related functions of the CALDB).

447. The day-to-day procedures for these functions could largely be handled by staff of one or more of the accounting bodies under delegation from the APB. Furthermore it would be envisaged that these bodies would continue to carry out quality review programs. These programs may, however, need to be expanded. To ensure that the public interest is well served, an APB could also carry out public oversight of the quality review programs implemented by the accounting bodies. This public oversight process would be designed to ensure that the quality review programs covering audit work are properly designed and implemented, with appropriate follow-up action.

448. The establishment of a separate body to handle registration and other roles could have a number of advantages, including:

- (a) it has many of the features of self-regulation;
- (b) such a body could relieve or overcome some of the ASC's resource problems in relation to finance and people, through the elimination of its existing administrative role;
- (c) inefficiencies or inconsistencies which may arise from different Regional Offices of the ASC handling registration matters would be eliminated;
- (d) such a body would mean that professional people would be overseeing professional accreditation;

- (e) it would be possible to link registration and ongoing criteria requirements with existing requirements of the accounting bodies for practising certificates and the quality review programs, thereby overcoming gaps that exist at present;
- (f) such a body would be better able to determine appropriate ongoing requirements as to experience and education;
- (g) such a body could be organised as cohesive and all embracing, covering in due course all aspects of registration, regulation and supervision of auditors; and
- (h) the public interest would be, and would be seen to be, better served, with proper coverage of all relevant areas and public accountability.

449. On the other hand, it could be argued that an APB simply transfers functions from one statutory body (the ASC) to another — albeit one on which the accounting bodies have a significant representation. While there may be efficiencies in centralising the registration and supervisory functions in one office, the resources (funding and staffing) needed for the new board would almost certainly have to come from other agencies such as the ASC or the CALDB.

450. Two overseas jurisdictions, Canada and South Africa, have established public accountants registration boards that have functions which encompass the functions proposed for an APB. However, a significant difference between the proposed APB and the overseas models is that the Australian board would only be concerned with company auditors while the overseas boards are concerned with all accountants in public practice.

## **ADDITIONAL ISSUES THAT WOULD NEED TO BE ADDRESSED IF AUTHORISED ACCOUNTING BODIES PERFORMED THE FUNCTIONS**

451. If one or more accounting bodies were authorised to undertake the registration and supervision of company auditors, there would be a number of additional issues to be considered. These issues are:

- (a) registration of persons who are not members of an authorised accounting body;
- (b) the exchange of information between the ASC and authorised accounting bodies;
- (c) the form of the Register of Auditors; and

- (d) other administrative procedures of the authorised accounting bodies.

## **Non-members of Authorised Accounting Bodies**

452. An important issue concerns the procedures to apply to individuals who are qualified for, and are seeking registration as, an RCA but who are not members of an authorised accounting body (for example, individuals who are qualified for membership of an authorised body but have a conscientious objection to becoming a member of that body or are members of a body that has not been authorised).

453. There would appear to be two main options available for registering and supervising company auditors who are not members of an authorised accounting body. The first would be for the ASC to continue to have responsibility for the function. The principal disadvantage of this option is that, because of the smaller number of applications that would need to be processed, the ASC would have to keep systems in place for processing applications, periodic statements and other documents and for undertaking regular surveillance of such auditors. It is also possible that, with the relatively small number of applications and auditors to be monitored, the ASC's staff may gradually lose their expertise for dealing with such matters.

454. The second option would be for authorised accounting bodies to perform these functions on the same basis as they perform the functions in respect of their own members. Such applicants would be subject to the rules, codes of ethics and disciplinary procedures of the bodies on the same basis as members of those bodies. The Working Party notes that, prior to 1996, the then NZSA was required under section 34 of the NZSA Act to issue practising certificates to persons who had a conscientious objection to membership. Individuals to whom practising certificates were issued were required by the Act to pay fees to the NZSA and to comply with the provisions of the Act and the rules and codes of ethics of the NZSA relating to discipline as if they were members of the NZSA. The Institute of Chartered Accountants of New Zealand Act 1996 (ICANZ Act), which came into operation in 1996, does not contain a provision equivalent to section 34 of the NZSA Act.

455. A submission received by the Working Party suggests that some individuals who have a conscientious objection, based on religious grounds, to membership of accounting bodies may not be prepared to participate in a registration system under which:

- (a) the administrative functions are performed by authorised accounting bodies under delegation from the ASC; and
- (b) registrants are required to undertake to comply with the ethics and rules of authorised accounting bodies, irrespective of whether or not the registrant is a member of such a body.

456. The Working Party was initially of the view that these concerns could be overcome on the grounds that the Government would effectively continue to be responsible for the registration and regulation of RCAs as the authorised accounting bodies would be performing the functions under delegation from a Government agency. However, following discussions with the authors of the submission referred to above, the Working Party understands that the objection is to any involvement of the accounting bodies in the registration process. As a consequence, the Working Party believes that, for individuals with such a conscientious objection, delegating functions to authorised accounting bodies could effectively preclude them from being RCAs and thus could be considered to be discriminatory.

457. While the Working Party would prefer to follow the New Zealand approach, and have the authorised accounting bodies responsible for registering individuals who are conscientious objectors, it notes that constitutional considerations may make it necessary for the ASC to register such individuals. The registration of these individuals could be conditional on the registrant complying with auditing guidelines which are set or adopted by the ASC and which mirror matters dealt with in the ethics and rules of the authorised accounting bodies. While this approach still effectively results in such individuals being treated as if they are members of a professional body, it has the advantage of ensuring that no RCAs have a competitive or other advantage through not having to comply with any ethics or rules.

## **Exchange of Information**

458. To facilitate the operation of a regime under which the registration and regulation of auditors is delegated to authorised accounting bodies, it is essential that there be an ongoing exchange of information between the ASC and the bodies performing the delegated functions.

459. Section 127 of the ASC Act currently provides that the ASC must take all reasonable measures to protect from unauthorised use or disclosure information given to it in confidence in or in connection with the performance of its functions or the exercise of its powers. The section imposes strict conditions on the bodies to which, and the circumstances under which, information may be disclosed by the ASC.

460. The Working Party is of the view that section 127 should be amended to permit the ASC to provide to authorised accounting bodies information concerning individuals who are members of one or more of the bodies. The ASC should also be empowered to give authorised accounting bodies information about non-members who are either RCAs or who are known to be making application for registration as an RCA.

461. Where information is given to authorised accounting bodies under section 127 of the ASC Act, those bodies should also be under an obligation to protect the information from unauthorised use or disclosure.

## **Register of Auditors**

462. The Working Party is of the view that, irrespective of how many accounting bodies are authorised by the ASC, there should be only one Register of Auditors. The Working Party is also of the view that information maintained on the Register should be capable of being accessed through the ASC's ASCOT computer system or a similar public database.

463. Issues such as where the Register is actually maintained and how it is to be updated are matters that should be addressed in the MOU, and perhaps the final instrument of delegation, between the ASC and the accounting bodies that are seeking authorisation.

## **Other Administrative Procedures**

464. The Working Party anticipates that a range of issues associated with the administration of delegated functions would also be addressed during the course of the discussions at which the MOU between the ASC and the accounting bodies that are seeking authorisation is developed.

465. In general terms, these administrative procedures will be ones for the accounting bodies to determine and the ASC's main concern should be one of whether they will enable delegated functions to be performed in an efficient and effective manner. It would, for example, be up to each authorised accounting body to decide whether to undertake the administration of the delegated functions on its own or in co-operation with other authorised accounting bodies.

## **RESOURCE IMPLICATIONS**

466. The various options outlined above have significantly differing financial implications. An overview of these implications is contained in the following paragraphs.

467. Payroll costs presently incurred by the ASC covering registration of auditors and the supervision functions described in paragraphs 402(a), (b) and (j) amount to approximately \$150,000-\$200,000 per annum, depending on the level of activities.

468. Additional significant costs are also incurred relating to the supervision functions described in paragraphs 402(e), (f) and (g). These can vary considerably from year to year. The approximate total amount incurred by the ASC during the year ended 30 June 1994 was \$900,000, which included significant out-of-pocket costs for expert opinions etc. For the year ended 30 June 1995 the total cost of payroll for ASC staff and external out-of-pocket costs was approximately \$650,000.

469. Information provided to the Working Party by the ICAA and ASCPA indicates that, if they were authorised accounting bodies that were jointly performing the registration and supervisory functions, expenses would amount to \$764,000 in the first year in which the functions are performed and by about \$617,000 in subsequent years. At present fees levels,<sup>8</sup> these expenses would lead to a significant excess of expenses over income.

470. The Working Party notes that the quantum of the costs associated with the performance of the registration function by authorised accounting bodies would be largely dependent on the way in which the function is performed. If, for example, the registration function could be performed as an adjunct to another function, such as the issue of public practice certificates, lower costs may be incurred by the bodies.

471. The Working Party understands that some or all of the accounting bodies may be reluctant to become authorised accounting bodies unless they have an assurance that they will be compensated for any losses (ie excess of expenditure over income) that they incur in performing the registration and supervisory functions. The Working Party notes that the question of whether any compensation should be paid to authorised accounting bodies is one for the Government and the bodies to negotiate.

472. If authorised accounting bodies were to assume responsibility for the registration and supervision of RCAs, the ASC would continue to incur some expenditure in undertaking the registration of conscientious objectors and in performing an audit-type function on compliance by the bodies with either the terms of the MOU or the conditions under which statutory conferral is made.

473. The direct costs of the third option outlined in this chapter, the establishment of a new APB, would depend on the extent to which the APB delegated its functions to the accounting bodies. If the majority of the APB's functions could be delegated to the bodies (as proposed earlier in this chapter), the cost may be of the order of \$250,000-\$300,000 per annum.<sup>9</sup> However, if the APB had to undertake its functions using its own resources, the annual cost could be at least \$1.5 million.

## **THE WORKING PARTY'S POSITION**

474. Whilst each of the options outlined above has its advantages and disadvantages, the Working Party is of the view that the preferred options are those giving the accounting bodies responsibility for the regulation and supervision of auditors. This

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<sup>8</sup> As at 1 May 1997, the prescribed fees were: \$280 for an application for registration; \$115 for lodging a triennial statement; \$55 for lodging a document up to one month late; and \$230 for lodging a document more than one month late.

<sup>9</sup> The ARB may also have to provide some compensation to the major accounting bodies for the functions that they perform under delegation.

view is consistent with the comments contained in many of the submissions received in response to the invitation for comments on the issues that should be addressed during the course of the audit review.

475. On balance, the Working Party has formed the view that the option giving accounting bodies responsibility for the regulation of auditors under delegation from the ASC is to be preferred. However, as audit responsibilities under the Law are discharged in accordance with public interest requirements, it is the view of the Working Party that this necessarily requires that there be a continuing executive government role in this matter and that the ASC maintain an oversight responsibility. The Working Party also notes that the negotiation of suitable compensation arrangements for the accounting bodies may be an important pre-requisite to discussions about the delegation of the registration and supervisory functions.

476. In undertaking the registration function under either of the options, the authorised accounting bodies would assume responsibility for:

- (a) receiving applications from members and non-members for registration as company auditors;
- (b) processing applications in accordance with the requirements of the Law; and
- (c) dealing with appeals in circumstances where an application for registration had been refused.

477. For the purpose of supervising RCAs, the authorised accounting bodies would:

- (a) require an annual statement from RCAs (which would be submitted at the time of payment of annual membership fees);
- (b) deal with administrative matters;
- (c) conduct an ongoing quality review program and undertake any other necessary monitoring functions;
- (d) monitor compliance with continuing education and indemnity insurance requirements;
- (e) assess and respond to complaints received; and
- (f) where necessary, take disciplinary action against RCAs in respect of any matters arising from their performance as company auditors.

478. Before the accounting bodies could assume responsibility for the functions of registration and supervision, it would be necessary for them to demonstrate that they

had procedures in place that would safeguard the public interest. Such procedures could include an effective and efficient quality review program, a mechanism for dealing with complaints about auditors and a disciplinary process that used publicly known and consistently applied standards and procedures. A further safeguarding of the public interest would come through the ASC overseeing the performance of the registration and supervision functions by the bodies.

479. In this regard, a key element of any arrangement for the delegation of functions to the accounting bodies will be the mechanisms that are put in place to ensure compliance with conditions imposed by the Law and the ASC. Authorised accounting bodies would be required to provide the ASC with regular reports on their administration of the delegated functions. Issues that should be addressed in such reports include the number of applications received, the number of applications approved, the number of complaints received concerning the activities of RCAs and a summary of the outcome of inquiries about those complaints, the number of RCAs who have had their work subject to a quality review and a summary of the overall results of those reviews.

480. In addition, the Working Party has given careful consideration to the type of appeal mechanism that should be put in place for dealing with matters arising in respect of the registration and supervision of auditors. As this report recommends that the functions should be performed by authorised accounting bodies under delegation from the ASC, the Working Party has concluded that the most appropriate means of obtaining a review of decisions of authorised accounting bodies would be to permit an appeal to the ASC. A decision of the ASC would, in turn, be subject to review in the same way as other administrative decisions of the ASC.

481. In settling its position, the Working Party has also been mindful of concerns raised in a number of submissions that delegating the functions to the accounting bodies could result in the establishment of a 'closed shop' for company auditors. The Working Party is of the view that the proposals contained in this chapter will guard against the possibility of a 'closed shop' being created. For example, every accounting body that satisfies the conditions contained in the legislation and of the ASC may seek to become an authorised accounting body. In addition, an authorised accounting body will be required by the Law to register a suitably qualified applicant irrespective of whether or not the applicant is a member of the body.

### **Recommendation 4.1**

The ASC Act and the Law should be amended to authorise the ASC to delegate responsibility for the registration and supervision of company auditors to one or more Australian accounting bodies that satisfy specified conditions.

### **Recommendation 4.2**

The conditions set out in the Law would provide that the ASC must be satisfied that each authorised accounting body has and will continue to maintain:

- sufficient resources to enable the delegated functions to be performed in an efficient and effective manner;
- a comprehensive and mandatory code of ethics and other rules dealing with the conduct of members who provide auditing services;
- mandatory requirements for the continuing professional education of its members and for professional indemnity insurance for those members in public practice;
- a comprehensive program for the periodic review of the work of members who provide auditing services;
- appropriate disciplinary procedures for dealing with complaints and other matters concerning members who provide auditing services; and
- (f) adequate indemnity insurance arrangements in respect of its performance of the delegated functions.

### **Recommendation 4.3**

A decision of an authorised accounting body made during the course of performing a delegated function may be the subject of an appeal to the ASC. The decision taken by the ASC may, in turn, be the subject of an appeal to the AAT.

### **Recommendation 4.4**

The ASC may set such additional conditions in an MOU as it considers are necessary to enable it to ensure that the delegated functions are performed in accordance with the requirements of the Law and in an effective and efficient manner.

#### **Recommendation 4.5**

The ASC may only delegate responsibility for the registration and supervision of company auditors to an accounting body when written agreement has been reached with that body on the conditions set down in the Law and any additional conditions that may be imposed by the ASC.

#### **Recommendation 4.6**

Where an authorised accounting body fails to comply with any of the conditions set out in either the Law or the MOU, the ASC may revoke the delegation.

#### **Recommendation 4.7**

Notwithstanding the delegation of registration and supervisory functions to one or more authorised accounting bodies, the ASC may continue to perform registration and supervisory functions in circumstances in which it would be unreasonable to expect a person to apply to an authorised accounting body for registration (for example, where the person has a conscientious objection, based on religious grounds, to the membership of a professional organisation). The registration of such a person should be subject to rules and conditions that are adopted by the ASC and which are equivalent to those imposed by an authorised accounting body.

#### **Recommendation 4.8**

Particulars of all RCAs are to be entered in a single Register of Auditors which is to be maintained in a manner and at a place approved by the ASC.

#### **Recommendation 4.9**

Subject to appropriate safeguards concerning the protection of information from unauthorised use or disclosure, section 127 of the ASC Act should be amended to allow the ASC to provide information to:

- authorised accounting bodies concerning individuals who are members of one or more of the bodies; and
- (b) authorised accounting bodies about non-members who are RCAs or who are known to be making application for registration as an RCA.

